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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

GERALD JAYNE; GREATER)	
YELLOWSTONE COALITION; THE LANDS)	
COUNCIL; NATURAL RESOURCES)	
DEFENSE COUNCIL; SIERRA CLUB; and)	
THE WILDERNESS SOCIETY;)	
)	
Plaintiffs,)	Case No.
)	
v.)	
)	COMPLAINT FOR DECLARATORY
MARK REY, Under Secretary for Natural)	AND INJUNCTIVE RELIEF
Resources and Environment, U.S. Department)	
of Agriculture; GAIL KIMBELL, Chief, U.S.)	
Forest Service; ROWAN GOULD, Acting)	
Director, U.S. Fish and Wildlife Service; and)	
DIRK KEMPTHORNE, Secretary, U.S.)	
Department of the Interior, in their official)	
capacities,)	
)	
Defendants.)	

INTRODUCTION

1. In this action, plaintiffs Gerald Jayne, Greater Yellowstone Coalition, The Lands Council, Natural Resources Defense Council, Sierra Club, and The Wilderness Society challenge the U.S. Forest Service's Idaho Roadless Rule, which makes hundreds of thousands of acres of Idaho's roadless lands available for road construction, mining, and logging. See Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho, 73 Fed. Reg. 61,456 (Oct. 16, 2008). In promulgating the rule, the Forest Service violated the National Forest Management Act and the National Environmental Policy Act. In determining that the rule would not jeopardize northern Idaho's imperiled woodland caribou and grizzly bear populations, the U.S. Fish and Wildlife Service violated the Endangered Species Act. Accordingly, the Idaho Roadless Rule is arbitrary, unlawful, and contrary to law, and should be set aside.

JURISDICTION AND VENUE

2. Plaintiffs bring this action pursuant to the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 et seq.; the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600 et seq.; the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq.; and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq., which waives defendants' sovereign immunity.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02.

4. Venue is proper under 28 U.S.C. § 1391(e) because plaintiff Gerald Jayne resides in this district, a substantial part of the events and omissions giving rise to plaintiffs' claims

occurred in this District, and a substantial part of the roadless land affected by the challenged regulation is situated in this District.

PARTIES

5. Plaintiff Gerald Jayne is a longstanding Idaho conservation advocate and a resident of Idaho Falls, Idaho, in Bonneville County. Throughout a conservation career extending back more than 40 years, Mr. Jayne has taken a leadership role in many advocacy efforts to protect Idaho's National Forest roadless areas, including efforts focused on protecting Hells Canyon, the White Cloud Mountains, and the lands now contained within the Frank Church–River of No Return Wilderness Area. Mr. Jayne was president of the Idaho Environmental Council from 1970-73 and 1978-82, and continues to edit the Council's newsletter. Mr. Jayne has hiked and backpacked across more than a thousand miles of Idaho's roadless National Forest lands, and continues to advocate for, and enjoy recreating in, Idaho's roadless areas.

6. Plaintiff Greater Yellowstone Coalition ("GYC") is a conservation organization dedicated to protecting and restoring the Greater Yellowstone Ecosystem and the unique quality of life it sustains. Central to GYC's mission is maintaining the integrity of the public lands that are the core of the larger ecosystem. Formed in 1983, GYC is a non-profit corporation and has approximately 9,000 members, many of whom regularly use and enjoy Idaho's roadless lands.

7. Plaintiff The Lands Council is a local grassroots, non-profit organization dedicated to protecting the quality of life in the Inland Northwest. The Lands Council works to preserve and revitalize Inland Northwest forests, water, and wildlife through advocacy, education, effective action, and community engagement.

8. Plaintiff Natural Resources Defense Council (“NRDC”) is a non-profit organization that uses law, science, and the support of more than 1.2 million members and online activists to protect the planet’s wildlife and wild places, and to ensure a safe and healthy environment. NRDC and its members have a longstanding interest in preserving America’s public lands.

9. Plaintiff Sierra Club is a national conservation organization with more than 700,000 members. Founded in 1892, its mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth’s ecosystems and resources; to educate and enlist humanity to protect and to restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

10. Plaintiff The Wilderness Society (“TWS”) is a non-profit organization dedicated to protecting a national network of wild lands and fostering an American land ethic. TWS works to ensure wise management and protection of America’s public lands. Founded in 1935, TWS has approximately 200,000 members, many of whom regularly use and enjoy roadless areas within the National Forests of Idaho.

