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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

WILDEARTH GUARDIANS, a non-profit
organization; and WESTERN
WATERSHEDS PROJECT, a non-profit
organization,

Plaintiffs,

Lead Case No.
CV 19-56-M-DWM

Member Case No.
CV 19-60-M-DWM

vs.

KURTIS E. STEELE, in his capacity as Forest Supervisor for the Flathead National Forest; the UNITED STATES FOREST SERVICE, a federal agency; **AURELIA SKIPWITH**, in her capacity as Director of the U.S. Fish and Wildlife Service; and the UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency;

Federal-Defendants.

PLAINTIFFS' SECOND
AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. WildEarth Guardians and Western Watersheds Project (collectively “Plaintiffs”), bring this civil action against Federal-Defendants Kurtis E. Steele, in his official capacity as Forest Supervisor for the Flathead National Forest; the United States Forest Service (collectively “Forest Service”); Aurelia Skipwith, in her capacity as Director of the U.S. Fish and Wildlife Service; and the U.S. Fish and Wildlife Service (“Fish and Wildlife Service”) under the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, for violations of Executive Order 11644 (as amended by Executive Order 11989); U.S. Department of Agriculture travel management regulations, 36 C.F.R. Part 212; and the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*

2. This case challenges the Forest Service’s decision finalizing the 2018 revision to the Flathead National Forest Land Management Plan (the “Forest Plan for

the Flathead National Forest” or “revised Forest Plan” or “Revised Plan”). The Flathead National Forest (the “Flathead” or “Forest”) in northwestern Montana is a crown jewel of our nation’s public lands system. The Forest supports some of the last-remaining, fully intact native ecosystems in the country and is home to a wide variety of rare and imperiled native species, including: grizzly bears, wolverine, and Canada lynx. The Forest is rich in aquatic resources. The Forest is home to threatened runs of bull trout and vital corridors of bull trout critical habitat.

3. In December 2018, the Forest Service published a Revised Plan for the Flathead National Forest. The Revised Plan sets the stage for forest management activities (e.g., logging, road development, recreation management, etc.) for at least the next 15 years.

4. After submitting extensive comments, meeting with Forest Service personnel about their concerns during the administrative objection phase, and exhausting all other options and available remedies, Plaintiffs are compelled to pursue this civil action because the Revised Plan is legally deficient and has detrimental impacts upon a variety of native wildlife species, including: grizzly bears, wolverine, Canada lynx, and bull trout and their associated habitats on the Flathead National Forest.

5. Plaintiffs’ members and supporters have worked hard to protect and conserve the valuable wildlife and habitat afforded by the Flathead National Forest for many decades and remain committed to ensuring the Forest Service manages the

Forest in accordance with NEPA, the Forest Service's Travel Planning Rules, and the ESA.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331 and 16 U.S.C. § 1540(g)(1). Final agency action exists that is subject to judicial review under 5 U.S.C. §§ 702 and 704. An actual, justiciable controversy exists between Plaintiffs and Defendants.

7. Venue is proper under 28 U.S.C. § 1391. All or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. Plaintiffs maintain offices within this judicial district. The lead Defendant's office is located within this judicial district. The administrative records at issue in this litigation were prepared within this judicial district. The public lands and resources affected by the Flathead Forest Plan are located within this judicial district.

8. This case is properly filed in Missoula, Montana. The Forest Service decision at issue in this litigation was made in Kalispell, Montana. Kalispell, Montana is geographically located within Flathead County, Montana. The Forest Service lands affected by the decision at issue in this litigation are located in Flathead, Missoula, Lake, and Lincoln Counties, Montana.

9. Plaintiffs have exhausted any and all available and required administrative remedies. Plaintiff WildEarth Guardians meets the requirements for Article III standing to pursue this civil action by and through its members who are

adversely affected by the decision at issue in this litigation. Plaintiff Western Watersheds Project meets the requirements for Article III standing to pursue this civil action by and through its members who are adversely affected by the decision at issue in this litigation. Plaintiffs have a significant, concrete interest in protecting and enjoying the wildlife and public lands on the Flathead National Forest. These interests are and will continue to be harmed by the Forest Service's Revised Plan and a favorable ruling from this Court will redress those harms. This matter is ripe for judicial review.

10. Plaintiffs sent a letter to Defendants dated April 3, 2019 notifying them of various ESA and APA violations committed by them in approving and releasing the Revised Plan. Plaintiffs sent a letter to Defendants dated April 3, 2019 notifying them of various ESA and APA violations committed by them in going through ESA Section 7 formal consultation related to the Revised Plan. More than sixty days have elapsed since the April 3, 2019 letter was received by Defendants. More than sixty days have elapsed since the April 3, 2019 letter was received by the Secretary of the Interior.

11. This Court has authority to issue the relief requested under 28 U.S.C. §§ 2201 and 2202, and 5 U.S.C. §§ 702 and 706.

PARTIES

12. Plaintiff, WILDEARTH GUARDIANS ("Guardians"), is a nonprofit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers

and health of the American West. WildEarth Guardians has over 236,000 members and supporters, many of whom have particular interests in grizzly bears, Canada lynx and its critical habitat, wolverine, and bull trout and its critical habitat. Many of Guardians' members also have particular interests in the management of forest roads and travel planning on the Flathead National Forest. Guardians has an organizational interest in ensuring the Forest Service's compliance with all federal laws.

13. Plaintiff, WESTERN WATERSHEDS PROJECT ("WWP"), is a nonprofit organization dedicated to protecting and restoring western watersheds and wildlife through education, public policy initiatives, and legal advocacy. WWP has over 9,500 members and supporters, many of whom have particular interests in grizzly bears, Canada lynx and its critical habitat, wolverine, and bull trout and its critical habitat. Many of WWP's members also have particular interests in the management of grazing, forest roads and travel planning on the Flathead National Forest. WWP has an organizational interest in ensuring the Forest Service's compliance with all federal laws.

14. Plaintiffs' members use and enjoy the Flathead National Forest for skiing, snowshoeing, hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other aesthetic, recreational, scientific, spiritual, vocational, and educational activities. Plaintiffs' members use the areas within the Flathead National Forest that have been designated as open to snowmobile use through the Revised Plan and identified as suitable for snowmobile use through the Revised Plan.

As a result of the decisions made in the Revised Plan, their use and enjoyment of these specific areas will be diminished. Plaintiffs' members intend to continue to use and enjoy the areas opened or suitable to snowmobiling frequently and on an ongoing basis in the future. Plaintiffs and their members rely on the Federal-Defendants to follow the laws pertaining to environmental review and travel planning in order that Plaintiffs and their members may stay informed and participate in travel planning decisions, and their interests in participating in such decisions are injured by the failures of the Defendants to follow the laws and regulations as described in this Second Amended Complaint.

15. The aesthetic, recreational, scientific, spiritual, vocational, and educational interests of Plaintiffs' members have been and will be adversely affected and irreparably injured if the Forest Service is allowed to continue implementing the Revised Plan as approved. These are actual, concrete injuries caused by the Defendants' failure to comply with mandatory duties under Forest Service regulations, U.S. Department of Agriculture regulations, the APA, the ESA, and pertinent Executive Orders. Plaintiffs and their members have also suffered procedural harm from the Forest Service's failure to comply with mandatory duties under the APA, Forest Service regulations, U. S. Department of Agriculture regulations, the ESA, and pertinent Executive Orders. The requested relief would redress these injuries. This Court has the authority to grant Plaintiffs' requested relief.

16. Each Plaintiff includes within its mission and purpose the promotion of sound use of public lands, the protection of the wildlife that inhabit such lands, and the promotion of non-motorized winter recreation opportunities on public lands. Plaintiffs have an interest in insuring that federal agencies follow the law, including travel planning processes and procedures of the statutes, regulations, and Executive Orders listed in this Complaint. Plaintiffs' organizational interests are adversely affected and injured by the Forest Service's failures as described in this Second Amended Complaint.

17. Plaintiffs' members and supporters have not been compelled to participate in this lawsuit.

18. If this Court issues the relief requested, the harm to Plaintiffs' mission and that suffered by their members and supporters will be alleviated and/or lessened.

19. Defendant KURTIS E. STEELE, is named in his official capacity as Forest Supervisor for the Flathead National Forest. Mr. Steele is the federal official with responsibility for all Forest Service actions and inactions challenged in this Second Amended Complaint.

20. Defendant UNITED STATES FOREST SERVICE ("Forest Service") is an agency of the United States and is a division of the U. S. Department of Agriculture. The Forest Service is responsible for implementing NEPA and its implementing regulations, NFMA, Forest Planning Rules, Executive Order 11644 (as amended), travel management regulations, and the Endangered Species Act.

21. Defendant AURELIA SKIPWITH is named in her official capacity as Director of the U.S. Fish and Wildlife Service. Ms. Skipwith is the federal official with responsibility for all Fish and Wildlife Service actions and inactions challenged in this Second Amended Complaint.

22. Defendant UNITED STATES FISH AND WILDLIFE SERVICE (“Fish and Wildlife Service”) is an agency of the United States and is a division of the U.S. Department of the Interior. The Fish and Wildlife Service is responsible for implementing the Endangered Species Act and its implementing regulations.

FACTS

The Flathead National Forest

23. The 2.4 million-acre Flathead National Forest lies in the heart of the Rocky Mountains and the core of the Crown of the Continent Ecosystem, just west of the continental divide and just south of the Canadian border. Its unique position within a larger complex of wilderness and unroaded areas bordering Glacier National Park and a remote portion of British Columbia make the Flathead a central facet in one of the largest and last remaining wild areas of the lower 48 states.

24. Inherently, this prime geographic location makes the Flathead a preeminent landscape for connecting habitats and core populations of a diverse array of wildlife. The Forest is inhabited by hundreds of species of native mammals, birds, fish, reptiles, amphibians, and invertebrates. The Forest is home to one of the last remaining — and most ecologically intact — assemblages of medium to large

carnivores in the contiguous United States, harboring grizzly bears, Canada lynx, wolverine, and gray wolves (among others) within its borders.

25. The Flathead is part of Canada lynx critical habitat unit 3 of the U.S. Fish and Wildlife Service’s Northern Rocky Mountains region. The Flathead is home to one of the largest populations of federally protected, threatened grizzly bears in the lower 48 states. The Forest is the largest public landowner within the Northern Continental Divide Ecosystem (“NCDE”), one of the U.S. Fish and Wildlife Service’s seven grizzly bear ecosystems in the continental United States. The largest known population of wolverines also reside on the Flathead. The wolverine is a species proposed for listing under the federal Endangered Species Act (“ESA”).

26. The Forest’s fecund aquatic resources — its many lakes, rivers, streams, and wetland resources, including: fens, marshlands, glaciated ponds, woodland vernal pools, wet meadows, and sloughs — and accompanying riparian corridors, provide high water quality and crucial habitats for wildlife and aquatic species. Bull trout and westslope cutthroat trout spawn in natal streams on the Forest upon migration from the Forest’s namesake, Flathead Lake, which is one of the largest natural freshwater lakes in the American West.

