



ENTERPRISE CONTENT MANAGEMENT
FOLDER COVER SHEET

8698431

12/31/2020

Control Number: 8698431 Folder Status: Active Processing Code: USFS06
 Folder Owner: OSEC/NRE/FS/None/MG/FS CCU CM
 Action Organization: OSEC/NRE/FS/None/Main Group
 Date on Letter: 12/14/2020 Due Date: None
 Received Date: 12/31/2020 Interim Date: None
 VIP Type:
 Correspondent: Akland, Kristine M.
 Referrer:
 Addressee: Christiansen, Victoria
 Final Signer: Sign Date: None
 Subject: Special Attention:
 Reference Number: Special Instruction: NRN
 Synopsis:

#	Assignee	Task	Status	Actual User	Assigned Days	Due Date	Date Received	Date Completed	Days Over Due
1	FS FINAL	NRN	Started	Zena Conerly	1	01/01/2021	12/31/2020 10:29:05 AM CST		-1



ECM COVER NOTES

8698431

12/31/2020

Control Number:	8698431	Processing Code:	USFS06
Folder Owner:	OSEC/NRE/FS/None/MG/FS CCU CM		
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Date on Letter:	12/14/2020	Due Date:	None
Received Date:	12/31/2020	Interim Date:	None

Synopsis:

Created By	Date	Notes
Zena Conerly	12/31/2020 10:29:02 AM CST	Notice of intent to sue, no response necessary folder sent to EMC

USDA ECM

Workflow Status

Control Number: 8698431

12/31/2020

	<u>Entire Workflow</u>	<u>Current Task</u>
Current Status:	Active	Started
Folder Owner/Assignee:	OSEC/NRE/FS/None/MG/FS CCU CM	FS FINAL
Received Date:	12/31/2020	12/31/2020
Due Date:		01/01/2021
Days Since Receipt:	0	0
Days Until Due Date:	0	1
Projected Completion:	01/01/2021	01/01/2021
Projected Days Over/Under:	0	0
Date Final Response Signed:		
Actual Days Over/Under:		

Folder
Date Created: 12/31/2020 **By:** Zena Conerly
Date Closed: **By:**
Date Archived: **By:**
Date Deleted: **By:**

#	Task	Assignee	Date Completed	Approval Type	Actual User
1	NRN	OSEC/NRE/FS/None/MG/FS FINAL			Zena Conerly

AKLAND

LAW FIRM, PLLC

317 E. Spruce Street • PO Box 7274 • Missoula MT 59807 • 406 544-9863
aklandlawfirm@gmail.com

December 14, 2020

Secretary, U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, D.C. 20250-0003

Chief, U.S. Forest Service
201 14th Street, SW
Washington D.C. 20250

Secretary, U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Director, U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

**RE: 60-Day Notice of Intent to Sue under the Endangered Species Act:
Middle Henry's Aspen Enhancement- Caribou-Targhee National Forest**

You are hereby notified that Alliance for the Wild Rockies, Yellowstone to Uintas Connection, and Native Ecosystems Council intend to file a citizen suit pursuant to the citizen suit provision of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g) for violations of the ESA, 16 U.S.C. § 1531 et seq. Alliance will file the suit after the 60-day period has run unless the violations described in this notice are remedied. The names, addresses, and phone numbers of the organizations giving notice of intent to sue are as follows:

Michael Garrity, Executive Director
Alliance for the Wild Rockies
P.O. Box 505
Helena, Montana 59624
Tel: (406) 459-5936

Jason Christensen, Director
Yellowstone to Uintas Connection
jason@yellowstonetouintas.org
Tel: (435) 881-6917

Sara Johnson
Native Ecosystems Council
P.O. Box 125
Willow Creek, MT



DEC 30 2020

Tel: (406) 579-3286

The names, addresses, and phone numbers of counsel for the notifier are as follows:

Claudia Newman
Bricklin & Newman, LLP
1424 Fourth Ave., Suite 500
Seattle, WA 98101
Tel: (206) 264-8600

Kristine M. Akland, Attorney at Law
Akland Law Firm, PLLC
P.O. Box 7472
Missoula, MT 59807
Tel: (406) 544-9863

STATEMENT OF LAW

ESA § 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. 16 U.S.C. § 1536(a)(2). To carry out the duty to avoid jeopardy and adverse modification of critical habitat, ESA § 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 U.S. Fish & Wildlife Service (USFWS), to evaluate the consequences of a proposed action on a listed species. 16 U.S.C. § 1536(a)(2).

