



December 3, 2024

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**Re: Sixty-day Notice of Violation of the Endangered Species Act:
Clark Fork Face Forest Health and Fuels Reduction Project, Missoula Field Office**

On behalf of the Center for Biological Diversity, Alliance for the Wild Rockies, Native Ecosystems Council, Council on Wildlife and Fish, and Yellowstone to Uintas Connection, we hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), that the United States Fish and Wildlife Service (“FWS”) and the United States Bureau of Land Management (“BLM”), (collectively, the “Agencies”), are in violation of the ESA, 16 U.S.C. § 1531 *et seq.*, regarding the Biological Opinion and Biological Assessment for the effects of the Clark Fork Face Forest Health and Fuels Reduction Project (“Project”) on grizzly bears, Canada lynx and lynx critical habitat, North American wolverine, and bull trout and bull trout critical habitat. The 2021 Missoula Field Office Resource Management Plan Biological Opinion and Incidental Take Statement also violate the ESA.

STATEMENT OF LAW

A “threatened” species is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). The ESA provides for the “conservation of the ecosystems upon which threatened and endangered species depend.” *Id.* § 1531(b). “Conservation” means “the use of all methods and procedures which are necessary to bring any . . . species to the point at which the measures provided pursuant to this chapter are no longer necessary.” *Id.* § 1532(3).

ESA Section 7 requires that all federal agencies work toward recovery of listed species, and it contains both a procedural requirement and a substantive requirement for that purpose. Substantively, it requires that federal agencies ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species, or result in the adverse modification of critical habitat for such species. *Id.* § 1536(a)(2). To carry out the duty to avoid jeopardy and adverse modification of critical habitat, ESA Section 7 sets forth a procedural requirement that directs an agency proposing an action (action agency) to consult with an expert agency, in this case, the FWS, to evaluate the consequences of a proposed action on a listed species. *Id.*

In order to fulfill the substantive purposes of the ESA, all federal agencies must consult with the 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 or result in the adverse modification of habitat of such species . . . determined . . . to be critical.” *Id.* Section 7 consultation is required for “any action [that] may affect listed species or critical habitat.” 50 C.F.R. § 402.14. Agency “action” is broadly defined in the ESA’s implementing regulations to include “(a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.” *Id.* § 402.02.

As courts have repeatedly held, the ‘may affect’ standard triggering the consultation requirement is low. *See Am. Bird Conserv. v. FCC*, 545 F.3d 1190, 1191 (9th Cir. 2008); *Ctr. for Biological Diversity v. BLM*, 698 F.3d 1101, 1122 (9th Cir. 2012) (“petitioners need to show only that an effect on listed species or critical habitat is plausible”). “Any possible effect, whether beneficial, benign, adverse or of an undetermined character, triggers the formal consultation requirement.” Interagency Cooperation—Endangered Species Act of 1973, as amended, 51 Fed. Reg. 19,926, 19,949 (June 3, 1986) (emphasis added). “Where actions ‘may affect’ listed species, ‘the burden is on the Federal agency to show the absence of likely, adverse effects to listed species or critical habitat as a result of its proposed action in order to be excepted from the formal consultation obligation.’” *Ctr. for Biological Diversity*, 698 F.3d at 1122 (quoting 51 Fed. Reg. at 19,949). Further, in determining whether any such “effects” may occur, the FWS and action agencies must consider not only the “direct” effects of the action, but also the “indirect effects,” which are defined as those that are “caused by the proposed action and are later in time, but still are reasonably certain to occur.” 50 C.F.R. § 402.02.

