April 28, 2023

Carl Petrick
Forest Supervisor, Idaho Panhandle National Forest
3232 West Nursery Road
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Cc: Jessie Berner, Kaleigh Maze

Submitted via: https://cara.fs2c.usda.gov/Public//CommentInput?Project=53091

Re: Kaniksu Over-Snow Vehicle Travel Plan EA Comments

Dear Supervisor Petrick,

On behalf of WildEarth Guardians, Inland Empire Task Force, the Alliance for the Wild Rockies, Friends of the Clearwater, and local resident Laura Westbrook please accept these comments on the Kaniksu Over-Snow Vehicle (OSV) Travel Plan draft Environmental Assessment (EA). Under its proposed action, the Forest Service seeks to designate 779,185 acres for OSV use, representing approximately 75% of the planning area that covers the Bonners Ferry, Priest Lake, and Sandpoint Ranger Districts. In addition, the agency proposes to designate 450 miles of groomed OSV trials, and 1,174 miles of ungroomed trails, of which 52 miles occur within areas protected from winter motorized use. The following comment detail why the Forest Service must conduct more robust analysis, and reconsider its proposed action to ensure that the OSV designations comply with the agency's requirements under the law and regulations.

I. The Forest Service failed to conduct proper travel analysis to inform its proposed action.

Current Forest Service directives governing travel management planning require the agency to conduct travel analysis to inform its decision-making.[1] Travel analysis must be completed prior to formulation of a proposed action and should "form the basis for proposed actions related to designation of roads, trails, and areas for motor vehicle use."[2] More specifically, travel analysis is designed to "[i]dentify management opportunities and priorities[,] formulate proposals for changes[,] . . . [c]ompare motor vehicle use . . . with desired conditions established in the applicable land management plan, and describe options for modifying the forest transportation system that would achieve desired conditions."[3] To achieve these purposes, the travel analysis process follows six steps:

[1] *See generally* Forest Service Handbook (FSH) 7709.55, chs. 10 & 20; Forest Service Manual (FSM) 7712 & 7715.
[2] FSH 7709.55, §§ 13(3) & 21.6; FSM 7715.03(2).
[3] FSH 7709.55, § 21.5.

Step 1: Setting Up The Analysis
Step 2: Describing the Situation
Step 3: Identifying Issues
Step 4: Assessing Benefits, Problems, and Risks
Step 5: Describing Opportunities and Setting Priorities
Step 6: Reporting[4]

While each step is important, assessing the risks and benefits is at the heart of the analysis since it allows officials to carefully weigh the identified issues in a manner that will help set priorities. Often, officials will score each of the risks and benefits for specific roads, trails and areas.

For the Kaniksu travel planning process, the Forest Service did produce a travel analysis report, but it lacked the detailed risk and benefit analysis. The tables under Appendix B of the report list specific road and trail segments, in addition to the 10 analysis areas proposed for OSV designations, but nowhere does the report "Analyze the risks and benefits associated with the current situation."[5] Rather, the Forest Service explains:

> Benefits and risks to current over-snow vehicle use were identified through public involvement and using field data collected by Forest Service personnel. The interdisciplinary team considered the issues and evaluated the potential severity of effects relating to the existing condition and proposed alternatives. This process was used to make recommendations relating to over-snow vehicle use designations.[6]

The report fails to actually identify or carefully consider each of the risks OSV use may pose, let alone rank those risks, or compare those risks to the potential benefits. The omission precludes the agency from making sufficiently informed determinations about how the proposed designations may comply with the TMR's minimization criteria.[7] The lack of specificity is also one reason the agency fails to take a hard look at the potential environmental consequences of the proposed OSV designations as NEPA requires.

II. Failure to take a hard look at the direct, indirect, and cumulative impacts.

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., is designed to facilitate informed decision-making and public transparency by requiring federal agencies to take a "hard look" at the direct, indirect, and cumulative impacts of their proposed actions and reasonable alternatives. Given the scale and scope of the Kaniksu winter travel planning process, the Forest Service should have recognized the significant impacts under the proposed action and developed an environmental impact statement, which is necessary to adequately analyze certain impacts, including

[4] FSH 7709.55 Ch. 20 TOC.
[5] FSH 7709.55, § 21.4.
[6] Kaniksu Over-Snow Vehicle Use Designation Project, Travel Analysis Process Report – Draft for Public Comment at 6.
[7] 36 C.F.R. § 212.55(b).

disclosing site-specific baseline information, best available science, impacts to future potential wilderness recommendations, impacts to wildlife and habitat connectivity corridors, impacts of authorizing OSV use on trails within protected areas, and the cumulative impacts, particularly in light of the climate crisis effects regarding snow levels and changing seasons and how that may affects the distribution and quality of habitat for at-risk species. Yet, the Forest Service fails to provide the necessary analysis to comply with NEPA's mandates.

A. Failure to adequately consider harmful effects to wildlife and quiet recreation from OSV noise disturbances.

Our scoping comments explained the importance of properly considering noise disturbance from OSV use, in particular to comply with the minimization criteria under the Travel Management Rule, and to fully assess the potential environmental consequences in a detailed analysis. To best address this issue, we strongly urged the Forest Service to actually measure sound impacts for proposed designations using spatial models and software packages available for analyzing potential noise propagation from OSV use. Modeling results could then be overlaid across denning and secure winter habitats for a variety of species including grizzly bear, Canada lynx, wolverine, mountain goat and other big game species in order determine the potential for harassment and significant disruption of wildlife habitats. In fact, we provided the Forest Service with a model titled "System for the Prediction of Acoustic Detectability (SPreAD)", a workbook issued by the Forest Service and Environmental Protection Agency for land managers to "evaluate potential … acoustic impacts when planning the multiple uses of an area."[8]

The Forest Service currently uses this model when performing a detailed analysis of noise impacts. Specifically, the Tahoe National Forest utilized the SPreAD model in its winter travel planning process:[9]

> This analysis uses SPreAD-GIS: an ArcGIS toolbox for modeling the propagation of engine noise in a wildland setting Version 2.0. SPreAD-GIS is based on the System for the Prediction of Acoustic Detection, a model developed by the Forest Service and Environmental Protection Agency to predict and plan for recreation opportunities in national forests. Input data include commonly available datasets including:
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> • Digital elevation model (DEM)
> • Land cover
> • Local weather conditions (average air temp, relative humidity, wild speed and direction for given season)
> • Sound source characteristics (from a table of built in source types)
> • Ambient sound conditions (a tool is available to estimate this based on land cover and a table of background sound for various environmental conditions)