11. Plaintiffs and their members use Idaho’s National Forest roadless lands for recreational, scientific, aesthetic, and commercial purposes. Plaintiffs have members who reside near, visit, or otherwise use and enjoy Idaho’s roadless areas in a variety of ways, including recreation, subsistence and sport hunting and fishing, wildlife viewing and education, and aesthetic and spiritual enjoyment. Plaintiffs and their members derive scientific, recreational, aesthetic, commercial, and conservation benefits and enjoyment from Idaho’s National Forest roadless areas. The interests of plaintiffs and their members in Idaho’s National Forest roadless areas have been, are being, and, unless the relief prayed for is granted, will continue to be

directly and adversely affected by the failure of defendants to comply with the law. These are actual, concrete injuries, traceable to defendants' conduct, that would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

12. Defendant Mark Rey is the United States Department of Agriculture's Under Secretary for Natural Resources and Environment and, in that capacity, signed the Final Rule and Record of Decision at issue in this case. Mr. Rey is sued in his official capacity.

13. Defendant Gail Kimbell is Chief of the United States Forest Service and, in that capacity, has management responsibility for the agency's actions. Ms. Kimbell is sued in her official capacity.

14. Defendant Rowan Gould is Acting Director of the United States Fish and Wildlife Service and, in that capacity, has management responsibility for the agency's actions. Mr. Gould is sued in his official capacity.

15. Defendant Dirk Kempthorne is the Secretary of the United States Department of the Interior and, in that capacity, has oversight authority over all actions of the United States Fish and Wildlife Service. Mr. Kempthorne is sued in his official capacity.

BACKGROUND

16. Roadless National Forest lands represent some of the last unprotected remnants of the United States' once-vast forested wildlands. The importance of the nation's roadless areas extends far beyond their diminishing boundaries. When Americans turn on the tap in hundreds of communities across the country, the clean water they receive traces its origin to National Forest roadless areas. In the roadless areas themselves, that same clean water provides vital habitat for some of the last remaining populations of native salmon and trout, including Idaho's dwindling populations of Yellowstone cutthroat trout and Bonneville cutthroat trout. These

undeveloped wildlands provide secure habitat for numerous sensitive wildlife species, such as fisher, marten, mountain lion, elk, and wolverine. For many rare and hard-pressed wildlife species, National Forest roadless areas are a final refuge. From condors of the southern California mountains, to grizzly bears and wolves near Yellowstone National Park, to migratory songbirds among the Appalachian hardwoods, many species would no longer exist—or would be severely depleted—but for National Forest roadless areas. And roadless areas provide abundant opportunities for hiking, camping, picnicking, wildlife viewing, hunting, fishing, cross-country skiing, mountain biking, and canoeing.

17. Roadless National Forest lands are even more valuable by virtue of their scarcity. The National Forest System is crisscrossed by an estimated 373,000 miles of roads, eight times the total length of the nation's interstate highway system. Despite this extensive network of existing roads, the number of roadless acres has continued to shrink as the Forest Service constructs new roads into previously unroaded areas, most often to facilitate logging, mining, and other resource development activities. As the Forest Service has acknowledged, this vast system of roads is responsible for many ecological problems, including increased flooding, stream sedimentation, habitat fragmentation, the loss of important wildlife corridors, and the proliferation of non-native plant and animal species. See 63 Fed. Reg. 4,350 (Jan. 28, 1998). Moreover, the Forest Service's inability to maintain this road system due to funding shortfalls exacerbates these problems.

The 2001 Roadless Area Conservation Rule

18. Forest Service management of the remaining roadless areas has been the subject of intense public scrutiny, comment, controversy, and litigation. In 1998, prompted by an enormous maintenance backlog and mounting scientific evidence demonstrating the ecological

devastation caused by roads, the Forest Service proposed a rule to temporarily suspend new road construction in certain roadless areas for 18 months. See 63 Fed. Reg. 4,351 (Jan. 28, 1998). At the same time, the Forest Service proposed revising the National Forest transportation system regulations to examine new approaches to managing roads to take into account their full ecological impacts. See 63 Fed. Reg. 4,350. The Forest Service promulgated a final interim rule on February 12, 1999, temporarily prohibiting any new road construction or reconstruction in several categories of roadless areas within National Forests. See 64 Fed. Reg. 7,290, 7,304 (Feb. 12, 1999).

