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*Counsel for Plaintiffs*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

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FRIENDS OF THE BITTERROOT; )  
FRIENDS OF THE CLEARWATER; )  
NATIVE ECOSYSTEMS COUNCIL; )  
and WILDEARTH GUARDIANS )

Plaintiffs, )

vs. )

DEB HAALAND, Secretary of the )  
Interior; MARTHA WILLIAMS, )  
Director of the U.S. Fish and Wildlife )  
Service; U.S. FISH AND WILDLIFE )  
SERVICE; RANDY MOORE, Chief of )  
the U.S. Forest Service; MATT )  
ANDERSON, Forest Supervisor of the )  
Bitterroot National Forest; and U.S. )  
FOREST SERVICE, )

Defendants. )

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Case No. CV 24-169-M-KLD

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1. This case addresses the U.S. Forest Service's arbitrary and unlawful approach to road management within important grizzly bear and bull trout habitat. Specifically, Plaintiffs challenge the Forest Service's 2023 Programmatic Amendment 40 to the Land Management Plan for the Bitterroot National Forest, which eliminated restrictions on road retention and motorized use without adequately considering resulting impacts on grizzly bears and bull trout. Plaintiffs also challenge the U.S. Fish and Wildlife Service's (FWS) July 8, 2021 Biological Opinion for the 1987 Bitterroot National Forest Plan as amended (Biological Opinion), because it ignored basic science and swept under the rug impacts on grizzly bears from the Forest Service's new approach to road management.

2. The Bitterroot National Forest encompasses more than 1.5 million acres of public land in the Sapphire and Bitterroot Mountains in west-central Montana and east-central Idaho. The Forest was home to robust numbers of grizzly bears until they were wiped out in the middle of the 20th century. Now, dispersing grizzly bears are once again and increasingly using this habitat to travel between discrete bear

populations in the region, and FWS expects grizzly bears to establish a permanent population in the Forest in the coming years. The Forest also contains the headwaters of the Bitterroot River in Montana and portions of the Selway and Salmon Rivers in Idaho. The clean, cold water supported by the Forest provides important habitat for bull trout. Both the grizzly bear and bull trout are protected species under the Endangered Species Act (ESA).

3. The value of the Bitterroot National Forest's grizzly bear and bull trout habitat depends on managing roads and motorized access in the Forest. Roads and road use displace grizzly bears from their habitat and deliver harmful sediment to bull trout streams.

4. Prior management direction in the Forest restricted roads and associated use by limiting road miles open to motorized use in all third-order drainages within the Forest, which benefitted grizzly bears and protected bull trout streams.

5. Amendment 40 eliminated this protective framework, removing prior restrictions on the number of road miles the Forest Service can keep open to motorized vehicles in the Bitterroot National Forest.

6. When purporting to examine and mitigate resulting impacts on grizzly bears and bull trout, FWS and the Forest Service violated the ESA, National Environmental Policy Act (NEPA), and National Forest Management Act (NFMA). For grizzly bears, the agencies violated the ESA and NEPA by failing to adequately account for the grizzly bear's biological need for large and contiguous blocks of "secure" habitat—land free from disturbance generated by roads—and failing to consider impacts on grizzly bears from unlimited roading and motorized use permitted outside of secure habitat. For bull trout, the Forest Service violated the ESA and NEPA by failing completely to examine Amendment 40's impacts on bull trout and their critical habitat. The Forest Service also violated NFMA by failing to include plan provisions to maintain or restore connective grizzly bear and bull trout habitat.

7. As the ESA requires, Plaintiffs sent a 60-day notice letter of their intent to sue Defendants for violating the ESA. The agencies responded, averring that they would reinitiate consultation regarding impacts on grizzly bears from unauthorized motorized use of closed roads in secure habitat and might further seek to "clarif[y]" their position regarding grizzly bears' need for large and contiguous blocks of

secure habitat. Forest Service & FWS, *Response to Amended 60-day Notice of Intent to Sue: Grizzly Bears*, at pdf 2 (2024) [hereinafter *Response Letter on Grizzly Bears*]. Further, while the Forest Service initially dismissed any need to consult with FWS regarding Amendment 40's impacts to bull trout, Forest Service, *Response to Amended 60-day Notice of Intent to Sue: Bull Trout*, at pdf 2–3 (2024) [hereinafter *Response Letter on Bull Trout*], the agency subsequently stated that it would reexamine the potential for effects to bull trout. Notably, the agencies did not state that they would reinitiate consultation regarding impacts on grizzly bears from allowing unlimited roads and motorized use outside of secure habitat or from permitting unused roads to remain in purportedly unroaded secure habitat. *Id.* at pdf 2–4. Plaintiffs' NEPA and NFMA claims will remain unaffected by any potential changes to the Biological Opinion.

8. The agencies have not provide a timeline for completing their renewed consultation efforts.

9. Plaintiffs thus turn to this Court for relief. To protect grizzly bears and bull trout, Plaintiffs request the Court declare unlawful and vacate the Forest Service's programmatic Amendment 40, as well as the

underlying Biological Opinion and Environmental Assessment (EA), and remand to the agencies for further analysis.

### **JURISDICTION AND VENUE**

10. Plaintiffs bring this action pursuant to the ESA, 16 U.S.C. § 1540(g)(1), and the APA, 5 U.S.C. § 706(2), which waive the defendants' sovereign immunity. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question) and the citizen-suit provision of the ESA, 16 U.S.C. § 1540(g), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201–02.

11. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) because Plaintiff Friends of the Bitterroot resides in this District, the violations alleged in this Complaint largely occurred in this District, and Defendant Matt Anderson performs his official duties in this District. Venue is proper in the Missoula Division of this District because a substantial part of Plaintiffs' claims arise in Ravalli County and Missoula County. *See* Mont. Code Ann. § 25-2-125; *see also* Local Civ. R. 1.2(c)(5), 3.2(b).

## **PARTIES**

12. Plaintiff Friends of the Bitterroot is a non-profit organization with its principal place of business in Hamilton, Ravalli County, Montana. Friends of the Bitterroot's mission is to preserve the wildlands and wildlife and to protect the forests and watersheds of the Bitterroot region as it works for a sustainable relationship with the environment. Friends of the Bitterroot brings this action on its own behalf and on behalf of its adversely affected members.

13. Plaintiff Friends of the Clearwater is a non-profit organization with its principal place of business in Moscow, Latah County, Idaho. Friends of the Clearwater's mission is to defend the Idaho Clearwater Bioregion's wildlands and biodiversity. Friends of the Clearwater strives to protect the environment, restore degraded habitats, preserve viable populations of native species, and recognize national and international wildlife corridors. Friends of the Clearwater brings this action on its own behalf and on behalf of its adversely affected members.

