



July 27, 2016

Shoshone National Forest
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Submitted via email to: travel-comments-rocky-mountain-shoshone@fs.fed.us,
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Re: Scoping Comment on Shoshone National Forest Travel Management

WildEarth Guardians respectfully submits these comments¹ to the U.S. Forest Service concerning the scope of the agency's environmental analysis of the Shoshone National Forest Travel Management project under the National Environmental Policy Act (NEPA). WildEarth Guardians is a non-profit organization with offices in Oregon and seven other states. Guardians has more than 160,000 members and online supporters across the United States and the world. WildEarth Guardians works to protect and restore wildlife, wild places, wild rivers, and the health of the American West. Toward this end, Guardians and its members work to protect the natural and cultural features of landscapes within national forests, including wildlife. Please add our name and organization to the contact list to receive any future public notices regarding this action.

Our comments break down to the following categories of issues:

- 1) Meaningfully Apply Minimization Criteria
- 2) Identify and Provide a Proper Baseline
- 3) Accurately Disclose Regulatory Framework
- 4) Substantiate Statement of Purpose and Need
- 5) Disclose All Direct, Indirect, and Cumulative Impacts
- 6) Consider a Reasonable Range of Alternatives
- 7) Include Mitigation, Monitoring and Enforcement
- 8) Ensure Compliance with Federal Laws
- 9) Travel Analysis and the Minimum Road System

¹ WildEarth Guardians is also submitted a separate citizens' comment letter on behalf of over 8,700 concerned citizens. This comment represents Guardians' organizational concerns with the proposal.

Comments

1. Meaningfully apply the minimization criteria.

The Forest Service states one of the purpose and needs of this project is to “provide a manageable system of designated public motor vehicle access routes and areas . . . consistent with the Forest Plan, Executive Orders 11644 and 11989, and the travel management regulations at 36 CFR 212 subparts B and C.” *See* Shoshone National Forest Travel Management Scoping Document (May 2016) (hereafter, Scoping), page 6. We applaud the Forest Service’s recognition of its substantive duty to locate area, route and trail motorized designations with the objective of minimizing impacts, consistent with the executive orders, Travel Management Rule, and new over-snow vehicle (OSV) rule.²

The Forest Service states that the 2015 Forest Plan directs it to develop at least 3 summer motorized loop opportunities during the life of the plan. In *deciding where to locate* any motorized trails, the Forest Service must minimize impacts to natural resources and wildlife, and minimize conflicts among uses. Courts have explained what it means to “minimize”:

“Minimize” as used in the regulation does not refer to the number of routes, nor their overall mileage. It refers to the effects of route designations, *i.e.* the [Forest Service] is required to place routes specifically to minimize “damage” to public resources, “harassment” and “disruption” of wildlife and its habitat, and minimize “conflicts” of uses.

Idaho Conservation League v. Guzman, 2011 WL 447456, *16 (D. Idaho Feb. 4, 2011) (quoting *Ctr. for Biological Diversity v. U.S. Dept. of Interior*, 2009 U.S. Dist. LEXIS 90016 (N.D. Cal. 2009)).

The agency must demonstrate in the record how it applied the minimization criteria to minimize impacts to the environment. *WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920, 931 (9th Cir. 2016) (“What is required is that the Forest Service *document* how it evaluated and applied the data on an area-by-area basis with the objective of minimizing impacts as specified in the TMR.”) (emphasis added). *See also id.* at 932 (“consideration” of the minimization criteria is insufficient; rather, the agency “must apply the data it has compiled to show how it designated areas open to snowmobile use ‘with the objective of minimizing’” impacts).

The Wilderness Society recently released a report documenting the Bureau of Land Management’s and Forest Service’s ongoing struggle to properly comply with the 1970s executive orders requiring agencies to minimize resource damage and recreational use conflicts when designating motorized use routes, areas, and trails. *See* The Wilderness Society, *Achieving Compliance with the Executive Order*

² Executive Orders 11644 and 11989 require federal land management agencies to plan for off-road vehicle (ORV) use by locating designated areas and trails to: (1) minimize damage to soil, watershed, vegetation, and other resources of the public lands; (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and (3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands. Exec. Order No. 11644, § 3(a), 37 Fed. Reg. 2877 (Feb. 8, 1972), as amended by Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977). The Forest Service codified the “minimization criteria” in its 2005 Travel Management Rule. 36 C.F.R. §§ 212.50-212.57 (Subpart B—Designation of Roads, Trails and Areas for Motor Vehicle Use) (commonly referred to as the 2005 Travel Management Rule). Case law has made clear that the minimization criteria also apply to over-snow vehicles (OSVs). *Winter Wildlands Alliance v. U.S. Forest Service*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at *27-36 (D. Idaho Mar. 28, 2013). 36 C.F.R. §§ 212.80-212.81 (Subpart C—Over-snow Vehicle Use).

“Minimization Criteria” for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations (May 2016) (Attachment A). This report is helpful for understanding how to locate motorized areas, routes and trails in a way that minimizes damage to natural resources, harassment of wildlife, and conflicts among uses.

The Forest Service must meaningfully apply the minimization criteria to show how it located each distinct, specifically designated OHV and OSV area, route or trail with the objective of minimizing impacts. Proper application of the minimization criteria requires the Forest Service to get out on the ground, gather site-specific information, and apply the criteria to minimize resource damage and user conflicts associated with each designated trail. *See, e.g., Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1074-77 (D. Idaho 2011) (invalidating travel management plan that failed to use monitoring and other site-specific data showing resource damage). The Forest Service also must consider the best available scientific information and associated strategies and methodologies for minimizing impacts to particular resources. *Friends of the Clearwater v. U.S. Forest Service*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *24-30, 40-52 (D. Idaho Mar. 11, 2015) (agency failed to consider best available science on impacts of motorized routes on elk habitat effectiveness or to select routes with the objective of minimizing impacts to that habitat and other forest resources).

Reliance on Existing Motorized Designations

In considering the changes to existing motorized use, the Forest Service must minimize impacts to natural resources, wildlife, and other uses. The agency notes that “[o]ver the years, the Forest has developed an extensive system of roads, trails, and areas for public motorized/mechanical transport recreation.” Scoping at 4. It states that the Shoshone “first designated motorized routes in the mid-1980s under the ‘white arrow’ program.” *Id.* at 6. There are two main reasons the Forest Service may not adopt these prior motorized designations without assuring that the decisions complied with the executive orders, Travel Management Rule, and NEPA.

First, the agency may not rely on previous NEPA decisions to affirm existing roads and motorized trails unless it verifies those prior decisions satisfied the minimization criteria and NEPA. Subpart B of the Forest Service’s regulations allows the agency to incorporate previous travel management decisions made under other authorities. 36 C.F.R. § 212.50(b). But reliance on this portion of the regulation cannot excuse compliance with other applicable laws and regulations. In reaffirming prior designations the Forest Service must confirm that those designations were made in compliance with the law. To the extent the Forest Service relies on 36 C.F.R. § 212.50(b) to adopt previous travel management decisions that did not demonstrate compliance with NEPA or the executive orders and Travel Management Rule, the loophole created by this provision is illegal. The Forest Service may not rely on 36 C.F.R. § 212.50(b) to skirt its legal duties.

NEPA provides that “[a]ny environmental document *in compliance with NEPA* may be combined with any other agency document to reduce duplication and paperwork.” 40 C.F.R. § 1506.4 (emphasis added). If relying on previous travel management decisions the agency must explain where we, as interested persons, can get information or status reports on environmental analyses relied on in this current process. 40 C.F.R. § 1506.6. If the prior decisions to designate motorized use on the forest did not demonstrate compliance with NEPA or the executive orders and Travel Management Rule, the Forest Service must now consider the minimization criteria and locate all motorized designations with the objective of minimizing impacts to natural resources, harassment of wildlife, harm to wildlife habitat, and conflicts among uses.

What prior analysis did the Forest Service complete for all of the existing road and trail system on Shoshone National Forest?

Second, significant new information requires a re-analysis of all prior motor vehicle designations. To the extent that the agency's understanding of the executive orders and how to implement its own Travel Management Rule has been clarified by more recent case law, this is significant new information. Under NEPA, the Forest Service has a duty to reconsider its previous decision in light of this new information. The agency must reassess the existing road, area and trail system for OHV use.

Mitigation is Not Minimization

The Forest Service should be careful not to confuse *mitigation* with the executive orders' and Travel Management Rule's requirement to *minimize* conflicts at the time routes and areas are designated. Exec. Order No. 11644, § 3(a) ("Areas and trails shall be located to minimize" impacts to natural resources, wildlife, and conflicts among uses); 36 C.F.R. §§ 212.51(a)(3), 212.55(b).³ To avoid any confusion, the agency should approach application of the minimization criteria in two steps. First, the Forest Service should locate areas and routes in a way that seeks to minimize impacts, and then establish site-specific management actions to reduce or mitigate remaining impacts. *See also* Attachment A at 4, 8-9.

The Forest Service proposes "Project Design Features" to prevent adverse effects from the proposed actions. Scoping at 11. It should not, however, confuse the proposed Project Design Features (which constitute mitigation efforts) with its duty to minimize environmental impacts of the proposed motorized designations.

The scoping document mentions a need for accountability on the current system and states that pre-NEPA processes identified education, enforcement, and infrastructure as ways to address noncompliance. To avoid noncompliance and the negative impacts that result from these activities, consistent with its duty to minimize the Forest Service must first clearly designate routes and areas for motorized use. Only once this is done should the agency turn to education, enforcement and infrastructure to ensure compliance with clear designations. For the public to understand the need for improved accountability, the Forest Service must provide information regarding documentation of noncompliance, including any monitoring results and areas with history of noncompliance.

Offsets Do Not Fulfill Duty to Minimize

The Forest Service may not pair 7.2 miles of new motorized trail with the closure of 6.3 miles of existing roads or trails to justify the addition of 0.9 miles of motorized routes within designated roadless areas. The Forest Service improperly attempts to apply a zero sum game. Given existing

³ *See also Sierra Club v. U.S. Dep't of Agric.*, No. 96-2244, 1997 WL 295308, at *29 (7th Cir. May 28, 1997) (holding under NEPA that an agency must either explain why new enforcement efforts would minimize illegal use or include the impacts of illegal trail use in its analysis); *Sierra Club v. Bosworth*, 352 F. Supp. 2d 909, 924 (D. Minn. 2005) (same).

substantive duties to minimize the impacts of motorized trails and to protect roadless areas,⁴ the proposed exchange is arbitrary and capricious. The motorized trails in roadless areas that the agency proposes to close as an offset should be closed regardless—not as part of a tradeoff. What’s more, the proposed offsets are a mitigation approach, but the agency has a duty to minimize.