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Forest Plan Revision for the Flathead National Forest

27. Forest Plans are the primary source of direction for a National Forest. Forest Plans are meant to provide forest-wide, geographic area, and management area desired conditions, objectives, standards, guidelines, and suitability of lands for specific uses.

28. NFMA directs revision of Forest Plans from time to time based on significant changes in conditions, but at least every fifteen years.

29. The Forest Service's 2012 Forest Planning Rules, 36 C.F.R. § 219 *et seq.*, require inclusion of plan components, including standards or guidelines, that address social and economic sustainability, ecosystem services, and multiple uses integrated with the plan components for ecological sustainability and species diversity. The Forest Planning Rules require plan components to maintain or restore vegetation and ecosystems to provide for species diversity, including threatened and endangered species.

30. The Flathead National Forest revised its Forest Plan in 2018.

31. The Flathead National Forest revised its Forest Plan under the requirements of the Forest Service's 2012 Forest Planning Rules.

Forest Planning Framework

32. The Revised Plan replaces the Flathead's 1986 Forest Plan, including the more than 20 amendments to the 1986 Forest Plan, in its entirety.

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Forest Service Travel Management

33. The Forest Service has a duty to manage off-road vehicles on the Flathead. Executive Order 11644, as amended by Executive Order 11989, obligates the Forest Service to “establish policies and provide for procedures that will ensure the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” Off-road vehicles include over-snow vehicles.

34. Executive Order 11644 obligates the Forest Service to promulgate rules requiring it to locate motorized routes to (1) minimize damage to soil, watershed, vegetation, or other resources of public lands; (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and (3) minimize conflicts between off-road vehicle use and other recreational uses.

35. In 2005, the Forest Service issued the Travel Management Rule to implement the requirements of Executive Order 11644. The 2005 Travel Management Rule excluded over-snow vehicles from those requirements. In 2015, the Forest Service issued a revised rule with the over-snow vehicle exclusion removed. This is referred to as Subpart C or the 2015 Over-Snow Vehicle Rule.

36. The 2015 Over-Snow Vehicle Rule requires winter travel management planning for all National Forests that receive enough snowfall for over-snow vehicle use to occur. Winter travel plans must designate the specific roads, trails, and areas on National Forest System lands open to over-snow vehicle use, and the remaining area

on the forest is closed to over-snow vehicle use. This is referred to as the “closed unless designated open” approach.

37. The winter travel planning process must provide for public involvement, coordination with other entities, and application of the minimization criteria.

38. Under the 2015 Over-Snow Vehicle Rule, specific criteria must be considered and applied in designating trails and areas for over snow motor vehicle use. The Forest Service must locate over-snow vehicle designations with the objective of minimizing damage to soil, watersheds, vegetation, and other forest resources; harassment of wildlife and significant disruption of wildlife habitats; and conflicts between motor vehicle use and existing or proposed recreational uses of the Forest. These specific criteria are referred to as the “minimization criteria.” The Forest Service must not just consider these minimization criteria, but must affirmatively demonstrate how it evaluated and applied the minimization criteria in any decision designating trails and areas for motor vehicle use with the objective of minimizing impacts and conflicts.

39. Roads, trails, and areas designated for over-snow vehicle use must be reflected on an over-snow vehicle use map made publicly available.

40. The 2015 Over-Snow Vehicle Rule includes a “grandfather provision” under which the Forest Service can avoid preparing a new winter travel plan if it has made previous decisions that underwent public involvement and restrict over-snow vehicle use to designated routes and areas, if no change is proposed to those previous

decisions. The Forest Service can only use the “grandfather provision” to avoid completing a new winter travel plan if its prior decisions comply with the minimization criteria and other substantive requirements of the 2015 Over-Snow Vehicle Rule.

The NEPA Process

41. The Forest Service published the notice of intent to revise the Flathead Forest Plan and prepare an environmental impact statement (“EIS”) assessing the effects of the Revised Plan in the Federal Register on March 6, 2015.

42. In May 2015, Plaintiff WildEarth Guardians submitted timely scoping comments on the Forest Service’s notice of intent to revise the Flathead Forest Plan and prepare an EIS.

43. The Forest Service published a notice of availability of a draft EIS for the Revised Plan in the Federal Register on June 3, 2016.

44. WildEarth Guardians and Western Watersheds Project submitted timely comments on the Forest Service’s draft EIS for the Revised Plan on October 3, 2016.

45. The Forest Service published a notice of opportunity to object to the Revised Plan and its draft Record of Decision (“ROD”) on December 14, 2017.

46. WildEarth Guardians and Western Watersheds Project submitted a timely objection on February 8, 2018.

47. WildEarth Guardians’ staff participated in objection resolution meetings in Kalispell, Montana in April 2018.

48. WildEarth Guardians submitted a letter on May 17, 2018 to Regional Forester Leanne Marten recommending the Flathead National Forest commit to site-specific winter travel planning within one year of the signing of the final ROD.

49. On August 15, 2018, the Forest Service reviewing officer issued its response to eligible objections. The August 15, 2018 response to objections included instructions for additional analysis the Forest Service needed to undertake before issuing the final ROD.

50. The Forest Service completed its final EIS for the Revised Plan in November 2018.

51. Forest Supervisor Chip Weber signed the final ROD for the Revised Plan on December 24, 2018.

52. On December 27, 2018, the Forest Service published a notice in the Federal Register that Forest Supervisor Chip Weber had signed the final ROD for the Flathead National Forest's Revised Plan. The Flathead National Forest Revised Forest Plan took effect on January 26, 2019.

Endangered Species Act Consultation

53. The Forest Service completed a Biological Assessment on October 31, 2017. This Biological Assessment assessed potential impacts to threatened and endangered species from implementation of the Flathead National Forest's Revised Forest Plan. The Biological Assessment concluded the Revised Plan is likely to adversely affect bull trout and designated bull trout critical habitat, grizzly bear,

Canada lynx, and Canada lynx critical habitat. The Biological Assessment concluded the Revised Plan may affect, but is not likely to jeopardize, wolverine.

54. The U.S. Fish and Wildlife Service (“FWS”) issued a Biological Opinion on November 22, 2017. The Biological Opinion concluded the Revised Plan is not likely to jeopardize the continued existence of bull trout, grizzly bear, or Canada lynx, or adversely modify designated bull trout critical habitat or Canada lynx critical habitat.

Wildlife on the Flathead National Forest

55. The Flathead National Forest is home to a wealth of rare and imperiled wildlife species. The Forest provides essential habitat for wildlife not found elsewhere in the contiguous United States.

Grizzly Bears (Ursus arctos horribilis)

56. Grizzly bears (*Ursus arctos horribilis*) are a subspecies of brown bear (*U. arctos*) that occur in North America, Europe, and Asia.

57. Grizzly bears once occurred throughout the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska. Prior to European settlement, there were approximately 50,000 grizzly bears in the western United States. By the 1930s, grizzly bears had lost approximately 98 percent of their historic range in the western United States. Of the 37 grizzly bear populations present in the contiguous United States in 1922, 31 were extirpated by 1975. By the early 1970s, only a few hundred grizzly bears remained in the contiguous United States.

58. In 1975, FWS listed all grizzly bears in the contiguous United States as a threatened species under the federal ESA. In the 1975 listing, FWS determined grizzly bears in the contiguous United States were threatened by a combination of factors. FWS determined grizzly bears in the contiguous United States had lost a significant amount of habitat in the contiguous United States. At the time, grizzly bear range was confined to only three regions, one of which was the Bob Marshall Ecosystem in northern Montana.

59. Isolation and the lack of connectivity between grizzly bear populations in the contiguous United States was considered a threat to grizzly bears in the 1975 listing. The 1975 listing also identified human-caused mortality as a threat to grizzly bears. The 1975 listing identified the inadequacy of existing regulatory mechanisms as a threat to grizzly bears. The 1975 listing identified the overall lack of data and scientific information on grizzly bear needs as a threat to grizzly bears. The 1975 listing identified increasing human use of the bears' habitat as a threat to grizzly bears.

60. The FWS identified six recovery ecosystems in the contiguous United States where grizzly bears are known to have inhabited and where suitable habitat available for grizzly bear conservation remains, including: (1) the NCDE; (2) the Greater Yellowstone Ecosystem; (3) the Cabinet-Yaak Ecosystem; (4) the Selkirk Mountains Ecosystem; (5) the Bitterroot Ecosystem; and (6) the North Cascades Ecosystem.

61. The Flathead National Forest is home to one of the largest remaining populations of grizzly bears in the contiguous United States. This population of grizzly bears on the Flathead National Forest is part of the NCDE grizzly bear population. There are approximately 900 grizzly bears in the NCDE.

62. Grizzlies in the NCDE are threatened by multiple factors. In particular, grizzly bears in the NCDE are significantly threatened by roads. FWS considers the management of roads to be one of the most important variables in managing grizzly bear habitat.

63. Grizzly bears are adversely impacted by roads through direct mortality from vehicle strikes. Grizzly bears are adversely impacted by roads through direct mortality from illegal harvest. Grizzly bears are adversely impacted by roads through indirect mortality resulting from habituation to humans. Grizzly bears are adversely impacted by roads through avoidance of key habitat as they attempt to move away from roads and road activity. Grizzly bears are adversely impacted by roads through displacement from key habitat as they attempt to move away from roads and road activity. Grizzly bears are adversely impacted by roads through modification of their core habitat due to roads and road construction. Grizzly bears are adversely impacted by roads through fragmentation of their core habitat due to roads and road construction.

64. The presence of roads leading to human population centers poses risks to grizzly bears. The presence of dispersed motorized recreation in habitat around

roads poses risks to grizzly bears. Access management is essential to reducing mortality risk to grizzly bears. Managing the construction and use of forest roads is essential to reducing mortality risk to grizzly bears. Managing dispersed motorized recreation is essential to reducing risks to grizzly bears.

65. Roads may cause some grizzly bears to habituate to humans. Grizzly bears that are habituated to humans suffer increased mortality risk.

66. Many grizzly bears will under-use or avoid otherwise preferred habitats that are frequented by humans due to road proximity and related opportunities for human access. This represents a modification of normal grizzly bear behavior that can result in detrimental effects. Grizzly bears will avoid roads. Grizzly bears will avoid corridors adjacent to roads. Grizzly bears will avoid roads and adjacent corridors even when the area contains preferred habitat for breeding, feeding, shelter, and reproduction.

67. Mace and Manley (1993) reported use of habitat by all sex and age classes of grizzly bears was less than expected where total road densities exceeded two miles per square mile. Mace and Manley (1993) also found that adult grizzly bears used habitats less than expected when open motorized route density exceeded one mile per square mile. Female grizzly bears in the Mace and Manley (1993) study area tended to use habitat more than 0.5 mile from roads or trails greater than expected.

68. Grizzly bear core habitat is comprised of areas with no motorized access during the non-denning period. Large blocks of secure core grizzly bear habitat are

vital to grizzly bears. Grizzly bear core habitat provides areas that are free from human influence. Secure core habitat for grizzly bears allows the species to exist under natural, free-ranging conditions. As in most grizzly bear ecosystems in the contiguous United States, in the NCDE, roads are the primary threat to large blocks of grizzly bear security core habitat.