14. Plaintiff Native Ecosystems Council is a non-profit Montana corporation with its principal place of business in Three Forks, Gallatin

County, Montana. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the Northern Rockies. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

15. Plaintiff WildEarth Guardians is a non-profit organization with its principal place of business in Santa Fe, Santa Fe County, New Mexico. WildEarth Guardians has several offices throughout the western United States, including Tucson, Denver, Portland, and Missoula, where it has operated for over ten years. WildEarth Guardians protects and restores the wildlife, wild place, wild rivers, and health of the American West. WildEarth Guardians brings this action on its own behalf and on behalf of its adversely affected members.

16. All Plaintiffs have long-standing interests in the preservation and recovery of grizzly bears and bull trout in the Bitterroot Ecosystem, which encompasses the Bitterroot National Forest, both because they and their members place a high value on these species, and because the presence of grizzly bears and bull trout is essential to the healthy functioning of the ecosystem. Plaintiffs have been active in seeking to protect and recover grizzly bears and bull trout



through a wide array of actions, including public outreach and education, scientific analysis, and advocacy intended to promote healthy ecosystem functioning in the region.

17. The members of each of the Plaintiff organizations also use the Bitterroot National Forest for recreational pursuits, including hiking, camping, backpacking, wildlife viewing, and aesthetic enjoyment. In so doing, Plaintiffs' members and staff seek to observe, photograph, and study grizzly bears and grizzly bear sign, as well as bull trout, in their native habitat. Plaintiffs derive aesthetic, recreational, scientific, inspirational, and other benefits from these activities. While in the Bitterroot National Forest, Plaintiffs also seek to enjoy solitude and nature: spaces free from roads and motorized use.

18. Amendment 40 and the Biological Opinion will reduce opportunities for Plaintiffs' members to experience grizzly bears and bull trout in the wild in the Bitterroot National Forest because new management direction will degrade grizzly bear and bull trout habitat and displace these species from areas that Plaintiffs' members use to observe, photograph, and study them. Amendment 40 will also degrade connective grizzly bear habitat, reducing the likelihood that grizzly

bears will use and occupy the Bitterroot National Forest, further harming Plaintiffs and their members. Further, Amendment 40 will reduce opportunities for undisturbed solitude in nature by permitting increased motorized access within the Forest. The legal violations alleged in this complaint therefore cause direct injury to the aesthetic, conservation, recreational, scientific, educational, inspirational, and wildlife preservation interests of Plaintiffs and their members.

19. Plaintiffs' aesthetic, conservation, recreational, scientific, educational, inspirational, and wildlife preservation interests have been, are being, and, unless the relief prayed for in this Complaint is granted, will continue to be adversely and irreparably injured by Defendants' failures to comply with federal law. These are actual, concrete injuries, traceable to Defendants' conduct, which would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

20. Defendant Deb Haaland is the U.S. Secretary of the Interior. In that capacity, Defendant Haaland has supervisory responsibility over FWS. The Secretary of the Interior is the federal official vested by Congress with responsibility for properly carrying out the ESA with

respect to terrestrial mammals, such as grizzly bears, and freshwater fish, such as bull trout. Defendant Haaland is sued in her official capacity.

21. Defendant Martha Williams is the Director of the U.S. Fish and Wildlife Service. In that capacity, Defendant Williams has supervisory responsibility over FWS and FWS's administration of the ESA. Defendant Williams is sued in her official capacity.

22. Defendant FWS is a federal agency within the Department of the Interior. FWS is responsible for administering the ESA with respect to terrestrial wildlife, such as grizzly bears, and freshwater fish, such as bull trout.

23. Defendant Randy Moore is the Chief of the U.S. Forest Service. In that capacity, Defendant Moore has supervisory responsibility over the Forest Service's management of national forest lands, including the Bitterroot National Forest, and the Forest Service's compliance with ESA, NEPA, and NFMA requirements. Defendant Moore is sued in his official capacity.

24. Defendant Matt Anderson is the Forest Service Supervisor for the Bitterroot National Forest. In that capacity, Defendant

Anderson is responsible for the management of the Bitterroot National Forest and the Forest's compliance with the ESA, NEPA, and NFMA. Defendant Anderson is sued in his official capacity.

25. Defendant U.S. Forest Service is a federal agency within the Department of Agriculture. The Forest Service is responsible for managing National Forest Lands, including the Bitterroot National Forest, and ensuring that Forest Service activity complies with the ESA, NEPA, and NFMA.

## LEGAL BACKGROUND

### I. ENDANGERED SPECIES ACT

26. The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). It is intended “to halt and reverse the trend toward species extinction, whatever the cost.” *Id.* at 184.

27. The ESA requires “each federal agency to ensure that an agency action is not likely to ‘jeopardize the continued existence’ of a threatened or endangered species.” *Native Ecosystems Council v. Marten*, 612 F. Supp. 3d 1146, 1153 (D. Mont. 2020) (quoting 16 U.S.C §

1536(a)(2)). To that end, before authorizing an action with potential to adversely affect grizzly bears or bull trout, the Forest Service must formally consult with FWS to ensure the action is not likely to jeopardize these species or destroy or adversely modify their designated critical habitat. *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(g)(4); *Conservation Cong. v. U.S. Forest Serv.*, 720 F.3d 1048, 1051 (9th Cir. 2013). The formal consultation process culminates in FWS issuing a biological opinion reflecting its jeopardy/adverse modification determinations based on “the best scientific and commercial data available.” 16 U.S.C. §§ 1536(a)(2), (b)(3)(A); *see* 50 C.F.R. § 402.14.

28. FWS violates the ESA if it issues a biological opinion that “fails to ‘consider[] the relevant factors and articulate[] a rational connection between the facts found and the choice made.’” *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1121 (9th Cir. 2012) (alterations in original) (citation omitted). In turn, the Forest Service violates the ESA if it approves an action in reliance on a flawed biological opinion from FWS. *Id.* at 1128. The Forest Service also violates the ESA if it fails to reinitiate consultation with FWS after a forest plan is modified such that it affects a listed species in a manner

not previously considered. *All. for Wild Rockies v. Probert*, 412 F. Supp. 3d 1188, 1205 (D. Mont. 2019); 50 C.F.R. § 402.16(a)(3).

## II. NATIONAL ENVIRONMENTAL POLICY ACT

29. NEPA “is the basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA requires all federal agencies proposing an action affecting the environment to “undertake a full and fair analysis,” constituting a “hard look at environmental consequences of their proposed actions.” *350 Montana v. Haaland*, 50 F.4th 1254, 1265 (9th Cir. 2022) (quotation and citation omitted); *see also* 36 C.F.R. § 220.7(b)(3)(i) (EA must “provide sufficient evidence and analysis” on “the environmental impacts of the proposed action ... to determine whether to prepare an EIS”). This “hard look” review helps ensure “that environmental concerns [will] be integrated into the very process of agency decision-making.” *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).

30. The Forest Service violates NEPA if its EA fails to “provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences” of its actions. *350 Montana*, 50 F.4th at 1265 (quotations and citations omitted). The Forest Service

also violates NEPA if it fails to provide “a convincing statement of reasons to explain why [a] project’s impacts are insignificant” such that the agency need not prepare an Environmental Impact Statement (EIS). *Id.* at 1259 (quotations and citation omitted).