Additionally, it is not even a fair exchange. It results in a sum increase of 0.9 miles of motorized routes in roadless areas. This cannot be the tradeoff. The Forest Service says proposing new motorized trail segments in roadless areas was necessary “[t]o create feasible connections and loops” and proposes “offsets” as migration for these new routes in roadless areas. Scoping at 8. There should be no net gain in motorized routes, yet the proposed “offsets” are not enough and still result in more miles of motorized roads and trails. Scoping at 8. Adding new motorized trail segments in roadless areas violates the executive orders and Travel Management Rule because it fails to minimize environmental impacts to forest resources, wildlife, wildlife habitat, and conflicts among uses. Many of the proposed new routes don’t even create loops, and therefore would not be consistent with stated purpose and need. To comply with the executive orders and Travel Management Rule, existing motorized routes in roadless areas must be closed.

Minimizing Damage to Forest Resources, Harassment of Wildlife, and Significant Disruption of Wildlife Habitats

In locating motorized use of trails and areas with the objective of minimizing impacts, the Forest Service must assess whether any of the proposed motorized use would affect: Wilderness Areas, Wilderness Study Areas, Inventoried Roadless Areas, primitive and semi-primitive non-motorized areas, research natural areas, rivers eligible for wild and scenic designation, coniferous forests, cultural sites, riparian areas and wetlands, or special interest areas. It must assess the likely impacts to soil. Certain soils are particularly erodible from OHV use. Motorized use should not be allowed in areas where soil is classified as highly erodible (“severe” or “very severe”) by the Soil Conservation Service,⁵ or the Forest Service Manual on soil classification. Compaction is severe in wet, poorly drained soils.⁶

Motorized use should not be allowed in wetlands, wet meadows, ephemeral ponds, shorelines, or other wet areas. Motorized use in riparian areas causes erosion and otherwise damage a critical ecosystem. Stream crossings should be closed to motorized use, but where that is not possible; all crossings should be perpendicular to the stream and outside of the recommended buffer zone.

Land-disturbing activities in riparian areas have direct, indirect, and cumulative effects on downstream uses. It is the responsibility of the Forest Service to avoid adversely affecting beneficial uses of water, such as for fisheries and human consumption. The Clean Water Act requires the implementation of Best Management Practices (BMPs)⁷ for non-point sources that would result in water quality violations if they were not controlled. BMPs direct the Forest Service to identify areas

⁴ See, e.g., *Wyoming v. Dept. of Agric.*, 661 F.3d 1209, 1222 (10th Cir. 2011) (noting that “roadless areas” identified under the Roadless Area Review and Evaluation (RARE II) that have not been officially designated as “wilderness” are still “worthy of some level of protection.”).

⁵ <http://websoilsurvey.nrcs.usda.gov/app/>

⁶ Burde, J.H., and J.R. Renfro. 1986. Use impacts on the Appalachian Trail. Pages 138-143 in R.C. Lucas, editor. Proc. National wilderness research conference: current research. USDA Forest Service, Intermountain Research Station, General Technical Report INT-212, Ogden, UT, USA.

⁷ 33 U.S.C. § 1329.

where OHV use causes, *or is likely to cause*, degradation of water quality. The Clean Water Act also requires that states identify all water bodies that are “impaired” and establish the Total Maximum Daily Loads that these water bodies can assimilate and still meet water quality standards. Steep slopes are also especially susceptible to soil damage from motorized vehicle use. Motorized use should not be allowed to climb directly up hillsides or be in excess of 15% slope.

The Forest Service must locate motorized areas and trails with the objective of minimizing harassment of wildlife including any endangered, threatened, sensitive, game, or management indicator species. It also must locate motorized areas and trails with the objective of minimizing disruption of wildlife habitat. A discussion of the impacts from OHV and OSV use on wildlife and wildlife habitat is below in part 5.

Minimize Conflicts of Use

To locate motorized use of trails and areas with the objective of minimizing conflicts among uses (existing or proposed) of National Forest System lands or neighboring federal lands, and conflicts among different classes of motorized use, the Forest Service should assess and disclose: (1) information regarding current motorized and non-motorized uses of the Shoshone, including popular locations for each, (2) the location and designation (motorized or non-motorized) of any neighboring Federal lands, (3) information regarding different classes of motorized use on the Shoshone, (4) and any documented effects or effects likely to arise based on the location of the proposed motorized use designations. In particular, the Forest Service should address likely impacts to neighboring Yellowstone National Park, Bridger-Teton National Forest, and Spence & Moriarty Wildlife Management Area.

Show in the Record How Trails are Located to Minimize Impacts

We strongly support closing WR-40 and WR-43. These ruts in these routes are horrible, show lots of damage, and need resource protection.

It is unclear, however, how the Forest Service complies with the minimization criteria when it proposes to locate motorized trail segments within roadless areas. For example, in the Wind River District, WR-11 appears to convert an existing non-motorized trail to motorized. Whether it is converting the trail to motorized or building a new motorized trail, WR-11 is an example of a motorized designation that will violate the executive orders, Travel Management Rule, and the agency’s duty to protect roadless areas. It would bisect two major sections of roadless areas. Routes that will newly bisect landscapes will have a major negative impact on wildlife. By connecting Forest Road 554 with MT14, which runs along the edge of Fitzpatrick Wilderness, proposed WR-11 is likely to increase motorized traffic that will directly impact existing designated wilderness. It is also likely to increase motorized use that cuts through Spence & Moriarty Wildlife Management Area. The proposed WR-63 looks like it will circle Grandy Reservoir and tributaries to Little Warm Spring Creek. The Forest Service must assess whether WR-11 and WR-63 would be located in areas important for wildlife, wildlife habitat, and non-motorized use, and it must explain how the location of these trails minimizes impacts.

Proposed WR-13 (southern portion) would cut across Warm Springs Creek, listed as eligible for designation as a Wild and Scenic River. This new motorized trail crossing is likely to preclude future

designation. The Forest Service appears to have made no attempt to minimize damage to watershed resources when locating this proposed motorized trail.

The Forest Service also proposes to maintain many motorized routes in Sunlight Basin in the Clarks Fork Ranger District. The agency must provide the basis for those designations and ensure they complied with its duty to minimize. Sunlight Basin currently is highly impacted with OHV use. Assuming there is NEPA documentation showing how the existing designations minimized impacts, in the very least this increased OHV use and resulting impacts is significant new information that requires the Forest Service to reassess its prior NEPA analysis.

The Forest Service's proposal to move the closure gate on Wild and Scenic Clarks Fork River in the Clarks Fork Ranger District, NZ-03, up hill seems inconsistent with the agency's duty to minimize damage to watershed resources, bighorn sheep and bighorn sheep habitat, and duty to protect roadless areas. There is not a lot of snow in this area in the winter, but OHVs use it in the winter. There is also a lot of wildlife. The Forest Service should disclose its inventory of bighorn sheep in this area. It should consider keeping a lower gate with a seasonal closure after hunting season for all motorized uses. This proposed change highlights connectivity and habitat fragmentation concerns. In the Washakie Ranger District, WK-07 and WK08 are proposed new motorized designations that do not provide loop opportunities but rather are spurs that lead directly into roadless areas near Willow Creek.

The Forest Service should explain how it expects the conversion of WK-19 to non-motorized, the conversion of WK-01 to motorized, and new construction of WK-26 as motorized to minimize impacts in the Washakie Ranger District. It states it is converting WK-19 to non-motorized due to resource damage. That trail crosses many wetland areas and ran adjacent to Popo Agie Wilderness as well as Shoshone Lake. But the state of Wyoming has already invested funds to install raised platforms and mitigate those impacts. It skirts the wilderness boundary, but that may help mitigate illegal use. The agency should consider the damage that has already been done in that region, and consider converting WK-19 to non-motorized without adding motorized designations on WK-01 and WK-26. The new motorized trails would cut through roadless areas and create new adverse impacts on the landscape. This is elk habitat. The Forest Service should consider the cumulative impacts of these proposed routes, when added to existing resource damage. In the big picture, it is possible that this will result in greater overall negative impacts across the landscape.

Seasonal Closures

We agree that standardizing seasonal closures to improve clarity is essential and will help improve compliance and enforcement efforts. This is so long as, however, signs are located in a way that the closure is visible year-round so that differences in seasonal closures will be easier to comply with. Plus, any proposal to standardize seasonal closures should accurately reflect current conditions to allow for meaningful comment when comparing alternatives. As noted below, there appears to be inaccuracies in the information disclosed by the Forest Service in this scoping notice. For example, the agency states that Upper Sunlight Bear Gate is currently open 3/31-7/16 and 9/30-12/1, but those are the dates when that route is closed. We strongly oppose the proposal to open that gate 7/1-3/31. A longer open season will only further exacerbate existing damaged conditions in Sunlight Basin due to OHV use in terms of damage to forest resources, increased dust, and increased noise. We propose a seasonal closure for this area after hunting season.

Winter Motorized Designations

When making winter motorized designations, the Forest Service must comply with the executive order minimization criteria, Travel Management Rule, and NEPA. The agency must not grandfather past decisions that did not properly consider the minimization criteria. Like subpart B, subpart C permits the Forest Service to rely on previous decisions made with public involvement that restrict OSV use to designated areas and routes, upon public notice. 36 C.F.R. § 212.81(b). But just as it must verify previous subpart B designations, prior to relying on existing winter travel management decisions by adopting them on an OSV use map the Forest Service must ensure those decisions were subject to the executive order minimization criteria and other relevant legal requirements. The administrative records for the decisions must demonstrate that the agency applied the minimization criteria when making any OSV area or route designations. If the previous decisions were not subject to the minimization criteria, the Forest Service may not adopt them on its OSV use map.⁸

Existing OSV use is allowed on 272 miles of snowmobile trails (groomed and ungroomed), and 528,000 acres. Scoping at 4. The Forest Service has published motor vehicle use maps showing OSV areas, routes and trails. Forest Service regulations define “[d]esignated road, trail, or area” as “an area on National Forest System lands that is designated for motor vehicle use pursuant to § 212.51 on a motor vehicle use map.” 36 C.F.R. § 212.1. Therefore the Forest Service must demonstrate how it designated the OSV areas, routes and trails on its motor vehicle use maps the objective of minimizing impacts.