FWS has the authority to issue an incidental take statement concurrent with a biological opinion (“BiOp”) if it concludes that incidental take is not likely to jeopardize the continued existence of the species. 50 C.F.R. § 402.14(i). An incidental take statement authorizes the action agency to “take” listed species without facing ESA liability. 16 U.S.C. § 1536(o)(2); 50 C.F.R. § 402.14(i)(5). This statement must specify the impact of such incidental taking on the species, set forth “reasonable and prudent measures” that the expert agency considers necessary to minimize such impact, and include the “terms and conditions” that the action agency must comply with to implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(1)(iv). If the action agency adopts such measures and implements their terms and conditions, the resulting level of incidental take authorized in the incidental take statement is excepted from the

ESA's ban on take. 50 C.F.R. § 402.14(i)(5). During this assessment process, as with the entire consultation process, the agencies must use the best available science. *Id.* § 402.14(d).

The measures in an incidental take statement are non-discretionary and must be undertaken by the action agency so that they become binding conditions of any grant or permit issued, as appropriate, for the exemption in Section 7(o)(2) to apply. *Id.* § 402.14(i)(5). The action agency has a continuing duty to regulate the activity that is covered by this incidental take statement. *Id.* If the action agency (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of Section 7(o)(2) may lapse. *Id.* § 402.14(i)(4). To monitor the impact of incidental take, the action agency must report the progress of the action and its impact on the species to the FWS as specified in the incidental take statement. *Id.* § 402.14(i)(3).

If Section 7 consultation is completed but later becomes inadequate to address impacts on any listed species or critical habitat, the agencies must reinitiate consultation. *Id.* § 402.16. "Reinitiation of formal consultation is required" if, among other criteria, "the amount or extent of taking specified in the incidental take statement is exceeded" *Id.* § 402.16(a). The duty to reinitiate consultation lies "with both the action agency and the consulting agency." *Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220, 1229 (9th Cir. 2008).

Lastly, an action agency—here the BLM—cannot rely on a faulty biological opinion to fulfill its substantive Section 7 duties to ensure it does not jeopardize the continued existence of a listed species. *See Defs. of Wildlife v. EPA*, 420 F.3d 946, 976 (9th Cir. 2005) (*rev'd on other grounds*, *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644 (2007)); *Resources Ltd. Inc. v. Robertson*, 35 F.3d 1300, 1304 (9th Cir. 1994) ("Consulting with the FWS alone does not satisfy an agency's duty under the Endangered Species Act.").

FACTUAL BACKGROUND

The Missoula Field Office Resource Management Plan ("RMP") was most recently updated in January 2021. The BLM initiated consultation on the RMP's impacts to listed wildlife, and on June 5, 2020, the FWS issued a Biological Opinion ("BiOp") and Incidental Take Statement for threatened grizzly bear, Canada lynx and designated lynx critical habitat, and bull trout and bull trout critical habitat. The analyses contained in the 2020 RMP BiOp represent "the first tier of a tiered consultation framework, with each subsequent project that may affect the listed species and/or designated critical habitat analyzed within this programmatic biological opinion, as implemented under the revised RMP, being the second tier of consultation."

On April 28, 2022, the BLM requested consultation with the FWS on the Clark Fork Face Project's impacts to grizzly bears, lynx and lynx designated critical habitat, western yellow-billed cuckoo, bull trout and designated bull trout critical habitat, whitebark pine, and the proposed wolverine. The FWS requested supplemental documents, which were submitted on June 6, 2022, September 24, 2022, and October 20, 2022.

In its Biological Assessment (“BA”), the BLM determined that the Project “may affect and is likely to adversely affect” grizzly bears, Canada lynx, and designated lynx critical habitat. The BLM also determined that the Project will have “no effect” on western yellow-billed cuckoo or whitebark pine because those species and habitat are not present within the action area. The BLM concluded that bull trout and designated bull trout critical habitat would not be affected because of Project design features and conservation measures and “distant proximity and local topography of vegetation treatments and haul routes to occupied bull trout habitat and designated critical habitat.” Finally, the BLM determined that Project activities were “not likely to jeopardize the continued existence” of the then-proposed North American wolverine. On November 8, 2022, the FWS issued a BiOp and Incidental Take Statement that concurred with the BLM’s determinations.