[8] *See* https://www.fs.usda.gov/t-d/library-card.php?p_num=9823%201308 (last accessed 9/15/2022).
[9] USDA Forest Service, Tahoe National Forest, Feb. 2019. Tahoe National Forest Over-snow Vehicle Use Designation Final Environmental Impact Statement. p. 118

Clearly, our recommendation to use the SPreAD-GIS model to assess sound disturbance was reasonable given its use during the Tahoe NF's winter travel planning process. However, the Kaniksu OSV planning team did not utilize this model, and instead the Forest Service simply states that noise disturbance would be addressed in the analysis.[10] Yet, the EA lacks any detailed analysis regarding noise disturbance and the potential impacts on wildlife or quiet recreation opportunities. In fact, the agency arbitrarily dismisses the need to need to carefully analyze noise impacts to wildlife at all:

> Because of the number of variables involved, it would be virtually impossible to predict the effects of snowmobile noise on wildlife species in every situation. While it is possible that quieter (even electric) motors on over-snow vehicles (OSVs) may become the norm during the life of this project, this analysis does not attempt to separate noise from other aspects of OSV disturbance, and it is not discussed further.[11]

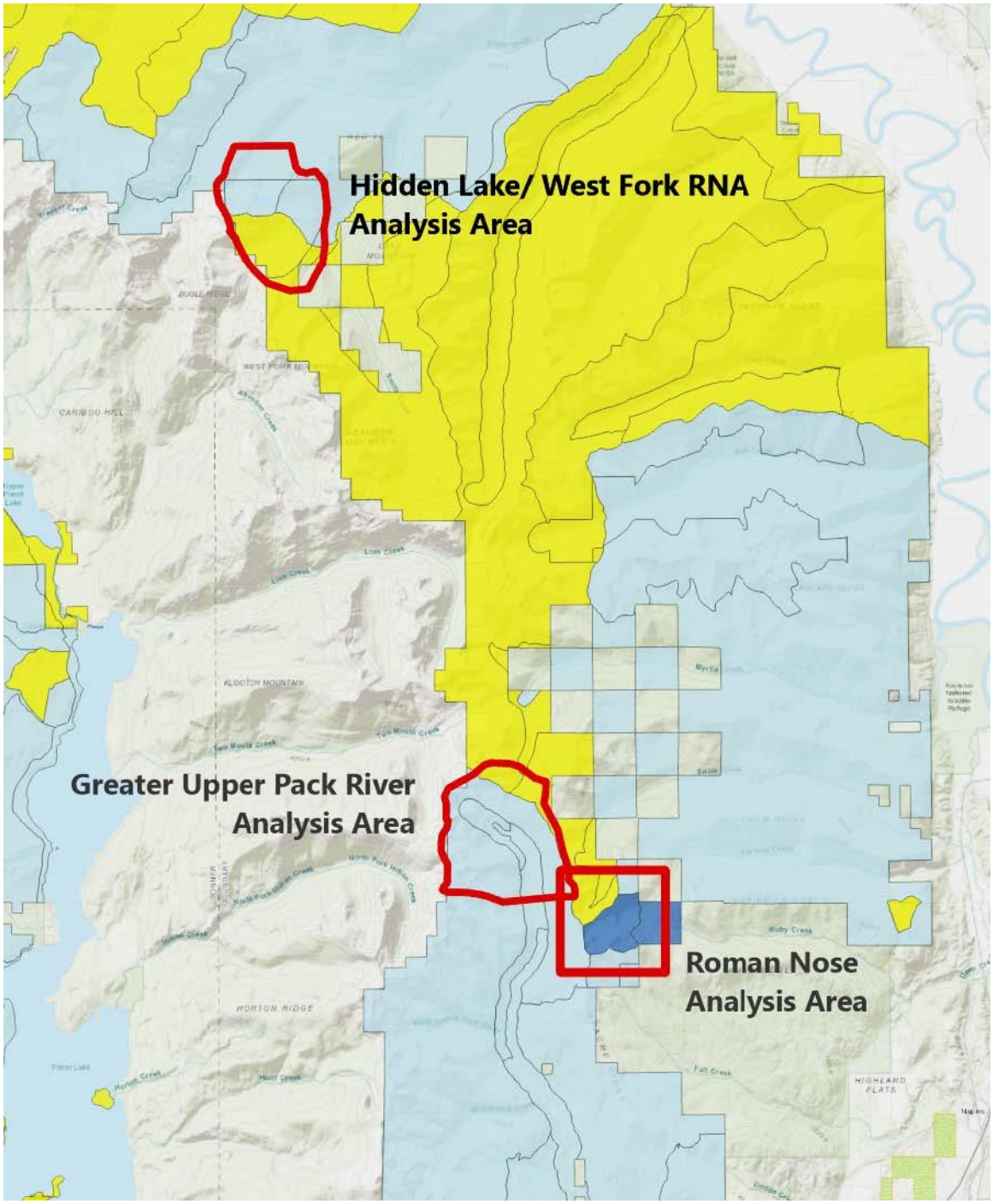
Given the example from the Tahoe NF, it is clear that while certainly complex, the ability to model sound disturbance is both feasible and necessary to take a hard look at the impacts OSV use may have on wildlife and quiet recreation opportunities. Further, the Forest Service sets up a strawman argument by asserting that it would need to consider noise impacts "in every situation." Rather, it would only need to evaluate sound disturbance for trails and areas proposed for designation where they overlap with threatened, endangered and sensitive species reliant on secure winter habitat such as mountain goat and other big game species. Certainly this could cover a large geographical area, which is why a detailed analysis under an EIS is necessary to comply with NEPA. In other words, the Forest Service cannot assert the task is too difficult and then dismiss its obligation to follow the law.

To illustrate the feasibility of conducting proper analysis of noise disturbance to wildlife and quiet recreation opportunities, we applied the SPReaD model to three areas. These were selected based on the presence of high elevation wildlife, OSV trespass, and controversial areas. These areas are called the Greater Upper Pack River, Roman Nose and West Fork RNA/Hidden Lake Analysis Areas (Figure 1). We provide a description of the modeled areas and methods in Exhibit 1.[12] Within the Roman Nose Area, we modeled noise propagation from a single OSV along a conceptual route and emulated highmarking and intense dispersed travel with a grid of points (e.g. Apache Ridge area). Models were run using parameters emulating a day with calm winds (Figure 2) and a day with wind speeds at 10 mph (Figure 3) to illustrate different levels of ambient sound. We then combined the modeled results for a calm day with habitat for grizzly bears (Figure 4), wolverine (Figure 5) and mountain goats (Figure 6). It is important to note that though we only modeled the OSV noise disturbance on a calm day within these wildlife habitats, the model results still represent a very conservative estimate since the Roman Nose Area is a popular OSV destination where numerous

[10] Kaniksu OSV Scoping Comment Summary at 20.
[11] Kaniksu Over-Snow Vehicle Use Designation Project - Wildlife Report at 7.
[12] Methods, Kaniksu Winter Recreation EA Soundscape Analysis by Paul Sieracki, Geospatial Analyst.

vehicles drive throughout the area and do not stay on a single trail.[13] While increased ambient sounds from wind may lessen wildlife disturbances, it is important to manage for the likely scenario where there are higher levels of use on a calm, clear day.