The Forest Service also must ensure that previous decisions are not outdated. Older OSV designation decisions likely did not account for the increased speed, power, and other capabilities of current OSV technology, which allow OSVs to travel further and faster into the backcountry and to access remote areas that were previously inaccessible. Older decisions also may not account for new scientific information on sensitive wildlife and other forest resources and how they are affected by OSV use. They may not account for current recreational use trends and increasing conflict between motorized and non-motorized winter backcountry users. And they may not account for the current and predicted impacts of climate change, which is, among other things, reducing and altering snowpack and increasing the vulnerability of wildlife and other resources to OSV-related impacts. Without this information, the Forest Service cannot demonstrate how those previous decisions minimize impacts based on current circumstances and science.

The proposed action would add 11 miles of ungroomed snowmobile trails, close 1,354 acres of cross country skiing to motorized use, prohibit tracked vehicles larger than a UTV from using groomed trails, and create two winter motorized seasons (high elevation snow season of 11/15 to 4/30, and low elevation snow season of 12/1 to 4/1). Scoping at 8. The Forest Service recognizes a “need to designate roads, trails, and areas for winter motorized travel and produce an over snow vehicle use map” pursuant to a recent court decision and 2015 revision of the Travel Management Rule. Scoping at 7. As noted above, the Forest Service must demonstrate in the record *how* it locates OSV

⁸ The language of the grandfathering provision does not explicitly require that previous OSV decisions have been subject to the minimization criteria. See 36 C.F.R. § 212.81(b). To the extent the agency interprets the provision to permit adoption of OSV designation decisions that do not satisfy the minimization criteria, the rule itself violates Executive Orders 11644 and 11989. See *Winter Wildlands Alliance v. U.S. Forest Serv.*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at *32 (D. Idaho Mar. 29, 2013) (requiring the agency to promulgate new OSV travel management rule that complies with the executive orders and making clear that the orders “require[] the Forest Service to ensure that *all* forest lands are designated for *all* off-road vehicles”).

areas, routes and trails with the objective of minimizing damage to natural resources, harm to wildlife, disruption of wildlife habitat, and conflicts among uses.⁹ It may not rely on forest plan allocations instead of designating areas. In the very least, must consider the cumulative impacts of adding 11 miles of OSV trails to the existing network of over 270 miles, and demonstrate how it located those new trails with the objective of minimizing environmental impacts.

It is well established that OSV use damages exposed soils and vegetation, and can harm water quality, especially early or late in the season where there is a likelihood of inadequate snow levels. Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Water Quality, Soils and Vegetation*. Journal of Conservation Planning. 12: 8-12 (Attachment C). It may also occur where wind exposes soil and vegetation. *Id.* at 9. OSV use can cause significant damage to browse plants important to wildlife. *See* Boyle, S. A., and F. B. Samson, *Effects of nonconsumptive recreation on wildlife: A review*, Wildlife Society Bulletin 13:110-116 (1985); Joslin, G. and H. Youmans, coordinators, *Effects of recreation on Rocky Mountain wildlife: A Review for Montana*, Committee on Effects of Recreation on Wildlife, Montana Chapter of The Wilderness Society (1999), 307 pp. As snow is compacted, the soil temperature can be reduced and soil microbial activity and germination of seeds can be slowed. Compacted snow can lead to wet and soft trails due to slower snow melt, ultimately leading to damage by other users in the spring. OSVs that run over or near vegetation damage trees and shrubs by tearing at the bark, ripping off branches, or topping trees.

Off-road vehicles—including OSVs—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, ATVs, and even snowmobiles. *See* U.S. Fish and Wildlife Service, Selawik Compatability Determination (2011), page 3 (describing “possible introduction of invasive plant species . . . from seeds carried on snowmobiles or sleds”). A single vehicle driven several feet through a knapweed site can acquire up to 2,000 seeds, 200 of which may still be attached after 10 miles of driving. *See* Montana Knapweeds: Identification, Biology and Management, MSU Extension Service (2011) (Attachment D). Plus, fuel leaks and exhaust from OSV use also negatively impacts soil quality and vegetative health.

The Forest Service should consider and disclose how proposed OSV use may adversely impact Wilderness Study Areas (WSAs) like the High Lakes. OSV use in WSAs degrades the areas’ naturalness, diminishes opportunities for solitude and primitive recreation, and vastly reduces the likelihood that Congress will eventually designate the areas as Wilderness. Allowing OSV use in wilderness-quality lands develops a constituency for the continuation of that use. It can also result in outright reduction of the wilderness potential of an area through physical degradation of the landscape and diminishment of its wilderness characteristics. In fact, the mere presence of motorized uses has resulted in areas no longer being seriously considered for Wilderness designation, in itself a de facto reduction of wilderness potential.

⁹ Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Introduction to Snowmobile Management and Policy*. Journal of Conservation Planning. 12:1-7 (Attachment E) (providing best management practices (BMPs) as guidelines, based on peer-reviewed science, for OSV designation decisions made to minimize conflicts with other winter recreational uses and minimize impacts to wildlife, water quality, soils, and vegetation).

OSV use can have significant adverse impacts on wildlife by increasing stress at a time when animals are highly vulnerable, facilitating competition, causing displacement and avoidance, and effectively reducing the amount of available habitat because species avoid motorized vehicles. Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Wildlife*. Journal of Conservation Planning. 12:13-20 (Attachment F). The Shoshone is home to grizzly bears, wolves, Canada lynx, North American wolverine, greater sage-grouse, black bear, as well as many “big game” species like Rocky Mountain elk, deer, moose, bighorn sheep, mountain goat, and antelope. Harmful impacts from winter motorized use can be significant, especially where specific routes cut through wildlife habitat. Studies show that snowmobile use causes both a physiological and behavioral response to wildlife. *See, e.g.*, Attachment F at 17. The Forest Service’s analysis should clearly disclose how the winter motorized use restrictions proposed in each alternative will affect wildlife, wildlife habitat, and solitude. Based on this information, the Forest Service must show how it located OSV route, trail and area designations to minimize those impacts.

We urge the Forest Service to consider limiting OSV use to designated routes in the winter range exemption areas. *See, e.g.*, Shoshone National Forest Land and Resource Management Plan EIS, page 35 (explaining “[s]ome areas of crucial winter range have stipulations waived where current recreation winter use patterns do not impact winter range”). For example, Indian Ridge-Windy Gap should be closed. This is an area not currently used by OSVs because it is somewhat inaccessible, but it does get use from OHVs. Because of the winter range exemption, it is more likely people will access this area and disrupt or harass wildlife or wildlife habitat.

Backcountry recreational use is increasingly popular, leading to more crowded forests and more instances of conflicts among uses. Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Winter Recreational Use Conflict*. Journal of Conservation Planning. 12:21-28 (Attachment G). Locating OSV routes, trails and areas to minimize those conflicts is crucial, and required by the executive orders and Travel Management Rule. The 2015 Revised Forest Plan states that “Front country areas provide a wide range of recreation opportunities for motorized *and non-motorized* recreation in a natural setting, yet 88% of the land available for administrative management decisions on South Zone are available for winter motorized use under the final Forest Plan. On the North Zone where only 30% of the administratively available lands are available for winter motorized use, the lands available for OSV use includes all of the relatively accessible high elevation terrain – areas that are valued for snow-based recreation by all users.

Effective winter travel management planning and compliance with the minimization criteria require the Forest Service to account for existing and potential future over-snow recreational uses that may not satisfy the definition of OSV. *See* Exec. Order No. 11644 § 3(a)(3) (“Areas and trails shall be located to minimize conflicts between off-road vehicle use and other *existing or proposed* recreational uses of the same or neighboring lands”) (emphasis added). For example, fat-tire bike riding is an increasing wintertime mechanized use throughout the Northern Rockies and nationally. Other new types of motorized or mechanized over-snow uses may also exist or be developed over the life of the winter travel plan. The Forest Service should also acknowledge that improvements in snowmobile technology allows OSV use in regions that currently present physical constraints such as steep rocky cliffs.

Minimum Snow Depths

In addition to limiting snowmobiles to designated routes, another way to minimize impacts is to close designated areas or trails when there is inadequate snowfall. *See* Attachment C at 10. Snow in higher elevation areas is susceptible to wind movement—which can leave bare or thinly covered areas that would be difficult or impossible to avoid given the speed of snowmobiles. Plant communities, biodiversity and water quality in higher elevation shallow-soil ecosystems may be extremely vulnerable to soil or vegetation disturbance. The impact of a pioneered trail or other disturbance can extend well downslope of the disturbed area, and adversely affect plant communities, biodiversity and water quality. Fragile vegetation in higher elevations needs protection against such use, since impacts to fragile vegetation may be irreversible. Pursuant to National Best Management Practices, the Forest Service must consider a minimum snow depth to protect underlying vegetative cover and soil or trail surface.

This is especially true where the agency relies on snow cover to mitigate impacts to soil and vegetation. The best available science shows that minimum snow depths should be at least 18 inches for cross-country travel and 12 inches for travel on groomed trails. The Forest Service must identify and impose a minimum snow depth, and address places to enforce those restrictions, including protocols for monitoring, communicating conditions to the public, and implementing emergency closures when snowpack falls below the relevant thresholds. We also suggest ending the snowmobiling season early enough to reduce potential snowmobile use in marginally snow covered areas that could result in damage to fragile vegetation.

2. The Forest Service must identify and provide a basis for a proper baseline for the analysis.

The Ninth Circuit has emphasized the importance of adequate baselines to satisfy NEPA’s “hard look” standard. *Northern Plains Resource Council v. Surface Transp. Bd.*, 668 F3d 1067, 1083-1087 (9th Cir. 2011) (explaining that “NEPA requires that the agency provide the data on which it bases its environmental analysis”). The Oregon Federal District Court in *Central Oregon LandWatch v. Connaughton*, 905 F. Supp. 1192, 1197 (Or. 2012), stated:

To comply with NEPA’s ‘hard look’ mandate, courts have held that agencies are obligated to maintain a current inventory of resources so that an adequate baseline exists to evaluate the environmental impacts of a proposed action. It is against baseline information that environmental impacts are measured and evaluated; therefore, it is critical that the baseline be accurate and complete.

For its inventory the Forest Service should disclose information essential to understanding the effects of this proposal. It should provide best available information about existing motorized area, route and trail designations, best available scientific information regarding the presence of wildlife on the forest and important wildlife habitat, where wildlife occupancy or important habitat overlaps with existing or proposed motorized designations, and similar information. In many instances the agency is proposing new roads with the justification that there are “no *known* resource concerns.” Scoping at 13. This is insufficient. The agency must discern, based on its own on-the-ground fact gathering efforts, whether there are any potential adverse impacts to natural resources, wildlife, or wildlife habitat from the proposed actions. The Forest Service must provide the results of any monitoring required by its Forest Plan.