### III. NATIONAL FOREST MANAGEMENT ACT

31. NFMA governs the Forest Service’s management of national forests. NFMA lays out a two-step process for forest management. It first requires the Forest Service to develop a forest plan governing future management of an entire forest. *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1061 (9th Cir. 2002) (citing 36 C.F.R. § 219.10(a), (b)). Second, the Forest Service must then manage the forest in compliance with the forest plan. *Id.* at 1061–62 (citing 36 C.F.R. § 219.10(e)). At the planning stage, including when amending forest plans, the Forest Service “must include plan components ... to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity.” 36 C.F.R. § 219.8(a)(1); *see id.* at § 219.9.

## FACTUAL BACKGROUND

### I. GRIZZLY BEARS

32. The grizzly bear, *Ursus arctos horribilis*, once numbered roughly 50,000 individuals across the western United States. *Crow Indian Tribe v. United States*, 343 F. Supp. 3d 999, 1004 (D. Mont. 2018) (quotation omitted), *aff'd in part, rev'd in part, and remanded*, 965 F.3d 662 (9th Cir. 2020). However, with European-American settlement, grizzlies were “shot, poisoned, and trapped wherever they were found,” eliminating them from all but a few isolated mountain populations. *Id.* In 1975, recognizing the grizzly bear’s imperiled status, FWS listed them under the ESA as a threatened species throughout the lower 48 United States. FWS, *Amendment Listing the Grizzly Bear of the 48 Conterminous States as a Threatened Species*, 40 Fed. Reg. 31,734 (July 28, 1975).

33. The Bitterroot Ecosystem in west-central Montana and east-central Idaho “was home to widespread grizzly bear populations until the middle of the 20th century when evidence of the bear’s last sign was found.” *All. For Wild Rockies v. Cooley*, 661 F. Supp. 3d 1025, 1030 (D. Mont. 2023). Grizzly bears are once again and increasingly using this



important habitat to travel between disparate bear populations in the region. FWS expects grizzly bears to establish a permanent population in the Bitterroot Ecosystem in the coming years.

34. The value of the Bitterroot National Forest's grizzly bear habitat depends on managing motorized access in the Forest. As seminal research by Richard Mace and Timothy Manley demonstrated in the 1990s, the presence of roads in grizzly bear habitat negatively impacts grizzly bears' survival. In part, this is because grizzly bears avoid roads, adjusting "their habitat use patterns in part" according to the density of roads in an area. Richard D. Mace & Timothy L. Manley, *South Fork Flathead River Grizzly Bear Project: Progress Report for 1992*, at 25 (1993) [hereinafter Mace & Manley 1993]. Indeed, contemporary research "indicates that grizzly bears consistently were displaced from roads and habitat surrounding roads, often despite relatively low levels of human use." Biological Opinion, at 19 (collecting studies). Researchers even observed bear avoidance of "areas with a high total road density even when the roads were closed to public travel." *Id.* at 20–21. Displacement effects are long-lasting, and "learned avoidance behavior could persist for more than one generation of grizzly

bears before grizzly bears again utilize habitat associated with closed roads.” *Id.*

35. FWS’s Biological Opinion acknowledges that managing roads and motorized access is the primary way to protect grizzly bear habitat in the Bitterroot National Forest:

Grizzly bear habitat security is primarily achieved by managing motorized access which: (1) minimizes human interaction and reduces potential grizzly bear mortality risk; (2) minimizes displacement from important habitats; (3) minimizes habituation to humans; and (4) provides habitat where energetic requirements can be met with limited disturbance from humans.

*Id.* at 10.

36. Limiting motorized access in grizzly bear habitat includes maintaining areas of unroaded “secure habitat”—usually defined to include areas 500 meters from motorized roads or trails. *Id.* at 12. Studies on grizzly bear habitat require that unroaded areas meet minimum size requirements before they may be counted as “secure.” Minimum area for secure habitat is based on the average daily feeding radius of individual grizzly bears. Michael L. Gibeau et al., *Managing for Grizzly Bear Security Areas in Banff National Park and the Central*

*Canadian Rocky Mountains*, at 1 (2001) [hereinafter Gibeau et al. 2001].

37. Research by Mace et al. (1996) defined secure habitat in the Northern Continental Divide Ecosystem to include only contiguous roadless areas more than 2,500 acres in size. Biological Opinion, at 12. Michael Proctor et al. recommended maintaining unroaded secure habitat in minimum sizes of 10 square kilometers (more than 2,471 acres). Michael F. Proctor et al., *Effects of Roads and Motorized Human Access on Grizzly Bear Populations in British Columbia and Alberta, Canada*, at 1 (2020). Gibeau et al. recommended minimum land sizes of more than 9 square kilometers (about 2,224 acres). Gibeau et al. (2001), at 1. Wayne Wakkinen and Wayne Kasworm’s attempt to identify minimum secure habitat polygon sizes for grizzly bears in the Selkirk and Cabinet-Yaak Ecosystems was hampered by small sample sizes, but they nevertheless concluded that “if a minimum size occurs, it is likely between 2 [square miles (1,280 acres)] and 8 [square miles (5,120 acres)],” and further noted that—even then—“narrow strips of core habitat that may fit some minimum size criteria likely will not provide effective core habitat for bears.” Wayne L. Wakkinen & Wayne F.

Kasworm, *Grizzly Bear and Road Density Relationships in the Selkirk and Cabinet-Yaak Recovery Zones*, at 25 (1997).

38. Thus, to effectively provide secure grizzly bear habitat, large tracts of contiguous, unroaded land must be preserved.

39. Protecting the adequacy of grizzly bear habitat also requires limiting road densities outside of secure, unroaded habitat. As FWS acknowledges, “[b]oth road density and the proportion of secure habitat contribute[] different yet important components influencing survival.” Biological Opinion, at 12. Grizzly bears generally avoid areas with open-road densities above one mile per square mile. *Id.* at 20.<sup>1</sup>

## II. BULL TROUT

40. The bull trout is a highly migratory char (a close relative of trout) in the salmonid family. FWS, *Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States*, 75 Fed. Reg. 63,898, 63,910 (Oct. 18, 2010). While bull trout are native to waters across western North America, their current distribution is “scattered and patchy.” *Id.* at 63,898. FWS listed bull trout across the lower-48 states as a threatened species under the ESA in 1999. FWS,

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<sup>1</sup> An “open road” is open to motorized vehicles.

*Determination of Threatened Status for Bull Trout in the Coterminous United States*, 64 Fed. Reg. 58,910 (Oct. 18, 1999). In 2010, FWS designated critical habitat for bull trout under the ESA, including many creeks and watersheds within the Bitterroot National Forest. 75 Fed. Reg. 63,898, 63,942.

