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We would like to submit the following joint scoping comments being submitted

by Native Ecosystems Council, the Alliance for the Wild Rockies, Council on Wildlife and Fish, Yellowstone to Uintas Connection, and Center for Biological Diversity in regards to the proposed Forestwide Prescribed Fire Project. Please note that these comments include 2 appendices with additional information. Appendix A includes 3 tables that summarize expected bird species present within 3 general habitat conditions on the Helena-Lewis and Clark National Forest: forests, woodlands-wooded shrublands-shrublands, and deciduous/riparian areas. Appendix B includes some references we are providing in support of our comments.

1. The Helena-Lewis and Clark National Forest (HLC) Revised Forest Plan (RFP) is a violation of the 2012 Planning Rule for a failure to contain conservation strategies for "at risk" species; the HLC needs to amend this RFP to meet this requirement.

The HLC RFP claims that most wildlife on the forest will have adequate habitat management in the face of vegetation treatments, including prescribed burning, because of the desired conditions established for vegetation. This is the complete analysis of this claim in the RFP Final Environmental Impact Statement (FEIS), except for a brief analysis of 3 "at risk" species, the flammulated owl, Lewis woodpecker, and Canada lynx. There is no analysis provided in the FEIS as to how these at-risk species were selected. This selection is a violation of the NEPA because there are many, many bird species that are in need of conservation management, which is the definition of an at-risk species (i.e., special management attention is needed to ensure further declines do not occur). There are 29 "at risk" bird species on the HLC. These are summarized in Appendix A, Tables 1-3. These include 14 "at risk" forest bird species, 10 "at risk" woodland, wooded-shrubland or shrubland species, and 5 "at risk" birds associated primarily with riparian/aspen communities. Only 2 of these species, the flammulated owl and Lewis woodpecker, are identified as "at risk" species in the HLC RFP. This leaves 27 additional "at risk" species that have no conservation measures, including habitat standards, on the HLC. An example as to why these 27 "at risk" bird species are threatened with continuing declines, declines that may be significant on a forest-wide level, is demonstrated by the proposed Forestwide Prescribed Burning Proposal. The entire HLC is potentially going to have the understory and partial overstory burned in conifer forests, the entire woodlands, wooded-shrublands, and shrublands slashed and burned, and all riparian areas burned as a part of this programmatic proposal. The lack of any conservation strategies in the HLC RFP include several "tipping point" species identified in the 2022 State of the Birds Report. These include the Greater Sage-Grouse, Evening Grosbeak, Pinyon Jay, Olive-sided Flycatcher, Red-headed Woodpecker, and Rufous Hummingbird. Although there is some Forest-wide direction for conserving Greater Sage-Grouse habitat (sagebrush), this direction does not actually prevent intensive prescribed burning of sagebrush given it is allowed simply by claims that this burning and killing sagebrush will "improve" sage grouse habitat (2015 Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, including the Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Region and Utah). In addition, we note that this 2015 sage grouse management direction has now been in effect for almost 8 years, but has not prevented continued declines of sage grouse. As is noted in the 2022 State of the Birds report, the sage grouse is identified as a "tipping point" species; this species has showed a continued steep decline that warrants increased voluntary habitat conservation incentives and renewed strong federal and state protections. A Tipping Point species are those that are on a trajectory to lose another 50% of their populations in the next 50 years, or already have perilously small populations and continue to face high threats. These protections on the HLC need to include no further burning of sagebrush habitat in occupied sage grouse habitat.

Another Tipping Point species present on the HLC is the Pinyan Jay. This species was recently petitioned for listing under the Endangered Species Act (ESA) by Defenders of Wildlife (Associated Press 2022). The proposed unlimited slashing and burning of woodlands and wooded-shrublands in the HLC prescribed burning proposal will clearly cause further declines of this species due to habitat loss and degradation. Two other conifer forest species identified as having lost 50% of their populations since 2010 include the Olive-sided Flycatcher and Red-headed Woodpecker (State of the Birds Report 2022).