19. In late 1999, the Forest Service issued a notice of intent (“NOI”) indicating that it was “initiating a public rulemaking process to propose the protection of remaining roadless areas within the National Forest System.” 64 Fed. Reg. 56,306 (Oct. 19, 1999). The NOI noted the strong public sentiment in favor of protecting roadless areas and the many ecological benefits they provide. It also noted that many commenters questioned the wisdom of building new roads when the Forest Service has grossly insufficient funding to maintain the existing roads. The NOI proposed a restriction on certain listed activities in inventoried roadless areas, as well as the development of national direction for managing both inventoried and uninventoried roadless areas in the future.

20. On May 10, 2000, the Forest Service published a Draft Environmental Impact Statement concerning this roadless area protection initiative. On November 13, 2000, after a 69-day public comment period, the Forest Service published a lengthy two-volume Final Environmental Impact Statement (“2000 FEIS”) for the 2001 Roadless Rule. The document identified 58.5 million acres of inventoried roadless areas nationwide that would be subject to the Roadless Rule’s restrictions on road construction and logging. More than nine million of these

acres were in Idaho alone—the most of any state outside of Alaska. The stated purpose of the 2001 Roadless Rule was “to immediately stop activities that pose the greatest risks to the social and ecological values of inventoried roadless areas[,]” based on the Forest Service’s acknowledgment that such values “are becoming scarce in an increasingly developed landscape.” 2000 FEIS at ES-1. In light of the “national significance” of roadless areas and their values, the Forest Service emphasized the need for national roadless protections. As the agency stated in its later Final Rule and Record of Decision,

If management decisions for [roadless] areas were made on a case-by-case basis at a forest or regional level, inventoried roadless areas and their ecological characteristics and social values could be incrementally reduced through road construction and certain forms of timber harvest. Added together, the nation-wide results of these reductions could be a substantial loss of quality and quantity of roadless area values and characteristics over time.

Special Areas; Roadless Area Conservation, 66 Fed. Reg. 3,243, 3,246 (Jan. 12, 2001).

21. The national importance of the 2001 Roadless Rule was underscored by the public’s involvement in the regulation’s development. Ultimately, around 1.2 million comments were submitted, with more than 95 percent of the commenters supporting the Roadless Rule and its protections.

22. The Forest Service issued the Roadless Rule on January 12, 2001. Under the regulation, road construction, reconstruction, and logging were generally prohibited in all inventoried roadless areas of the National Forest System. See 66 Fed. Reg. at 3,272-73 (36 C.F.R. §§ 294.12(a), 294.13(a)). The 2001 Roadless Rule’s restrictions nevertheless were subject to carefully crafted exceptions. With respect to roads, the rule allowed construction and reconstruction when necessary, among other things, “to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would

cause the loss of life or property[.]” or to access mineral leases already in existence at the time of the regulation’s promulgation. See id. (36 C.F.R. §§ 294.12(b)(1), (7)). With respect to logging, the rule allowed “[t]he cutting, sale, or removal of generally small diameter timber” when, among other things, it would “maintain or improve one or more of the roadless area characteristics” and was necessary to either improve species habitat or “[t]o maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period[.]” Id. at 3,273 (36 C.F.R. § 294.13(b)(1)). Through these uniform and nationwide restrictions on road construction and logging, the 2001 Roadless Rule ensured “lasting protection for inventoried roadless areas within the National Forest System.” Id. at 3,272 (36 C.F.R. § 294.10).