The U.S. Court of Appeals for the Ninth Circuit has held that “[o]nce an agency is aware that an endangered species may be present in the area of its proposed action, the ESA requires it to prepare a biological assessment . . .” *Thomas v. Peterson*, 753 F. 2d 754, 763 (9th Cir. 1985). A biological assessment “shall evaluate the potential effects of the action” on listed and proposed species to determine whether any such species are likely to be adversely affected by the action. 50 C.F.R. § 402.12(a). If the biological assessment concludes that the proposed action “may affect” but will “not adversely affect” a threatened or endangered species, the action agency must consult informally with the appropriate expert agency. 50 C.F.R. §§ 402.14 (b)(1), 402.12(k)(1). If the action “is likely to adversely affect” a listed species, the action agency must formally consult with the expert agency, and the expert agency must provide the action agency with a Biological Opinion explaining how the proposed action will affect the species or its habitat. 16 U.S.C. § 1536(a-c); 50 C.F.R. § 402.14. If the Biological Opinion concludes that the proposed action will jeopardize the continued existence of a listed species, it must outline “reasonable and prudent alternatives,” if any are available, that would allow an action agency to carry out the purpose of its proposed activity without jeopardizing the existence of listed species. 16 U.S.C. § 1536(b)(3)(A). During the consultation process, the agencies are required to utilize the best available science.

As defined in the ESA’s regulations, an “action” subject to consultation includes all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (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. 50 C.F.R. § 402.02. The U.S. Court of Appeals for the Ninth Circuit holds that this regulatory language “admit[s] of no limitations” and that “there is little doubt that Congress intended to enact a broad definition of agency action in the ESA” *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1054 (9th Cir. 1994). Thus, ESA consultation is required for individual projects as well as for the promulgation of land management plans and standards. *Id.* “Only after the Forest Service complies with § 7(a)(2) can any activity that may affect the protected [species] go forward.” *Pacific Rivers*, 30 F.3d at 1056-57.

The ESA’s regulations further define “effects of an action” as:

[T]he direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification.

50 C.F.R. § 402.02

“An agency’s decision is arbitrary and capricious if the agency (1) entirely failed to consider an important aspect of the problem, (2) offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, (3) failed to base its decision on consideration of the relevant factors, or (4) made a clear error of judgment.” *Superior v. U.S. Fish & Wildlife Serv.*, 913 F. Supp. 2d 1087, 1100-01 (D. Colo. 2012) (citing *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 704 (10th Cir. 2009) (internal citation omitted)).

“In addition to requiring a reasoned basis for agency action, the ‘arbitrary or capricious’ standard requires an agency’s decision to be supported by the facts in the record.” *Superior v. U.S. Fish & Wildlife Serv.*, 913 F. Supp. 2d 1087, 1101 (D. Colo. 2012) (citing *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575 (10th Cir. 1994)). “An agency’s decision, therefore, is arbitrary if not supported by ‘substantial evidence.’” *Id.*

Even after the procedural requirements of consultation are complete, however, the ultimate duty to ensure that an activity does not jeopardize a listed species lies with the action agency. An action agency’s reliance on an inadequate, incomplete, or flawed biological opinion to satisfy its ESA section 7 duty is arbitrary and capricious. *See Defenders 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. Defenders of Wildlife*, 551 U.S. 644 (2007)); *see also WildEarth Guardians v. U.S. Bureau of Reclamation*, 2015 WL 13651243, at *5 (D.N.M. Sept. 23, 2015) (citations omitted); *Mayo v. Jarvis*, 177 F. Supp. 3d 91, 146 (D.D.C. 2016).