On November 30, 2023, the FWS published a final rule listing the wolverine as threatened under the ESA. The agencies reinitiated consultation with the BLM submitting a BA to the FWS on March 20, 2024, and on April 11, 2024, the FWS concurred with the BLM’s conclusion that the Project “may affect but is not likely to adversely affect” wolverine.

On April 18, 2024, Missoula Field Office Manager Erin Carey signed the Decision Notice and Finding of No Significant Impact for the Project. The Decision Notice authorizes logging and burning on 16,689 acres in the Clark Fork River sub-basin and Garnet Range east of Missoula as well as road work, including blading an unknown number of currently impassable roads in grizzly bear, lynx, and wolverine habitat and designated critical habitat. Despite the large scale of the Project, the BLM authorized the Project without adequately analyzing how Project activities may affect the area’s ability to function as a “stepping stone” area, or crucial connectivity corridor, for grizzly bears, Canada lynx, wolverine, elk, and other wildlife.

Because the biological assessments and the biological opinions are based on insufficient information and incorrect assumptions, these deficiencies also permeate the consultation documents. Of particular concern, the BLM did not adequately disclose or publicly discuss how it mapped lynx habitat at the programmatic level before approving the RMP, as NEPA requires; therefore, the Project BiOp improperly tiers to the effects analysis in the RMP BiOp. That discussion was ultimately made irrelevant when, at the Project level, the BLM redefined the wildland urban interface (“WUI”) to include “effectively” the entire Project planning area.

LEGAL VIOLATIONS

I. The Missoula RMP BA, BiOp, and Incidental Take Statements Violate the ESA

The BA, BiOp, and incidental take statements for the Missoula RMP do not apply the best available science, fail to analyze relevant factors, and are otherwise arbitrary and capricious regarding lynx and lynx critical habitat, in violation of Section 7 of the ESA.

In 2000, the Canada Lynx Conservation Assessment and Strategy (“LCAS”) was developed to “provide a consistent and effective approach to conserve Canada lynx on federal lands. The LCAS applies to all lands “mapped as lynx habitat.” The LCAS recommended measures “intended to conserve the lynx, and to reduce or eliminate adverse effects from the spectrum of

management activities on federal lands.” These conservation measures “focuse[d] on areas where habitat could support resident populations and contribute to the long-term conservation of lynx.”

In 2021, the BLM revised the RMP for the Missoula Field Office. Because the RMP does not fully incorporate the LCAS conservation measures, it violates the ESA.

The LCAS, which is considered the best available science in regard to lynx conservation, describes the typical characteristics of lynx habitat but did not actually develop any maps of lynx habitat. Instead, the LCAS instructed that specific “national forests, BLM field offices, national parks, and wildlife refuges . . . should develop or refine maps of known lynx occurrence and potential lynx habitat.” The LCAS describes lynx habitat in northwest Montana as moist subalpine mixed-conifer forests dominated by Engelmann spruce, subalpine fir, Douglas-fir, western larch, and lodgepole pine. The LCAS also created “LAUs” to “provide analysis units of the appropriate scale with which to begin the analysis of potential direct and indirect effects of projects or activities on individual lynx, and to monitor habitat changes.” LAUs encompass both lynx habitat and non-lynx habitat, but the conservation measures generally only apply to lynx habitat within an LAU.

The LCAS conservation measures instruct agencies to map lynx habitat “[u]sing the best available mapping tools, assess the abundance and juxtaposition of lynx habitat, and ensure that adequate amounts of lynx habitat are present within each LAU. If not, [the agency must] redelineate the LAU in coordination with FWS to encompass additional lynx habitat, eliminate the LAU, or combine LAUs as appropriate.” (2013 LCAS at 89.)