The 2005 Roadless Repeal

23. On May 13, 2005, as litigation regarding the 2001 Roadless Rule persisted in the federal courts, the Forest Service repealed the regulation. See 70 Fed. Reg. 25,654 (May 13, 2005). This “Roadless Repeal” instituted a discretionary state petition process under which management decisions regarding the nation’s roadless lands would again be “made on a case-by-case basis at a ... regional level,” allowing the very sort of “incremental[] reduc[tions]” in “inventoried roadless areas and their ecological characteristics and social values” that were avoided under the 2001 Roadless Rule. See 66 Fed. Reg. at 3,246. The Forest Service declined to assess the Roadless Repeal under NEPA. Moreover, the agency failed to consult with the National Marine Fisheries Service (“NMFS”) or United States Fish and Wildlife Service (“FWS”) pursuant to the Endangered Species Act. Citing these deficiencies, a federal district court invalidated the Roadless Repeal on October 11, 2006, and ordered reinstatement of the

2001 Roadless Rule pending the Forest Service’s compliance with federal law. See California ex rel. Lockyer v. U.S. Dep’t of Agric., 459 F. Supp. 2d 874 (N.D. Cal. 2006).

The State of Idaho Petition

24. On October 5, 2006, then–Idaho Governor James Risch submitted a petition to the Secretary of Agriculture proposing a management scheme that would reduce protections for Idaho’s more than nine million acres of National Forest roadless lands. The Secretary accepted the petition. FWS issued a biological opinion concluding that the proposed Idaho Roadless Rule would not jeopardize the continued existence of any threatened or endangered species in September 2008. On October 16, 2008, following the publication of an environmental impact statement, the Forest Service promulgated a final Idaho Roadless Rule, with it repealing the 2001 Roadless Rule’s protections within the State of Idaho. See 73 Fed. Reg. 61,456.

25. Unlike the 2001 Roadless Rule, which secured all of the nation’s inventoried roadless lands with a uniform set of protections, the Idaho regulation subjects the state’s roadless areas to five management “themes” that “span a continuum from more restrictive to more permissive”—namely, (1) Wild Land Recreation; (2) Special Areas of Historic or Tribal Significance; (3) Primitive; (4) Backcountry/Restoration (“Backcountry”); and (5) General Forest, Rangeland, and Grassland (“General Forest”). Id. at 61,462. The Idaho Roadless Rule opens the state’s “Backcountry” and “General Forest” lands to substantial incursions. In “Backcountry” areas up to one-and-a-half miles from the boundary of an “at-risk community”—areas deemed “community protection zones”—the Idaho rule allows temporary road construction and logging “[t]o reduce hazardous fuel conditions” whenever “the responsible official[]” concludes that “the project [would] generally retain[] large trees as appropriate for the forest type and [would be] consistent with land management plan components[.]” 36 C.F.R. §§ 294.21,

294.23(b)(2), 294.24(c)(1)(i). In all other “Backcountry” areas, including those many miles from any human community, logging and related road construction activities are allowed “[t]o reduce hazardous fuel conditions” so long as the Regional Forester determines that “[t]here is significant risk that a wildland fire disturbance event could adversely affect an at-risk community or municipal water supply system[,]” and that the action would “[m]aintain[] or improve[] one or more of the roadless characteristics over the long-term; ... [m]aximize[] the retention of large trees as appropriate for the forest type to the extent the trees promote fire-resilient stands; and ... [be] consistent with land management plan components[.]” Id. §§ 294.23(b)(3), 294.24(c)(1)(ii), 294.24(c)(2).

26. Roadless areas deemed “General Forest, Rangeland, and Grassland” under the Idaho rule are granted even fewer protections. “Timber may be cut, sold, or removed within Idaho Roadless Areas designated as General Forest, Rangeland, and Grassland” so long as the logging is “consistent with the [relevant] land management plan components[.]” 36 C.F.R. § 294.24(d). Road construction and reconstruction is similarly unrestricted. Id. § 294.23(c)(1). Moreover, in stark contrast to the 2001 Roadless Rule, which, with respect to mineral leasing, allowed road construction only in connection with mineral leases already issued as of the rule’s effective date, the Idaho regulation allows road construction in connection with future phosphate mineral leases within southeast Idaho’s Caribou-Targhee National Forest. See id. § 294.25(e)(1).