The agency notes a need “to consider if there are current routes with resource concerns or enforcement issues which could be removed or changed in the system.” Scoping at 7. This information is critical to properly consider and apply the minimization criteria when locating areas and trails during the initial screening process that have become proposals in this scoping phase. This information is critical to be able to meaningfully comment on the stated purpose and need, range of potential alternatives, and likely effects of those alternatives.

The Forest Service should verify the accuracy of this information so that the public is able to meaningfully comment on the proposal. It appears some information in the scoping document is incorrect. For example, the agency’s chart states Upper Sunlight Bear gate is presently open 3/31-7/16 and 9/30-12/1. This is incorrect. Those are the currently closed dates.

As part of its inventory of resources, the Forest Service should also cite to and explain the adequacy of any analysis it relies on in support of the existing road system and trail network on the Shoshone, including OSV designations. The Forest Service created the 2005 Travel Management Rule to sustain the health of national forest service lands and resources, in response to growing popularity and capabilities of OHVs. 70 Fed. Reg. 68264, 68264-65 (Nov. 9, 2005). The Travel Management Rule directs forests to designate a system of roads, trails, and areas for motor vehicle use and prohibit OHV use outside of that system. 36 C.F.R. §§ 212.50-212.57 (Subpart B—Designation of Roads, Trails and Areas for Motor Vehicle Use). As noted above, motorized area, route and trail designations should only be included as part of the baseline if those designations were made consistent with the executive orders, the Travel Management Rule, and NEPA.

Were all existing areas, routes and trails designated consistent with the executive orders and Travel Management Rule, and subject to analysis under NEPA?

3. The Forest Service should accurately disclose the regulatory framework it is working within.

The Forest Service must accurately inform the public about applicable rules, regulations and policies impacting the action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. 40 C.F.R. § 1500.1(c). NEPA directs the Forest Service must “to the fullest extent possible . . . [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1500.2(d). Here, the Forest Service paints an inaccurate picture of the regulatory framework within which the agency must act.

For example, the Forest Service notes the “sideboards” that it used to evaluate proposals received during pre-scoping for this project: the Forest Plan (May 2015), and the Shoshone’s niche as a back country forest. In addition, the Forest Service must also consider its proposal and any alternatives in light of the minimization criteria set out in executive orders and the Travel Management Rule. This applies to both summer and winter designations, per 2015 OSV rule. The agency should clearly explain the agency’s substantive duty under the minimization criteria to allow for full understanding of this process. Without that explanation there can be no meaningful public comment.

As another example, the Forest Service must clarify overarching Forest Service policy that establishes a “closed unless designated open” approach to winter travel management. By regulation,

for each national forest unit with adequate snowfall, the Forest Service must designate and display on a map areas and routes where OSV use is permitted. 36 C.F.R. §§ 212.80(a), 212.81(a). OSV use outside of the designated system is prohibited. *Id.* § 261.14. Therefore, forests are supposed to apply a “closed unless designated open” approach to OSV designations. *See, e.g.*, 80 Fed. Reg. 4500, 4507 (Jan. 28, 2015) (concluding that “it would be clearer for the public and would enhance consistency in travel management planning and decision-making if the Responsible Official were required to designate a system of routes and areas where OSV use is prohibited unless allowed” (i.e., marked open on a map)). This paradigm shift in the agency’s winter management approach means there must be significant changes in how OSVs are managed on National Forest lands.

4. Provide an accurate statement of purpose and need.

The Forest Service’s underlying substantive duties should necessarily inform the scope of the agency’s NEPA analysis. When an agency takes an action “pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS.” *Westlands Water Dist. v. U.S. Dept. of the Interior*, 376 F.3d 853, 866 (9th Cir. 2004). Here, the Forest Service should include in its statement of purpose and need:

- (1) The need to consider effects on resources with the objective of minimizing the impacts resulting from the designated motorized areas, routes and trails, for summer and winter travel, pursuant to 36 C.F.R. § 212.55(b); and
- (2) The need to ensure that all areas, routes and trails designated for summer or winter motorized use are properly analyzed for environmental impacts.

The Forest Service states the overall objective “is to provide a manageable system of designated motor vehicle access routes and areas within the Shoshone National Forest” consistent with the executive orders and Travel Management Rule. Scoping at 6. It explains that part of its overarching goal with this project is to continue the Shoshone National Forest’s niche as a backcountry forest and therefore not make major changes to the motorized system. Scoping at 6. The agency states it “needs . . . to examine the existing system and identify current routes with resource concerns or enforcement issues which could be removed or changed in the system.” Scoping at 7. Uncontrolled motorized use across the Shoshone National Forest landscape for the past 10 years has resulted in significant environmental damage to the landscape. Unmanaged recreational motor vehicle use upsets the natural balance of the forest. It damages the soil and water resources, degrades fish habitat, and harms wildlife. It also intrudes on the freedom of quiet solace many non-motorized users seek on these public lands.

Yet the Forest Service’s proposal would result in a net increase of 20 miles of motorized routes, more than 10 miles of new motorized road and trail construction, a cumulative addition of 0.9 miles of motorized road and trail in roadless areas. Scoping at 9. We strongly encourage the Forest Service to revise its proposed actions to make sure the statement of purpose and need is internally consistent,¹⁰ consistent with overlying Forest Service law and policy, and to restore a balance to the

¹⁰ Compare Scoping at 6 (explaining an objective “to provide a manageable system of designated motor vehicle access routes and areas within the Shoshone National Forest”) with *id.* at 7 (describing a “need to provide some level of motorized routes to a growing user group on the Shoshone” and noting the “Forest Plan directs us to look for opportunities to provide ‘loop[s]’”).

Shoshone National Forest. This is a major concern for WildEarth Guardians, and we hope to work with the Forest Service to address this concern as the agency moves forward with its analysis of the proposed actions.

The scoping document states that the “Regional Forester . . . directed the [Shoshone] to analyze additional motorized opportunities during the Travel Management planning process.” Scoping at 7. It is unclear what need exists for additional motorized use opportunities on the forest, especially since—as the Forest Service itself recognizes—the Shoshone “has developed an extensive system of roads, trails, and areas for public motorized/mechanical transport recreation” over the years. Scoping at 4. The Forest Service notes that it received comments during the Shoshone Forest Plan revision process asking for more motorized recreation opportunities, including loop opportunities. Scoping at 6. It also notes increased demand for OHV opportunities. *Id.* The Forest Service should support these statements with specific data to justify the claimed need.

In fact, non-motorized recreation has become more popular on the national forests in recent years. For example, recent trends show an increase in outdoor recreation on our national forests that depends on high functioning, natural ecosystems. Between 2006 and 2015, backpacking increased by 43% compared to a 14% decrease in RV camping nationwide. The number of long-distance hiking permits on the Pacific Crest Trail increased from 1,879 in 2013 to 2,655 in 2014, following the film adaptation of Cheryl Strayed’s popular memoir, *Wild: From Lost to Found on the Pacific Crest Trail*. Plus additional OHV use on the forest will further damage forest resources, harm wildlife, disrupt wildlife habitat, and exacerbate conflicts with other non-motorized uses.

Given the Shoshone already has an extensive motorized recreation system any expansion in motorized recreation on the Shoshone would further tip the scales away from balanced uses across the forest. The Forest Service should therefore consider ways to create more motorized loops *without* increasing the OHV footprint on the Shoshone.

The Forest Service also proposes to create more trail opportunities for Utility Task Vehicles (UTVs) across the forest. It explains that UTVs are currently limited to existing open roads and must be street legal. Scoping at 10. Forest Service trails are defined as routes 50 inches or less in width or one over 50 inches wide that is identified and managed as a trail. 36 C.F.R. § 212.1. The agency therefore proposes motorized trails greater than 50 inches in width for “vehicles that are less than 65 inches wide, have maximum tire pressure ratings of 12 psi, and weigh less than 2,000 lbs.” Scoping at 10. The Forest Service should disclose what evidence it has demonstrating this new demand, other than general comments from the Forest Plan revision process asking for new uses of motorized trails for UTVs.

5. Disclose all direct, indirect, and cumulative impacts.

We urge the Forest Service to accurately disclose how roads and motorized recreation in both summer and winter seasons can negatively affect water quality, fish and wildlife habitat, and opportunities for quality non-motorized recreation including hiking, horseback riding, wildlife watching, and hunting.

Best Available Science

NEPA requires Forest Service to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1500.2(d). A critical part of this obligation is presenting data and analysis in a manner that will enable the public to thoroughly review and understand the analysis of environmental consequences.

NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. 40 C.F.R. § 1500.1(b). The Data Quality Act expands on this obligation, requiring that influential scientific information use “best available science and supporting studies conducted in accordance with sound and objective scientific practices.” Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515.

Impacts from Motorized Use

Increased popularity of OHV and OSV use and technological advances in their capabilities has resulted in motorized use penetrating deeper into backcountry and pristine areas of our public lands. OHVs represent a major and growing threat to the ecological integrity and function of public lands as a result of their ability to pollute air and water, spread invasive weeds, tear ruts and ditches into the landscape, drive wildlife from feeding and nesting areas, and damage riparian areas, fisheries, and watersheds. The impacts from OHV use are well documented in scientific literature. *See, e.g.*, Attachment B. Soil is the foundation upon which all life in the forest grows. All soils are vulnerable in some degree to compaction and erosion from ORV use,¹¹ but certain soils are particularly erodible. *See also* Attachment B at 14-15. OHV comes at a great expense to the landscape. The Forest Service should disclose these impacts as part of its environmental analysis.

The Forest Service should consider how the proposed motorized designations will affect the nature and purposes of the Continental Divide National Scenic Trail, and show how it located the areas, routes and trails so as to minimize those effects.

Impacts to Wildlife

The Forest Service must locate motorized trails and areas with the objective of minimizing harassment of wildlife including any endangered, threatened, sensitive, game, or management indicator species. Understanding and disclosing the likely effects of OHV and OSV use on wildlife is a necessary prerequisite to properly applying the minimization criteria.

¹¹ Dotzenko, A.D., N.T. Papamichos, and D.S. Romine. 1967. Effect of recreational use on soil and moisture conditions in Rocky Mountain National Park. *Journal of Soil and Water Conservation* 22:196-7.