69. Roads are a primary threat to large blocks of grizzly bear security core habitat because they facilitate human presence. Roads are a primary threat to large blocks of grizzly bear security core habitat because they fragment large swaths of habitat into smaller blocks.

70. Winter motorized travel adversely impacts grizzly bears. Grizzly bears generally select den sites one to two kilometers from human activity. Human disturbance within one kilometer of a den site has a significant risk of causing abandonment, especially early in the denning season. Grizzly bears den in relatively high elevation areas with more stable snow conditions and steep slopes. Snowmobiles can easily access remote snow-covered sites and therefore pose a potential for disturbance to grizzly bears. Grizzly bear denning habitat overlaps with winter motorized recreation areas on the Flathead, making grizzlies susceptible to disturbance from over-snow vehicles.

71. Effects of snowmobiles on grizzly bears occur primarily when bears are entering or leaving their dens. The mean week of grizzly bear den emergence is from the third week in March to the fourth week in May. It is important to provide secure

habitat when grizzly bears are emerging from dens so bears are able to fully use available resources.

72. Possible effects from snowmobiles to grizzly bears include den abandonment, loss of young, increased energetic costs while bears are in dens or displaced away from suitable habitat if outside dens, learned displacement from suitable habitat resulting from exposure to disturbance, and death. Snowmobile use may also result in direct mortality to grizzly bear if an avalanche is triggered on a slope where bears are hibernating. Snowmobiles can directly harm bears emerging from dens, mainly females and cubs. Female grizzlies with cubs have high energetic needs. Grizzly bear cubs have limited mobility for several weeks after leaving the den. Grizzly females and cubs remain in the den site area for several weeks after emergence from dens. Disturbance levels that cause a female to prematurely leave the den in spring or move from the den area can impair the fitness of a female grizzly and safety of her cubs.

73. Grizzly bears in the NCDE are currently isolated from other grizzly bear populations in the contiguous United States. Providing for grizzly bear connectivity is key towards eventually recovering the species across the contiguous United States.

74. Grizzly bears in the NCDE are threatened by the impacts of climate change. The changing climate impacts the availability of grizzly bear food resources. Climate change impacts the number, size, and location of large wildfires. Wildfires can disrupt grizzly bear habitat.

Canada Lynx (Lynx canadensis)

75. The Canada lynx (lynx) is a medium-sized cat with long legs, large paws, webbed toes adapted to walking on snow, long tufts on the ears, and a short, black-tipped tail.

76. Lynx primary food source is snowshoe hare. Lynx are highly specialized in hunting snowshoe hare. Lynx have secondary food sources. Red squirrel is a lynx secondary food source. Lynx consume a greater diversity of prey during summer months than at other times of year.

77. In Montana, snowshoe hares account for approximately 96 percent of biomass in the lynx diet.

78. Lynx habitat is closely correlated with snowshoe hare habitat in much of North America.

79. Lynx are habitat specialists. In the western United States, lynx primarily occur in spruce-fir vegetation types that receive persistent snowfall. Lynx typically inhabit gentle, rolling topography with dense horizontal cover, persistent snow cover, and moderate to high snowshoe hare density.

80. Lynx winter habitat is different from snowshoe hare winter habitat. Lynx winter habitat is more limiting on lynx than snowshoe hare winter habitat.

81. Lynx are known to persist in areas that have experienced large-scale forest mortality events. Lynx are known to reproduce in areas that have experienced large-scale forest mortality events. Lynx are known to persist in forests that have

experienced insect kill events. Lynx are known to reproduce in forests that have experienced insect kill events.

82. The average home range for lynx is 39.6 square kilometers. For female lynx, the average home range is 31.1 square kilometers. For male lynx, the average home range is 42.9 square kilometers.

83. Lynx make exploratory movements beyond identified home ranges. In Montana, these exploratory movements range from approximately 15 to 40 kilometers. The duration of these exploratory movements ranges from one week to several months.

84. Lynx are known to disperse. Dispersal is the permanent movement of an animal to a new home range. Young male lynx are most likely to disperse. Female lynx tend to establish home ranges adjacent to their mother's home range.

85. Lynx populations are declining across the contiguous United States. Lynx populations are declining in Montana. Lynx populations are declining on the Flathead National Forest.

86. Canada lynx are listed as threatened under the federal ESA.

87. Lynx experience various threats to their existence. Logging in lynx habitat is a threat to lynx existence. Logging in lynx habitat can cause adverse effects to lynx. Climate change is a threat to lynx existence. Climate change can cause adverse effects to lynx. Canada lynx are threatened by incidental trapping. Canada lynx are threatened by too many roads in lynx habitat.

88. Snowmobiles may directly affect Canada lynx during winter months.

89. During winter months, Canada lynx are especially vulnerable due to physiological responses like increased heart rate and elevated stress level.

90. Noise from snowmobiles disturbs the ability of lynx to hunt. Noise from snowmobiles increases stress to lynx.

91. Snowmobiles may disturb lynx den sites during a time when lynx are rearing young.

92. Snowmobiles may displace lynx. Snowmobiles may disrupt otherwise quiet winter habitat by facilitating human access into historically remote winter forest landscapes. Snowmobiles may disrupt otherwise quiet winter habitat by increasing lynx interactions with humans. Snowmobiles may disrupt otherwise quiet winter habitat by increasing hunting, trapping, and poaching mortality.

93. Snowmobiling may result in direct collisions, death, habitat fragmentation, and potential population declines for lynx.

Wolverine (Gulo gulo luscus)

94. The wolverine is the largest member of the *Mustelidae* (weasel) family.

95. The wolverine resembles a small bear, but with a bushy tail and a broad, rounded head, short rounded ears, small eyes, and a body custom-built for high-elevation mountain living.

96. The wolverine's large, crampon-clawed feet (each with five toes with curved, semi-retractile claws used for digging and climbing) are enormous relative to

its body which allow the animal to spread its weight like snowshoes. This gives wolverines an advantage over most competitors and prey during cold months.

97. Wolverines operate at a higher metabolic rate than other animals their size. To hold in heat, wolverines wear a double fur coat which includes a dense inner layer of air-trapping wool beneath a cover of stout guard hairs which add extra insulation. These stout guard hairs, which drape from the wolverine, are textured to resist absorbing moisture and excel at shedding frost (this makes a wolverine's pelt extremely desirable and valuable).

98. Reproductive rates for wolverines are among the lowest known for mammals.

99. Approximately 40 percent of all female wolverines are capable of giving birth at two years old, but the average age of reproduction is three years. Female wolverines become pregnant most years and produce a litter of approximately 3.4 kits on average. It is common, however, for females to forgo reproducing every year, possibly saving resources to increase reproductive success in subsequent years. Female wolverines are also known to reabsorb or spontaneously abort litters prior to giving birth.

100. Breeding generally occurs from late spring to early fall. Female wolverines undergo delayed implantation until the following winter to spring, when active gestation lasts from 30 to 40 days.

101. Wolverine litters are born from mid-February through March.

102. Female wolverines use natal (birthing) dens that are excavated in snow.

103. Deep snow that persists into the late spring is needed for wolverine reproduction.

104. No records exist of wolverines denning anywhere but in snow in the contiguous United States. Wolverines do not den in the absence of snow. This is true even though there is a wide availability of snow-free denning opportunities within the species' geographic range.

105. Stable snow pack greater than five feet deep appears to be a requirement for natal denning because it provides security for offspring and buffers cold winter temperatures.

106. Female wolverines have been known to abandon reproductive dens when temperatures warm and snow conditions become wet. This may indicate that the condition of the snow is important to successful reproduction and that the onset of spring snowmelt may force female wolverines to move kits into alternate denning sites with better snow conditions if they are available.

107. Once the litter is born, wolverines will continue to use the natal den through late April and early May (occupancy of such dens varies from 9 to 65 days). As wolverines grow, females move the kits to multiple secondary "maternal" dens. Researchers believe the timing of natal den abandonment may be tied to the accumulation of water in the dens due to snowmelt, the maturation of offspring, disturbance, and/or geographic location.

108. Wolverines require secure, core areas of habitat that are large and linked to other sub-populations. Wolverines require a lot of space; the availability and distribution of food is likely the primary factor in determining wolverine movements and home range size.

109. Female wolverines forage close to den sites in early summer, progressively ranging further from dens as kits become more independent.

110. The best available science reveals climate change will decrease the amount of available wolverine habitat and increase fragmentation between areas of suitable wolverine habitat in the contiguous United States. This will result in a smaller and more isolated population of wolverines in contiguous United States.

111. Peer-reviewed, climate change models predict that warming temperatures and changes in precipitation will result in reduced snowpack and permanent loss of wolverine habitat in the contiguous United States.

112. By 2045, the best available science estimates that 23 percent of current wolverine habitat in the contiguous United States will be lost due to climate warming. That loss expands to 63 percent of wolverine habitat by the time interval between 2070 and 2099.

113. The best available science reveals that as habitat patches become smaller and more isolated, they are likely to lose the ability to support wolverines. Loss of wolverine habitat also increases habitat fragmentation as islands of wolverine habitat become smaller and intervening areas between wolverine habitat become larger. This

habitat alteration will result in the loss of genetic diversity due to inbreeding within a few generations. Further, isolation of wolverines on small habitat islands with reduced connectivity to other populations would also increase the likelihood of sub-populations being lost due to demographic stochasticity, impairing the functionality of the wolverine metapopulation in the contiguous United States.

114. Wolverines are vulnerable to trapping due to their habit of ranging widely in search of carrion, which would bring them into frequent contact with poison baits and traps set for other species. Trapping occurs on the Flathead National Forest. Traps set for other animals can incidentally capture a wolverine.

115. Because of their scavenging nature, wolverines come readily to man-made baits and are thus vulnerable to skilled trappers. Females with newborn young are limited in their ranging and foraging capacities and, as such, are especially vulnerable to baited traps.

116. Wolverine are sensitive to disturbance from motorized winter recreation activities. Wolverine alter their behavior in response to motorized winter recreation activities. Wolverine avoid areas where motorized winter recreation activities occur. Female wolverine demonstrate a stronger response to motorized winter recreation activities than male wolverine. Male wolverine exhibit a negative response to motorized winter recreation activities. Female wolverine exhibit a negative response to motorized winter recreation activities.

117. The best available science reveals that motorized winter recreation poses the greatest threat to wolverine persistence and recovery after climate change.

118. The cumulative effect of climate change and motorized winter recreation on wolverine is significant. The cumulative effect of climate change and motorized winter recreation negatively affects wolverine.

119. As wolverines lose habitat to the effects of climate change, wolverine and motorized winter recreationists will be forced to share smaller and smaller habitat patches. Decreasing areas with sufficient snow will amplify the effect of motorized winter recreation on wolverine due to the fact that motorized winter recreation will be concentrated in smaller areas on the Flathead National Forest.

120. Designated wilderness areas may not necessarily provide for all of the wolverine's life history requirements.

121. Wolverine meta-populations require connectivity to maintain genetic health and population persistence.

122. Wilderness areas isolated from each other by expanses of forest lands subject to logging, motorized recreation, and other activities not allowed in designated wilderness can make movements dangerous for dispersing young wolverine.