The procedural consultation requirements in the ESA are judicially enforceable and strictly construed:

If anything, the strict substantive provisions of the ESA justify more stringent enforcement of its procedural requirements [than the provisions of the National Environmental Policy Act], because the procedural requirements are designed to ensure compliance with the substantive provisions. The ESA's procedural requirements call for a systematic determination of the effects of a federal project on endangered species. If a project is allowed to proceed without substantial compliance with those procedural requirements, there can be no assurance that a violation of the ESA's substantive provisions will not result. The latter, of course, is impermissible.

Thomas v. Peterson, 753 F.2d at 764.

ESA § 9 requires agencies insure that proposed actions do not result in the “take” of any listed species. 16 U.S.C. § 1538(a)(1)(B). “Take” is defined under the ESA to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). Habitat modification constitutes “take.” *Marbled Murrelet v. Babbitt*, 83 F.3d 1060 (9th Cir. 1996).

LEGAL VIOLATIONS

The Forest Service determined that the Middle Henry Aspen Enhancement Project (“Project”) “may affect, not likely to adversely affect” the Grizzly Bear and Canada Lynx. The Forest Service made a “not likely to jeopardize the continued existence” determination for the North American wolverine. FWS concurred with the Forest Service’s determination. The Forest Service’s analysis in the Biological Assessment and the FWS’s concurrence is arbitrary and capricious and an abuse of its discretion.

GRIZZLY BEAR

The Biological Assessment fails to adequately and fully address all impacts to grizzly bears. The Project area is located adjacent to the Greater Yellowstone Ecosystem Recovery Zone and is within the Island Park bear analysis unit (BAU). Grizzly bears are known to reside in the Project area- the Forest Service has documented two active dens in the Project area. Between 2009 and 2018 the Interagency Grizzly Bear Study team documented 1,897 radio locations from 33 grizzly bears, including nine females (three with young, three solitary, and three sub-adults). The Forest Service estimates that between 50-70 grizzly bears spend some portion of their annual life cycle in the Ashton-Island Park district.

The Project authorizes timber harvest and prescribed burning on over 42,000 acres. Most of the treatment will be prescribed burning that would likely to occur in September through November. The Project authorizes the use of helicopters to ignite the burn units- allowing helicopter use for eight hours per day for six days in a row below 500 feet above ground level.

The Region 1 Guide to Effects Analysis of Helicopter Use in Grizzly Bear Habitat sets forth an approach for analyzing effects of helicopter use on grizzly bears. It states

The biologist must consider (in part):

- Occupied or unoccupied grizzly bear habitat
- Sensitive habitat (e.g., spring range, post-denning area, important seasonal food sources)
- Time of year (denning or non-denning seasons)

- Core habitat or roaded habitat
- One flight, several flights, or extended operations
- Indirect effects of the overall operation (i.e., those that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur)
- Actions interrelated to and interdependent upon the helicopter activity (i.e., what else is related to, or dependent upon, the flight?)... consider ground operations to support the helicopter as well as the intended purpose such as logging or communications tower maintenance

The Guide goes on to state:

Furthermore, individual and population response by grizzly bears to human activity also includes the nature and extent of historical interactions with humans and the distribution of native habitats and foods (Mace and Waller 1996). In areas with relatively dense grizzly bear populations, the physiological cost to a bear caused by moving from preferred habitat (i.e., displacement) may be high because of the social intolerance of other bears. Conversely, if the grizzly bear population is low, moving from a disturbance would incur less cost because available habitats would be relatively abundant (McLellan and Shackleton 1989b).

In regards to the Project ESA §7 consultation, the agencies entirely failed to consider all of the factors stated above. Forest Service's "not likely to adversely affect grizzly bears" conclusion and the FWS's concurrence are both arbitrary and capricious because the agencies fail to take into account the factors the agencies themselves have identified as an important aspect of the problem. The Project will adversely impact grizzly bears and therefore the FWS must produce a biological opinion and incidental take statement (ITS) for the Project.