Two other Tipping Point species that occur on the HLC include the Rufous Hummingbird and Evening Grosbeak (State of the Birds 2022). Both species depend upon coniferous forest habitat (Scoping comments Appendix A). The effect of removal of forest understories on these species is unknown, but is likely a highly adverse habitat loss. There is also another at-risk bird noted in the State of the Birds Report (2022), which is the Sage Thrasher, which has exhibited accelerated declines since 2010. This at-risk species is strongly associated with wooded-shrublands and shrublands.

In spite of recent (Rosenberg et al. 2019) and current reports (North American Bird Conservation Initiative 2022), the HLC is proposing a massive habitat removal program for 27 at-risk bird species. This is a violation of the National Environmental Policy Act (NEPA) as well as the National Forest Management Act (NFMA), in addition to the Migratory Bird Treaty Act (MBTA). This massive proposal to remove habitat for at least 27 at-risk bird species will occur due to the total lack of any conservation strategies in the HLC RFP, as well as the complete lack of any analysis as to how a massive forest-wide prescribed burning and slashing program will impact these 27 species. Until the HLC RFP is amended to include habitat protections for these 27 at risk species, no prescribed burning and slashing programs can legally go forward.

The HLC RFP also needs to be amended to include general habitat protection measures for all forest birds. As is noted in the Rosenberg et al. (2019) report, as well as the 2022 State of the Birds Report, it is not just at-risk species that require conservation measures. As we summarized in Tables 1-3 in Appendix A, the HLC includes approximately 107 birds associated with conifer forests, woodland, wooded-shrublands and shrublands, and riparian/aspen vegetation communities. All these forest habitat include North American landbirds that have lost over 3 billion birds in their populations since the mid-1970s (Rosenberg et al. 2019). That paper shows that of 67 western forest birds, 64.5% are in decline. The 2022 State of the Birds notes that roughly half of western forest birds are in decline. The Rosenberg et al. (2019) report states that their study has documented a long-developing but overlooked biodiversity crisis in North America - the cumulative loss of nearly 3 billion birds across the avifauna; pervasiveness of avian loss across biomes and bird families suggest multiple and interacting threats; isolating spatiotemporal limiting factors for individual species and populations will require additional study; targeted research to identify limiting factors must be coupled with effective policies to identify limiting that emphasize reducing threats and minimizing avoidable anthropogenic mortality year-round; our results signal an urgent need to address the ongoing threats of habitat loss, and direct anthropogenic mortality to avert continued biodiversity loss and potential collapse of continental avifauna.

2. The HLC RFP is a violation of the MBTA due to an almost complete lack of any habitat protection measures for forest birds, which include mostly neotropical migratory birds.

The Memorandum of Understanding (MOU) between the Forest Service and the U.S. Fish and Wildlife Service addressing protections of migratory birds includes the following requirements:

- Support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions.

-Restore and enhance the habitat of migratory birds, as practicable.

-Ensure that environmental analysis of Federal actions required by the NEPA or other established environmental review processes, evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern.

-Identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitat, and key risk factors; with respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service; these principles, standards and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations; the agency shall also inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts.

On clear display for the proposed Forestwide Prescribed Burning Project which is undergoing scoping right now, there are no requirements for the agency to complete any surveys for neotropical migratory birds, even though from 21,900 to 26,750 acres per year may be treated with burning and/or slashing and burning. We could find no requirements in the HLC RFP for even a single wildlife survey to be done for any project, including where thousands of acres per year are to be treated. Over a 10-year period, this program could remove and/or degrade up to 267,500 acres of migratory bird habitat without a single survey being required.

3. The HLC RFP is a violation of the NEPA because it contains no criteria for determining when significant adverse impacts are triggered on migratory birds; as such, any massive project that degrades hundreds of thousands of acres of migratory bird habitat can be claimed to have no significant adverse impacts, as witnessed by the Forestwide Prescribed Burning Proposal.