OHV use has been shown to cause stress in many animal species and often results in major changes in animal behavior and reduced reproductive success or survival.¹² OHV use can lead to direct collisions and death of wildlife, disturbance during critical breeding seasons, and habitat loss. Attachment B at 17-20. The Forest Service should disclose location of presence and location of wildlife and important wildlife habitat, for both summer and winter seasons. It should provide map overlays of the proposed motorized area, route and trail designations and wildlife and wildlife habitat locations to allow the public to meaningfully comment on likely impacts of those designations.

Grizzly Bear

Grizzly bears are listed as a threatened species under the Endangered Species Act (ESA). Conservation of remaining habitat is one of the two primary challenges in grizzly bear conservation. U.S. Fish and Wildlife Service, *Biological Opinion on the Effects of the Divide Travel Plan on Grizzly Bears* (Feb. 29, 2016) (Attachment H). Research has shown that secure habitat—areas free from motorized use—is an important component of grizzly bear habitat. Attachment H at 1-19. Much of the routes, areas and trails proposed for motorized use are near Primary Conservation Areas. The Forest Service must ensure its motorized use designations do not intrude on secure habitat, meaning motorized use should not be designated within 500 meters of secure habitat. Managing motorized access to protect grizzly bear secure habitat is meant to minimize human interaction with grizzlies, minimize displacement of grizzly from important habitat, and minimize habituation to humans. The Forest Service should consider eliminating dispersed camping where there are potential conflicts with grizzly bears. Where dispersed camping is heavy, consider installing bear boxes.

Grizzly bears are large animals with great metabolic demands requiring extensive home ranges. The search for energy-rich food appears to be a driving force in grizzly bear behavior, habitat selection, and intra and inter-specific interactions. Grizzly bears normally avoid people, possibly as a result of many generations of bear sport hunting and human-caused mortality. Avoidance of roads can lead grizzly bears to either avoid essential habitat along roads, or could put them at greater risk of exposure to human-caused mortality if they do not avoid roads.

Habitat fragmentation is significant to large carnivores requiring wide vegetative and topographic habitat diversity. Loss and fragmentation of habitat is particularly relevant to the survival of grizzly bears. Large expanses of un-fragmented habitat are important for feeding, breeding, sheltering, traveling, and other essential behavioral patterns. Grizzly bears occur at low densities, have low reproductive rates, exhibit individualistic behavior, and are largely dependent on riparian habitats also used extensively by people; thus, grizzly bear populations are susceptible to human influences. Grizzly bears may avoid key habitats due to human generated disturbances, such as motorized use, or become habituated and food conditioned, which may ultimately lead to the animal being killed. Historically, as human settlements, developments, and roads increased in grizzly bear habitat, grizzly bear populations became fragmented. Linkage zones, or zones of habitat connectivity within or between populations of animals, foster the genetic and demographic health of the species.

The Forest Service must improve grizzly bear population connectivity under this Travel Management project to address the risks facing this species. The Forest Service must do more in this

¹² Joslin G. and H. Youmans. 1999. Effects of recreation on Rocky Mountain wildlife: a review for Montana. Committee on Effects of Recreation on Wildlife, Montana Chapter of the Wildlife Society. *See also* Attachment B at 17-20 (noting “the most widespread ORV impact on wildlife is disturbance.”).

Travel Management project than rely on existing management to address those threats.

OSV use also is likely to impact grizzly bears. The interplay between grizzly bears and OSV use was captured well in the Biological Opinion supporting the Flathead Forest Plan Amendment 24:

Female grizzlies with cubs have high energetic needs, and cubs have limited mobility for several weeks after leaving the den. Females and their cubs remain in the den site area for several weeks after emergence (Haroldson et al. 2002, Mace and Waller 1997). ... Disturbance levels that cause a female to prematurely leave the den in spring or move from the den area could impair the fitness of the female and safety of the cubs. If cubs attempt to follow their mother, they would likely experience decreased fitness and the family unit may be pushed to less suitable habitat. ... [T]he potential of snowmobile use impacting an individual grizzly bear's breeding, feeding, or sheltering to the extent that harm or harassment occurs cannot be eliminated. The incidental take is expected to be in the form of harm or harassment to individual female grizzly bears and/or cubs caused by premature den emergence or premature displacement from the den site, resulting in reduced fitness of females and cubs, ultimately resulting in injury and possibly death.

Biological Opinion on Amendment 24 to the Flathead National Forest Plan (March 26, 2011), pages 32 & 43. Grizzly bears can be susceptible to disturbance and risk den abandonment. The risk is especially high from late February through April. Attachment H ("Grizzly bears excavate dens and require environments well covered with a blanket of snow for up to five months, generally beginning in fall (September-November) and extending until spring (March-April)"). The Forest Service should consider the impacts of OSV use in grizzly den areas during these times of the year, and how that use may directly, indirectly, or in the cumulative impact grizzly bears.

Canada Lynx and North American Wolverine

Canada lynx—a species listed as threatened under the federal ESA—and the wolverine—a candidate species proposed for listing under the federal ESA—can be sensitive to motorized recreation, especially during denning periods.

For lynx, it is important to remember that the Shoshone National Forest is included within one of six core areas for Canada lynx.¹³ The U.S. Fish and Wildlife Service defines Canada lynx core areas as those "areas with the strongest long-term evidence of the persistence of lynx populations within the contiguous United States" and that "have both persistent verified records of lynx occurrence over time and recent evidence of reproduction."¹⁴ Further, the Shoshone National Forest has stated in the environmental analysis of its revised Forest Plan that native Wyoming lynx "are nearly extirpated"¹⁵ and that winter recreation represents one of the primary threats to Canada lynx on the Shoshone.¹⁶

¹³ Nordstrom, Lori. 2005. Recovery Outline: Contiguous United States Distinct Population Segment of the Canada Lynx. U.S. Fish and Wildlife Service at 3-4. Available at: <https://www.fws.gov/mountain-prairie/species/mammals/lynx/final%20lynx%20recoveryoutline9-05.pdf> (last accessed July 26, 2016).

¹⁴ *Id.*

¹⁵ Shoshone National Forest Land Management Plan Environmental Impact Statement, Volume 1 at 155. 2015. Available at: https://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3791220.pdf (last accessed July 26, 2016).

¹⁶ *Id.* at 157.

As such, it is critical that the Forest Service thoroughly examine all potential impacts to Canada lynx as a result of increased motorized recreation on the Shoshone, including both over-snow, and non-winter motorized recreation. The Shoshone appears to recognize the importance of protecting Canada lynx populations on the Forest as the revised Forest Plan's EIS recommends that the Forest "[c]ontinue to manage winter recreation (groomed over-the-snow trails) in lynx habitat at or below current levels" because "[g]roomed trails may allow access by lynx competitors ... into lynx habitat."¹⁷ We therefore recommend that the Forest Service follow its own recommendations in the Forest Plan EIS and not increase winter recreation in lynx habitat above current levels. In particular, the Forest should ensure that it is following its own advice in designated lynx critical habitat, which exists on the Shoshone, within Lynx Analysis Units, and as discussed below, in lynx denning habitat.

The Forest Service should also further restrict motorized winter recreation during denning periods in Canada lynx denning habitat. To determine where such restrictions make sense, the Forest Service should map lynx denning habitat, disclose the results of such analysis to the public in the upcoming draft EIS, and justify any allowed motorized winter recreation in those areas. Without knowing where such denning habitat is located on the Forest, and how it relates to areas and trails open to motorized winter recreation, the Forest Service cannot claim to have taken a hard look at the environmental impacts of its decision.

The Forest Service must also ensure that its proposed action complies with the Northern Rockies Lynx Amendment's (NRLA) objectives, guidelines, and standards. Importantly, although some of the relevant NRLA provisions may not technically be binding on the Shoshone, the Shoshone still must explain how it is complying with all relevant objectives, guidelines, and standards, and further explain how and why it is deviating from those provisions. Several provisions in the Human Use Projects portion of the NRLA apply, including, but not limited to:

- Objective HU01: discouraging expansion of snow-compacting activities in lynx habitat;
- Objective HU02: manage recreational activities to maintain lynx habitat and connectivity;
- Objective HU03: concentrate activities in existing developed areas, rather than developing new areas in lynx habitat;
- Objective HU04: provide for lynx habitat needs and connectivity when developing new or expanding existing developed recreation sites
- Guideline HUG3: recreation developments should be planned in ways that both provide for lynx movement and maintain the effectiveness of lynx habitat;
- Guideline Hug11: designated over-the-snow routes or designated play areas should not expand outside baseline areas of consistent snow compaction, unless designation serves to consolidate use and improve lynx habitat.

Further, the NRLA required the Forest Service to conduct certain monitoring activities, including mapping the location and intensity of snow compacting activities and designated and groomed routes that occurred inside Lynx Analysis Units during the period of 1998 and 2000. This data is very old, but should still be disclosed and analyzed as it relates to any alternatives analyzed by the Forest Service. Further, the Forest Service should update this analysis using current data to better ascertain actual usage of the Forest and the impacts of such motorized snow compacting activities on Canada lynx.

¹⁷ *Id.*

The Forest Plan EIS also acknowledges that “[c]limate change has the potential to reduce Canada lynx populations and habitat on the Shoshone. Lynx have low adaptability potential and narrow environmental tolerance, which make them susceptible to climate change.”¹⁸ Because climate change is such an important issue affecting Canada lynx, and admittedly is a risk factor largely outside the control of the Shoshone National Forest, the Shoshone must ensure that it is doing everything in its power to reduce and minimize the effects of other stressors and risk factors to Canada lynx, including the effects of motorized recreation. Eliminating and restricting motorized use of lynx critical habitat, Lynx Analysis Units, and denning habitat, the Shoshone can give lynx populations the best possible chance of achieving recovery in Wyoming.

Similarly, the wolverine is also adversely impacted by motorized recreating, and in particular winter recreational activities. Indeed, the best available science reveals that dispersed recreational activities—especially winter recreational activities—have the potential to result in take of wolverine because they disrupt and limit use of wolverine natal denning areas. Steps should therefore be taken to continue to study the effects of dispersed recreation on wolverines and, where necessary, minimize the harm from such activities.