27. In authorizing significant and extensive road construction, logging, and mining activities, the Idaho Roadless Rule fails to protect critical expanses of Idaho’s roadless areas. By the Forest Service’s own estimation, the Idaho regulation fails to “assure[] retention of the roadless characteristics” of 800,000 acres of roadless lands over the long term. 73 Fed. Reg. at 61,460; see also id. at 61,482 (noting that “road construction is conditionally permissible” under

the Idaho rule on 1,786,400 acres of “highly sensitive soils”). This failure threatens numerous species of wildlife dependent upon Idaho’s roadless areas. According to the Forest Service, Bonneville cutthroat trout and Yellowstone cutthroat trout—already sensitive species—will be placed at “high risk” as a result of the expanded phosphate mining allowed under the Idaho rule. U.S. Forest Service, Roadless Area Conservation, National Forest System Lands in Idaho Final Environmental Impact Statement (Aug. 2008) (“FEIS”), at 261. Moreover, the road construction and logging activities authorized by the Idaho Roadless Rule threaten northern Idaho’s tiny and critically imperiled woodland caribou and grizzly bear populations, which are presently near the vanishing point.

FIRST CAUSE OF ACTION
(Violation of the Endangered Species Act)

28. All preceding paragraphs are hereby incorporated as if fully set forth herein.

29. FWS violated the Endangered Species Act in concluding that the Idaho Roadless Rule would not jeopardize the state’s imperiled woodland caribou population as a result of unenforceable Forest Service assurances that essential conservation actions will be taken on once-protected roadless lands.

30. Under the ESA, every federal agency is required to “insure that any action authorized, funded, or carried out by [the] agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species[.]” 16 U.S.C. § 1536(a)(2). In furtherance of this requirement, an agency must consult with FWS (or, in the case of marine species, NMFS) whenever an action “may affect listed species or critical habitat.” 50 C.F.R. § 402.14(a). Absent a determination that “the action is not likely to adversely affect listed species or critical habitat,” see id. §§ 402.13(a), 402.14(b)(1), FWS is required to prepare a biological opinion assessing

“whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat[,]” id. §§ 402.14(g)(4), (h); see also 16 U.S.C. § 1536(b)(3)(A). When FWS determines that an action will jeopardize a listed species, its biological opinion must address “reasonable and prudent alternatives ... that the agency ... can take to avoid violation of [the ESA].” 50 C.F.R. §§ 402.14(g)(5), (h)(3); see also 16 U.S.C. § 1536(b)(3)(A).

31. In determining that an action will not jeopardize the continued existence of listed species in violation of the Endangered Species Act, federal agencies—including FWS—may not rely on uncertain or unenforceable mitigation measures. Only when specific and mandatory mitigations are in place may FWS declare that jeopardy will be avoided. FWS’s determination that the Idaho Roadless Rule will not jeopardize the state’s caribou cannot be reconciled with this requirement.

32. The Selkirk Mountains woodland caribou of northern Idaho, Washington, and British Columbia stand as the last, imperiled remnant of a population that once ranged across Canada and the northern United States. FWS first listed the woodland caribou as endangered on an emergency basis in 1983. At last count, the Selkirk Mountains population—devastated by over-hunting, predation, and the fragmentation and loss of the old-growth habitat upon which it depends—numbered only 46 animals. As FWS recognized in its biological opinion, “[m]ountain caribou habitat requirements for extensive stands of old-growth timber place them in direct competition with most current forest management practices.” FWS, Biological Opinion and Conference Opinion for the Modified Idaho Roadless Rule (Sep. 2008) (“FWS Op.”), at 78. As a result, “the primary long-term threat to mountain caribou is the ongoing loss and fragmentation

of contiguous old-growth forests due to timber harvesting, wildfires, and other human activities[.]” Id. at 91.

33. Despite this threat, the Idaho Roadless Rule opens substantial portions of the caribou’s already fractured habitat to road construction and logging. According to the Forest Service, the Idaho regulation classifies 58,507 acres of roadless land within the caribou’s recovery area as “Backcountry” and 4,545 acres as “General Forest.” As FWS acknowledged in its biological opinion, the Idaho rule’s “General Forest” designation alone threatens the caribou:

The potential modification of 4,545 acres of caribou habitat, given the existing degree of habitat fragmentation within the Selkirk recovery area and the consideration of habitat fragmentation as a primary threat to caribou, could result in significant adverse effects to the caribou. Most of the potentially affected acres (3,602) fall within the Selkirk IRA, which contains the most caribou habitat of any of the IRAs, and most of the caribou telemetry points.