It defies logic that the HLC can claim that burning up to 267,500 acres of migratory bird habitat in even 10 years (the time line is not actually clear, but we will address at least the first 10 years) will have no significant adverse impacts. This proposal is being planned as an Environmental Assessment, it appears. One of the functions of a RFP is to ensure that limits to wildlife habitat are not exceeded where significant adverse impacts are triggered. Without any actual criteria as to where or when these thresholds of significance occur, a RFP cannot provide the required function of a Forest Plan, which is to ensure that a diversity of wildlife are maintained. Until the HLC RFP is amended to include criteria for habitat maintenance for migratory birds, the agency has no basis for evaluating project impacts. Even if this is done at a site-specific level, it cannot address forest-wide cumulative effects.

4. The Forestwide Prescribed Burning Proposal on the HLC is a violation of the NEPA because the agency is not providing the public "high quality" information on habitats and wildlife that will be affected by the project.

It will be impossible for the HLC to complete any valid wildlife surveys on over the entire HCL before the project is implemented in a decision. This would require a massive, multiple-years inventory effort to cover almost all of the HCL. Of course, this is not actually planned. This entire project will be presented to the public, and a decision implemented, without a single wildlife survey having been completed. The public will never have any information to understand how the proposed vast treatment acres are going to be designed with respect to wildlife. This is essential information to the public, and is required by the NEPA. The agency is required to provide high quality information to the public so that the public can understand how the project will be implemented. As is planned, the Forestwide Prescribed Burning Proposal is intentionally excluding the public from having any information as to how wildlife is being coordinated with burning. In essence, the HLC has relieved themselves of the necessity of

doing any wildlife surveys by implementing a huge project where surveys are not even possible.

The HLC is also violating the NEPA by failing to specifically identify which habitats will be treated per year, and what wildlife species will suffer habitat losses as a result. All that is provided is a forest-wide map, any of which could be treated in an unidentified time frame - potentially for 20 or more years. The public will never have any idea as to what wildlife habitats will be treated for any given locale, or what level of reduced carrying capacity this will have on wildlife. This proposal is clearly a violation of the NEPA as a result.

In order to comply with the NEPA, the agency needs to limit the size of any specific project to that which high quality information can be provided to the public. This high quality information needs to include the results of wildlife surveys, what the habitat requirements of a species are, and a summary of each habitat category that will be degraded as a result. It is essential as per the NEPA that the agency demonstrate to the public how wildlife habitat requirements were integrated into any vegetation treatments. A project area needs to be the size which valid high quality wildlife surveys can be conducted DURING project planning, so that the project design is based on wildlife habitat requirements. The Forestwide Prescribed Burning Proposal clearly cannot meet NEPA.

5. As per the MBTA MOU, the agency needs to define what mitigation measures are being applied to the Forestwide Prescribed Burning Proposal to both measure and minimize "take" of migratory birds.

The HLC is required by the MBTA and associated MOU to estimate the direct, indirect and cumulative mortality that will be created on migratory birds with treatment of the entire HLC over an undisclosed number of years. Direct mortality will include killing of nestlings when nest sites are cut down or burned up during slashing and/or burning activities. Direct mortality will also include direct deaths of nestlings and fledglings due to smoke toxicity (Defiance Canyon Raptor Rescue 2022). Indirect mortality will include abandonment of fledged birds due to associated treatment disturbances. It will also include reduced health of birds exposed to toxic smoke. And it will include the loss of hiding cover for all birds, both young and adults, with increased predation. And it will include the loss of thermal cover for all birds, due to the increased exposure they will have to adverse weather, from rain to snow to winds and cold events. And it will include indirect impacts due to the loss of forage resources that have been burned up, or slashed, including juniper berries and pine nuts, as well as insects. Overall, the planned reduction in the carrying capacity of treatments in the 3 general bird habitats as per Tables 1-3 (Scoping comments Appendix A) need to be estimated due to the proposed treatments. This is essential high quality information that needs to be provided to the public. This needs to be provided on a per-acre basis for the 3 general habitats.