Moreover, the agencies conclusion is contrary to substantial evidence produced by the Forest Service and FWS themselves, which concludes that low altitude helicopter use, particularly for extended prescribed burning, is generally likely to adversely affect the grizzly bear. Additionally, it is arbitrary and capricious to conclude that the duration of the helicopter use authorized by the Project is "short term." The agencies here have failed to adequately consider the effects of the Project's helicopter use on grizzly bears. The agencies failed to disclose the location of core security areas in the Project area, fails to disclose whether helicopter use will be in core habitat, and fails to analyze impacts to core security areas. The analysis presented by the agencies and the determination that the authorized helicopter use is "discountable" is conclusory and arbitrary, and ignores relevant scientific information.

The amount of helicopter use authorized by the Project will result in the harassment of grizzly bears. Therefore, the Project violates the ESA's § 9 take prohibition.

Additionally, the agencies analysis and conclusion regarding the timber harvest impacts to grizzly bears is arbitrary. The agencies fail to consider the fact that grizzly bears utilize areas within 500 meters of roads. The agencies determination is based on inaccurate, unsupported and/or incorrect conclusion that grizzly bears only utilize secure core areas. The agencies must consider impacts to grizzlies that will result from timber harvest and the failure to do so is a violation of the ESA and the APA.

LYNX

The Biological Assessment also fails to adequately and fully address Project effects on Lynx. The Forest Service determined that primary and secondary lynx habitat exists in the Project area, according to the 2014 Lynx Analysis Map disclosed in the Targhee National Forest Lynx Analysis Units Final Environmental Impact Statement. The 2007 Map of Northern Rockies Lynx Planning Area Occupied and Unoccupied Lynx Habitat discloses that the Project area is within occupied secondary lynx habitat and is a linkage area connecting the Yellowstone National Park.

The Forest Service concedes that the Project area is considered lynx linkage habitat. Indeed, Project area links two important primary lynx habitat to the north and south and provides connectivity to Yellowstone National Park. Lynx have been known to travel cross this area.

Landscape connectivity is an important component of lynx conservation, particularly at the southern edge of their distribution (Squires et al. 2013). The Northern Rockies Lynx Management Direction (NRLMD) defines connectivity as consisting of “an adequate amount of vegetation cover arranged in a way that allows lynx to move around. Narrow forested mountain ridges or shrub-steppe plateaus may serve as a link between more extensive areas of lynx habitat...” The Forest Service has concluded

When patches are fragmented and connections between patches do not exist, recolonization becomes problematic and the metapopulation may be unable to persist, even though patches of suitable habitat remain (Meffe and Carroll 1997). Additional fragmentation and isolation of suitable habitat occurring as a result of land management activities can not only affect small isolated habitat patches supporting smaller populations but also large contiguous patches supporting higher population levels.

USDA Forest Service 1999. Biological Assessment of the Effects of National Forest Land and Resource Management Plans and Bureau of Land Management Land Use Plans on Canada Lynx.

Middle-aged conifer stands (40-120 years old) with open understories and sparse deadfall do not provide good denning or foraging environments but often serve as travel habitat (Koehler and Aubry 1994). Characteristics favorable for landscape level connectivity for lynx include forested cover, an abundance of productive foraging habitat, and gentle-moderate terrain (Squires et al. 2013).

Lynx usually avoid large unforested areas and prefer to move between primary habitat sites under cover of mature forest, dense early-seral forest, or tall shrubs—typically following ridges or riparian zones and moving through saddles. Based on fieldwork in north-central Washington, Koehler (1990) concluded that openings created by regeneration harvest, where the distance to cover is more than about 325 feet [total opening width of no more than about 650 feet], had potential to divert local lynx movement and preclude other habitat use until forest cover had regrown. Thinning can affect lynx movement across the landscape and can alter lynx distribution within their home range (Squires et al. 2006, Squires et al. 2010). Areas of high human use can also interrupt habitat connectivity and further fragment lynx habitat (Ruediger et al. 2000, p. 2-18). The construction of temporary roads and the use of closed roads for hauling can have some influence on the ability of lynx to disperse through the area (or move about freely within their home range).