41. Because “the bull trout is largely a migratory species with complex migration patterns, connectivity among and within its habitats is essential for long-term persistence and recovery of the species.” *Id.* at 63,960; *see also id.* at 63,910 (“connectivity among patches of occupied habitat is essential to [bull trout] conservation.”). In turn, it is “essential for the conservation of bull trout” to protect against “water quality impediments between spawning, rearing, overwintering, and freshwater ... foraging habitats.” *Id.* at 63,931.

42. “Bull trout have more specific habitat requirements than most other salmonids.” *Id.* at 63,930. In particular, bull trout require cold and clean water, largely free from the impacts of sedimentation. 64 Fed. Reg. 58,910, 58,911. “Strict cold water temperature requirements make bull trout particularly vulnerable to activities that warm spawning and rearing waters.” *Id.* at 58,921. Sediment in bull trout

streams can increase water temperature and damage bull trout habitat by “reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels ..., which reduce carrying capacity.” *Id.* Sedimentation also “negatively affects bull trout embryo survival and juvenile bull trout rearing.” *Id.* “Because bull trout require such specific habitat conditions, they are particularly susceptible to habitat loss, fragmentation, and degradation.” *WildEarth Guardians v. Steele*, 545 F. Supp. 3d 855, 860 (D. Mont. 2021), *aff’d in part, vacated in part on other grounds, remanded sub nom. Swan View Coal. v. Steele*, No. 22-35137, 2023 WL 3918686 (9th Cir. June 9, 2023).

43. “[R]oads can act as vectors for introducing sediment to streams....” 75 Fed. Reg. 63,898, 63,912. Research shows that “increasing road densities were associated with declines in ... non-anadromous salmonid species [including bull trout] within the Columbia River Basin.” 64 Fed. Reg. 58,910, 58,921. “Bull trout were less likely to use highly roaded basins for spawning and rearing, and if present, were likely to be at lower population levels....” *Id.* Research has also demonstrated that “when average road densities were between ... 0.7 and 1.7 [miles per square mile] on [Forest Service] lands, the

proportion of subwatersheds supporting ‘strong’ populations of key salmonids [such as bull trout] dropped substantially. Higher road densities were associated with further declines.” *Id.*

44. According to FWS, “[i]ncreasing traffic levels on unpaved roads have been correlated with increased fine sediment delivery to stream channels.” FWS, *Biological Opinion for Bull Trout – Bitterroot National Forest’s Travel Management Plan*, at 36 (2012) [hereinafter *Travel Management Biological Opinion*]; see *id.* at 32 (identifying “degree of road use” as a “factor[] that influences the delivery of sediment to streams from forest roads”). Therefore, FWS acknowledges that protecting bull trout and their habitat requires “closing and stabilizing or obliterating and stabilizing roads not needed for future management activities.” FWS, *Biological Opinion for the Effects to Bull Trout from Continued Implementation of Land and Resource Management Plans in Eastern Oregon and Washington, Idaho, Western Montana, and Portions of Nevada (INFISH)*, Attachment A at A-8 (1998) [hereinafter *INFISH Attachment A*]. It also requires “regulat[ing] ... traffic during wet periods to minimize erosion and sediment delivery.” *Id.* at A-7.

### III. THE 1987 FOREST PLAN

45. The original 1987 Forest Plan required the Forest Service to limit open-road densities in third-order drainages to no more than 1 road mile per square mile or 2 road miles per square mile depending on the road densities that existed in 1987. Compare Amendment 40 EA, at 14–15 (describing 1987 Plan standard requiring 50 or 60 percent elk habitat effectiveness in drainages), with *id.* at 15 (noting “[a]n elk habitat effectiveness value of 50 percent equates to open road density of two miles per square mile, and a value of 60 percent equates to one mile of open road per square mile”).

46. When the Forest Service issued the 1987 Plan, many of the Bitterroot Forest’s third-order drainages did not comply with the Plan’s road-density limitations.

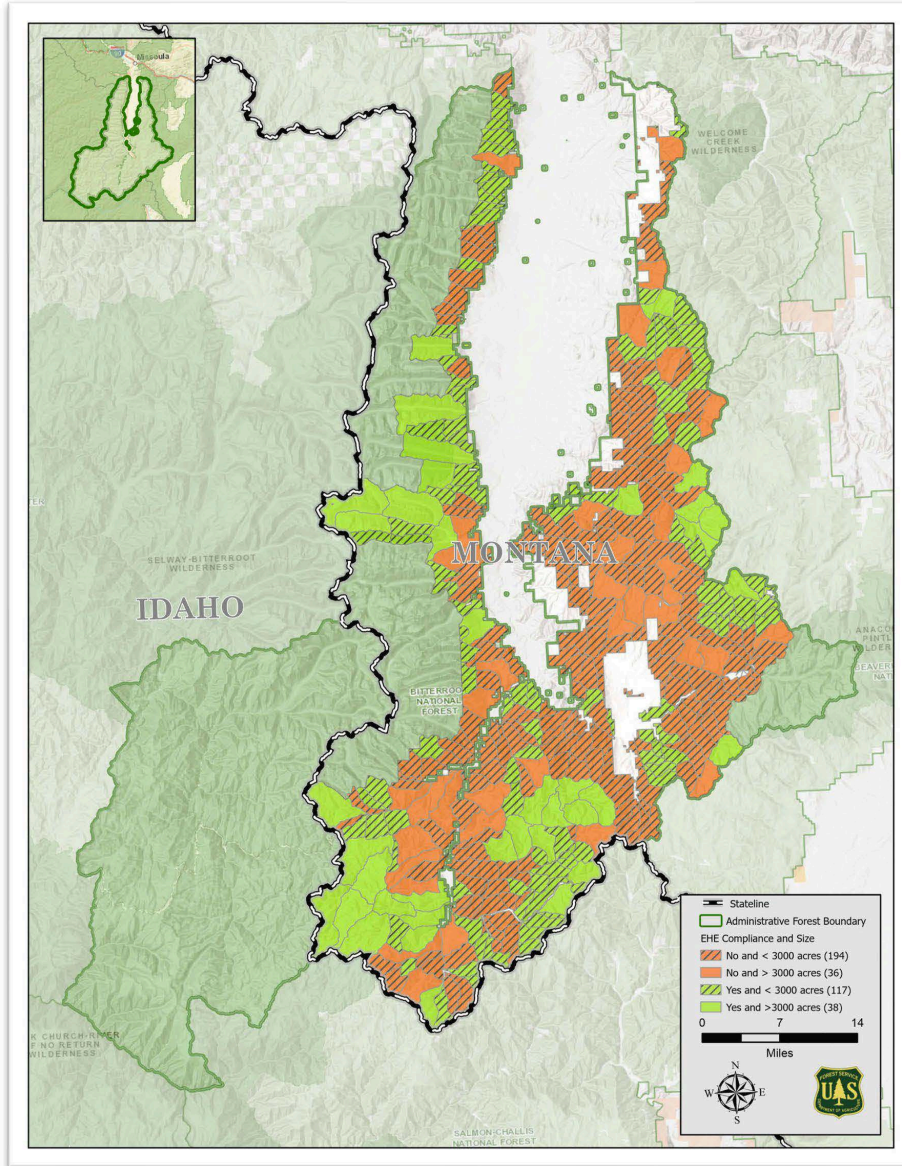
47. In practice, then, Plan prevented the Forest Service from opening or constructing new roads in grizzly bear habitat until it had closed comparable miles of roads elsewhere.