Figure 1. Sample SPReaD Model Areas for OSV Use.



[13] Kaniksu OSV EA at 18.

Figure 2. OSV Noise Propagation, Roman Nose Area, Calm Wind Conditions

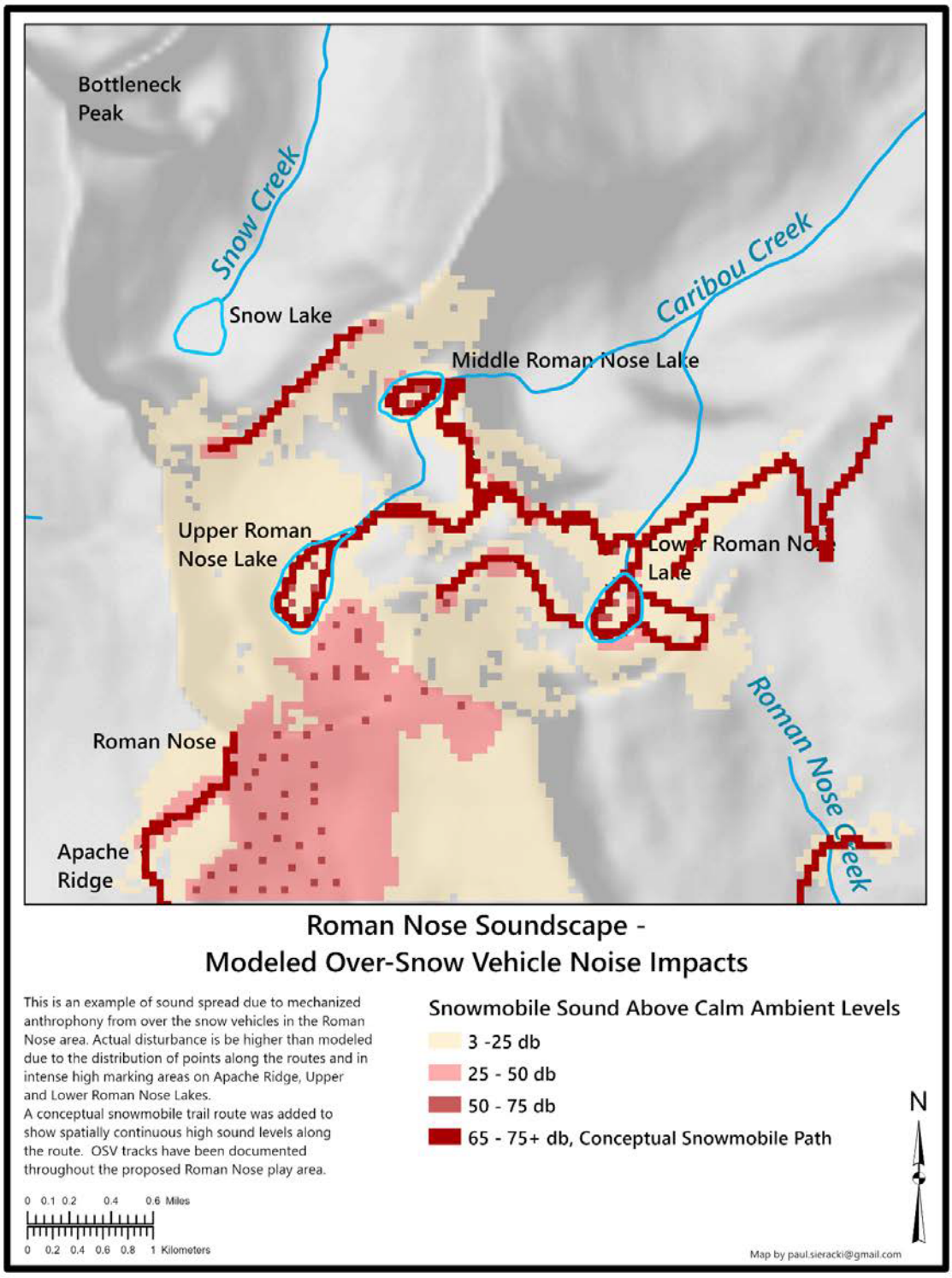
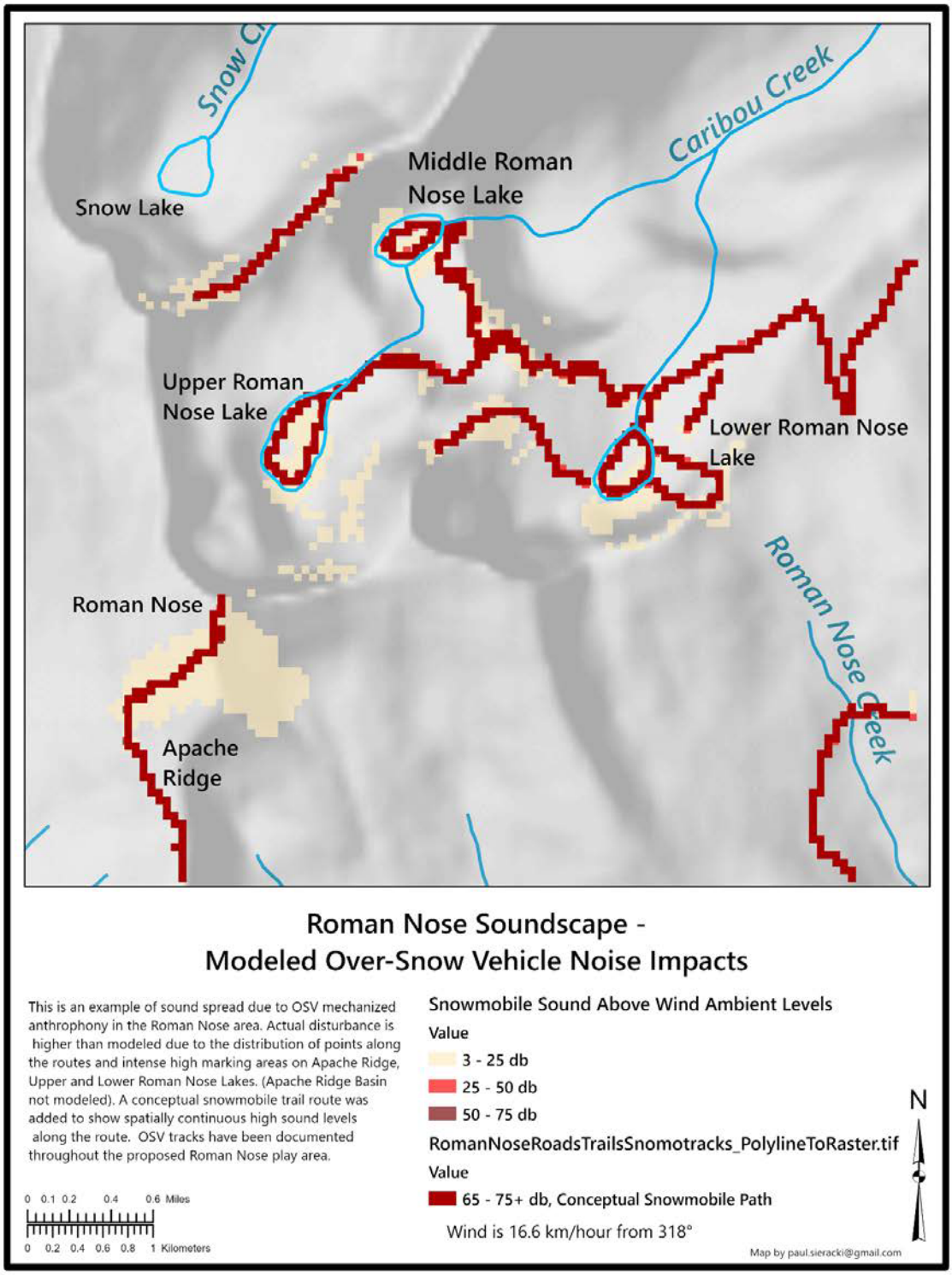