123. Designated wilderness areas can provide secure wolverine denning habitat. Designated wilderness areas do not, on their own, ensure a healthy wolverine population over the long term.

Bull Trout (Salvelinus confluentus) and Bull Trout Critical Habitat

124. Bull trout (*Salvelinus confluentus*) is a species listed as threatened under the federal ESA throughout the coterminous United States. Since listing bull trout as threatened, FWS has designated and redesignated bull trout critical habitat multiple times. In 2010, FWS designated critical habitat for bull trout that included critical habitat on the Flathead National Forest.

125. The Flathead supports 12 bull trout core areas of the Columbia Headwaters Recovery Unit. Nine of the core areas are considered “simple” core areas, each representing a single local bull trout population. Three of the core areas are considered “complex” because they represent larger interconnected habitats, each containing multiple spawning streams and considered to host separate and largely genetically identifiable local bull trout populations. The Flathead also contains four designated critical habitat sub-units for bull trout, all within the Clark Fork River Basin Critical Habitat Unit (CHU 32).

126. Bull trout are members of the salminidae family. Bull trout are primarily freshwater fish, with occasional instances of anadromy. Historically, bull trout occurred from Alaska to California, however they now live primarily in Washington, Oregon, Idaho, and Montana. Bull trout have been largely extirpated from the southern end of their historic range in California.

127. Bull trout require migration corridors as part of their life cycle. Migration is important for the genetic integrity of bull trout. The Flathead River system is home

to bull trout migration. Bull trout can migrate up to 250 kilometers to spawn within the Flathead River system.

128. Bull trout are a cold-water fish of relatively pristine streams and lakes. Bull trout have specific habitat requirements: cold, clean, complex and connected habitat. Bull trout are sensitive to water temperatures above 54 degrees Fahrenheit. Bull trout require cold water for all stages of their life cycle. Juvenile bull trout distribution is limited by stream temperatures above 59 degrees Fahrenheit. Optimum stream temperature for juvenile bull trout is between 44 and 46 degrees Fahrenheit. Optimum stream temperature for incubation of juvenile bull trout eggs is between 35 to 39 degrees Fahrenheit.

129. Bull trout streams must have clear water. Bull trout streams must have a clean surface substrate. Bull trout streams must have complex habitats. Complex habitats include deep pools. Complex habitat includes wood cover such as snags and overhanging banks.

130. Bull trout require fresh water with stable stream channels and loose, clean gravel for spawning. Bull trout prefer habitats with complex and diverse cover and rocky bottoms for rearing offspring. Deeper pools and ponds containing woody debris, undercut banks, and boulders are optimal features of bull trout habitat.

131. Bull trout require stream beds made up of loose, clean gravel. Fine sediment negatively affects the survival rate of bull trout eggs.

132. Bull trout occur over a large area, but their distribution and abundance has declined. Scientists have documented several local extinctions of bull trout. Remaining bull trout populations tend to be small and isolated from each other, making the species more susceptible to local extinctions.

133. Historical habitat loss, degradation and fragmentation are threats to bull trout. The introduction of and competition with nonnative species such as brown, lake, and brook trout are threats to bull trout. Blockage of migratory bull trout corridors is a threat to bull trout. Instream flow alterations associated with water diversions, road construction and maintenance are threats to bull trout and its critical habitat. Grazing practices are a threat to bull trout and its critical habitat. Poor water quality is a threat to bull trout and its critical habitat. The 2015 Recovery Plan for bull trout identifies climate change effects as a factor affecting bull trout and bull trout critical habitat.

134. Fragmentation and isolation of local populations of bull trout is a significant factor that has resulted in a legacy of degraded bull trout critical habitat. Degradation of spawning and rearing habitat and upper watershed areas from forest and rangeland practices and intensive development of roads is a significant factor that has resulted in a legacy of degraded bull trout critical habitat.

135. Climate change may affect bull trout and designated bull trout critical habitat by warming stream temperatures, altering stream hydrology, and changing the frequency, magnitude, and extent of climate-induced events including floods,

droughts, and wildfires. A warming climate is expected to shrink cool spawning and rearing areas.

136. Logging and other vegetation management in riparian areas can harm water quality. Logging in riparian areas can increase soil moisture and surface runoff. Logging in riparian areas can reduce shade cover. Logging in riparian areas often removes vegetation along banks. Logging in riparian areas that removes vegetation along banks can de-stabilize those banks. Logging in riparian areas can raise water temperatures. Logging in riparian areas can reduce the potential for recruitment of woody material.

137. Road construction in riparian areas harms water quality. Road construction in riparian areas accelerates erosion. Road construction in riparian areas introduces invasive species to sensitive riparian ecosystems. Roads are a primary source of sediment impacts to developed watersheds. Accumulation of fine sediment is detrimental to bull trout. Sediment delivered to streams is greatest in riparian areas where roads cross the streams.

138. The use of forest roads in riparian areas harms water quality. The use of forest roads in riparian areas accelerates erosion. The use of forest roads in riparian areas increases the amount of sediment entering receiving waters. Increased sediment in waterways increases the turbidity and temperature of receiving waters. The use of forest roads in riparian areas introduces invasive species to sensitive riparian ecosystems.

139. Unmaintained forest roads on the Forest pose a risk to bull trout and designated bull trout critical habitat.

140. A culvert is a structure that allows water to flow under a road from one side to the other. Debris and sediment can build up in a culvert without regular maintenance and cleaning. A culvert plugged with debris and sediment can fail. A plugged culvert that fails can deliver large amounts of sediment from the road surface, ditch, and fill slopes to receiving waters. Culverts that remain in the road behind gates or berms are less likely to be inspected. Culverts that remain in the road behind gates or berms are less likely to be maintained. Culverts that remain in the road behind gates or berms pose an increased risk of failure.

141. The existing road system on the Forest includes closed forest roads with culverts behind gates or berms. The terms and conditions of previous ESA consultation documents required the Forest Service to annually monitor culverts left behind gates and berms on the Forest. In 2015, FWS concluded annual culvert monitoring was necessary to prevent harms from culvert failures on the Flathead. However, the Forest Service has failed to annually monitor culverts left behind gates and berms on the Forest. The existing road system on the Forest poses a risk to bull trout and designated bull trout critical habitat.

142. Livestock grazing in riparian areas can harm water quality. Livestock grazing in riparian areas reduces vegetation and stability of surrounding stream banks. Livestock grazing in riparian areas increases sediment to receiving waters. Livestock

grazing near streams can cause changes in channel morphology. Livestock trailing, trampling, and soil displacement along stream banks can result in collapse of undercut bank areas, increased bank angle, loss of bank cover, and stream widening. This in turn leads to increases in water temperature. Concentrated livestock waste can cause eutrophication of lakes and ponds.

Winter Motorized Travel

143. Over-snow vehicles have substantial harmful impacts on a variety of resources, including air quality, water quality, vegetation and wildlife. Over-snow vehicles also adversely impact the experiences of other users of National Forest lands, such as those seeking quiet recreation, and degrade Wilderness characteristics, including opportunities to experience solitude and participate in primitive forms of recreation.

144. Over-snow vehicle use damages exposed soils and vegetation. Over-snow vehicle use can harm water quality, especially early or late in the season where there is a likelihood of inadequate snow levels. Damage from over-snow vehicle use may also occur where wind exposes soil and vegetation. Over-snow vehicle use can cause significant damage to browse plants important to wildlife. Over-snow vehicle use compacts snow. Snow compaction can reduce the soil temperature and soil microbial activity, and can slow germination of seeds. Snow compaction can result in wet and soft trails due to slower snow melt, ultimately leading to damage by other

users in the spring. Over-snow vehicles that run over or near vegetation damage trees and shrubs by tearing at the bark, ripping off branches, or topping trees.

145. Over-snow vehicles are designed to, and do, travel off-trail, disturbing soil, creating weed seedbeds, and dispersing seeds widely. The greatest vector for spread of weeds is through motorized vehicles—cars, trucks, All Terrain Vehicles (“ATVs”), and snowmobiles. Fuel leaks and exhaust from over-snow vehicle use also negatively impacts soil quality and vegetative health.

146. Motors from over-snow vehicle use create noise that degrades the naturalness of an area. Over-snow vehicle use diminishes opportunities for solitude and primitive recreation. Over-snow vehicle use reduces the likelihood that Congress will eventually designate such areas as Wilderness.

147. Over-snow vehicle use can have adverse impacts on wildlife. The presence and noise from over-snow vehicle use increases stress to wildlife in the winter. Wildlife are vulnerable in the winter. Over-snow vehicle use causes both a physiological and behavioral response in wildlife. Over-snow vehicle use facilitates competition among species. Over-snow vehicle use causes displacement and avoidance of wildlife. Over-snow vehicle use reduces the amount of available habitat because species avoid motorized vehicles. Harmful impacts from winter motorized use can be significant, especially where specific routes cut through wildlife habitat.

148. Over-snow vehicle use can have significant adverse impacts on grizzly bears. Over-snow vehicle use can have significant adverse impacts on Canada lynx.

Over-snow vehicle use can have significant adverse impacts on North American wolverine.

149. Technological advances in recreational machinery have increased the power and ability of snowmobiles and other over-snow vehicles. New technological capabilities of over-snow vehicles allow riders to navigate steeper terrain, deeper snow, and more dense forests. Over-snow vehicles are able to travel much farther into the backcountry as a result of increased power and ability of over-snow vehicles. New technology allows over-snow vehicles to partake in activities such as highmarking—where over-snow vehicles race up steep slopes toward ridge tops and then quickly turn before capsizing and race back down the slope.

150. Motorized snow bikes are becoming popular on the Flathead. Motorized snow bikes are more narrow than traditional snowmobiles. Motorized snow bikes allow riders to go through tighter spaces than traditional snowmobiles. Motorized snow bikes allow riders to access more narrow terrain and more dense forests than traditional snowmobiles.

151. Increases in machine power and geographic scope of over-snow vehicle activity has changed, and exacerbated, the impacts of over-snow vehicles on the environment, wildlife, and other recreationists.

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The 2018 Forest Plan for the Flathead National Forest

Grizzly Bear Habitat Direction and the NCDE Conservation Strategy

152. The Revised Plan relies on the contents of the 2018 NCDE Conservation Strategy as basis for its grizzly bear habitat management direction.

153. In 2013, the Interagency Grizzly Bear Committee, NCDE Subcommittee developed a draft Conservation Strategy outlining a post-delisting management framework for grizzlies in the NCDE. The NCDE Conservation Strategy was finalized in July 2018. The Forest Service is a signatory to the NCDE Conservation Strategy.

154. The Forest Service relied on the 2013 draft NCDE Conservation Strategy during the notice and comment periods for the proposed Revised Plan, draft EIS, and during the objection period. The Forest Service adopted the management framework of the July 2018 NCDE Conservation Strategy for managing grizzly bear habitat on National Forest System lands in its final ROD for the Revised Plan.