Additionally, the conservation measures instruct agencies to:

[M]aintain the amount and distribution of lynx foraging habitat over time, manage so that no more than 30% of the lynx habitat in an LAU is in an early stand initiation structural stage or has been silviculturally treated to remove horizontal cover (i.e., does not provide winter snowshoe hare habitat). Emphasize sustaining snowshoe hare habitat in an LAU. If more than 30% of the lynx habitat in an LAU is in early stand initiation structural stage or has been silviculturally treated to remove horizontal cover (e.g., clearcuts, seed tree harvest, precommercial thinning, or understory removal), no further increase as a result of vegetation management projects should occur on federal land.

Recognizing that natural disturbances and forest management of private lands also will occur, management induced change of lynx habitat on federal lands that creates the early stand initiation structural stage or silviculturally treated to remove horizontal cover should not exceed 15% of lynx habitat on federal lands within a LAU over a 10-year period.

(2013 LCAS at 91.)

In preparing the RMP and during consultation, however, the BLM and FWS did not utilize the best available mapping tools, assess the abundance and juxtaposition of lynx habitat to ensure that an adequate amount of lynx habitat is present within each LAU. Apart from noting that the

RMP planning area includes 63,957 acres providing “current lynx habitat on BLM [lands],” the Agencies do not define lynx habitat or in any way quantify or discuss the amount, location, or proximity of various types of lynx habitat to one another within each LAU under the Missoula Field Office’s administration. The Agencies did not map the nearly 64,000 acres deemed current lynx habitat, nor did they disclose or explain how they determined that only 64,000 acres of the 100,123 acres in LAUs qualified as “current lynx habitat.” These failures violate the ESA.

Additionally, the RMP states as an objective that the BLM will:

Contribute to the conservation and recovery of listed terrestrial wildlife species and their habitats through the current and future USFWS recovery plans or interagency strategies such as the Canada Lynx Conservation Assessment and Strategy, Canada lynx critical habitat designation, and the final NCDE Grizzly Bear Conservation Strategy in coordination with the USFWS through Section 7 consultation.

(WL-OBJ-1.) Contrarily, the RMP provides that “[f]uels treatment projects within the within the 1-mile wildland urban interface (WUI) buffer (approximately 7,648 acres) and Fire Management Zone I [(“FMZ1”)] not meeting lynx conservation measures (due to protecting life, increasing the safety of firefighters, and protecting property, improvements, and infrastructure) may occur.” (WL-OBJ-13-17.)

However, the LCAS does not exempt from its conservation measures projects within the 1-mile WUI or FMZ1; thus, the RMP contradicts the LCAS. The FWS fails to adequately discuss or disclose the effects of exempting such a significant amount of lynx habitat from conservation measures in the RMP BiOp. Thus, the FWS’s failure to discuss these effects using the best available science violates the ESA.

In sum, the Agencies failed to adequately analyze the impacts of the lynx management directions in the RMP to lynx and lynx critical habitat. This failure resulted in an ill-informed jeopardy determination for lynx. Additionally, because of the FWS’s inadequate analysis and jeopardy determination, the incidental take statement’s anticipated take, reasonable and prudent measures, and terms and conditions are ill-informed and inadequate, in violation of the ESA.

II. The Project BA, BiOp, and Incidental Take Statements Violate the ESA

Canada Lynx

The Agencies’ determinations that Project activities are “not likely to adversely affect” Canada lynx and “not likely to adversely modify” Canada lynx critical habitat are contrary to the best available science, arbitrary and capricious, and in violation of Section 7 of the ESA.

The Clark Fork Face Project authorizes logging, burning, and road building activities within lynx critical habitat spanning four different LAUs. The Project lies within the Bear Creek, Elk Creek, Union Creek, and McElwain Complex LAUs, which total 190,066 acres. Yet, the Agencies only analyzed the Project’s impacts on an arbitrarily small number of acres of lynx habitat, in contradiction to the best available science and the ESA.