FWS Op. at 106 (emphasis added); see also id. at 107 (“the existing level of habitat fragmentation throughout the recovery area makes even small increases in habitat fragmentation a significant adverse effect on the caribou”). Moreover, FWS emphasized, “given the extremely small size of the Selkirk Mountains woodland caribou population, any adverse effects to individual caribou caused by Federal or non-Federal actions are likely to be significant.” Id. at 107.

34. In concluding that the Idaho Roadless Rule would not jeopardize the Selkirk Mountains woodland caribou population, FWS relied not on enforceable mitigation measures but, rather, the Forest Service’s “stated intent” to protect the caribou and its habitat. FWS Op. at 107-09. According to FWS’s biological opinion, the land and resource management plan for the Idaho Panhandle National Forest, in which the caribou’s Idaho habitat is located, includes “outdated” caribou habitat management guidelines; relies on an “outdated” and “incomplete”

cumulative effects model; and fails to prohibit “timber harvest that removes allocated old growth stands” essential to the Selkirk population. Id. at 99-100. Nonetheless, relying on a nonbinding biological assessment and letter in which the Forest Service “stated [its] intent of continuing to use the best available science to maintain and manage old growth stands that are suitable caribou habitat within the caribou recovery area[,]” FWS declared that the Idaho Roadless Rule was “not likely to jeopardize the continued existence of the Selkirk mountain caribou population.” Id. 100, 103-109 (emphasis added). This declaration, unmoored from mandatory mitigation measures, was both arbitrary and contrary to the ESA.

**SECOND CAUSE OF ACTION
(Violation of the Endangered Species Act)**

35. All preceding paragraphs are hereby incorporated as if fully set forth herein.

36. FWS further violated the Endangered Species Act in concluding that the Idaho Roadless Rule would not jeopardize the state’s imperiled grizzly bear populations as a result of unenforceable Forest Service assurances that essential conservation actions will be taken on once-protected roadless lands.

37. While the grizzly once roamed the North American continent from central Mexico to the Arctic Ocean, two centuries of habitat deterioration, commercial trapping, hunting, and control actions have eliminated all but five isolated populations of grizzly bears in the northwestern United States. In 1975, the grizzly was listed in the lower 48 due to, among other things, habitat destruction from roadbuilding. Two of the grizzly bear’s remaining populations, both tiny and threatened, occupy National Forest roadless areas within northern Idaho: the 46-bear Selkirk population, and the declining, 40-bear Cabinet-Yaak population. Of the threats facing the Selkirk and Cabinet-Yaak grizzly bears, the adverse effects of roads and associated

human access are the most serious, resulting in the displacement of bears from key habitat, bear mortality, and other adverse impacts.

38. In its biological opinion, FWS acknowledged that “[c]onstruction or reconstruction of roads within grizzly bear core habitat would result in losses of core habitat and corresponding adverse effects to grizzly bears” within the recovery zones established for the Selkirk and Cabinet-Yaak populations. FWS Op. at 145. The agency further noted that the Idaho Roadless Rule “would allow the construction of roads within grizzly bear core habitat” in the Selkirk and Cabinet-Yaak recovery zones, as it designates more than 12,000 acres of core habitat “Backcountry” and nearly 9,000 acres of core habitat “General Forest.” *Id.* Such road construction, FWS concluded, “would potentially have serious ramifications on the stability and recovery of the grizzly bear populations within these ecosystems.” *Id.* (emphasis added). Nonetheless, citing a nonbinding letter in which the Idaho Panhandle National Forest’s supervisor promised temporarily to defer decisions likely to adversely affect grizzly bears within the recovery zones ““except when the project is designed to provide long-term benefits to grizzly bears,”” FWS simply “assume[d]” that the Selkirk and Cabinet-Yaak populations would not suffer adverse effects as a result of the Idaho rule. *Id.* at 146. In relying on the Forest Service’s vague and unenforceable promise to temporarily refrain from the road construction activities authorized by the Idaho Roadless Rule within the Selkirk and Cabinet-Yaak recovery zones, FWS acted arbitrarily and in violation of the ESA.