155. The management framework consists of a number of management zones in which differing levels of protections for grizzly bears are applied: (1) the Primary Conservation Area (“PCA”) – the same area as the recovery zone identified in the FWS’s 1993 Grizzly Bear Recovery Plan; (2) Management Zone 1 – a defined area surrounding the PCA within which the grizzly bear population status and trend are monitored; (3) Demographic Connectivity Areas (“DCAs”) – including the Salish and Ninemile DCAs, portions of zone 1 with specific habitat measures to allow

female grizzly bear occupancy and eventual dispersal to other ecosystems in the lower 48; (4) Management Zone 2 – an area where grizzly bears are expected to be present at low densities; and (5) Management Zone 3 – areas where management emphasis is primarily focused on conflict response.

156. The PCA for the NCDE encompasses approximately 5.7 million acres. The Forest Service manages 60.9 percent of these lands. The Flathead National Forest contains 37 percent of lands in the NCDE PCA and 5 percent of lands within Management Zone 1, including DCAs, as adopted by the NCDE Conservation Strategy.

157. The 2013 draft NCDE Conservation Strategy was never made available for public comment. The 2013 draft NCDE Conservation Strategy is not a NEPA document. The 2018 final NCDE Conservation Strategy was never made available for public comment. The 2018 final NCDE Conservation Strategy is not a NEPA document. The 2018 final NCDE Conservation Strategy was signed in July 2018, after the Flathead had completed its public review and comment process under NEPA, and after the Forest had completed the objection resolution meetings for the Revised Plan.

Road Density, Grizzly Bear Secure Core, and the 2011 Baseline

158. The Revised Plan adopts components relating to road density levels on the Forest. Managing road density is one of the most important factors for managing grizzly bear habitat security.

159. Flathead Forest Plan Amendment 19 to the 1986 Flathead Forest Plan (1995) incorporated forest-wide objectives and standards pertaining to motorized access and security core areas in grizzly bear habitat in order to provide adequate habitat protections for grizzly bears. Amendment 19 established a standard for no net increase in total motorized access density or open motorized access density and no net decrease in security for 54 grizzly bear management subunits. Amendment 19 also established numeric objectives to limit open motorized route density and total motorized route density, and to ensure secure core at specified levels within each grizzly bear management subunit. The grizzly bear objectives and standards of Amendment 19 were not discretionary.

160. Specifically, Amendment 19 required no net increase in total motorized route density greater than 2 miles/mile²; no net increase in open motorized route density greater than 1 mile/mile²; and no net decrease in the amount or size of security core areas in all grizzly bear management subunits on the Forest. Amendment 19 also set objectives for all grizzly bear management subunits that are predominantly (greater than 75 percent) National Forest System lands to: (1) limit high-density, open motorized access to no more than 19 percent of a grizzly bear management subunit within 5 years; (2) limit high-density, total motorized access to no more than 24 percent of a bear management subunit in 5 years and no more than 19 percent in 10 years; and (3) provide security core areas that equal or exceed 60 percent of each grizzly bear management subunit in 5 years, and 68 percent in 10 years.

161. The Flathead never achieved the objectives and standards of Amendment 19. Ten out of seventy three grizzly bear management subunits have yet to meet the objectives for open motorized route density. Fifteen out of seventy three grizzly bear management subunits have yet to meet the objectives for total motorized route density. Sixteen out of seventy three grizzly bear management subunits fail to meet the objectives for secure core habitat. The Flathead would need to decommission 518 miles of roads to meet the objectives and standards of Amendment 19.

162. Amendment 19 forest-wide objectives and standards also benefitted bull trout. By limiting route densities on the Flathead, Amendment 19 allowed for fewer roads. Fewer roads and road crossings resulted in reduced risks and threats to bull trout. Amendment 19 objectives and standards requiring the Forest to decommission 518 miles of roads would have benefitted bull trout.

163. The Amendment 19 road density and secure core standards and objectives are based on the best available science.

164. The Revised Plan abandons the Amendment 19 road density and secure core standards and objectives. The Revised Plan adopts a 2011 baseline by which to measure road density and secure core habitat in the future. The 2011 baseline is an arbitrary baseline.

165. The 2011 baseline generally refers to conditions on the ground as of December 31, 2011. The Forest Service justifies the use of a 2011 baseline because

the NCDE population of grizzly bears was increasing in size and expanding in distribution as of that date. The Forest Service concludes that maintaining the on-the-ground conditions that existed as of December 31, 2011 will not preclude the recovery of the NCDE grizzly bear population.

166. The 2011 baseline is derived from the 2013 draft NCDE Conservation Strategy, and subsequently, the 2018 final NCDE Conservation Strategy. Reliance on the 2011 baseline fails to account for changed conditions since December 31, 2011. Reliance on the 2011 baseline fails to account for or consider important factors such as food resource availability to the NCDE grizzly bear population since December 31, 2011. Reliance on the 2011 baseline fails to account for or consider important factors such as increased mortalities to the NCDE grizzly bear population since December 31, 2011. Reliance on the 2011 baseline fails to account for or consider important factors such as wildfire impacts to the NCDE grizzly bear population since December 31, 2011. Reliance on the 2011 baseline fails to account for changes in the NCDE grizzly bear population's size since December 31, 2011. Reliance on the 2011 baseline fails to account for changes in the NCDE grizzly bear population's distribution since December 31, 2011. Reliance on the 2011 baseline fails to account for changes in the NCDE grizzly bear population's rate of population change since December 31, 2011.

167. The Biological Opinion for the Revised Plan relies on the assumption that Revised Plan components are sufficient to maintain road density at 2011 baseline levels. This is an erroneous assumption.

168. The Biological Opinion fails to consider that the Revised Plan contains multiple exceptions that allow for increases in road density beyond 2011 baseline levels. The Biological Opinion fails to consider how the Revised Plan's monitoring plan is incapable of ensuring maintenance of 2011 baseline road densities.

169. Using the 2011 baseline maintains existing road conditions on the Flathead, with no requirement for future reductions of open motorized route density or total motorized route density, or increases in secure core habitat. The FWS expects that conditions in 32 subunits on the Flathead National Forest will continue to contribute to adverse effects to grizzly bears since motorized route densities are greater than those known to adversely affect grizzly bears (19 percent for open motorized route density and total motorized route density), or the percentage of secure core is less than the threshold known to adversely affect grizzly bears (at least 68 percent).

170. The Revised Plan allows for increases in the number and density of forest roads for temporary and administrative uses above the arbitrary 2011 baseline. The Revised Plan standards allow temporary changes in the open motorized route density, total motorized route density, and secure core for projects within bear management subunits in the NCDE primary conservation area.

171. The Forest Service has moved away from a policy position — Amendment 19 — that it has stated is the best available science and is necessary for the conservation and recovery of grizzly bears. The Forest Service has instead adopted

a Revised Plan with plan components that are not based on the best available science because it eschews necessary restrictions on road densities without explaining why it has made this policy decision.

172. The Biological Opinion for the Revised Plan adopts the NCDE Conservation Strategy's 2011 baseline definition. This definition defines the baseline as conditions as of December 31, 2011, as modified by changes in numbers that were found to be acceptable by FWS.

173. The Biological Opinion relies on the fact that the NCDE grizzly bear population was increasing in size and expanding in distribution when road densities on the Flathead were at 2011 numbers.

174. The Biological Opinion fails to consider or analyze several relevant factors related to grizzly bears.

175. The Biological Opinion does not consider the status of the grizzly bear population as a whole in the contiguous United States. The Biological Opinion does not consider the status of the grizzly bear population as a whole in the contiguous United States in 2011.

176. The Biological Opinion does not consider the importance of connectivity among the various grizzly sub-populations in its assessment of how the Revised Plan affects grizzly bears. The Biological Opinion does not consider how 2011 baseline road conditions affect grizzly bears in the contiguous United States.

177. The Biological Opinion does not consider how weakened road density and secure core standards may adversely impact the ability of the NCDE grizzly bear population to serve as a necessary source population for neighboring grizzly bear recovery zones. The Biological Opinion does not consider how weakened road density and secure core standards may adversely impact the ability of the NCDE grizzly bear population to serve as a necessary source population for the grizzly bear population in the contiguous United States.

178. The NCDE grizzly bear population is a source population for neighboring grizzly bear recovery zones. The NCDE grizzly bear population is a source population for the grizzly bear population in the contiguous United States.

179. The Biological Opinion does not consider or account for changed conditions for the NCDE grizzly bear population since 2011. The Biological Opinion does not consider or account for changes in food resource availability for NCDE grizzly bears since 2011. The Biological Opinion does not consider or account for increased wildfire impacts on NCDE grizzly bears since 2011. The Biological Opinion does not consider or account for increased wildfire impacts on NCDE grizzly bear habitat since 2011. The Biological Opinion does not consider or account for climate change impacts on NCDE grizzly bears since 2011. The Biological Opinion does not consider or account for climate change impacts on NCDE grizzly bear habitat since 2011.

180. The Biological Opinion does not consider or account for changed conditions for the contiguous United States grizzly bear population since 2011. The Biological Opinion does not consider or account for changes in food resource availability for the contiguous United States grizzly bear population since 2011. The Biological Opinion does not consider or account for increased wildfire impacts on the contiguous United States grizzly bear population since 2011. The Biological Opinion does not consider or account for increased wildfire impacts on grizzly bear habitat in the contiguous United States since 2011. The Biological Opinion does not consider or account for climate change impacts on the contiguous United States grizzly bear population since 2011. The Biological Opinion does not consider or account for climate change impacts on grizzly bear habitat in the contiguous since 2011.

181. The Biological Opinion does not disclose and use more recent data regarding grizzly bears since 2011. The Biological Opinion does not use or disclose data on grizzly bear denning habitat since 2011.

182. The grizzly bear is listed as threatened under the ESA throughout the contiguous United States. The grizzly bear population in the contiguous United States is the listed entity under the ESA.

183. The grizzly bear population in the contiguous United States is not recovered. The NCDE grizzly bear population is not recovered.

184. The Biological Opinion for the Revised Plan assumes the NCDE grizzly bear population is recovered. This assumption is erroneous. The Biological Opinion fails to consider that the NCDE grizzly bear population is not recovered.

185. The grizzly bear population in the contiguous United States is not recovered as defined by the ESA. The NCDE grizzly bear population is not recovered as defined by the ESA.

186. In 2011, the grizzly bear population in the contiguous United States was too small in size to be considered recovered. In 2011, the grizzly bear population in the contiguous United States was not distributed sufficiently to be considered recovered.

187. In 2011, there was not sufficient connectivity between the grizzly bear populations in the contiguous United States to be considered recovered. Currently, there is not sufficient connectivity between the grizzly bear populations in the contiguous United States to be considered recovered.

188. The Biological Opinion should have considered the status of the grizzly bear population throughout the contiguous United States. Biological Opinions must consider the status of the listed entity. Biological Opinions cannot narrow the scope of analysis to only consider the status of a sub-population of a listed entity. The Biological Opinion concludes that the Revised Plan is not reasonably expected to reduce appreciably the likelihood of both the survival and recovery of NCDE grizzly bears. The Biological Opinion does not make any conclusion regarding the potential

effects of the Revised Plan on the survival and recovery of the grizzly bear population as a whole.