Snowshoe hares are the primary prey, making up anywhere from 35% to 97% of lynx diet. Preferred lynx foraging habitat consists of dense young conifer growth—either in early seral stands or in mature forest understories—that provides cover and browse for hares (Koehler 1990). Koehler and Brittell (1990) recommend that seedling/sapling stands in the lodgepole/subalpine fir zone be well dispersed to provide optimal lynx foraging. Squires (2010) found that in the Seeley Lake region of western Montana, lynx hunted for hares primarily in mature, multi-storied spruce-fir forest in winter and in dense early-seral stands in summer. He cautioned, however, that in southern lynx populations, regional and local habitat differences were likely to generate variations in lynx foraging patterns: a number of southern populations depend primarily on early successional forests year-round, and some inhabit primarily lodgepole pine rather than spruce-fir forests (McKelvey et al. 1999; Aubry et al. 1999, p. 8). These differences are a function of the local availability of key forest types and the distribution of snowshoe hares among them (Maletzke et al. 2008, p. 1473; Squires et al. 2010, p. 1656). Vegetation management can affect snowshoe hare habitat through fragmentation, and through effects to connectivity. Walker (2005) and Lewis et al. (2011) found that the quality of matrix habitats around the most preferred snowshoe hare habitats influenced hare use in those preferred patches. More isolated patches were used less than patches in a more contiguous matrix (Lewis et al. 2011).

The agencies failed to adequately analyze the Project's impacts on lynx habitat connectivity. The Biological Assessment fails to disclose characteristics favorable for landscape level connectivity for lynx and discuss the Project's impacts to those characteristics. The agencies do not disclose or discuss the effects timber harvest and prescribed burning treatments will have on the Project areas ability to maintain or support connectivity. Further, the agencies conclusory determination that the project would retain cover is unsupported. The agencies fail to discuss what factors constitute adequate cover to support linkage and connectivity and fail to disclose how the Project meets those factors. Moreover, the agencies fail to discuss the Project's contribution to openings and the cumulative opening sizes. This is particularly important here where Island Park has been subject to clear-cuts in the past.

In addition to failing to adequately address the individual significance of the Project area on lynx, the agencies fail to adequately and fully address all the relevant habitat standards for lynx, fail to adequately address cumulative effects, and fail to adequately address the primary constituent elements.

Finally, the Project level consultation violates the terms and conditions and reasonable and prudent measures of the NRLMD Programmatic Biological Opinion. The failure to comply with the NRLMD Programmatic Biological Opinion Terms and Conditions results in the illegal take of Lynx and the violation of Section 9 of the ESA.

In 2001, the Forest Service and FWS delineated Lynx Analysis Units (LAUs) for the Island Park and Centennial Mountains areas of the Targhee National Forest (2001 LAUs). The 2001-LAU map depicts several LAUs within the Island Park District and within the Project area.

In 2012, the District Court for the District of Idaho found that 2005 Lynx Analysis Unit map was not properly vetted under NEPA. *Native Ecosystems Council & Alliance for the Wild Rockies v. USFS*, 866 F.Supp. 2d 1209 (D.Idaho 2012). The court found that the Split Creek Vegetation Management Project, was procedurally defective because it relied upon the 2005 Lynx Analysis Unit Map which was not properly vetted under NEPA. "This Court also has determined that the FWS should have made a jeopardy determination for the 2005 Map. These decisions by the Forest Service and the FWS were the basis for authorization for the Project." *Id.*

at 1233. Because the 2005 Lynx Analysis Unit Map is defective, the 2001 LAU Boundaries are still in place.

The Project area and the Island Park District contains "occupied lynx habitat." NRLMD Programmatic Biological Opinion, Appendix B. Therefore, the Forest Service and FWS must ensure that the Project complies with the NRLMD Programmatic Biological Opinion. However, the agencies failed to do so here resulting in the violation of the ESA.