Heinemeyer et al. (1999), for example, refers to the rapid increases in winter recreational activities—in particular the advancements in the power and technology of snowmobile machines—as being a new, potential impact to natal denning habitats. Heinemeyer (1999) discusses a “growing body of evidence” suggesting that “female wolverines are prone to disturbance at den sites, particularly at the natal dens where birthing occurs. Idaho wolverine selected specific natal den and kit-rearing habitat and responded negatively to human disturbance near these sites (Copeland 1996). Female wolverine abandoned dens in Finland (Pulliainen 1968) and Norway (Myrberget 1968) when disturbed by human activity.” Heinemeyer (1999) at 2. “As snowmobiling and backcountry skiing continue to grow in popularity, there is increasing concern that reproductive habitats may become limiting to populations due to human disturbance. Protection of reproductive denning habitat may be critical for the persistence of wolverine. A clear association between wolverine presence and refugia (e.g., Wilderness Areas) may be strongly linked to a lack of available reproductive denning habitat outside protected areas.” Heinemeyer (1999). In addition, a number of peer-reviewed papers refer to the absence of human presence as one of the key attributes of wolverine habitat. *See* Hornocker and Hash (1981); Banci (1994) (same); Landa et al. (1998) (same); Rowland et al. (2003) (same); Copeland (1996) (same); Krebs et al. (2007); May et al. 2012 (same).

In Heinemeyer (2001), the authors also documented a correlation between winter recreational use and wolverine presence. In the Targhee Creek sampling unit (SU) the authors note that the area receives the most intensive snowmobile activity in the study area. One potential wolverine den was found in the unit but the den was located “in the single small basin that was free of snowmobile activity.” Heinemeyer (2001) at 17. The authors saw “high levels of wolverine activity in this same general area” in 2001 that was, again, one of the few areas without snowmobile activity. *Id.* The same findings were documented in other SUs. In the East Centennial SU, most wolverine tracks “were found in areas with little snowmobile activity.” *Id.* Likewise, in the Palisades SU, where wolverine denning habitat was impacted by snowmobile activity and a new heli-ski operation, the researchers found no wolverine presence after 2 years of research. “The region appears to contain high quality wolverine habitat, but these habitats appear to be incurring potentially large impacts due to the widespread winter recreational activities.” *Id.*

¹⁸ *Id.*

Notably, in Heinemeyer (2001), the researchers “located wolverine tracks throughout the Targhee Creek SU but never within areas of high snowmobile activity. This may indicate that not only are wolverine sensitive to recreational use near denning sites, but also need secure areas for foraging activities.” *Id.* “[I]t appears that snowmobile activity may be forcing [a wolverine] to resort to possibly atypical behavior or risky behaviors to meet winter food requirements.” *Id.*

Noise from over-snow vehicles is a likely disturbance factor associated with human activity that may result in harassment and habitat disruption for wolverine. Olliff et al. (1999) studied the effects of winter recreation on wildlife in the Greater Yellowstone area and found that, for mid-size carnivores like wolverine, “...foraging behavior in forested areas may be disrupted along groomed trails and other travel corridors. Displacement or avoidance may occur due to noise of snowmachines or to human presence . . .” Olliff et al. (1999) at 67. A “significant effect on carnivores from winter recreational activities is displacement from or avoidance of high recreational use areas (i.e., groomed trails, marked trails, destination areas, and play areas). Human use will increase where high recreational use areas exist or are provided.” *Id.* at 68.

In the 2009 Beaverhead-Deerlodge Revised Forest Plan FEIS, the Forest Service notes that: (1) wildlife species that inhabit the Forest, including but not limited to elk, wolverine, lynx and mountain goats, experience displacement in winter from snowmobile intrusions into their habitat at the time when demands on their energy reserves are highest (p. 509); (2) female wolverines may be negatively impacted by snowmobiles near their den sites (p. 513); (3) advances in snowmobile technology enable snowmobilers to ride many of the steep slopes and high basins used by wolverines during the February-April birthing and whelping period and there is “increasing evidence” that females may be harmed by such disturbance near their den sites (p. 513); (4) snowmobile disturbances may have adverse effects on the survival of young wolverine; and (5) increased cross-country snowmobile use can displace wolverines from big-game winter range where they can forage on winter-killed elk and deer (p. 48, App. B).

Likewise, in the Bitterroot Travel Plan DEIS, the Forest Service noted that since the wolverine population in the Sapphires and other areas on the east side of the valley is likely quite small and relatively isolated from other wolverine populations, loss of a litter due to disturbance could potentially result in extirpation of wolverines from this area. Closing some high elevation areas to snowmobile use reduces the risk of impacts to wolverine populations (DEIS, p. 3.5-22).

Importantly, we note that Dr. Kimberly Heinemeyer and Dr. John Squires are currently analyzing data related to the interactions between wolverines and winter recreation activities in Idaho. This study is expected to conclude the majority of the analysis and reporting related to this multi-year study by the end of 2016. We encourage the Forest Service to incorporate the results of this study into any environmental analysis that it prepares for this proposal. More information about this study can be found in the 2015 Progress Report related to the study.¹⁹

In its EIS for its Forest Plan Revision, the Shoshone stated that winter recreation activities were one

¹⁹ Heinemeyer, K. and Squires, J., *Wolverine – Winter Recreation Research Project: Investigating the Interactions Between Wolverines and Winter Recreation – 2015 Progress Report*. December 30, 2015. Available at: <http://wolverinefoundation.org/wp-content/uploads/2011/02/Idaho-Wolverine-Winter-Recreation-Project-2015-Progress-Report.pdf> (last accessed July 26, 2016).

of the primary risk factors for wolverine.²⁰ It additionally acknowledged “[w]inter recreation, especially snowmobiling, is a primary source of disturbance for denning wolverines” and that “[r]egulating snowmobile use in important denning areas and deterring wilderness trespassing by snowmobiles are important.”²¹ Finally, the EIS recognized that snowmobile use in important denning areas may need to be restricted.²² In light of this, we encourage the Forest Service to eliminate or restrict access to important wolverine denning habitat during the denning season. No new routes or areas should be allowed in these important areas that are critical for wolverine recovery. Further, in order to make these determinations, the Forest Service must actually conduct an analysis to identify these important wolverine denning areas to ensure that its proposals will not adversely impact denning wolverine.

As with lynx, because wolverine are significantly affected by climate change, it is important that the Shoshone do everything it can to reduce and minimize other risks and stressors to give the wolverine its best chance of recovering both on the Shoshone National Forest, in Wyoming, and throughout the Rocky Mountains. Ensuring that motorized recreational activities do not adversely impact both wolverine and lynx is very important. We look forward to working with the Forest Service to protect and preserve wolverine and lynx habitat from negative impacts associated with motorized recreation (and in particular winter motorized recreation) on the Shoshone National Forest.

Elk

As noted above, the Forest Service should consider restricting OSV use within winter range exemptions. It should consider and disclose how OHV and OSV use can cause noise disturbance for elk. The agency should consider the latest research on ungulate migrations patterns in the Greater Yellowstone area. *See, e.g.,* Wyoming Migration Initiative, Elk Migrations of the Greater Yellowstone, *available at* <http://migrationinitiative.org/content/migration-database-and-viewer> (last accessed July 27, 2016). Certain motorized routes likely to impact elk and elk habitat include NVO-1, a north-south route that intersects an area where Elk are present, moving east to west.

Bighorn Sheep

The Forest Service should disclose any bighorn monitoring data for the Shoshone as well as locations of important bighorn sheep summer habitat and winter range, in comparison to the proposed motorized designations. It should consider likely OSV impacts in and near bighorn habitat and whether that use might be altering the use of the bighorn habitat in a way that puts bighorn in closer proximity to domestic sheep allotments. The Forest Service should show in the record how it minimized harassment of bighorn sheep and significant disruption of bighorn sheep habitat by locating motorized designations of areas, routes and trails outside of bighorn sheep habitat.

Connectivity

Recognizing the importance of connectivity for wildlife and the need to minimize motorized use in

²⁰ Shoshone National Forest Land Management Plan Environmental Impact Statement, Volume 1 at 185. 2015. Available at: https://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3791220.pdf (last accessed July 26, 2016).

²¹ *Id.*

²² *Id.* at 186.

important wildlife corridors is a critical factor that the agency must consider. It also must consider road density targets on the identified needs of wildlife species.

Impacts to Other Uses of the Forest

The Forest Service should consider the impacts—direct, indirect, and cumulative—on places important for quiet, non-motorized recreation. “Natural quiet” has become increasingly scarce on public lands throughout the Western U.S. Its scarcity is a result of many factors, including the increase in both commercial and military air traffic, and an increase in the use of OHVs coupled with advances in engine technologies. *See, e.g., Off-Highway Vehicle Trail Impacts on Breeding Songbirds in Northeastern California, The Journal of Wildlife Management* 71(5): 1617-1620 (2007). Given the growing scarcity of natural quiet coupled with the beneficial effects of natural quiet to most wildlife populations and the recreational experience of forest visitors, this proposal should identify natural quiet as a resource worth protecting.

Unauthorized Use

The Forest Service must consider the impact of its proposal when added to the ongoing impact of unauthorized routes on the forest landscape and wildlife. The continuing presence of user-created routes on the landscape, certainly known to those who created them, continues to allow harassment of wildlife, littering, fires and invasive plant distribution all while contributing to riparian harm downstream. The agency must consider the cumulative impacts suffered by the landscape especially because and proposed new routes will likely serve as a conduit for the proliferation and use of user-created routes. The Forest Service should verify that no user-created routes would be authorized under the proposal. Authoring user-created routes suggests to the public that they can be legitimized. This creates the wrong incentive for future actions on the forest.

Here, unauthorized use exists on closed roads and trails, as well as user-created routes. Most of unauthorized use is outside Dubois in Wind River District. The Forest Service should document and disclose where this unauthorized use is occurring so that the public can meaningfully consider the direct, indirect, and cumulative impacts of the proposed action in addition to these ongoing impacts.

The agency should be careful about how its actions may allow for additional unauthorized use to continue to grow. For example, WR-12 already exists and is well worn. By authorizing this route as part of the legal system, the Forest Service is creating the wrong incentive for future actions on the forest.

Impacts from UTVs

The Forest Service should consider how and to what extent impacts from UTVs—which are generally more than 50 inches wide and therefore likely to have greater impacts than OHVs—might differ from impacts generally known to result from OHVs and OSVs. It must show how it located motorized designations so as to minimize the impacts from UTVs.

Motorized Access to Dispersed Camping

The Travel Management Rule contains a limited exception allowing the Forest Service to identify specific time periods during which motorized access to dispersed camping off of designated roads

and trails outside of designated areas is allowed. 36 C.F.R. § 212.51(b). This exception is supposed to be applied sparingly. 70 Fed. Reg. 68,264, 68,285 (Nov. 9, 2005) (“The Department expects the Forest Service to apply this provision sparingly, on a local or State-wide basis, to avoid undermining the purposes of the final rule and to promote consistency in implementation.”).