189. The Revised Plan would result in adverse effects to individual grizzly bears.

190. The Revised Plan will allow temporary reductions in secure core habitat for grizzly bears.

191. The Revised Plan will allow increases in open and total motorized route densities.

192. The Biological Opinion's reliance on 2011 road density calculations as a baseline is not in accord with the best available scientific data.

193. The Biological Opinion does not rely on the best scientific data as it relates to the impact of winter motorized recreation on grizzly bears. The Biological Opinion does not disclose or analyze all of the conclusions from the literature review by Linnell et al. (2000). In addition to the conclusions from this literature review cited in the Biological Opinion, this literature review reached other conclusions about impacts of human activity on denning bears than the conclusions in the Biological Opinion. Bears showed physiological responses of increased heart rate or increased physical activity in response to loud noises at a distance of one to two kilometers. Bear responses to denning disturbance occur on a continuum, and can include waking, increases in temperature, increases in heart rate, and den abandonment.

194. The Biological Opinion's incidental take statement does not include a quantifiable incidental take limit for effects to grizzly bear from forest road management. The Biological Opinion's incidental take statement does not include a reasonable surrogate for effects to grizzly bear from forest road management.

195. The Biological Opinion's incidental take statement provides surrogate measures of incidental take of grizzly bears related to road densities in the Primary Conservation Area and zone 1 (including the Salish Demographic Connectivity Area) in the form of Open Motorized Route Density, Total Motorized Route Density, and secure core. These surrogate measures are insufficient to retrigger consultation with FWS because the monitoring to track the surrogates is not certain to occur. These surrogate measures are insufficient to retrigger consultation with FWS because the monitoring to track the surrogates is not capable of implementation. These surrogate measures are insufficient to retrigger consultation with FWS because the monitoring to track the surrogates is not enforceable.

196. The Flathead National Forest has a history of failing to accurately measure Open Motorized Route Density, Total Motorized Route Density, and secure core. The Revised Plan contains no assurances to indicate that the Forest Service will accurately and consistently measure Open Motorized Route Density, Total Motorized Route Density, and secure core in the future.

197. Monitoring for the Biological Opinion's surrogates is not capable of implementation and unenforceable because the monitoring program is flawed. The

Biological Opinion and Revised Plan rely on a 10-year running average to track whether various projects will result in changes to Open Motorized Route Density, Total Motorized Route Density, and secure core. Using a 10-year running average to track changes to Open Motorized Route Density, Total Motorized Route Density, and secure core makes it impossible to track and monitor the actual on the ground impact of any given project on grizzly bear.

Bull Trout Plan Components

198. The Inland Native Fish Strategy (“INFISH”) amended the Flathead’s 1986 Forest Plan and directed management of bull trout on the Flathead since 1995. The INFISH standards and guidelines applied to all riparian habitat conservation areas (“RHCAs”) and to projects and activities in areas outside of RHCAs that would degrade conditions in RHCAs. The INFISH standards and guidelines addressed, *inter alia*, timber management, roads management, grazing management, recreation management, minerals management, and general riparian area management.

199. Direction under the INFISH standards and guidelines in the 1986 Forest Plan reduced the risk to watersheds, soils, riparian, and aquatic resources from new and ongoing activities. Based on effectiveness monitoring, the INFISH standards and guidelines were documented to be effective in protecting aquatic resources. INFISH is the best available science.

200. In 1998, FWS identified that the INFISH standards and guidelines lacked an active restoration component.

201. Under the the 2018 Revised Plan, the Forest Service eliminated INFISH protections. The Revised Plan does not include all of the objectives, standards, and guidelines from INFISH.

202. Instead of building upon the protections Amendment 19 afforded to bull trout and bull trout critical habitat in terms of reducing the size of the road network, the Forest Service eliminated them. In 2010, FWS determined delayed implementation of Amendment 19 would result in direct and indirect effects to bull trout. This included the delayed decommissioning of 16.5 miles of roads in four subunit watersheds (Red Meadow Creek, Granite Creek, Morrison Creek, and North Fork Lost Creek) that contained 28 culverts and two bridges in bull trout drainages. FWS determined that if the 16.5 miles of road failed, they could produce 476 tons of sediment.

203. The Revised Plan eliminates the objectives, standards, and guidelines from Amendment 19.

204. For bull trout, the Revised Plan replaced the Amendment 19 and INFISH plan direction with a draft Aquatic Riparian Conservation Strategy (“ARCS”). The Forest Service relies on implementation of ARCS and priority watersheds (restoration and conservation watersheds) to restore habitats, maintain or improve the distribution of native aquatic and riparian dependent species, and contribute to the recovery of listed aquatic species. The Revised Plan established the

Conservation Watershed Network (“CWN”) to identify watersheds that are native fish strongholds with appropriately functioning aquatic habitats.

205. The Revised Plan eliminated the riparian management objectives (“RMOs”) from INFISH. The Revised Plan eliminated the requirements under INFISH to complete watershed analysis. The multi-scale watershed analysis required under the Revised Plan is less protective than the requirement under INFISH to complete watershed analysis.

206. The Revised Plan replaced the standards and guidelines that applied to RHCAs under INFISH with plan components applicable to new Riparian Management Zones (“RMZs”). For example, the Revised Plan lacks any standards to prohibit the construction of roads and landings associated with vegetation management, or the use of ground-based equipment, within the RMZ. The Revised Plan allows vegetation management in the inner portion of the RMZ under numerous exceptions to the only standard for RMZs.

207. Elimination of the Amendment 19 objectives and standards will harm water quality. Elimination of the Amendment 19 objectives and standards will harm bull trout and designated bull trout critical habitat. Elimination of the Amendment 19 objectives and standards requiring the Forest to decommission 518 miles of roads will harm bull trout and designated bull trout critical habitat.

208. The Revised Plan eliminated the Forest Service’s commitments to decommission 518 miles of roads under Amendment 19.

209. FWS prepared a Biological Opinion for the Flathead National Forest Revised Plan that analyzed impacts to bull trout and bull trout critical habitat. The Biological Opinion for the Flathead National Forest's revised plan concludes the Revised Plan is not likely to destroy or adversely modify bull trout critical habitat. The Biological Opinion notes that the Revised Plan will temporarily lower the function of spawning and rearing habitat in the action area due to some level of unavoidable sediment loading.

210. The Revised Plan will adversely impact bull trout critical habitat. The Revised Plan will adversely impact bull trout critical habitat in the near-term.

211. Under the prior management regime for the Flathead National Forest, the Forest Service conducted annual culvert monitoring. Under the Revised Plan, the Forest Service is no longer required to conduct annual culvert monitoring. Annual culvert monitoring was required per the requirements of several existing Biological Opinions related to activities on the Flathead National Forest.

212. The Amendment 19 Revised Implementation (November 2010) Biological Opinion required annual culvert monitoring. As a result of the Biological Opinion for the Revised Forest Plan, the Amendment 19 Revised Implementation (November 2010) Biological Opinion no longer requires annual culvert monitoring.

213. The Robert Wedge Post-Fire Project (November 2004) Biological Opinion required annual culvert monitoring. As a result of the Biological Opinion for

the Revised Forest Plan, the Robert Wedge Post-Fire Project (November 2004) Biological Opinion no longer requires annual culvert monitoring.

214. The West Side Reservoir Post-Fire Project (November 2002) Biological Opinion required annual culvert monitoring. As a result of the Biological Opinion for the Revised Forest Plan, the West Side Reservoir Post-Fire Project (November 2002) Biological Opinion no longer requires annual culvert monitoring.

215. The Moose Post-Fire Project (November 2002) Biological Opinion required annual culvert monitoring. As a result of the Biological Opinion for the Revised Forest Plan, the Moose Post-Fire Project (November 2002) Biological Opinion no longer requires annual culvert monitoring.

216. The Spotted Beetle Project (March 2002) Biological Opinion required annual culvert monitoring. As a result of the Biological Opinion for the Revised Forest Plan, the Spotted Beetle Project (March 2002) Biological Opinion no longer requires annual culvert monitoring.

217. The Biological Opinion does not quantify an amount of incidental take allowed under an Incidental Take Statement for bull trout because the proposed action only guides future activity on the Forest and does not authorize any particular action. This is an erroneous conclusion. The Biological Opinion itself specifically modifies culvert monitoring as required by the terms and conditions included in Biological Opinions for several existing projects on the Flathead. These changes will

have direct effects on bull trout. These changes will have direct effects on bull trout critical habitat. These changes will adversely modify bull trout critical habitat.

218. Changing culvert monitoring from every year to once every six years increases the risk of culvert failure. Changing culvert monitoring from every year to once every six years increases the risk of not discovering culverts at risk of failure before they fail. Culvert failures result in adverse effects to bull trout. Culvert failures result in adverse effects to bull trout critical habitat.

219. In 2016, Flathead National Forest Supervisor Chip Weber informed FWS in a letter that as budgets have decreased, culvert monitoring had been inconsistent and incomplete. The Flathead National Forest failed to meet its prior annual culvert monitoring requirement.

220. The Biological Opinion prepared by FWS for the Flathead National Forest Revised Plan does not consider the Forest Service's historic failure to conduct annual culvert monitoring as required by the terms and conditions included in Biological Opinions for several existing projects on the Flathead as they relate to bull trout. The Biological Opinion prepared by FWS for the Flathead National Forest Revised Plan does not consider the Forest Service's historic failure to conduct annual culvert monitoring as required by the terms and conditions included in Biological Opinions for several existing projects on the Flathead as they relate to bull trout critical habitat.

221. The culvert monitoring plan in the Revised Plan does not measure take of bull trout. The Biological Opinion's incidental take statement does not require the Revised Plan's culvert monitoring program to measure take of bull trout. The Forest Service failed to provide a rational explanation justifying the culvert monitoring program changes. FWS failed to provide a rational explanation justifying the culvert monitoring program changes.

222. The Revised Plan's culvert monitoring program will cause take of bull trout.

223. The Biological Opinion prepared by FWS for the Flathead National Forest Revised Plan does not consider the impacts of increased risk of road failure and sediment loading into bull trout habitat on bull trout.

224. The Biological Opinion prepared by FWS for the Flathead National Forest Revised Plan does not consider the increased risk of road failure and sediment loading into bull trout critical habitat.

225. The Biological Opinion explains the Forest Service will meet a Revised Plan guideline to trend toward bull trout recovery by using the Bull Trout Recovery Plan and Columbia Headwaters Recovery Unit Implementation Plan to identify threats to core bull trout areas. The Biological Opinion explains the Forest Service will use the Western Montana Bull Trout Conservation Strategy to identify actions to address those threats. The Revised Plan and associated FEIS do not explain how the Forest Service used the Bull Trout Recovery Plan in the Revised Plan. The Revised

Plan and associated FEIS do not explain how the Forest Service used the Western Montana Bull Trout Conservation Strategy in the Revised Plan.

Winter Travel Management Plan Components

226. The revised Forest Plan adopted the Winter Motorized Recreation Forest Plan Amendment from the Flathead's 1986 Forest Plan. This Winter Motorized Recreation Forest Plan Amendment for the Flathead is commonly referred to as Amendment 24. Amendment 24 amended the Flathead's 1986 Forest Plan.