WOLVERINE

Wolverines are present in the Project area. Additionally, the Forest Service has determined that a portion of the Aston-Island Park District was identified as an area with relatively high potential and quality as a dispersal corridor for wolverines. The Project area is within the Central Linkage Region (CLR) for wolverine. The CLR consists of a large number of fairly small habitat patches that contain reproductive females and sit between the major ecosystems of the Northern U.S. Rockies. Maintaining high adult female survival and reproductive rates in the CLR would likely benefit metapopulation demographics and gene flow. (Inman 2013).

Wolverines of the contiguous U.S. are dependent on successful dispersal among patches of habitat across a vast geographic scale. (Inman 2013). Maintaining a network of natural areas among the patches of suitable reproductive habitat has been found to be critical for long-term wolverine persistence. *Id.*

Recent studies have continued to find associations between wolverine distribution and rugged areas with minima human footprint (Fisher et al. 2013; Stewart et al. 2016). Stewart et al. (2016) also noted a behavioral difference, with wolverines spending less time foraging in regions with increased human activity.

Wolverines exist as a small, inherently vulnerable metapopulation that is dependent on successful dispersal over a vast geographic scale. Priority conservation actions include: 1) maintaining connectivity, particularly in the Central Linkage Region of western Montana; 2) restoration to areas of historical distribution that are robust to climate change, e.g., Colorado; and 3) development of a collaborative, multi-state/province monitoring program. (Inman 2013).

Key components of wolverine ecology revealed by research over the past three decades can be summarized as follows: (1) wolverines need adequate space to maintain populations; (2) population fragmentation must be avoided to maintain genetic, social, and spatial continuity of subpopulations; (3) the environment must be capable of providing a varied seasonal diet; and (4) security areas must be available to provide undisturbed seclusion for reproducing females (Copeland and Hudak 1995).

Inman (2013) concluded that "The viability of the wolverine in the contiguous United States, a candidate endangered species threatened by indirect, habitat-related impacts caused by all of society, depends on a fundamental shift in the way conservation of non-game wildlife and habitat are financed. . . **We therefore argue that loss of connectivity is as significant of a threat to wolverine persistence as climate change.**" (Inman 2013).

The agencies failed to consider the impacts the Project has on the ability of the area to maintain suitable reproductive habitat for female wolverines. The agencies did not adequately discuss or disclose the Projects effects on population fragmentation, the impacts on the CLR, and did not consider the best available science regarding wolverine. The agencies determination and analysis

is arbitrary and capricious because it fails to consider an important aspect of the recovery of wolverines.

CARIBOU-TARGHEE NATIONAL FOREST PLAN

Finally, the Forest Service must reinitiate/initiate consultation on the Caribou-Targhee National Forest Plan regarding its impacts to grizzly bears in the Island Park BAU. Since the 1997 consultation, grizzly bears are now present and residing in the Island Park BAU. Thus, new information reveals effects of the Forest Plan that may effect the grizzly bear in a way that was not previously considered. Thus, the failure to reinitiate consultation on the Forest Plan's impact on grizzly bears is a violation of the ESA. The best available science concludes that security core and road density are important factors in grizzly bear recovery. Consultation must discuss the best available science regarding grizzly bears conservation and recovery. The failure of the Forest Service and the FWS to do so is arbitrary and capricious and an abuse of discretion.

CONCLUSION

The agencies have ignored their duties under the ESA, 16 U.S.C. § 1531 et seq., to ensure that their actions do not jeopardize threatened and endangered species, that their actions do not result in unauthorized take of these species of wildlife, and that their actions promote conservation and recovery of these species. The agencies' actions in this matter represent an unlawful departure from their legally binding mandate to protect and recover imperiled species and their habitats. If the violations of law described above are not cured within 60 days, the Alliance intends to file suit for declaratory and injunctive relief, as well as attorney and expert witness fees and costs.

Sincerely,

/s/ Kristine M. Akland

Kristine M. Akland, Counsel for Notifier

cc: U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