Figure 3. OSV Noise Propagation, Roman Nose Area, Wind at 10 mph



Comparing the two results demonstrates that on a calm day the noise disturbance echos within a portion of the area to the southwest, and on a windier day the ambient levels significantly reduce this disturbance.

Figure 4. OSV Noise Propagation, Calm Wind Conditions within High & Medium Suitable Grizzly Bear Denning Habitat

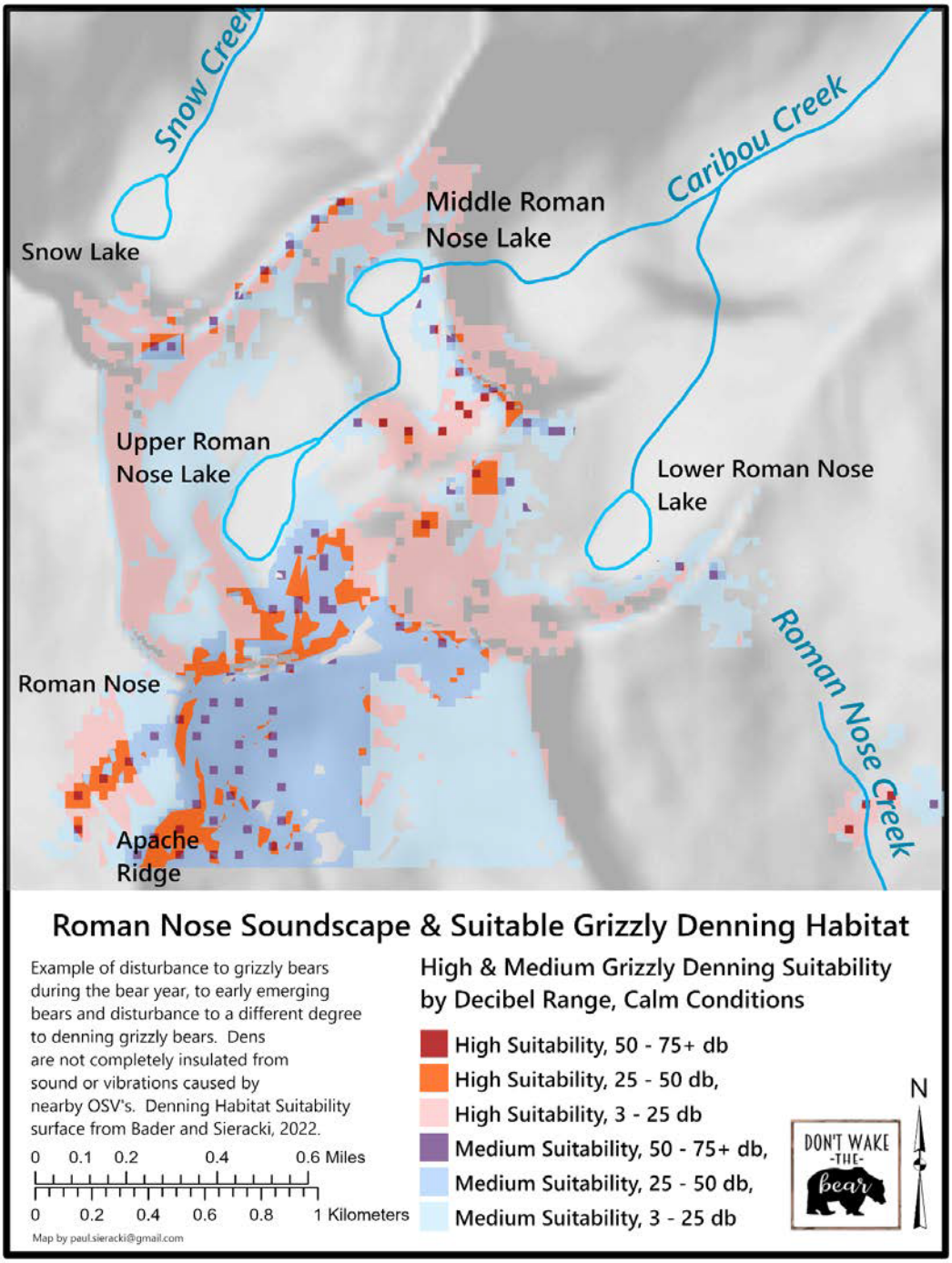
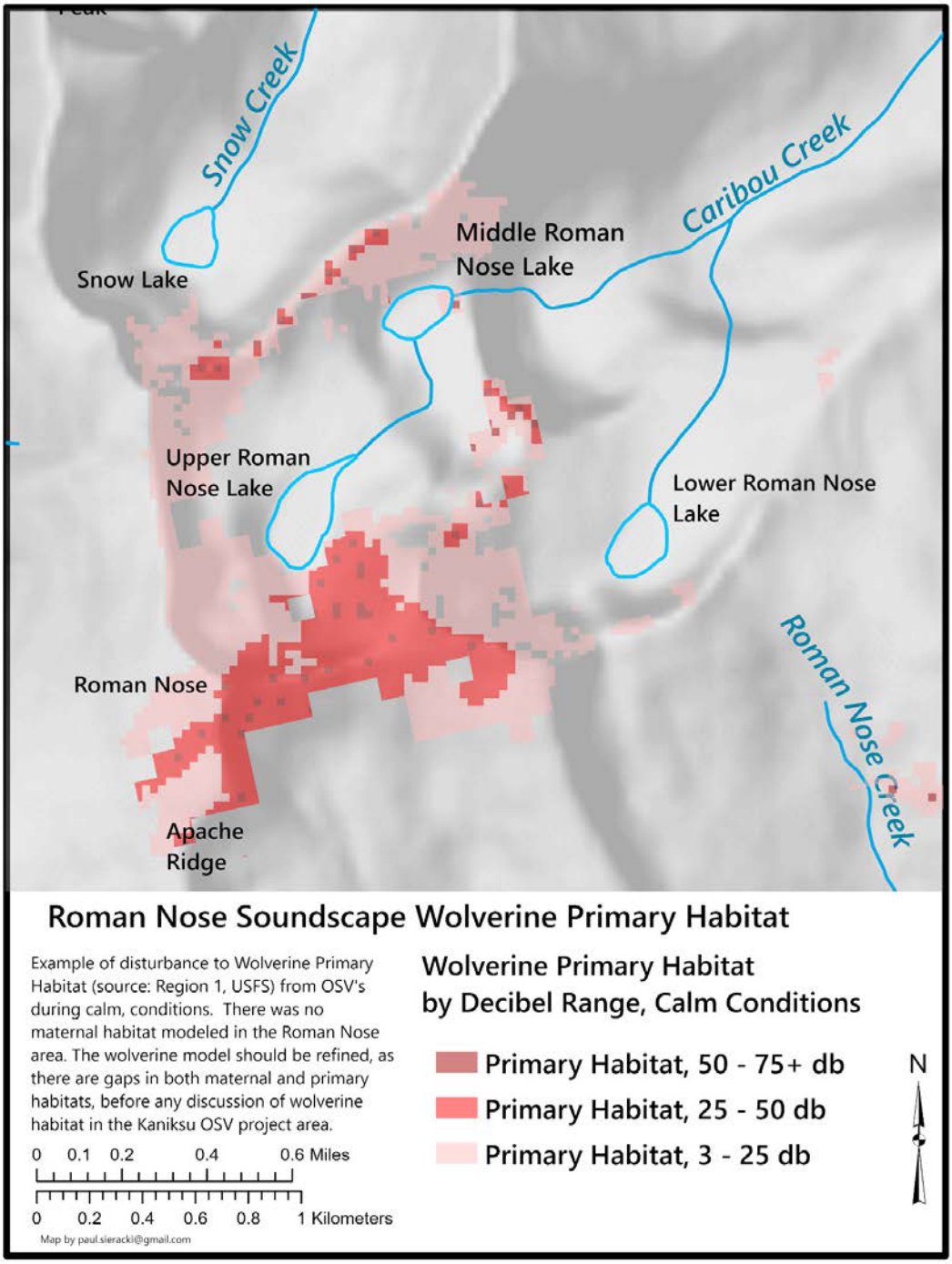
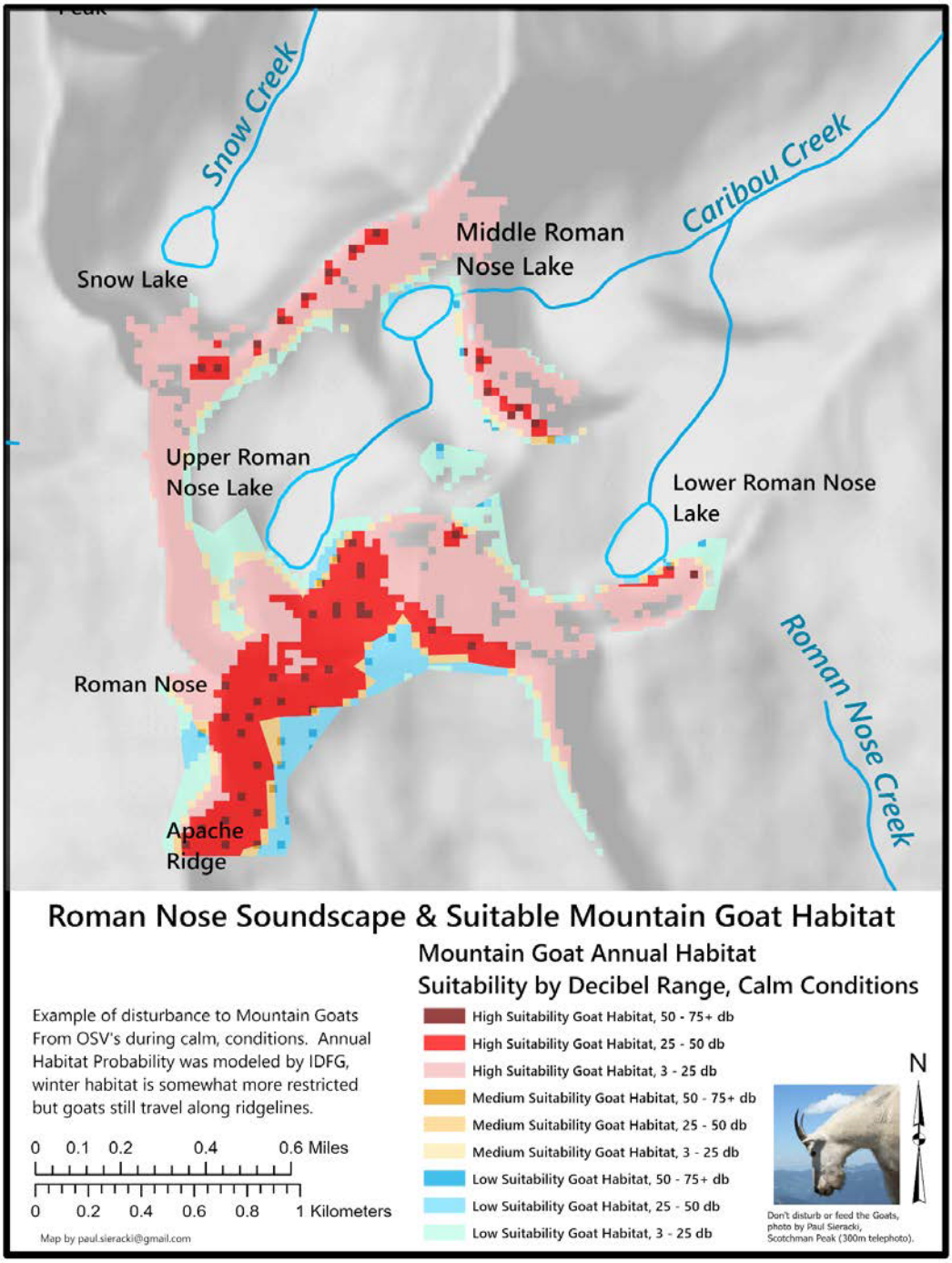