Here, the Forest Service proposes to increase the dispersed camping allowance. The Forest Service should consider how this added use may result in creep onto new, unauthorized areas for dispersed camping. It should also consider eliminating dispersed camping where there are potential conflicts with grizzly bears. The increased areas will basically cover everything—not every road needs to be open to dispersed camping. In fact, if dispersed camping is so popular the agency should consider adding a campground.

Climate Change

By authorizing the continued use of the existing designated motorized system, the Forest Service is effectively authorizing the continued emission of carbon from those vehicles on the forest. Right now the agency has the opportunity to change its approach. Simply because the agency is deciding to maintain the existing system does not mean that it is making no decision. As a result of its decision to maintain the existing system, there will be new emissions from the use of motorized vehicles on that system.

A robust analysis under NEPA of the forest road system and its environmental and social impacts is especially critical in the context of climate change. As the Council on Environmental Quality’s (CEQ) recent draft guidance on addressing climate change in NEPA analyses recognizes, “[c]limate change can increase the vulnerability of a resource, ecosystem, human community, or structure, which would then be more susceptible to climate change and other effects and result in a proposed action’s effects being more environmentally damaging.” 77 Fed. Reg. 77,801, 77,828-29 (Dec. 24, 2014). The draft CEQ guidance makes clear that “[s]uch considerations are squarely within the realm of NEPA, informing decisions on whether to proceed with and how to design the proposed action so as to minimize impacts on the environment, as well as informing possible adaptation measures to address these impacts, ultimately enabling the selection of smarter, more resilient actions.” *Id.* Here, the Forest Service must include existing and reasonably foreseeable climate change impacts as part of the affected environment, assessed as part of the agency’s hard look at impacts, and integrated into each of the alternatives, including the no action alternative.

Independent from NEPA, the Forest Service has a substantive duty under its own Forest Service Manual (FSM) to establish resilient ecosystems in the face of climate change. *See, e.g.*, FSM 2020.2(2) (directing forests to “[r]estore and maintain resilient ecosystems that will have greater capacity to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental conditions and extreme weather events”); FSM 2020.3(4) (“[E]cological restoration should be integrated into resource management programs and projects . . . Primary elements of an integrated approach are identification and elimination or reduction of stressors that degrade or impair ecological integrity.”).

Climate change intensifies the adverse impacts associated with OHV use. The Forest Service should consider the risk of increased disturbance when analyzing this proposal. For example, as the warming climate alters species distribution and forces wildlife migration, landscape connectivity becomes even more critical to species survival and ecosystem resilience. Exhibit C at 9-14. *See also*

USDA, Forest Service, *National Roadmap for Responding to Climate Change* at 26 (2011), available at <http://www.fs.fed.us/climatechange/pdf/Roadmapfinal.pdf> (recognizing importance of reducing fragmentation and increasing connectivity to facilitate climate change adaptation).

Climate change is also expected to lead to more extreme weather events, resulting in increased flood severity, more frequent landslides, altered hydrographs, and changes in erosion and sedimentation rates and delivery processes. Many National Forest roads are poorly located and designed to be temporarily on the landscape, making them particularly vulnerable to these climate alterations. Even those designed for storms and water flows typical of past decades may fail under future weather scenarios, further exacerbating adverse ecological impacts, public safety concerns, and maintenance needs. The Forest Service should analyze in detail the impact of authorizing OHV use on forest roads in combination with the impacts from climate change on forest roads and forest resources, as cumulative impacts.

The President's Executive Order 13,653 (Nov. 2013) provides direction on "Preparing the United States for the Impacts of Climate Change." The Order recognizes that "[t]he impacts of climate change – including an increase in prolonged periods of excessively high temperatures, more heavy downpours, an increase in wildfires, [and] more severe droughts . . . – are already affecting communities, natural resources, ecosystems, economies, and public health across the Nation," and that "managing th[o]se risks requires deliberate preparation, close cooperation, and coordinated planning . . . to improve climate preparedness and resilience; help safeguard our economy, infrastructure, environment, and natural resources; and provide for the continuity of . . . agency operations, services, and programs." Exec. Order 13,653, § 1. To that end, the Order requires agencies to take various actions aimed at making "watersheds, natural resources, and ecosystems, and the communities and economies that depend on them, more resilient in the face of a changing climate." *Id.* § 3. For example, "recognizing the many benefits the Nation's natural infrastructure provides, agencies shall, where possible, focus on program and policy adjustments that promote the dual goals of greater climate resilience and carbon sequestration." *Id.* Agencies also must develop and implement adaptation plans that "evaluate the most significant climate change related risks to, and vulnerabilities in, agency operations and missions in both the short and long term, and outline actions . . . to manage these risks and vulnerabilities." *Id.* § 5(a).

The Forest Service's 2014 adaptation plan recognizes that the wide range of environmental and societal benefits provided by our national forests "are connected and sustained through the integrity of the ecosystems on these lands." See USDA Forest Service, *Climate Change Adaptation Plan*, page 58 (2014). The plan highlights USDA's 2010-2015 Strategic Plan Goal 2 of "[e]nsur[ing] our national forests . . . are conserved, restored, and made more resilient to climate change, while enhancing our water resources." *Id.* at 58. And consistent with section 5(a) of Executive Order 13,653, the plan identifies numerous climate change risks – including increased wildfire, invasive species, increasing water temperatures, extreme weather events, and fluctuating precipitation and temperature – that "pose challenges to sustaining forests and grasslands and the supply of goods and services upon which society depends, such as clean drinking water, forest products, outdoor recreation opportunities, and habitat." *Id.* at 60-64. With respect to transportation infrastructure specifically, the adaptation plan recognizes that, "[w]ith increasing heavy rain events, the extensive road system on NFS lands will require increased maintenance and/or modification of infrastructure (e.g. larger culverts or replacement of culverts with bridges)." *Id.* at 62.

The Forest Service's Climate Change Adaptation Plan points to a number of actions to address the risks of climate change to our forests. For example, the plan points to Forest Service Manual 2020, which provides "Ecological Restoration and Resilience" directives designed "to restore and maintain resilient ecosystems that will have greater capacity to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental conditions, including climate change and extreme weather events." USDA Climate Change Adaptation Plan at 73. The Forest Service must consider and disclose likely climate change impacts in this analysis.

Need for an Environmental Impact Statement

We applaud the Forest Service in deciding to prepare an environmental impact statement (EIS) for this project. The CEQ's regulation defines an EA as "a concise public document . . . that serves to, *inter alia*, "[f]acilitate preparation of a [EIS] when one is necessary." 40 C.F.R. § 1508.9(a)(3). Given the scope of impacts (both positive and negative) on wildlife, wildlife habitat, and water resources, and the geographic scope of the proposal, this project will have a significant impact in terms of both context and intensity. Therefore the Forest Service's preparation of an EIS instead of an EA is appropriate here.

6. Consider a reasonable range of alternatives.

Under NEPA, the Forest Service's environmental analysis must include a discussion of "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C). The analysis of alternatives "is characterized as 'the heart' of the environmental impact statement." *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir.1999) (quoting 40 C.F.R. § 1502.14). In the EIS, the agency must "[r]igorously explore and objectively evaluate all reasonable alternatives" in response to a "specif[ie]d ... purpose and need." 40 C.F.R. §§ 1502.13, 1502.14(a). The Forest Service should consider a reasonable range of alternatives that would result in varying numbers and spatial allocations of areas, routes and trails designated for OHV and OSV use. Some of the alternatives appear to be inconsistent with agency's statement of purpose and need, and should be eliminated.

7. The agency should address mitigation, monitoring, enforcement and the resources needed and available to accomplish these tasks.

For all actions considered in this proposal the Forest Service has a duty to "[u]se all practicable means . . . to restore and enhance the quality of the human environment and to avoid or minimize any possible adverse effects of [its] actions upon the quality of the human environment." 40 C.F.R. § 1500.2(f). It also has a duty to monitor the effects of motor vehicle use on designated roads and trails and in designated areas, consistent with the Shoshone Forest Plan. 36 C.F.R. § 212.57.

Here, the Forest Service states a need "to ensure or improve compliance and accountability on the existing road and trail system." Scoping at 7. To address compliance the Forest Service proposes to focus on education, enforcement and infrastructure, and consolidate existing seasonal restriction dates. Scoping at 8. The Forest Service should include assurances that the mitigation and monitoring plans will be complied with. Enforcement must also be an integral part of the monitoring plan.

8. Ensure compliance with the National Forest Management Act, Clean Water Act, and Endangered Species Act.

The Forest Service should ensure its proposed Travel Management project complies with all applicable laws, including the National Forest Management Act (NFMA), Clean Water Act (CWA), and ESA.

NFMA

The Forest Service must ensure that all areas, routes and trails proposed in the various alternatives are consistent with the Forest Plan for the Shoshone National Forest. It should disclose any applicable standards or guidelines, including road density standards, winter range standards, and ROS spectrum requirements.

CWA

Under the CWA, states are responsible for developing water quality standards to protect the desired conditions of each waterway within the state's regulatory jurisdiction. 33 U.S.C. § 1313(c). Water bodies that fail to meet water quality standards are deemed "water quality-limited" and placed on the CWA's § 303(d) list. The CWA requires all federal agencies to comply with water quality standards, including a state's anti-degradation policy. 33 U.S.C. § 1323(a).

The Forest Service must ensure this Travel Management project complies with the CWA. To allow for meaningful public comment, it should disclose any waters on the Shoshone National Forest's 303(d) list of impaired waters. Given the likely impacts of motorized use on water quality, it must provide details as to the number of stream or river crossings of each area, route or trail, and how it plans to ensure water quality standards are met so as not to cause or contribute to a violation.

ESA

Section 7 of the ESA imposes a substantive obligation on federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of" habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2). To make this determination, a federal agency may engage in informal consultation with the Fish and Wildlife Service or the National Marine Fisheries Service (collectively, Services). 50 C.F.R. § 402.13(a). Informal consultation "includes all discussions, correspondence, etc., between the [Services] and the Federal agency . . ." *Id.* An agency may also prepare a biological assessment to determine whether the action will adversely affect the species or its habitat and whether formal consultation or a conference with the Service is necessary. *Id.* at § 402.12(a).