227. The Forest Service states in the final ROD for the revised Forest Plan that it has completed subpart C of the Travel Management Rule through Amendment 24 to the 1986 Forest Plan. The Forest Service states in the final ROD for the revised Forest Plan that the over-snow vehicle designations are displayed on the Flathead's over-snow vehicle use map as required by 36 CFR 212 subpart C. It stated the over-snow vehicle designations from Amendment 24 remained unchanged under the 2018 Forest Plan.

228. The Biological Opinion for the Revised Plan states the Revised Plan is a "strategic and programmatic" document that "does not provide project-level decisions." The Biological Opinion for the Revised Plan also states it complied with site-specific travel planning requirements under Subpart C of the Travel Management Rule. Travel planning as required by Subpart C of the Travel Management Rule is a project-level decision with site-specific impacts on the landscape. The Biological Opinion's incidental take statement explains that there are site-specific impacts on

grizzly bears from motorized access route densities and over-snow motorized use. This internal inconsistency in the Biological Opinion skews the effects analysis contained in the Biological Opinion. This internal inconsistency means FWS relied on an inconsistent and inaccurate description of the proposed action.

229. In 2003, the Forest Service completed an EIS assessing the effects of Amendment 24. In November 2006, the Forest Service issued its final ROD for Amendment 24.

230. The Forest Service prepared a 2004 Biological Assessment for Amendment 24 that requested formal consultation with FWS on its determination for grizzly bear and written concurrence on its determinations for gray wolf and Canada lynx. In 2008, as a result of a court order, the Forest Service prepared a 2008 modified Biological Assessment to assess impacts from Amendment 24 on grizzly bears. FWS issued a 2008 Biological Opinion that concluded Amendment 24 is not likely to jeopardize the continued existence of the grizzly bear.

231. Amendment 24 included both programmatic and site-specific decisions related to the use of snowmobiles on the Flathead. Amendment 24 programmaticly allowed snowmobiling on 787,200 acres. Amendment 24 designated approximately 3,000 miles of roads and routes for over-snow vehicle use on the Flathead.

232. On the areas considered “open,” Amendment 24 allowed snowmobiling from December 1 through March 31. Amendment 24 authorized late-season snowmobiling in three specific spring snowmobiling areas and on one set of

snowmobile routes: (1) until May 31 in the Lost Johnny area; (2) until May 15 in the Challenge Creek area; (3) until April 30 in the Six-mile area; and (4) until April 15 on groomed routes in Canyon Creek.

233. Amendment 24 did not alter locations of existing groomed snowmobile routes.

234. Amendment 24 modified Appendix TT of Amendment 19 to the 1986 Forest Plan by altering the definition of restricted road, reclaimed road, and security core, and by defining the grizzly bear denning season as December 1 through March 31. The modifications to Appendix TT of Amendment 19 under Amendment 24 authorized over-snow vehicle use on restricted and reclaimed roads after March 31.

235. In 2008, the FWS observed that thousands of acres of the Flathead were not actually useable by snowmobiles due to slope (steepness) or vegetation (e.g., too densely forested). FWS and the Forest Service stated in 2008 that about 63,000 acres of the 787,200 acres open to over-snow vehicle use received the most common use where slope and vegetation do not impede snowmobile use.

236. The Forest Service and FWS did not include a large portion of the Tally Lake Ranger District in the 63,000 acres estimate. The agencies noted a nominal amount of riding occurs in the Tally Lake Ranger District because it is generally lower elevation and rolling topography that does not provide an aesthetic snowmobile experience.

237. In 2008 the Forest Service recognized that spring time restrictions on snowmobiling in grizzly bear recovery zones had not been strictly enforced. In 2008 the Forest Service recognized that snowmobiling had been occurring throughout open areas on the Flathead as long as snow conditions permitted. In 2008 the Forest Service admitted this resulted in some undocumented and unquantified effects on grizzly bears from spring snowmobiling.

238. Amendment 24 designated NCDE recovery zone lands on the Flathead outside of the North Fork drainage as open to snowmobile use with the exceptions of: (1) designated Wilderness, (2) Jewel Basin Hiking Area, (3) Coram Experimental Forest, (4) LeBeau Research Natural Area, (5) proposed Wilderness, and (6) other specific closures based on research concerns (e.g., certain Management Areas defined in the 1986 Forest Plan).

239. Under Amendment 24, 32 percent of the lynx habitat on the Forest is open to motorized over-snow vehicle use or is in cross-country ski areas where trails are groomed.

240. The revised Forest Plan adopts the designated routes and areas and associated dates for over-snow vehicle use identified in Amendment 24. The revised Forest Plan adjusts the boundaries of some of the designated over-snow vehicle routes and areas identified in Amendment 24. There are direct impacts from over-snow vehicle use authorized under the revised Forest Plan.

241. The effects of adjusting boundaries for designated over-snow vehicle routes and areas identified in Amendment 24 is a factor FWS failed to consider in the Biological Opinion for the Revised Plan. FWS focused only on total mileage and acreage instead of discussing the impacts on specific geographic areas, and addressing the geographic distribution of such changes. This is a factor FWS failed to consider in the Biological Opinion for the Revised Plan.

242. The Biological Opinion for the Revised Forest Plan does not analyze or consider the direct, on-the-ground impacts that will result from adopting over-snow vehicle use designations from Amendment 24. Adopting over-snow vehicle use designations from Amendment 24 will have direct impacts on grizzly bears. Adopting over-snow vehicle use designations from Amendment 24 will have direct impacts on Canada lynx. Adopting over-snow vehicle use designations from Amendment 24 will have direct impacts on Canada lynx critical habitat. Adopting over-snow vehicle use designations from Amendment 24 will have direct impacts on wolverine. These impacts are new and different from any impacts considered in the 2008 Biological Opinion related to Amendment 24.

243. The Biological Opinion for the Revised Forest Plan does not analyze or consider the direct, on-the-ground impacts that will result from adjusting the boundaries for designated over-snow vehicle routes and areas identified in Amendment 24. Adjusting the boundaries for designated over-snow vehicle routes and areas identified in Amendment 24 will have direct impacts on grizzly bears.

Adjusting the boundaries for designated over-snow vehicle routes and areas identified in Amendment 24 will have direct impacts on Canada lynx. Adjusting the boundaries for designated over-snow vehicle routes and areas identified in Amendment 24 will have direct impacts on Canada lynx critical habitat. Adjusting the boundaries for designated over-snow vehicle routes and areas identified in Amendment 24 will have direct impacts on wolverine. These impacts are new and different from any impacts considered in the 2008 Biological Opinion related to Amendment 24.

244. The Biological Opinion for the Revised Forest Plan does not analyze or consider the direct, on-the-ground impacts that will result from adopting over-snow vehicle use designations from making new over-snow vehicle suitability determinations in the revised Forest Plan. Adopting over-snow vehicle use designations based on new over-snow vehicle suitability determinations will have direct impacts on grizzly bears. Adopting over-snow vehicle use designations based on new over-snow vehicle suitability determinations will have direct impacts on Canada lynx. Adopting over-snow vehicle use designations based on new over-snow vehicle suitability determinations will have direct impacts on Canada lynx critical habitat. Adopting over-snow vehicle use designations based on new over-snow vehicle suitability determinations will have direct impacts on wolverine. These impacts are new and different from any impacts considered in the 2008 Biological Opinion related to Amendment 24.

245. New information since the 2008 Biological Opinion related to Amendment 24 exists that triggers the requirement to reinitiate consultation. The wolverine was not proposed for listing in 2008. The wolverine is currently proposed for listing. FWS and the Forest Service should have considered impacts to wolverine as a result of adopting over-snow vehicle use designations from Amendment 24. Lynx critical habitat has been designated on the Flathead National Forest since 2008. FWS and the Forest Service should have considered impacts to Canada lynx critical habitat as a result of adopting over-snow vehicle use designations from Amendment 24. FWS and the Forest Service did not consult or conference on the impacts from adopting over-snow vehicle use designations from Amendment 24 on wolverine. FWS and the Forest Service did not consult on the impacts from adopting over-snow vehicle use designations from Amendment 24 on Canada lynx. FWS and the Forest Service did not consult on the impacts from adopting over-snow vehicle use designations from Amendment 24 on Canada lynx critical habitat. FWS and the Forest Service did not reinitiate consultation on the impacts from adopting over-snow vehicle use designations from Amendment 24 on Canada lynx. FWS and the Forest Service did not reinitiate consultation on the impacts from adopting over-snow vehicle use designations from Amendment 24 on Canada lynx critical habitat.

246. The revised Forest Plan identified 31 percent of the Forest as suitable for motorized over-snow vehicle use. The revised Forest Plan made changes to motorized over-snow vehicle use suitability resulting in an increase of about 567 acres

as suitable for motorized over-snow vehicle use. The revised Forest Plan changed an area by Marias Pass in the Middle Fork geographic area to management area 5c to allow motorized over-snow vehicle use on designated routes and areas. The revised Forest Plan changed an area between Soldier Creek and Bruce Creek in the South Fork geographic area to management area 5c to allow over-snow vehicle use on designated routes and areas.

247. The Forest Service stated it will initiate site-specific planning within three years from the date of the final ROD for the 2018 Forest Plan where an existing order may need to be changed in light of the 2018 Forest Plan suitability direction. The Forest Service has not yet initiated site-specific planning. The Forest Service has not made any date-certain commitments to conduct winter travel planning to designate over-snow vehicle use on the Flathead. The Forest Service has no plans to conduct winter travel planning to designate over-snow vehicle use on the Flathead.

248. The Forest Service used the grandfather provision of the 2015 Over-Snow Vehicle Rule to avoid conducting winter travel planning, despite the prior over-snow vehicle designation decisions occurring more than ten years ago, and despite not having made designation decisions for a large portion of the forest. When the Forest Service made the prior designations under Amendment 24, it specified areas that were closed to over-snow vehicle use, and the remainder of the forest was left open to cross-country use. The agency did not apply the minimization criteria to ensure that

its designations minimized impacts to natural resources, wildlife, and other recreation users.

249. Since the prior designations, significant changes have occurred on the Flathead including advances in over-snow vehicle technology, an increased number of winter recreationists on the Flathead, leading to greater conflicts, increased impacts to wildlife and wildlife habitat, and impacts from climate change.

250. Rather than assess the impacts of over-snow vehicle use under these changed circumstances to determine whether current over-snow vehicle use designations comply with the minimization criteria and the “closed unless designated open” approach, the Forest Service states in the ROD for the revised Forest Plan that adoption of Amendment 24 designations, without any future winter travel planning process, completes subpart C of the Travel Planning Rule (also known as the 2015 Over-Snow Vehicle Rule).

251. The Biological Opinion does not use or disclose data on current over-snow vehicle uses on the Flathead National Forest. The Biological Opinion relies on the Forest Service’s modeled denning habitat that was impacted by late season over-snow vehicle use. The Flathead National Forest 1986 Forest Plan required the Forest Service to monitor actual over-snow vehicle use. The Flathead National Forest 1986 Forest Plan required the Forest Service to monitor actual impacts to wildlife from over-snow vehicle use. The Biological Opinion does not state it obtained this data

from the Forest Service. The Biological Opinion did not use this data from the Forest Service.