48. While the Plan’s limitations on open-road densities were designed to protect elk habitat, they also benefited grizzly bears, bull trout, and bull trout critical habitat.



49. As discussed, protecting grizzly bears “is primarily achieved by managing motorized access,”—i.e., roads and motorized use—in their habitat. Biological Opinion, at 10. Moreover, preventing harmful sedimentation of bull trout streams requires “closing and stabilizing or obliterating, and stabilizing roads not needed for future management activities,” *INFISH* Attachment A, at A-8, and further “regulat[ing] ... traffic during wet periods,” *id.* at A-7.

50. Nevertheless, Forest Service data demonstrate that the agency never achieved the 1987 Plan’s open-road density limitations requirements, and many drainages remain highly roaded and out of compliance.



**Figure 1: Third order drainages on the Bitterroot National Forest *not* in compliance with 1987 Plan’s road-density requirements**

Amendment 40 EA, at 17. The graphic above demonstrates that a significant number of third-order drainages (those shown in orange) never achieved compliance with the 1987 Plan’s open-road density requirements.

#### IV. AMENDMENT 40

51. Adopted in September 2023, Amendment 40 amended and replaced the 1987 Forest Plan’s elk habitat effectiveness plan without adequately considering the impacts on grizzly bears and bull trout. Among other changes, Amendment 40 eliminated the 1987 Plan’s limitations on open-road densities permitted in third-order drainages. Amendment 40 introduced no new requirements to mitigate resulting road-density impacts on bull trout, bull trout critical habitat, or grizzly bears. As FWS admits, “[n]o standards exist that would limit the miles of routes that could be built in the future other than land designations.” Biological Opinion, at 23.

52. Amendment 40’s elimination of open-road-density limitations threatens increased harm to grizzly bears, bull trout, and bull trout critical habitat. Because open roads displace grizzly bears, allowing unlimited road retention and motorized use threatens to significantly degrade the quality of grizzly bear habitat. And because elevated road densities and motorized use harm bull trout and bull trout streams, eliminating open road densities—roads open to motorized use—threatens to harm bull trout and their critical habitat.

**A. Unlawful Analysis of Impacts on Grizzly Bears**

53. FWS's Biological Opinion failed to fully and rationally examine Amendment 40's impacts on grizzly bears, and further created a legally flawed framework for examining and mitigating harms to grizzly bears in the Bitterroot National Forest.

54. FWS's Biological Opinion concluded that the Bitterroot Forest Plan, as amended, would not jeopardize grizzly bears if the Forest Service maintains secure, unroaded habitat at 95 percent of current levels within the Montana portion of the Bitterroot National Forest or in any of the eleven grizzly bear analysis units that subdivide it. However, FWS's framework and conclusion failed to examine the amended Plan's impacts in two significant ways: (1) it failed to consider road-density impacts on grizzly bears *outside* of secure, unroaded habitat; and (2) it allowed the Forest Service to overinflate current and future calculations of secure grizzly bear habitat by including fractions of land as small as one acre in size—approximately .00156 square miles. In short, Amendment 40 and the Biological Opinion allow the Forest Service to checkerboard the Bitterroot National Forest with roads open

to motorized use without meaningfully accounting for or analyzing resulting impacts on grizzly bears.

55. First, FWS’s Biological Opinion admitted that the agency considered the impacts of Amendment 40’s elimination of road-density limitations only as “related to grizzly bear secure habitat.” Biological Opinion, at 24. However, this approach is incompatible with FWS’s discussion of the science demonstrating that “[b]oth road density and the proportion of secure habitat contribute[] different yet important components influencing survival.” *Id.* at 12. Indeed, the District Court for the District of Montana has already rejected FWS’s approach because it “ignores the interplay between secure habitat and road density ... outside of secure habitat as predictors of grizzly bear survival.” *All. for the Wild Rockies v. Gassmann*, 678 F. Supp. 3d 1249, 1283 (D. Mont. 2023). Thus, FWS’s Biological Opinion failed to consider an important threat to grizzly bears by examining only Amendment 40’s impacts on secure habitat and setting aside any consideration of road-density impacts on grizzly bears outside of secure habitat.<sup>2</sup>

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<sup>2</sup> In response to Plaintiffs’ 60-day notice letter, the agencies stated that “Amendment 40 does not authorize or prohibit future route

56. Managing road densities outside of secure habitat is particularly important in the Bitterroot National Forest because road densities already exceed levels deemed acceptable for grizzly bears in the neighboring Northern Continental Divide Ecosystem. There, researchers observed that “[a]dult grizzly bears used habitats less than expected when open motorized access density exceeded 1 mile per square mile.” Biological Opinion, at 20. Open-road densities in the Bitterroot National Forest *average* about 1.7 miles per square mile in the Forest, Biological Opinion, at 11—far exceeding levels generally deemed acceptable by FWS. *See, e.g., All. for the Wild Rockies v. Marten*, 685 F. Supp. 3d 971, 982 (D. Mont. 2023) (“[R]esearch benchmarks ... describe that adverse effects to grizzly bears are likely to occur when [open-road density] exceeds 1 mile per square mile in

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construction” and “[t]he effects of future motorized route changes will be addressed in project-specific consultations between the [Forest Service] and FWS.” *Response Letter on Grizzly Bears*, at pdf 2–3. This response is inadequate because this District has held that “roads are an important aspect of the problem of maintaining grizzly bear populations,” and FWS is “obligated to consider” impacts on grizzly bears from road-management direction in forest plans, *WildEarth Guardians*, 545 F. Supp. 3d at 867 (D. Mont. 2021) (quotation and citation omitted).

more than 19 percent of [a grizzly bear] subunit” in the Helena-Lewis and Clark National Forest).

57. Second, FWS’s conclusion that the Forest Service may maintain adequate grizzly bear secure habitat by preserving unroaded land in one-acre slivers stands in stark contravention to prevailing grizzly bear science. As discussed, secure unroaded habitat must be generally large enough to accommodate the “average daily feeding radius” of grizzly bears, Gibeau et al. (2001), at 122—more than a thousand acres at minimum and possibly more than 5,000 acres.

58. Thus, to effectively provide grizzly bear secure habitat, large tracts of contiguous, unroaded land must be preserved in sizes that are orders of magnitude larger than one acre.