39. The arbitrary and unlawful nature of FWS’s “no jeopardy” determination is underscored by the agency’s assessment of the Idaho Roadless Rule’s impact on those bears occupying habitat outside the Selkirk and Cabinet-Yaak recovery zones. As FWS recognized in its biological opinion, bears have been regularly documented on roadless lands within the Pack

River Area, adjacent to the Selkirk recovery zone. Under the Idaho rule, these lands have been designated “Backcountry,” allowing road construction and reconstruction. In declaring that the regulation would nonetheless avoid jeopardizing the grizzly bear, FWS stated merely that it “expects that the USFS’s (specifically, the [Idaho Panhandle National Forest’s]) commitment to avoid adverse effects to grizzly bears would extend to actions proposed under the [Idaho Roadless Rule] within the [Pack River Area], and would, therefore, maintain the existing roaded conditions within the [Pack River Area].” FWS Op. at 147 (emphasis added). FWS cited nothing in support of this expectation.

40. FWS’s determination that the Idaho Roadless Rule would not jeopardize the region’s grizzly bear populations was arbitrary, capricious, and contrary to the ESA.

**THIRD CAUSE OF ACTION
(Violation of the National Forest Management Act)**

41. All preceding paragraphs are hereby incorporated as if fully set forth herein.

42. The Idaho Roadless Rule violates the National Forest Management Act by removing roadless area protections that are prescribed in numerous forest plans. Under NFMA, road construction, logging, and other activities may be allowed on forest land only when consistent with the relevant forest plan. See 16 U.S.C. § 1604(i). The Idaho Roadless Rule disregards this restriction, purporting to authorize road construction on 18,260 acres of roadless lands in the face of forest plan provisions that prohibit such incursions. See FEIS at 69; 73 Fed. Reg. at 61,473. The Idaho rule is accordingly arbitrary, capricious, and contrary to NFMA.

**FOURTH CAUSE OF ACTION
(Violation of the National Environmental Policy Act)**

43. All preceding paragraphs are hereby incorporated as if fully set forth herein.

44. In promulgating the Idaho Roadless Rule without first assessing the site-specific impacts of the mining it authorizes, the Forest Service failed to comply with the requirements of the National Environmental Policy Act.

45. Under NEPA, federal agencies must prepare an environmental impact statement (“EIS”) assessing and disclosing to the public the environmental effects of any proposed “major Federal action[] significantly affecting the quality of the human environment[.]” 42 U.S.C. § 4332(2)(C). An EIS must take a “hard look” at the environmental consequences of a proposed action, Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976), “sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public[.]” 40 C.F.R. § 1502.14. This “hard look” requires, among other things, an evaluation of the site-specific impacts of a decision to commit an area to development.

46. Unlike the 2001 Roadless Rule, which prohibited road construction in connection with new mineral leases, the Idaho Roadless Rule opens more than 5,000 acres of roadless lands to road construction and mining “in association with phosphate deposits” within the Caribou-Targhee National Forest. See 36 C.F.R. §§ 294.23(c), 294.25(e)(1). Under the regulation, the roadless characteristics of these areas are eliminated as a factor affecting the Forest Service’s consideration of whether to allow future phosphate development. Despite this commitment of roadless lands to phosphate mining, the Forest Service failed to assess the site-specific impacts of the designation. As a result, the Forest Service’s environmental analysis was arbitrary, capricious, and contrary to NEPA.

REQUEST FOR RELIEF

THEREFORE, plaintiffs respectfully request that this Court:

1. Declare that FWS's biological opinion violated the ESA in determining that the Idaho Roadless Rule would not jeopardize the woodland caribou or the grizzly bear due to vague and unenforceable Forest Service commitments;
2. Declare that the Forest Service violated NFMA and NEPA in promulgating the Idaho Roadless Rule;
3. Set aside the Forest Service's Final Environmental Impact Statement, Record of Decision, and Final Rule for the Idaho Roadless Rule;
4. Reinstate the 2001 Roadless Rule as the governing regulatory authority for management of Idaho's roadless areas;
5. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and
6. Grant plaintiffs such other and further relief as the Court may deem proper.

Respectfully submitted this 16th day of January, 2009.

/s/ Bradford M. Purdy

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