Figure 5. OSV Noise Propagation, Calm Wind Conditions, Primary Wolverine Habitat[14]



[14] The GIS data we received from the Forest Service did not show any maternal denning habitat within the Roman Nose Area, though we question the accuracy of this information.

Figure 6. OSV Noise Propagation, Calm Wind Conditions, Mountain Goat Habitat



All together, the maps illustrate that OSV use would affect a significant portion of the Roman Nose Area, particularly for medium quality suitable grizzly bear denning habitat and primary wolverine habitat where the noise levels range from 25 - 50 decibels. Similarly, highly suitable mountain goat habitat would also be significantly affected with noise levels within this range. The model illustrates a high likelihood that all habitat areas for each species would be harmed by cross-country OSV use, particularly when vehicles drive along the Apache Ridgeline and east along the top of the cirque

basin to Lower Roman Nose Lakes . Additionally, multiple OSVs on a conceptualized path up to and around Upper Roman Nose Lake would also significantly harm habitat for grizzly bears, wolverine and mountain goats. ***For this reason, we strongly recommend the Forest Service minimize the harmful effects of OSV noise disturbance by protecting the Roman Nose Area from cross-country travel and limiting winter motorized use to groomed trails only to the Lower and Middle Roman Nose Lakes with a seasonal closure beginning March 15 to protect grizzly bears denning habitat.***

We also modeled calm and windy conditions for the Greater Upper Pack River Area (Figure 7) since it is a popular destination for quiet winter recreational activities, as is the Hidden Lake Area, (Figure 8), though here we only modeled calm wind condition since our purposes were to demonstrate how the Forest Service could use the SPReaD model throughout the planning area. The model shows high levels of disturbance along the conceptualized OSV trail, with noise reaching or exceeding 75 db. Sound quickly drops off to the 3-25 db range off the trail due to sound absorption from the surrounding forest, but this still would conflict with quiet recreational uses, and any primitive or semi-primitive non-motorized setting, such as near the Selkirk Proposed Wilderness Area.

In sum, these images illustrate the utility of the GIS based SPReaD model to analyze noise impacts to wildlife habitat and quiet recreation opportunities. It was arbitrary and capricious for the Forest Service to assert that the task is too complex. The model results also show an effective minimization approach would be to designate specific groomed trails away from suitable wildlife habitat. Further, the model shows that even if OSV use were restricted to specific trails, noise would eliminate existing or proposed quiet recreational uses. Given the extensive acres proposed for OSV designation and literally hundreds of miles of groomed and ungroomed trails, it is reasonable to protect the Greater Upper Pack River and Hidden Lake Areas from OSV disturbances, along with the three proposed de facto play areas in the Cabinet-Yaak Grizzly Bear Recovery Area that we did not model.

Figure 7. OSV Noise Propagation, Calm Wind Conditions, Greater Upper Pack River Area