6. The Scoping Notice did not address how prescribed burning and slashing will maintain old growth forests.

The burning out of understories in old growth forests, or slashing of conifers in limber pine old growth stands, will directly degrade their values to wildlife. Although the HLC RFP uses an invalid measure of old growth, as per the minimum criteria for old growth as per the Green definitions, the FEIS for the RFP did not define why logging, slashing, and/or burning in old growth stands will maintain values for wildlife. There was no such analysis provided in the RFP FEIS. We note that another Region description of old growth (USDA 1990) defines old growth as per the entire Green definition. The RFP FEIS did not address this contradiction between 2 Region 1 reports which were released at similar times. The acres of old growth forests, including woodlands, needs to be clearly identified and mapped for the public, and an analysis provided as to why these treatments will not impact associated species. This analysis is essential as there is no such analysis in the RFP FEIS.

7. Please define how prescribed burning will not adversely impact whitebark pine, a threatened species, and define (map and acres) where it will be burned.

It is clear that prescribed burning will kill unlimited numbers of whitebark pine seedlings and saplings, or the young trees that are essential for long-term persistence of whitebark pine. The agency needs to map all areas

where whitebark pine will be prescribed burned, and identify the estimated number seedlings and saplings that will be destroyed. Given that this tree species can live up to 1,000 years, these young seedlings and saplings can survive for long periods of time until some disturbance, typically bark beetles, creates temporary openings in a mixed conifer forest that allows growth spurts to occur. When these seedlings and saplings are burned, this eliminates the potential for them to eventually grow into the canopy, and thus maintain this threatened species.

8. We are requesting that all mule deer winter range and fawning habitat be mapped for the project area, and habitat criteria amended into the RFP to define management for these key areas.

The CG RFP does not map mule deer winter range, nor does it map mule deer fawning areas. Nor does it have any habitat management criteria for these areas. As such, the agency has no basis for "treating" mule deer winter ranges and fawning habitats, or measuring impacts of prescribed burning and/or slashing.

9. Until this problem is addressed in a Forest Plan amendment, the agency cannot legally treat mule deer winter range and fawning habitat, as it is random habitat removal without any criteria for measurement of impacts.

9. We are requesting that all pine marten and snowshoe hare habitat be mapped for the Project Area, and RFP habitat criteria be implemented via an amendment to the RFP to maintain adequate levels of pine marten and snowshoe hare habitat well distributed across the landscape.

We note that USDA (1990) defines "well distributed" wildlife habitat as every 10,000 acres. We note that currently, the HLC RFP violates both the NEPA and the NFMA by a failure to include any conservation measures for the pine marten and the snowshoe hare. The former was previously identified as a Management Indicator Species in previous forest plans. And the snowshoe hare is an important if not key, prey species for many forest carnivores, from the lynx to the wolverine to the fisher to the pine marten to the goshawk to the great gray owl. Viability of these forest carnivores has to address their prey, including the snowshoe hare. Forest underburning will eliminate snowshoe hare habitat, and thus coordination with hares is essential in order for the agency to meet the requirements of the NFMA. Please map and define acres of pine marten and snowshoe hare habitat in the project area, and define what habitat measures are required to maintain these species "well distributed" across the HLC (every 10,000 acres). Specifically in regards to old growth management, please define how removal of the understory, as well as many logs, will affect the pine marten and snowshoe hare.

10. The HLC is violating the NEPA and Administrative Procedures Act (APA) by failing to address the considerable volume of new science that contradicts the agency claim that logging, slashing and/or burning is necessary to prevent uncharacteristic fires on the HLC.