First, despite tiering to the RMP's lynx and lynx habitat analyses in the Project BiOp, because the Agencies did not map lynx habitat at the RMP (programmatic) level, it is impossible to know if the Project's mapping of lynx habitat is consistent with the RMP's classification of lynx habitat; thus, the FWS's analysis in the Project BiOp is arbitrary.

Second, as a result of the BLM's overly-narrow definition of lynx habitat, the BLM determined that less than 250 acres across the Project area qualify as lynx habitat. In other words, even though the Project is entirely within lynx critical habitat, the BLM deemed most of the area "currently unsuitable for lynx," allowing all but a mere 248 acres to be logged and burned without any concern for lynx habitat conservation measures. By excluding all habitat groups that were not dominated by Engelmann spruce or subalpine fir from its definition of lynx habitat, the BLM failed to consider that lynx use a variety of forest types, including those with Douglas-fir, western larch, and lodgepole pine. Thus, the Agencies' analyses and determinations short-circuited the best available science, failed to consider relevant factors, and are otherwise arbitrary and capricious in violation of the ESA and the APA.

The Project BiOp further fails to adequately discuss and disclose the Project's impacts to lynx connectivity. Project activities and other nearby logging project activities will destroy a significant but unknown number of acres of lynx habitat. The best available science is clear that fragmentation of the naturally patchy pattern of lynx habitat in the contiguous United States affects lynx by reducing their prey base and increasing the energetic costs of using small, spread out patches of suitable habitat within their home ranges. Additionally, landscape-scale fragmentation directly affects lynx by creating openings that increase access by competing carnivores, especially in the winter when lynx have traditionally been able to exploit their evolutionary edge over other predators such as coyotes and mountain lions. This all has particularly problematic consequences in places like the Project area, which has been heavily impacted by logging and mining activities historically, and is now experiencing high levels of additional human impacts on private lands while still serving as a keystone corridor for connectivity. The Agencies' failure to consider these effects violates the ESA.

The Project BiOp also unlawfully allows the BLM to conduct fuels management treatments on the last tiny bit of lynx habitat identified by the BLM in the Project area, in violation of the best available science. As discussed above, the RMP allows the BLM to conduct fuels management treatments in lynx habitat within the WUI and FMZ1. After excluding potentially thousands of acres of lynx habitat under an overly-narrow definition, the BLM then determined that all of the mere 248-or-so acres of "current" lynx habitat remaining in the Project area are within either FMZ1 or the Project's "functional" WUI, and therefore, it will be treated too. The LCAS does not allow for such exemptions. Ultimately, the Agencies' analysis and authorization to treat lynx habitat within the WUI and FMZ1 violate the best available science, do not provide a detailed discussion of effects, and do not provide for the conservation of the species.

Finally, the Project's definition of WUI is arbitrary. While the LCAS does not exempt WUI from its conservation measures, it does incorporate the definition of WUI from the Healthy Forests Restoration Act ("HFRA"), 16 U.S.C. §§ 6501–92d. (LCAS at 128.) However, the BLM did not use this definition when mapping the WUI for the Project. Rather, the BLM's approach disregarded HFRA's requirements for identifying "at-risk communities" and simply drew a one-mile buffer around every structure of any kind that it could find on the map. This is wildly

overinclusive. Along with greatly expanding the scope of the WUI that was analyzed in the RMP BiOp, this effectively allows the BLM to log all BLM lands within the planning area—including in lynx habitat occurring within federally designated lynx critical habitat that had previously been protected, at least in theory, under conservation measures adopted in the RMP.

In sum, the BLM's considerable shrinking of lynx habitat and expansion of the Project WUI are contrary to law and the best available science, in violation of the ESA. Additionally, due to the FWS's inadequate analyses and jeopardy determinations, the Project's incidental take statement's anticipated take, reasonable and prudent measures, and terms and conditions are ill-informed and inadequate, in violation of the ESA.