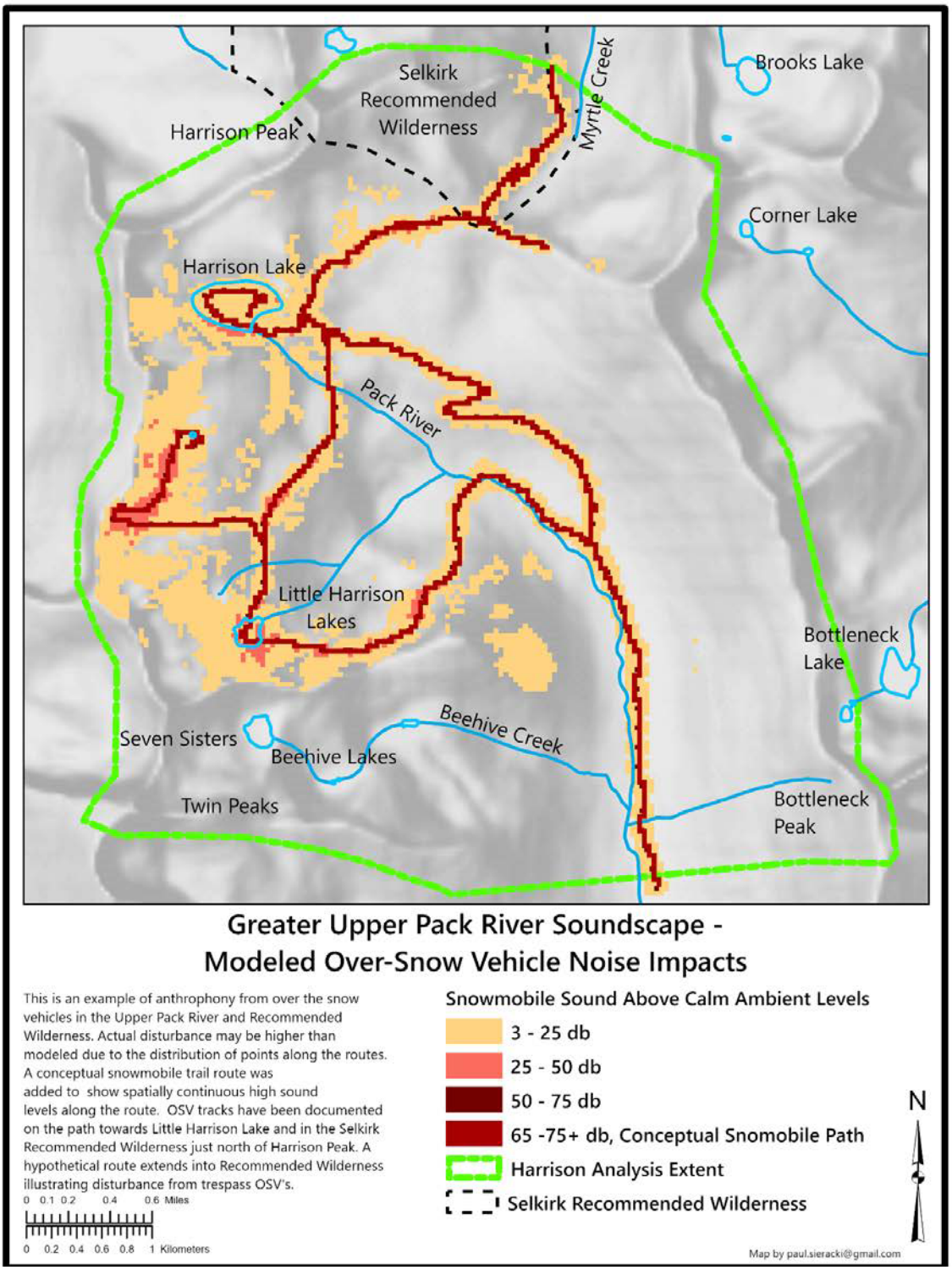
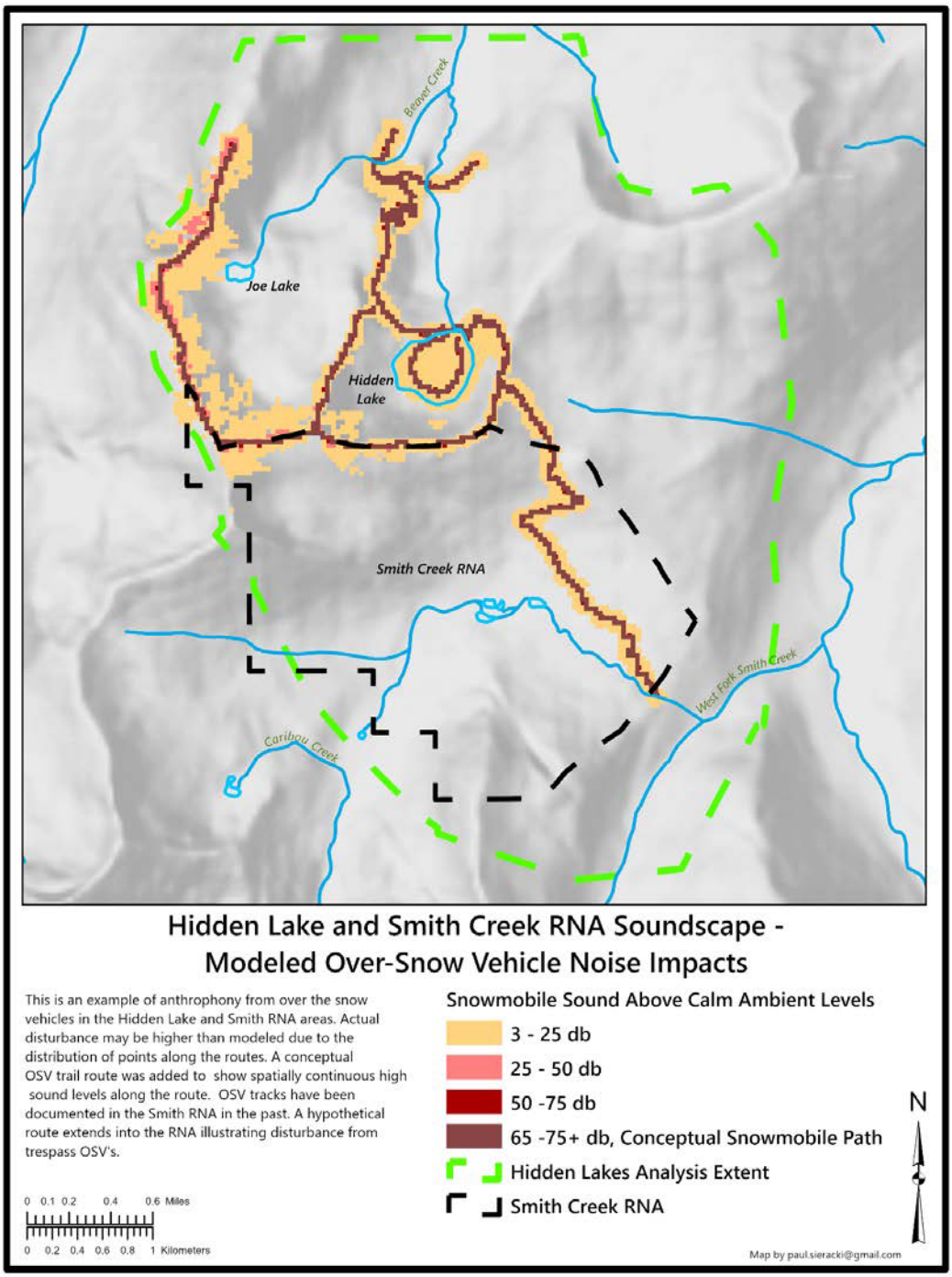


Figure 8. OSV Noise Propagation, Calm Wind Conditions, Hidden Lake Area



B. Failure to properly analyze impacts to wildlife and vegetation

1. Grizzly Bears

The above discussion focuses on just one flaw with the Forest Services analysis regarding grizzly bears, but several more exist. Ultimately, the Forest Service failed to provide detailed analysis of the direct, indirect and cumulative impacts from each alternative.