59. While FWS acknowledged that “larger, less fragmented patches of secure habitat are likely the ideal for a grizzly bear,” Biological Opinion, at 12, the agency justified its decision to allow the Forest Service to count small, one-acre fractions of unroaded land as secure habitat because “no current research on grizzly bear habitat use exists for the Bitterroot Ecosystem to inform a minimum size patch of secure habitat that grizzly bears might use,” *id.* In other words, FWS

disregarded decades of science regarding grizzly bear habitat needs in the region because the research had not been conducted specifically in the Bitterroot National Forest.<sup>3</sup>

60. To make matters worse, FWS’s Biological Opinion allows the Forest Service to undermine these one-acre strips of unroaded land by permitting the Forest Service to exclude “decommissioned” or “obliterated” or “impassable” roads when calculating secure habitat. Biological Opinion, at 12–13, 24; *see id.* at 15 (further describing such roads as “reclaimed/obliterated or bermed”). Such roads can retain engineered features, including the roadbed, cut-slope, fill-slope and drainage, enabling them to persist on the ground, support motorized use, and displace grizzly bears and deliver sediment to bull trout streams well into the future. Excluding consideration of such roads when calculating secure habitat was arbitrary because, as discussed, *supra*, Factual Background Pt. I, FWS’s Biological Opinion

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<sup>3</sup> In response to Plaintiffs’ 60-day notice letter, the agencies asserted that they “will examine this issue to determine if further clarification is warranted.” *Response Letter on Grizzly Bears*, at pdf 2. The agencies did not commit to making any changes and have provided no timeline for completing consultation.



acknowledged that even unused roads can impact grizzly bears, Biological Opinion, at 20–21.<sup>4</sup>

61. Additionally, FWS’s Biological Opinion failed to meaningfully consider impacts on grizzly bear secure habitat from motorized trespass on decommissioned, obliterated, or impassable roads. FWS acknowledged that trespass is “reasonably certain to occur,” *id.* at 40, but disclaimed any ability to examine such impacts by reciting boilerplate assertions repeatedly rejected by courts that impacts are “uncertain” and “unknown,” *id.* at 15; *see, e.g., All. for the Wild Rockies v. Marten*, 685 F. Supp. 3d at 985 (“[T]his is not the first time the Court has rejected the apparently boilerplate assertion that has become familiar to the Court in recent years: because unauthorized motorized

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<sup>4</sup> The agencies’ response to Plaintiffs’ 60-day notice letter stated that it was “appropriate” to exclude consideration of such roads when calculating secure habitat. *Response Letter on Grizzly Bears*, at pdf 3. However, this response failed to grapple with FWS’s admissions in the Biological Opinion that the science demonstrates even unused roads displace grizzly bears, *see supra*, Factual Background Pt. I—a fact which this District recently acknowledged in *Swan View Coalition v. Haaland*, No. CV 22-96-M-DLC, 2024 WL 3219206, at \*12–14 (D. Mont. June 28, 2024).

access is unpredictable, its effects on grizzly bears are unknowable.”) (quotations and citation omitted).<sup>5</sup>

62. For its part, the Forest Service’s EA simply included “summary information from the Biological Assessment” of impacts on grizzly bears, Amendment 40 EA, at 56—information which suffered from the same infirmities as FWS’s Biological Opinion, *see id.* at 59–61.

### **B. Unlawful Analysis of Impacts on Bull Trout**

63. The Forest Service unlawfully refused to reinitiate consultation with FWS about impacts on bull trout from Amendment 40’s elimination of road-density limitations in third-order drainages in the Bitterroot National Forest.

64. This is problematic because FWS has acknowledged that road presence and motorized use in bull trout watersheds—and even in watersheds above bull trout occurrence—deliver harmful sediment to streams, which degrades bull trout habitat conditions. *Travel Management Biological Opinion*, at 24, 32; 75 Fed. Reg. 63,898, 63,901.

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<sup>5</sup> The agencies’ response to Plaintiffs’ 60-day notice letter stated that “[t]he agencies will be reinitiating consultation to analyze the effects of illegal motorized access on grizzly bears more thoroughly.” *Response Letter on Grizzly Bears*, at pdf 3. The agencies have provided no timeline for completing consultation.

As FWS has admitted, addressing the threat of sedimentation from roads thus requires closing or obliterating roads and regulating traffic to minimize erosion. *INFISH* Attachment A, at A-7–A-8.

65. As discussed, Amendment 40 authorizes the Forest Service to abandon its prior duties to regulate motorized access in the Bitterroot National Forest by entirely removing limitations on open-road densities in Forest drainages. Nevertheless, the Forest Service failed to acknowledge or examine resulting impacts on bull trout as required under the ESA and refused even to initiate ESA consultation with FWS about such impacts. Instead, the Forest Service’s Biological Assessment stated only that “the Amendment will have No Effect on Bull Trout or designated critical habitat” and “[n]o further analysis for Bull Trout is

necessary.” Bitterroot National Forest, *Biological Assessment for Grizzly Bear*, at 6 (Oct. 6, 2020).<sup>6</sup>

66. Similarly, the Forest Service’s EA contains no mention of “bull trout” whatsoever. In response to Plaintiffs’ public comments asking how Amendment 40 would impact bull trout, the Forest Service simply stated: “[i]t won’t.” Forest Service, *Amendment 40 EA Comment Responses*, at 12 (2023).

**FIRST CAUSE OF ACTION  
(Violation of Endangered Species Act—  
Failure to rationally address threats to grizzly bears during  
section 7 consultation)**

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

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<sup>6</sup> The Forest Service asserted in its response to Plaintiffs’ 60-day notice letter that “if a future proposed project activity may have an effect on bull trout or bull trout habitat, the [Forest Service] will consult with the U.S. Fish and Wildlife Service on the effects of the proposed activity.” *Response Letter on Bull Trout*, at pdf 2. This response is inadequate because the Forest Service “cannot circumvent the consultation requirements of ESA § 7 by relying on [a promise of future] project-level review.” *N. Plains Res. Council v. U.S. Army Corps of Engineers*, 460 F. Supp. 3d 1030, 1035 (D. Mont. 2020). In a subsequent email, counsel for the Forest Service stated that the agency would reexamine the potential for effects to bull trout.

68. ESA section 7 requires the Forest Service to ensure its actions will not jeopardize the survival of threatened grizzly bears. 16 U.S.C. § 1536(a)(2). To meet this requirement, the Forest Service must consult with FWS about proposed actions that may adversely affect grizzly bears. *Id.*; 50 C.F.R. § 402.14(a). During consultation, FWS must rationally determine whether the Forest Service’s action will jeopardize grizzly bear survival and recovery based on consideration of all relevant factors. *See Ctr. for Biological Diversity v. BLM*, 698 F.3d at 1121. During the consultation process, the Forest Service and FWS “shall use the best scientific and commercial data available.” 16 U.S.C. § 1536(a)(2).

69. FWS violates the ESA if it issues a biological opinion that “fails to consider the relevant factors and articulate a rational connection between the facts found and the choice made.” *Ctr. for Biological Diversity v. BLM*, 698 F.3d at 1121 (cleaned up) (quotations and citation omitted). The Forest Service violates the ESA if it approves or implements an action in reliance on a legally flawed biological opinion or fails in its approval or implementation decision “to discuss information that would undercut the [biological] opinion’s conclusions.”

*Id.* at 1127–28 (citation omitted); *accord Save Our Cabinets*, 255 F. Supp. 3d at 1063.