Bull Trout

The BLM's determination that Project activities will have "no effect" on bull trout or bull trout critical habitat, and the FWS's concurrence of that finding, are arbitrary and capricious. The Clark Fork River is designated bull trout critical habitat. The Project authorizes prescribed fire, timber harvest, and "fuels management" in units that overlap or abut the Clark Fork River. It is unclear how these actions could have *no effect* on bull trout and bull trout critical habitat. A "may affect" determination is required when any "possible effect, whether beneficial, benign, adverse, or of an undetermined character" occurs. *Ctr. for Biological Diversity*, 698 F.3d at 1122 (emphasis added). Additionally, the Project authorizes a significant amount of logging, burning, and timber hauling along Bear Creek, which flows directly into the Clark Fork River. The Agencies failed to consider how haul routes and treatments in such close proximity to the Clark Fork River and its tributaries may affect bull trout and bull trout critical habitat and the Project's "no effect" determination is arbitrary and capricious, in violation of the ESA.

Grizzly Bear

The Project area is important for grizzly bears because it serves as both a home range and connectivity corridor for bears moving between the Northern Continental Divide Ecosystem, the Bitterroot Ecosystem, and the Greater Yellowstone Ecosystem. At least one adult male grizzly bear was recently documented using the Project area on both sides of I-90. Despite acknowledging that the area is a "stepping stone" for grizzly bears, the Agencies failed to adequately analyze the Project's effects on the species, including its impacts to connectivity.

First, the Agencies failed to adequately analyze the environmental baseline for the Project, which resulted in an inadequate analysis of the Project's impacts to grizzly bears. The "environmental baseline" is defined to include past and present impacts of all Federal, state, and private actions and other human activities in the action area including those that have already undergone Section 7 consultation. 50 C.F.R. § 402.12. Thus, the environmental baseline is where the agencies consider the impacts of other past, present, and future reasonably anticipated logging projects on the species in relation to the proposed project.

Here, the Project area has a long history of heavy logging on BLM, state, and private lands. In addition, multiple logging projects are currently ongoing adjacent to the Project area, likely within a female grizzly bear's home range. However, the Agencies entirely failed to meaningfully consider these other projects and their impacts to the species. For example, the

Coyote Greenough projects, state logging operations currently occurring within mere miles of Project treatment units, were entirely omitted from the consultation documents. This is particularly egregious in this case because the Agencies continually rely on the incorrect assumption that there are “ample” areas for grizzly bears to relocate when Project activities displace them to support its conclusion that the Project’s effects to grizzly bears are “insignificant.” In this way, the Agencies fail to adequately consider the Project’s impacts on grizzly bears, in violation of the ESA.

The Project also authorizes winter logging, but fails to adequately discuss and disclose the effects of winter logging on grizzly bears denning in the Project area, and further fails to consider best available science, which indicates that human disturbance can lead to den abandonment.

Moreover, it is well known that roads pose the most imminent risk to grizzly bears. In the RMP BiOp, the FWS concluded that “existing road densities in some areas and continued presence of these roads under the revised RMP, along with new temporary road construction and use, may result in incidental take of some individual female grizzly bears attempting to establish or maintain home ranges in roaded areas at some point over the life of the revised RMP.” Therefore, the FWS used “the existing miles of open motorized routes and the open and total linear motorized route density within the five geographic areas of the action area as [the] first surrogate measures of incidental take of grizzly bears related to motorized access.”

Under the RMP, the current open motorized route density within NCDE Zone 1 must be maintained and managed for no net increase above the 2011 baseline, as described in the NCDE Conservation Strategy. Specifically in the Garnet Range, if the total miles of roads open to motorized use or the linear road density increases beyond 240 miles or 2.0 miles/square mile, or if the total motorized road miles or linear road density increases over 374.8 miles or 3.1 miles/square mile over the life of the RMP, the level of incidental take would be exceeded.