If, during informal consultation or as a result of the biological assessment, the agency and the Service agree in writing that the action "is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary." *Id.* at § 402.13(a). An agency action is "not likely to adversely affect" a species "when effects on the listed species are expected to be discountable, or insignificant, or completely beneficial . . ." *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, 723 F.Supp.2d 1247, 1270 (E.D. Cal. 2010) (citing Fish and

Wildlife Serv. And Nat'l Marine Fisheries Serv., *Endangered Species Consultation Handbook*, pages 3-12 to 3-13 (1998)).

Where a species is proposed for listing, or critical habitat is proposed, the process is different. Section 7(a)(4) of the ESA requires a Federal action agency to conference with the Services if a proposed action is likely to jeopardize a proposed species, or destroy or adversely modify proposed critical habitat. 16 U.S.C. § 1536(a)(4); 50 C.F.R. § 402.10(a). *See also* 50 C.F.R. § 402.02 (defining “[c]onference” as “a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the [ESA] regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.”). The agencies must record any results of a conference. *Id.* at § 401.10(e) (“The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency”).

Here, the Forest Service must consult as required by the ESA to ensure its proposed actions are not likely to jeopardize the continued existence of the endangered or threatened species or result in the destruction or adverse modification of critical habitat. This includes grizzly bear and Canada lynx. The agency must conference to ensure its proposed OSV designations and grooming will not likely jeopardize the continued existence of species proposed for listing under the ESA. This includes wolverine.

9. Implement a sustainable roads system.

The Forest Service faces many challenges with its vastly oversized, under-maintained, and unaffordable road system. The impacts from roads to water, fish, wildlife, and ecosystems are tremendous and well documented in scientific literature. *See* The Wilderness Society, *Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review* (May 2014) (Attachment I) (literature review surveying the extensive and best-available scientific literature—including the Forest Service’s 2000 General Technical Report²³ synthesizing the scientific information on forest roads—on a wide range of road-related impacts to ecosystem processes and integrity on National Forest lands). To address its unsustainable and deteriorating road system, the Forest Service promulgated the Roads Rule (referred to as “subpart A”) in 2001. 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A.

The Roads Rule created two important obligations for the agency. One obligation is to identify unneeded roads to prioritize for decommissioning or to be considered for other uses. 36 C.F.R. § 212.5(b)(2). Another obligation is to identify the Minimum Road System (MRS) needed for safe and efficient travel and for the protection, management, and use of National Forest system lands. *Id.* § 212.5(b)(1).²⁴ The MRS is the road system, determined by the Forest Service, as needed to:

- Meet resource and other management objectives adopted in the relevant land and resource management plan,

²³ Hermann Gucinski *et al.*, *Forest Roads: A Synthesis of Scientific Information*, Gen. Tech. Rep. PNW-GTR-509 (May 2001), available at <http://www.fs.fed.us/pnw/pubs/gtr509.pdf>.

²⁴ In promulgating its rules, the Forest Service indicated that “[t]he requirement to identify roads for decommissioning is ‘[e]qually important’ as the overall identification of the minimum road system.” *Center for Sierra Nevada v. U.S. Forest Service*, 832 F. Supp. 2d 1138 (E.D. Cal. 2011) (quoting 66 Fed. Reg. at 3207).

- Meet applicable statutory and regulatory requirements,
- Reflect long-term funding expectations, and
- Ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

Id. (hereafter, MRS factors). *See also* Memorandum from Leslie Weldon to Regional Foresters *et al.* on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012) (hereafter, 2012 Weldon Memo) The goal of subpart A is “to maintain an appropriately sized and environmentally sustainable road system that is responsive to ecological, economic, and social concerns.”²⁵

The Forest Service’s Washington Office has issued a series of directive memoranda that outline how the agency expects forests to comply with subpart A.²⁶ First, each forest was required to submit its TAR by September 30, 2015. *See* 2013 Weldon Memo. Next, pursuant to its own regulations and directive memoranda, the Forest Service must consider the valid portions of its TAR and begin to determine the MRS in its analysis of projects of the appropriate geographic size, subject to review under NEPA. *See* 2012 Weldon Memo at 2 (directing forests to “analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed”). By analyzing whether a proposed project is consistent with the relevant portions of the TAR, and considering the MRS factors under 36 CFR 212.5(b)(1), the Forest Service expects each forest to identify the MRS for particular forest segments. *Id.* (“The resulting decision [in a site-specific project] identifies the MRS and unneeded roads for each subwatershed or larger scale”).

Given that the Forest Service is proposing changes to its road system²⁷ and given the geographic scale of this project across the entire forest landscape, this forest-wide travel plan is precisely the type of project where the Forest Service should consider its TAR for the Shoshone National Forest and identify the MRS.²⁸ The current proposal is a missed opportunity to create a sustainable road system on the Shoshone, implement the findings in the TAR, and identify the MRS.

The National Forest road system is in a serious state of disrepair, and the Shoshone is no exception. The growing backlog of unmaintained or under-maintained roads results in serious resource impacts. The Forest Service should provide a copy of the Shoshone’s TAR to allow for meaningful public comment on this project. It should consider the TAR as part of this analysis. For each road the

²⁵ 2012 Weldon Memo at 1 (“The national forest road system of the future must continue to provide needed access for recreation and resource management, as well as support watershed restoration and resource protection to sustain healthy ecosystems.”). *See also* 66 Fed. Reg. 3206, 3207 (Jan. 12, 2001) (noting the 2001 rules “signal the shift away from development and construction of new roads to maintaining needed roads and decommissioning unneeded roads.”); Memorandum from Joel Holtrop, U.S. Forest Service Washington Office, to Regional Foresters *et al.* (Nov. 10, 2010) (hereafter, 2010 Holtrop Memo) (“Though this process points to a smaller road system than our current one, the national forest road system of the future must provide needed access for recreation and resource management and support watershed restoration and resource protection to sustain healthy ecosystems and ecological connectivity.”).

²⁶ 2010 Holtrop Memo; 2012 Weldon Memo; Memorandum from Leslie Weldon, U.S. Forest Service Washington Office, to Regional Foresters *et al.* (Dec. 17, 2013) (hereafter, 2013 Weldon Memo) (supplementing and reaffirming the 2012 Weldon Memo).

²⁷ The Forest Service proposes to: (1) standardize its approach to managing motorized vehicle use on ML1 roads, (2) come into compliance with the Forest Service Handbook definition for ML1 roads, (3) maintain the existing road system, and (4) designate WATVs on 350 miles of NFS roads.

²⁸ 36 C.F.R. § 212.5(b)(1) (“For each national forest . . . the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.”).

Forest Service determines to keep, it should determine whether the road is part of the MRS based on each of the MRS factors listed above. If the road does not fit as part of the MRS, or is not identified by the TAR as likely needed, the Forest Service must explain its decision to keep the road as part of the system.

This project is a major opportunity for the Forest Service appears to close the gap between the cost of maintaining its massive forest road system and the limited funding it receives from Congress. We strongly support the Forest Service's proposal to remove roads with lots of illegal use in the Wind River District.

But the agency also proposes to construct 9.5 new road miles, which would make no progress towards closing the gap between the agency's limited funding and maintenance costs for keeping up its deteriorating road system. Scoping at 9. The agency proposes closing only the upper segments of WR-55 and WR-20 in the Wind River District. In the Clarks Fork and Wapiti Ranger Districts, the Forest Service proposes to close NZ-07 to reduce watershed effects but does not propose to close the entire road even though it crosses Sweetwater Creek multiple times. The Forest Service should consider placing closures at the start of these roads, to more prevent inviting unauthorized use and to clearly delineate road closures. This will help with enforcement. The agency also proposes to add spur road NZ-27, which provides access to a dispersed camp. Scoping at 11. The agency states it has no *known* resource concerns and would increase the ability to enforce compliance. Yet the agency does not explain how providing new motorized access to dispersed camping would improve compliance. This new access is likely to have additional, new adverse impacts to that area and therefore will require more enforcement in order to ensure compliance. The Forest Service must explain its reasoning here.

We cannot emphasize enough that the Shoshone must start taking actions that will put the forests on a trajectory towards achieving a sustainable roads system. Upon completion of this subpart B process, we urge the Shoshone to immediately begin district-level projects that implement its TAR and begin to identify the MRS through projects subject to NEPA.²⁹ The Forest Service's Washington Office directed forests to use the TAR to identify the MRS for proposed actions at the scale of a 6th code subwatershed or larger. 2012 Weldon Memo at 2. *See also* 2012 FAQs (noting that "travel analysis and identification of the MRS could be done at the same scale, if that scale is at the ranger district or unit level."). While completing the travel analysis process is a good start, much work remains to create a sustainable motorized travel system.

Conclusion

It is crucial that the Forest Service adopt a sensible and sustainable travel management approach that moves the forest towards a balanced motorized road and trail system on the Shoshone that provides access to the national forest while protecting and restoring natural resources, including fish and wildlife. Re-establishing a balance between motorized access and other, non-motorized access will result in significant environmental benefits.

²⁹ *See* 2012 Weldon Memo ("The next step in identification of the MRS is to use the travel analysis report to develop proposed actions to identify the MRS . . . at the scale of a 6th code subwatershed or larger. Proposed actions and alternatives are subject to environmental analysis under NEPA. Travel analysis should be used to inform the environmental analysis.").

If you have questions, please me at [REDACTED].

Sincerely,



Marla Nelson
Rewilding Attorney

Attachments

Attachment A: The Wilderness Society, *Achieving Compliance with the Executive Order “Minimization Criteria” for Off-Road Vehicle Use on Federal Public Lands: Background, Case Studies, and Recommendations* (May 2016).

Attachment B: Switalski, T. A. and A. Jones, *Off-road vehicle best management practice for forestlands: A review of scientific literature and guidance for managers*, J. Cons. Planning 8:12-25 (2012).

Attachment C: Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Water Quality, Soils and Vegetation*. Journal of Conservation Planning. 12: 8-12.

Attachment D: Montana Knapweeds: Identification, Biology and Management, MSU Extension Service (2011).

Attachment E: Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Introduction to Snowmobile Management and Policy*. Journal of Conservation Planning. 12: 1-7.

Attachment F: Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Wildlife*. Journal of Conservation Planning. 12:13-20.

Attachment G: Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management – *Winter Recreational Use Conflict*. Journal of Conservation Planning. 12:21-28

Attachment H: U.S. Fish and Wildlife Service, *Biological Opinion on the Effects of the Divide Travel Plan on Grizzly Bears* (Feb. 29, 2016).

Attachment I: The Wilderness Society, *Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review* (May 2014).