There is an abundance of current science that shows that forest thinning will actually increase the potential for fire spread and intensity, rather than reduce it. It is also known that weather, not fuels, are the major trigger of forest fires. There is no actual science that shows that somehow, forests have grown "too dense," due to a lack of fire, and are thus "uncharacteristic," which requires restoration thinning. Finally, it is noted that fuels reduction activities are "temporary," and that repeated treatments are necessary in order to maintain low fuels. The entire premise of the proposed forestwide prescribed fire program is based on science that has been extensively challenged. Yet the scoping notice does not address these contradictions. This is an important issue, because the use of faulty science to justify a massive treatment program across the entire HLC, a program that will inflict not only massive mortality on forest birds, but trigger a massive loss in wildlife carrying capacity. The agency needs to demonstrate why the proposed massive treatment program is based on current science, and the end results will justify the massive impacts on wildlife. Also, the agency needs to demonstrate why forest fires need to be prevented. Why is this necessary for wildlife?

Appendix A for the scoping comments for the Helena-Lewis and Clark Forestwide Prescribed Fire Project submitted by NEC, AWR, CWF, Y2U, and CBD on May 8, 2023. Appendix A contains 3 tables summarizing approximate bird species that occur within three board habitat conditions on the Helena-Lewis and Clark National

Forest, including conifer forests, woodlands, wooded-shrublands, and shrublands, and riparian habitats. These distributions are "approximate" as there can be considerable overlap between bird use in these 3 broad habitat categories, especially in riparian/aspen forests intermingled with conifer forests. Bird distributions and habitat associations are based on (1) P.D. Skaar's Montana Bird Distribution, Fifth Edition March 1996; (2) Neotropical migrant landbirds in the Northern Rockies and Great Plains by D. Dobkin, developed by USDA Forest Service Northern Region, and (3) USFS Northern Region songbird monitoring program: distribution and habitat relationships, developed by USDA Northern Region USFS. Appendix A, Table 1: Forest birds likely present on the Helena-Lewis and Clark National Forest, including 49 estimated species, 14 which are species of concern. Bird distribution is based on the Fifth Edition, March 1996, Montana Bird Distribution by P.D. Skaar. Appendix A, Table 2. Birds associated with woodlands, wooded-shrublands, and shrublands that likely occur on the Helena-Lewis and Clark National Forest, including 23 total estimated species of which 10 are a species of concern. Bird distribution is based on the Fifth Edition, March, 1996, Montana Bird Distribution by P.D. Skaar. Appendix A, Table 3. Birds associated with deciduous/riparian forest areas that likely occur on the Helena-Lewis and Clark National Forest, including 35 total species of which 5 are a species of concern. Bird distribution is based on the Fifth Edition, 1996 Montana Bird Distribution by P.D. Skaar. Appendix B for the Scoping comments for the Helena-Lewis and Clark Forestwide Prescribed Fire Project submitted by NEC, AWR, CWF, Y2U and CBD on May 8, 2023. Appendix B contains hard copies of several reports and/or publications cited in the scoping comments, including: REFERENCE: Associated Press. 2022. Protections sought for western bird linked to pinon forests amid deforestation. Great Falls Tribune April 27, 2022. REFERENCE: Defiance Canyon Raptor Rescue. 2022. Cal Fire burns next to Bald Eagle nest, eaglets die. Daily Kos April 15, 2022. North American Bird Conservation Initiative. 2022. The state of the birds, United States of America, 2022. State of the Birds.org. REFERENCE: Rosenberg, K., A. Dokter, P. Blancher, J. Sauer, A. Smith, P. Smith, J. Stanton, A. Panjabi, L. Helft, M. Parr, and P. Marra. 2019. Decline of the North American avifauna. Science 10.1126/science.aaw1313(2019). REFERENCE: USDA. 1990. Old-growth habitats and associated wildlife species in the Northern Rocky Mountains. Ed. Nancy Warren. USDA, Forest Service Northern Region Wildlife Habitat Relationships Program, R1-90-42.