Open road density across the Project planning area is high (2.46 mi/mi²), with an open road density of 3.49 mi/mi² on BLM-managed lands. The Project will use “existing roads” as haul roads and will not construct any additional roads. However, as is clear from satellite imagery and confirmed by site visits, a significant but ultimately unknown number of miles of roads in the Project area that will be used for hauling timber are presently “impassable,” meaning they have “been treated in such a manner that the road is blocked” by natural vegetation growth, road entrance obliteration, fallen trees, boulders, or other means. Please see the attached Exhibit A for examples of the current conditions on roads the BLM will be utilizing as haul roads for the Project. Turning these revegetated and/or obliterated road beds into haul roads will create an on-the-ground change that must be considered in an effects analysis for grizzly bears. The Agencies failed to discuss the potential effects of re-constructing currently impassable roads, which violates the best available science and is arbitrary and capricious.

Finally, the RMP BiOp’s Incidental Take Statement states:

If, over any given 10-year period, more than 7 miles of temporary road is constructed in the portion of the action area within NCDE zone 1, more than 2 miles of temporary road is constructed in the portion of the action area within NCDE zone

2, and/or more than 2 miles of temporary road is constructed in the remaining portion of the action area (outside of NCDE zones 1 and 2), then the level of incidental take we anticipate in our second surrogate measure of take would be exceeded and therefore the level of take exempted would be exceeded.

But the Project authorizes 6.24 miles of temporary roads—2.15 miles in NCDE Zone 1 and 4.09 miles in NCDE Zone 2. Thus, the Project violates the terms and conditions of the RMP BiOP and the Agencies must reinitiate consultation on the RMP and the Clark Fork Face Project.

Wolverine

Wolverine have been documented within and immediately surrounding the Clark Fork Face Project area, increasingly within the last decade. Between 1932 and 2023, 833 wolverines were documented within a 50-mile radius of the center of the Project area with 2016 recording the highest number at 126. Recent studies have shown that connectivity among wolverine habitats is particularly sensitive to housing development and other human impacts in rugged areas located between typical wolverine habitats. Recent studies have also established that forest roads used by snowmobilers have a strong negative correlation with wolverine distribution. Additionally, wolverine detection has been strongly and negatively correlated with both summer and winter non-motorized recreation.

The Project area facilitates dispersal for male and female wolverine into surrounding primary habitats found at higher elevations like the nearby roadless Wales Creek Wilderness Study Area, which includes rugged features and receives persistent spring snow, providing important secure habitat that is relatively difficult to access, especially during the winter. However, the Agencies failed to adequately analyze how the Project will affect wolverine connectivity. In particular, the Agencies did not discuss how turning currently obliterated and revegetated roads into haul roads will increase both summer and winter motorized and non-motorized use and open up access by competing carnivores into secure habitat. Further, the Agencies failed to adequately consider and disclose the environmental baseline effects to wolverine because they failed to analyze current and reasonably foreseeable future actions like other logging projects, road building, and other development as discussed above, when added to effects from the Clark Fork Face Project. Therefore, the Agencies' analysis and jeopardy determination violates the ESA.

CONCLUSION

Because the RMP and Clark Fork Face Project biological assessments, biological opinions, and incidental take statements are unlawful, the Agencies' reliance on these documents violates their duties under Section 7(a)(2) of the ESA. The Agencies have failed to utilize the best available science, to promote the conservation and recovery of threatened and endangered species, and to ensure that their actions do not jeopardize protected species or result in unauthorized take of grizzly bears, Canada lynx, wolverine, or bull trout, or any critical habitat.

The Agencies' actions in this matter represent an unlawful departure from their legally binding mandate to protect and recover threatened species and their habitats. If the violations of law described above are not cured within 60 days, the Center and its allies intend to file suit for declaratory and injunctive relief, as well as attorney and expert witness fees and costs.

Sincerely,



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EXHIBIT A

Note: The numbered photographs correspond to the numbers on the Map on page 4 of this Exhibit.