Monitoring Components

252. The revised Forest Plan monitoring plan requires monitoring evaluation reports only every other year. The monitoring evaluation report need not address each monitoring question. The revised Forest Plan monitoring plan states that an interdisciplinary team will develop a biennial monitoring evaluation report. The monitoring evaluation report was not available for public review or comment during the public notice or objection process for the revised Forest Plan.

253. The revised Forest Plan monitoring plan does not include monitoring questions or associated indicators to track administrative motorized use of roads within the NCDE primary conservation area.

254. The 2017 Biological Opinion replaces the terms and conditions of existing, ongoing Biological Opinions requiring annual monitoring of culverts on closed forest roads with a plan component that requires monitoring once every six years. The revised Forest Plan requires the Forest Service to monitor only a selection of culverts every six years.

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FIRST CLAIM FOR RELIEF

Violation of Travel Management Rule, 36 C.F.R. § 212, and Executive Order 11644, as amended

Count I: Failure to Consider and Comply with Minimization Criteria

255. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

256. The Forest Service violated the Travel Management Rule and Executive Order 11644, as amended, by failing to demonstrate consideration, implementation, and compliance with the “minimization criteria” by adopting existing over-snow vehicle use designations from Amendment 24 in the revised Forest Plan.

257. The Forest Service violated the Travel Management Rule and Executive Order 11644, as amended, by failing to complete a winter travel plan as required by Travel Management Rule Subpart C.

258. The Forest Service’s adoption of Amendment 24 as the over-snow vehicle use map in the revised Forest Plan and final ROD violated the 2015 Over-Snow Vehicle Rule because adopting existing over-snow vehicle use designations did not minimize damage to natural resources, harassment of wildlife and disruption of wildlife habitat, or conflicts with other recreation users. 36 C.F.R. §§ 212.55(b), 212.81(d). The Forest Service violated the Travel Management Rule by adopting existing over-snow vehicle use designations from Amendment 24 that did not comport with the “closed unless designated open” approach because they continued

to implement designations of closed areas rather than discrete, specifically delineated areas open to over-snow vehicle use.

259. An interpretation of the grandfather provision of Subpart C that allows the Forest Service to adopt prior designations under such circumstances violates the language and intent of the Travel Management Rule as well as Executive Order 11644. *Id.* §§ 212.80-81; E.O. 11644, § 3.

260. The Forest Service did not minimize damage to soils, watersheds, vegetation and other natural resources in developing the revised Forest Plan. The Forest Service did not demonstrate that it minimized damage to soils, watersheds, vegetation and other natural resources in developing the revised Forest Plan.

261. The Forest Service did not minimize harassment of wildlife and significant disruption of wildlife habitat in developing the over-snow vehicle designations under Amendment 24 or in the revised Forest Plan. The Forest Service did not demonstrate that it minimized harassment of wildlife and significant disruption of wildlife habitat in developing the over-snow vehicle designations under Amendment 24 or in the revised Forest Plan.

262. The Forest Service did not minimize conflicts amongst different types of forest users – including between motorized and non-motorized recreationists – in developing the over-snow vehicle designations under Amendment 24 or in the revised Forest Plan. The Forest Service did not demonstrate that it minimized conflicts amongst different types of forest users – including between motorized and non-

motorized recreationists – in developing the over-snow vehicle designations under Amendment 24 or in the revised Forest Plan.

263. The revised Forest Plan’s decision failed to demonstrate implementation of the “minimization criteria” required by the Travel Management Rule and Executive Order 11644, as amended, and as a result is arbitrary and capricious, an abuse of discretion, and not in accordance with the law. 36 C.F.R. §§ 212.81(d), 212.55(b); 5 U.S.C. § 706(2)(A).

264. As a result of the above legal violations, the revised Forest Plan decision and the Forest Service’s over-snow vehicle use map for the Flathead are arbitrary and capricious, an abuse of discretion, and not in accordance with the law. 36 C.F.R. §§ 212.81(d), 212.55(b); 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

Violations of the Endangered Species Act, 16 U.S.C. § 1536, and Administrative Procedures Act, 5 U.S.C. § 706(2)(A)

265. ESA Section 7 requires each federal agency, in consultation with FWS, to “insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species.” 16 U.S.C. § 1536(a)(2). ESA Section 7 requires each federal agency to “insure that any action authorized, funded, or carried out by such agency” is not likely to result in the destruction or adverse modification” of designated critical habitat for any endangered or threatened species. *Id.* During this consultation process, the federal

action agency and FWS must use the best scientific data available. *Id.* The best scientific data available is also referred to as the best available science.

266. For a proposed action, the action agency must request from FWS information on whether any ESA-listed, or species proposed for listing under the ESA, may be present in the area of the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c). The action agency should also request information on any designated or proposed critical habitat for ESA-listed species from FWS in the area of the proposed action. 50 C.F.R. § 402.12(c).

267. If an ESA-listed species, or species proposed for listing under the ESA, may be present in the area of the proposed action, the action agency must prepare a biological assessment to determine whether such species may be affected by the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(a). If the agency determines that the proposed action may affect any ESA-listed species or its critical habitat, the action agency must engage in formal consultation with FWS. 50 C.F.R. § 402.14.

268. Formal consultation under ESA Section 7 results in a Biological Opinion prepared by FWS. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(h). The Biological Opinion includes a summary of the information on which the opinion is based; a discussion of the effects of the action on ESA-listed species and their critical habitat; and FWS's opinion on whether the proposed action is likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of its

critical habitat. 50 C.F.R. § 402.14(h).

269. If the Biological Opinion results in a conclusion that the proposed action is not likely to jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of critical habitat for such species, FWS must include an incidental take statement in the Biological Opinion. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). The incidental take statement must specify the amount of extent of such incidental taking on the species, any reasonable and prudent measures FWS considers necessary or appropriate to minimize such impact, and must set forth any terms and conditions that must be complied with by the action agency to implement those measures. *Id.* An incidental take statement must quantify the amount of anticipated take. *Id.*

270. FWS may use a surrogate, such as habitat or ecological conditions, to express the amount or extent of anticipated take. 50 C.F.R. § 402.14(i). To use a surrogate for anticipated incidental take, FWS must: (1) describe the causal link between the surrogate and take of the listed species; (2) explain why it is not practical to express the amount or extent of anticipated take in terms of individuals of the listed species; and (3) set a clear standard for determining when the level of anticipated take has been exceeded. *Id.*

271. The action agency must report the impact of its action on the listed species to FWS as specified in the incidental take statement. 50 C.F.R. § 402.14(i)(3).

272. If, during the implementation of the proposed action, the amount or

extent of incidental taking of an ESA-listed species as described in the incidental take statement is exceeded, the action agency and FWS must reinitiate consultation immediately. 50 C.F.R. § 402.14(i)(4).

273. Reinitiation of consultation is required in several circumstances where discretionary Federal involvement or control over the action is retained or is authorized by law, including: (1) if amount or extent of take specified in an incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the proposed action is later modified in a manner that causes effects to an ESA-listed species or its critical habitat that was not considered in the Biological Opinion; or (4) if a new species is listed or critical habitat for an ESA-listed species is designated that may be affected by the proposed action. 50 C.F.R. § 402.16.

274. After consultation is initiated, or reinitiated, the action agency is prohibited from making any irreversible or irretrievable commitment of resources with respect to the agency action which may foreclose the formulation or implementation of any reasonable and prudent alternative measures. 16 U.S.C. § 1536(d).

275. The ESA and its implementing regulations generally prohibit the unauthorized take of an ESA-listed species. 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. § 17.21(c); 50 C.F.R. § 17.31(a). Take includes harming, harassing, pursuing, trapping, hunting, capturing, wounding, or killing an ESA-listed species, an an attempt to engage

in such conduct. 16 U.S.C. § 1532(19). Take as contemplated by a Biological Opinion's incidental take statement is exempt from the ESA's take prohibition. 16 U.S.C. § 1536(o).

Count I: The Fish and Wildlife Service's 2017 Biological Opinion violates the ESA and APA

276. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

277. FWS' 2017 Biological Opinion for the Flathead National Forest's Revised Forest Plan is unlawful under the ESA, 16 U.S.C. § 1536, and arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), for the following reasons:

- a. Failure to consider all relevant factors in making its jeopardy determinations for grizzly bear and Canada lynx;
- b. Reliance on an inconsistent and inaccurate description of the proposed action from the Forest Service in making its jeopardy determinations for grizzly bear and Canada lynx;
- c. Failure to articulate a rational connection between the facts found and the choices made in making its jeopardy determination for grizzly bear;
- d. Failure to use the best available science in making its jeopardy determinations for grizzly bear and Canada lynx;
- e. Failure to consider the proper scope of analysis in making its jeopardy determinations for grizzly bear;

- f. Failure to include a quantifiable incidental take limit or an acceptable surrogate to retrigger consultation for take of grizzly bear;
- g. Failure to include an incidental take limit or an acceptable surrogate to retrigger consultation for take of bull trout.

Count II: The Forest Service's Improper Reliance on the 2017 Biological Opinion Violates the ESA and APA

278. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

279. The 2017 Biological Opinion for the Flathead National Forest revised Forest Plan is unlawful. Therefore, the Forest Service's reliance on the 2017 Biological Opinion in authorizing and approving the Flathead National Forest's Revised Forest Plan Record of Decision is arbitrary, capricious, and in violation of the ESA, 16 U.S.C. § 1536(a)(2).

280. Because the 2017 Biological Opinion is unlawful, the Forest Service is committing an ongoing violation of its independent and substantive duty to insure that the authorization and implementation of the Flathead National Forest's Revised Forest Plan is not likely to jeopardize the continued existence of any threatened or endangered species, or result in the destruction or adverse modification of designated critical habitat. Therefore, the Forest Service is violating ESA Section 7. 16 U.S.C. § 1536(a)(2). ESA Section 7 obligations cannot be met by relying on a legally deficient Biological Opinion.

281. Because the Forest Service's Record of Decision approving, authorizing, and adopting the Flathead National Forest's Revised Forest Plan relies on the unlawful 2017 Biological Opinion, the Record of Decision is arbitrary, capricious, not in accordance with the APA, and contrary to the ESA. 5 U.S.C. § 706(2)(A).

PLAINTIFFS' REQUESTS FOR RELIEF

Plaintiffs respectfully request this Court:

- A. Declare the Forest Service and the Fish and Wildlife Service have violated and continue to violate the law as alleged above;
- B. Remand this matter back to the Forest Service with instructions to comply with the Travel Management Rule, the ESA, and the APA as alleged above;
- C. Set aside and vacate relevant and appropriate portions of the Forest Service's decision approving the Revised Forest Plan pending compliance with the law;
- D. Set aside and vacate the Biological Opinions at issue in this litigation;
- E. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request;
- F. Award Plaintiffs their costs of suit, reasonable expenses, and attorneys' fees; and
- G. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted this 30th day of July, 2020.

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