70. FWS’s analysis of Amendment 40’s impacts on grizzly bears violated the ESA, first, because it examined impacts only on secure habitat and set aside any consideration of road-density impacts on grizzly bears outside of secure habitat. *All. for the Wild Rockies v. Gassmann*, 678 F. Supp. 3d at 1283 (holding FWS’s biological opinion violated ESA’s “best available science” requirement by relying on the “secure habitat metric alone” and “ignor[ing]” impacts to grizzly bears from roads outside secure habitat); *Ctr. for Biological Diversity v. BLM*, 698 F.3d at 1121 (“A Biological Opinion is arbitrary and capricious if it fails to consider the relevant factors and articulate a rational connection between the facts found and the choice made”) (cleaned up) (quotations and citations omitted).

71. Second, against the well-established science showing that grizzly bears in the region require thousands of acres of uninterrupted and truly unroaded habitat, FWS’s decision to include one-acre patches of nominally unroaded land in calculations of secure grizzly bear habitat violated the ESA. *See Ctr. for Biological Diversity v. BLM*, 698

F.3d at 1121; 16 U.S.C. § 1536(a)(2) (requiring FWS to “use the best scientific and commercial data available”). Third, FWS’s Biological Opinion violated the ESA because it failed to consider impacts on grizzly bear secure habitat from “decommissioned” or “obliterated” or “impassable” roads and associated motorized trespass in secure habitat. Biological Opinion, at 12–13, 24; see *Ctr. for Biological Diversity v. BLM*, 698 F.3d at 1121.

72. By relying on FWS’s arbitrary Biological Opinion, the Forest Service violated its own ESA obligations to ensure its management of the Bitterroot National Forest will not jeopardize the grizzly bear. 16 U.S.C. § 1536(a)(2); *Ctr. for Biological Diversity v. BLM*, 698 F.3d at 1127–28.

**SECOND CAUSE OF ACTION  
(Violation of Endangered Species Act—  
Failure to initiate section 7 consultation regarding threats to  
bull trout)**

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

74. ESA section 7 requires the Forest Service to reinitiate consultation with FWS before modifying a forest plan in a manner that affects bull trout. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a)(3). The

Forest Service violates the ESA if it fails to reinitiate consultation with FWS when a forest plan is modified such that it affects bull trout in a manner not previously considered. *All. for Wild Rockies v. Probert*, 412 F. Supp. 3d at 1205.

75. The Forest Service violated its duty under the ESA to reinitiate consultation with FWS regarding Amendment 40's impacts to bull trout. Instead, the Forest Service summarily concluded—contrary to the facts and science demonstrating that elevated road densities and motorized use deliver harmful sediment to bull trout streams—that Amendment 40 would have no effect on bull trout and their critical habitat and consultation was therefore unnecessary.

76. The Forest Service's determination that Amendment 40 would not impact bull trout was therefore arbitrary and capricious, and the agency's decision not to reinitiate consultation with FWS violated the ESA. 16 U.S.C. § 1536(a)(2); *All. for Wild Rockies v. Probert*, 412 F. Supp. 3d at 1205.



**THIRD CAUSE OF ACTION**  
**(Violation of National Environmental Policy Act —**  
**Failure to take a hard look at impacts on grizzly bears)**

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

78. NEPA requires the Forest Service to disclose and analyze all the environmental impacts of its actions. 42 U.S.C. § 4332(2)(C). The Forest Service violates NEPA when it fails to take a “hard look’ at environmental consequences of [its] proposed actions.” *350 Montana*, 50 F.4th 1254, 1265 (9th Cir. 2022) (quotation and citation omitted); *see Mont. Wilderness Ass’n v. McAllister*, 666 F.3d 549, 560 (9th Cir. 2011) (holding Forest Service violated NEPA and APA where it failed to consider relevant environmental impacts of travel management plan).

79. As discussed, Amendment 40 weakened grizzly bear habitat protections by removing prior limitations on road densities and road use. This new management direction threatens to displace grizzly bears from using and occupying lands within the Bitterroot National Forest. The Forest Service’s Final EA, however, failed to fully and rationally consider resulting impacts on grizzly bears, instead relying on an inadequate plan to preserve miniature one-acre slices of purportedly

unroaded habitat—a plan that fails because it neither preserves secure habitat nor considers impacts on grizzly bears from roads and motorized use outside of secure habitat.

80. The Forest Service thus violated NEPA by failing to disclose, analyze, or take a hard look at all of Amendment 40’s environmental impacts. 42 U.S.C. § 4332(2)(C); *see Mont. Wilderness Ass’n*, 666 F.3d at 560.

**FOURTH CAUSE OF ACTION  
(Violation of National Environmental Policy Act —  
Failure to take a hard look at impacts on bull trout)**

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

82. NEPA requires the Forest Service to disclose and analyze all the environmental impacts of its actions. 42 U.S.C. § 4332(2)(C); *see Mont. Wilderness Ass’n*, 666 F.3d at 560. The Forest Service violates NEPA when it fails to take a “hard look’ at environmental consequences of [its] proposed actions.” *350 Montana*, 50 F.4th 1254, 1265 (9th Cir. 2022) (quotation and citation omitted); *see Mont. Wilderness Ass’n*, 666 F.3d at 560.

83. As discussed, Amendment 40's new management direction threatens to cause harmful sedimentation of bull trout streams, including designated critical bull trout habitat by permitting unlimited road retention and motorized use in Forest drainages. The Forest Service's Final EA, however, failed to acknowledge or analyze this impact on bull trout.

84. The Forest Service thus violated NEPA by failing to disclose, analyze, or take a hard look at all of Amendment 40's environmental impacts, contrary to NEPA requirements. 42 U.S.C. § 4332(2)(C); *see Mont. Wilderness Ass'n*, 666 F.3d at 560.

**FIFTH CAUSE OF ACTION  
(Violation of National Environmental Policy Act —  
Failure to Prepare EIS)**

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

86. NEPA requires the Forest Service to prepare an EIS before undertaking any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). When deciding not to prepare an EIS, the Forest Service must issue a Finding of No Significant Impact (FONSI) that provides "a convincing statement

of reasons to explain why [a project’s] impacts are insignificant” *350 Montana*, 50 F.4th at 1269 (quotations and citations omitted).

87. The Forest Service violated NEPA by issuing an arbitrary and capricious FONSI for Amendment 40 and failing to prepare an EIS. The Forest Service’s FONSI—concluding that Amendment 40’s “effects to all resources are minor” and that the amendment poses “no significant effect to wildlife from any of the components in this amendment,” Amendment 40 EA, at 117—is arbitrary and capricious because, as discussed, the agency failed to take a hard look at the full range of potentially significant impacts Amendment 40 may have on ESA-protected grizzly bears and bull trout.