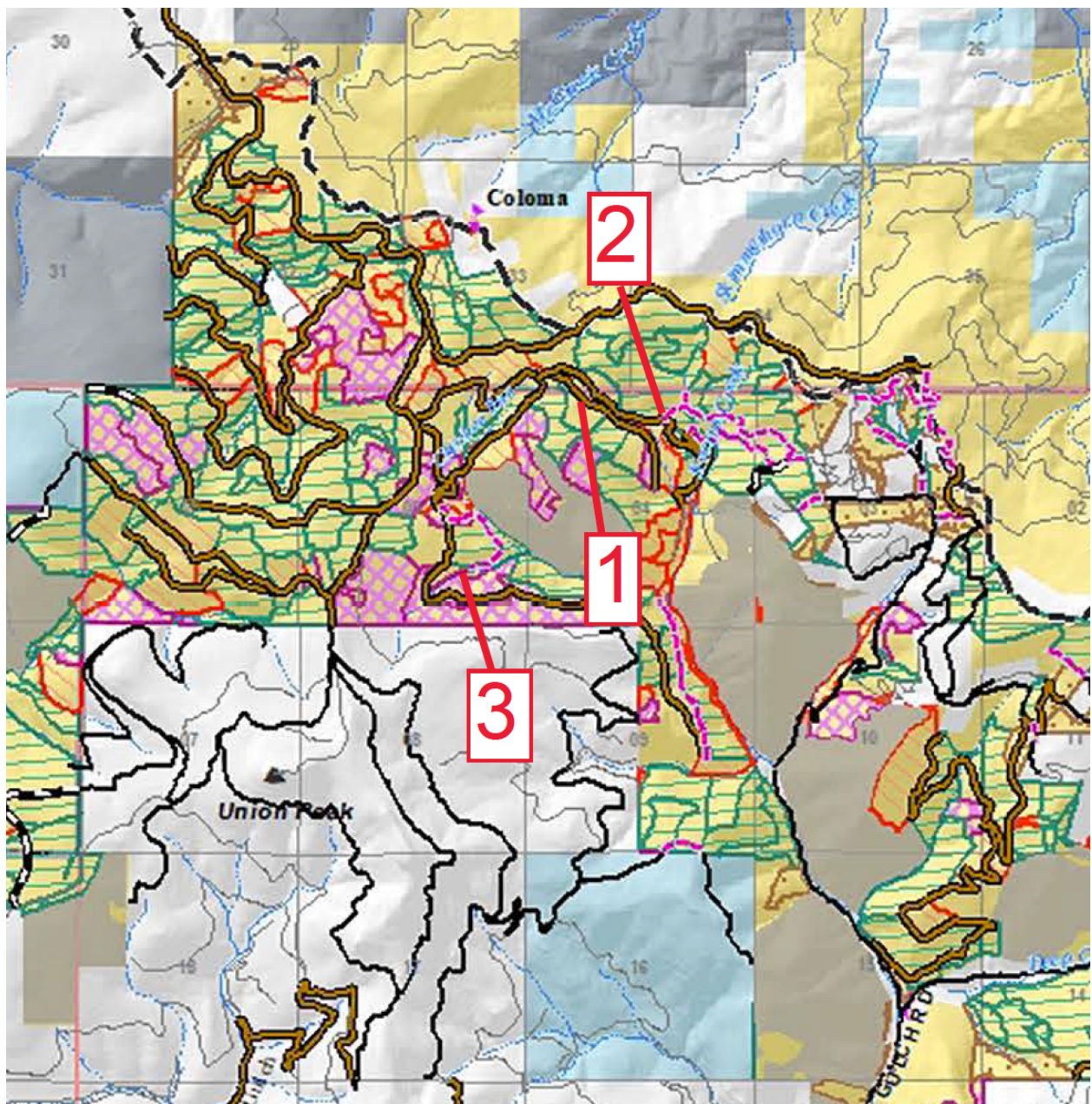
Photo 1



Photo 2



Photo 3



Clark Fork Face Decision Map Page 2 of 5