88. These unexamined yet potentially significant impacts on federally protected species contradict the Forest Service’s FONSI and decision not to complete an EIS for Amendment 40. *See 350 Montana*, 50 F.4th at 1269–70 (holding FONSI unlawful when agency relied on “opaque” analysis, “failed to account for” potentially significant impacts, and therefore “hid the ball and frustrated NEPA’s purpose”).

**SIXTH CAUSE OF ACTION**  
**(Violation of National Forest Management Act —**  
**Failure to Maintain or Restore Grizzly Bear Connective**  
**Habitat)**

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

90. NFMA requires the Forest Service to provide for sustainability and diversity of plant and animal communities. 16 U.S.C.A. § 1604. Accordingly, NFMA regulations require that any Forest Plan or revision that would impair connective habitat “must include plan components ... to maintain or restore” such habitat. 36 C.F.R. § 219.8; *id.* at § 219.9.<sup>7</sup> To comply with this mandate, the Forest Service must “[d]etermine which specific substantive requirement(s) within [36 C.F.R.] §§ 219.8 ... are *directly related* to the plan direction being added, modified, or removed by the amendment,’ and then ‘apply such requirement(s) within the scope and scale of the amendment.’”

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<sup>7</sup> NFMA’s implementing regulations define habitat “connectivity” broadly to include “landscape linkages that permit the exchange of flow, sediments, and nutrients; the daily and seasonal movements of animals within home ranges; the dispersal and genetic interchange between populations; and the long-distance range shifts of species, such as in response to climate change.” Amendment 40 EA, at 50 (quoting 36 C.F.R. § 219.19).

*Sierra Club, Inc. v. United States Forest Serv.*, 897 F.3d 582, 601 (4th Cir. 2018) (emphasis in original) (quoting 36 C.F.R. § 219.13(b)(5)). A substantive requirement is directly related to an amendment when it “is associated with *either* the purpose for the amendment or the effects ... of the amendment.” *Id.* at 602 (emphasis in original) (quoting U.S. Dep’t of Agric., National Forest System Land Management Planning, 81 Fed. Reg. 90,723, 90,731 (Dec. 15, 2016)).

91. Amendment 40’s elimination of road-density standards substantially threatens connective grizzly bear habitat into, out of, and within the Bitterroot Ecosystem, as well as the important connective habitat potential of the Bitterroot itself. The Interagency Grizzly Bear Committee has identified “habitat loss, modification, and fragmentation due to roads and road construction” as a primary threat to grizzly bear recovery. Biological Opinion, at 19. Maintaining connective grizzly bear habitat into and out of the Bitterroot National Forest is especially important because, at present, grizzly bears do not permanently inhabit the Bitterroot, instead moving through the area between populations. *Id.* at 4–5. Moreover, “[a] long-term goal [for grizzly bear recovery] is to allow the populations in western and southwestern Montana to

reconnect through the intervening ... habitats,” including the Bitterroot Ecosystem. *Id.* at 40. Indeed, the Bitterroot Ecosystem itself may be considered connective habitat because an established population in the Bitterroot Ecosystem could provide for genetic exchange between unconnected populations in the region, particularly the isolated Greater Yellowstone Ecosystem, which suffers from “a lack of genetic diversity.” *Crow Indian Tribe v. United States*, 965 F.3d 662, 679 (9th Cir. 2020); see 36 C.F.R. § 219.19 (defining “connectivity” to include “the dispersal and genetic interchange between populations”).

92. Despite the overwhelming science that roads and road use adversely impact and fragment grizzly bear habitat, the Forest Service nevertheless arbitrarily swept considerations of impacts to habitat connectivity under the rug. In response to public comment, the Forest Service’s Final EA dismissed consideration of grizzly bear connective habitat because such concerns were “well beyond the scope of a focused amendment to define ... elk habitat.” Amendment 40 EA, at 50.

93. The Forest Service thus violated NFMA by dismissing—and failing to include plan provisions to minimize—Amendment 40’s impacts on grizzly bear connective habitat. 36 C.F.R. § 219.8(a)(1); see

*Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 166 (4th Cir. 2018) (finding Forest Service violated NFMA by arbitrarily determining that forest plan amendments “would not have substantial adverse effects”), *rev'd on other grounds and remanded*, 590 U.S. 604, 140 S. Ct. 1837, 207 L. Ed. 2d 186 (2020).

**SEVENTH CAUSE OF ACTION**  
**(Violation of National Forest Management Act —**  
**Failure to Maintain or Restore Bull Trout Connective Habitat)**

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

95. NFMA requires that, for any forest plan amendment that would impair connective habitat, the Forest Service “must include plan components ... to maintain or restore,” the “structure, function, composition, and connectivity” of such habitat. 36 C.F.R. § 219.8; *id.* at § 219.9; *see* 16 U.S.C.A. § 1604 (requiring the Forest Service to provide for sustainability and diversity of plant and animal communities).

96. “[T]he bull trout is largely a migratory species with complex migration patterns,” and “connectivity among and within its habitats is essential for long-term persistence and recovery of the species.” 75 Fed. Reg. 63,898, 63,960; *see also id.* at 63,910 (“Bull trout are highly



migratory, and connectivity among patches of occupied habitat is essential to their conservation.”). In turn, it is “essential for the conservation of bull trout” to protect against “water quality impediments between spawning, rearing, overwintering, and freshwater ... foraging habitats.” *Id.* at 63,931.

97. Amendment 40’s elimination of open-road density limitations threatens substantial adverse effects to bull trout habitat, including connective habitat, through increased stream sedimentation. Researchers have observed that “[b]ull trout were less likely to use highly roaded basins for spawning and rearing, and if present, were likely to be at lower population levels.” 64 Fed. Reg. 58,910, 58,921. Moreover, FWS has identified “degree of road use” as a “factor[] that influence[s] the delivery of sediment to streams from forest roads.” *Travel Management Biological Opinion*, at 32. Thus, FWS advises that protecting bull trout from sedimentation impacts requires closing and obliterating roads and regulating motorized access during wet periods. *INFISH Attachment A* at A-7–A-8.

98. The Forest Service therefore violated NFMA by dismissing—and failing to include plan provisions to minimize—Amendment 40’s

impacts on bull trout connective habitat. 36 C.F.R. § 219.8(a)(1); *see Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d at 165.

### **PRAYER FOR RELIEF**

THEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that FWS's July 8, 2021 Biological Opinion for the 1987 Bitterroot Forest Plan violates the ESA and APA;
2. Declare that the Forest Service's Final EA violates NEPA and the APA;
3. Declare that the Forest Service's Amendment 40 to the Bitterroot National Forest Plan violates the ESA, NEPA, NFMA, and the APA;
4. Set aside and vacate Amendment 40, the Biological Opinion, and the Final Amendment 40 EA;
5. Reinstate and order compliance with the open-road-density requirements of the original 1987 Forest Plan;
6. Award Plaintiffs injunctive relief prohibiting the Forest Service from implementing the challenged provisions of Amendment 40 pending compliance with governing law;

7. Award Plaintiffs their reasonable fees, costs, and expenses, including attorney fees, associated with this litigation; and

8. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 3rd day of December, 2024.

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