The Forest Service rightly recognizes threats posed by motorized access:

> Grizzly bears often under-use or avoid otherwise preferred habitats that are frequented by people, which can result in a negative association with roads even in the absence of traffic (USDI Fish and Wildlife Service 2011). This avoidance is often strongest in adult grizzly bears (as opposed to subadults) (Gibeau et al. 2002). In the case of adult females, persistent displacement from habitats can result in learned avoidance behavior by their cubs – causing long-term underutilization of habitat areas.[15]

The harmful effects on grizzly bears from motorized disturbance is not limited to just roads, but motorized disturbance generally, including from OSV use. The Forest Service recognizes some of those harmful effects in its analysis where it acknowledges the "potential displacement of females with cubs from the immediate vicinity of the den site after they emerge in the spring," and "potential for the mother and a young cub to become separated during an encounter with OSVs after they emerge from the den or in the vicinity of the den."[16] However, the agency also asserts that direct mortality from an OSV encounter is rare or nonexistent, and therefore not considered in the analysis.[17] While instances of direct mortality may be rare or undocumented in the recovery zone, the potential is still a concern, especially given the agency's own acknowledgement about the perilous state of grizzly bear recovery and the ability of the population to withstand any mortality. Within the Selkirk Recovery Zone, the USFWS found the following:

> Finally, applying the 4 percent mortality limit to the minimum calculated population resulted in a total mortality limit of 1.2 bears per year and a female limit of 0.4 females per year (30 percent of 1.2) (Kasworm et al. 2022b). The average annual human caused mortality for 2016–2021 was 2.3 bears per year and 0.8 females per year. At this time, two of the three recovery goals are not being met in the Selkirk recovery zone.[18]

Within the Cabinet-Yaak Recovery Zone, the USFWS found the following:

> Applying the 4 percent mortality limit to the minimum calculated population resulted in a total mortality limit of 1.6 bears per year, and a female limit of 0.5 females per year (30 percent of 1.6). The average annual human-caused mortality for 2016–2021 was 1.0 bears per year and 0.5 females per year, so this goal is being met. However, only 14 of 22 bear management units were occupied by females with young from a running 6-year sum of verified evidence; and unduplicated sightings of females with cubs averaged 3.3 per year

[15] Kaniksu OSV EA, Wildlife Report at 25.
[16] Kaniksu OSV EA, Wildlife Report at 28-29
[17] *Id.* at 29 "Consequently, direct mortality or injury is likely rare or non-existent and therefore discountable and warrants no additional analysis."
[18] *Id.* at 23.

> from 2016–21 (Kasworm et al. 2022a). Two of the three recovery goals are also not being met in the Cabinet-Yaak recovery zone.

Female mortality within the Selkirk Recovery Zone already exceeds the limit, and is right at the 0.5 threshold within the Cabinet-Yaak Recovery Zone. As such, just one death in either area caused by OSV use is highly significant and should be subject to analysis. While collisions may be one cause, another not mentioned in the analysis is direct mortality from collapsed dens, which may occur when OSVs trigger avalanches and entomb a female and her cubs. Such an occurrence was documented in Alaska a number of years ago,[19] and given there are no specific monitoring protocols that effectively document such instances within the Kaniksu planning area, there may have been similar mortality events that have occurred with no documentation. Certainly with such activities as highmarking and cornice tapping, OSV caused avalanches could have led to direct grizzly bear mortality. The Forest Service does not consider OSV triggered avalanches or their potential to harm wildlife, including direct grizzly bear mortality, even while acknowledging an increased risk to denning grizzly bears from such activity:

> The physical separation of grizzly bear denning habitat from areas preferred by most OSV users reduces the likelihood of negative impacts on denning grizzly bears. An exception is in areas of steep, open slopes used for high marking by advanced OSV operators. In these areas the potential for overlap between dens and over-snow vehicles is increased.[20]

It is reasonable given the cited observation to expect the Forest Service to acknowledge the potential impacts to denning grizzly bears from use of steep, open slopes. In addition, we certainly refute the assertion that OSV use occurs away from grizzly bear denning habitat to such a degree that negative impacts are unlikely, especially given the agency provides no evidence to support such an arbitrary conclusion. The interplay between grizzly bears and OSV use was captured in Region 1 under a 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. … However, the potential of snowmobile use impacting an individual female 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

[19] Hildebrand et al. 2000. A denning brown bear, Ursus arctos, sow and two cubs killed in an avalanche on the Kenai Peninsula, Alaska. Canadian Field Naturalist 114(3): 498.
[20] Kaniksu OSV EA, Wildlife Report at 31.

> emergence or premature displacement from the den site area, resulting in reduced fitness of females and cubs, ultimately resulting in injury and possibly death.[21]

Grizzly bears can be susceptible to disturbance and risk den abandonment. The risk is especially high from late February through April. ("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 failed to carefully 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 to grizzly bears. Rather, the Forest Service asserts any disturbance to denning grizzly bears would be minor:

> No den abandonment or other deleterious effects on individual grizzly bears as a result of over-snow vehicles has been documented in the Selkirk or Cabinet-Yaak ecosystems or in any other grizzly bear ecosystem in the contiguous United States (USDI Fish and Wildlife Service 2008a). However, such effects would be difficult to detect and determine. Nevertheless, it is possible that over-snow vehicle use in close proximity to a den could have minor effects on individuals.[22]

Given the acknowledgement that den abandonment would be difficult to detect and determine, the Forest Service should have considered a scenario where the effects on individuals is not minor. In addition, the Forest Service failed to adequately demonstrate how designations authorizing late-season OSV use in or near grizzly bear denning habitat complies with the ESA including any existing incidental take statements related to OSV use, as we discussed in our scoping comments. Further, we remind the agency that compliance with an incidental take statement does not demonstrate compliance with the TMR's minimization criteria.

Further, the Forest Service acknowledges the risk of OSV use to grizzly bears emerging from their dens, but then describes the period of emergence as occurring in late April or May.[23] It also states that emergence may begin as early as the third week of March.[24] Clearly there is a need to take a closer look at when grizzly bears may begin emerging from their dens, especially in light of the climate crisis. Here, the agency fails to acknowledge or discuss patterns of den emergence in the planning area that may be occurring at earlier dates, the likelihood of which is reasonable to expect given the climate crisis and its negative consequences on levels of snowpack, timing of snowmelt and their impacts regarding den emergence. While the Forest Service acknowledges climate change, it does not include the consequences in its analysis, rather it simply makes the following statement:

> As described in Halofsky et al. 2018b, climate change is expected to have a generally negative

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[21] Biological Opinion on Amendment 24 to the Flathead National Forest Plan (December 19, 2008), pages 35 & 53. Exhibit 2.
[22] Kaniksu OSV EA, Wildlife Report at 31.
[23] Kaniksu OSV EA, Wildlife Report at 32.
[24] Kaniksu OSV EA at 47, ("Grizzly bears emerge from their dens beginning in late March continuing through mid-May. Exit dates for female grizzly bears range from the third week of March to the third week of May, with most occurring the fourth week in April.").

> effect on snow-based winter activities, although a wide range of effects at local scales is possible because of variations across the region in site location and elevation. Warmer projected winter temperatures for the region are expected to reduce the proportion of precipitation as snow, even if the total amount of precipitation does not deviate significantly from historical norms.[25]

Yet, even with this acknowledgement the Forest Service fails to include a detailed analysis of how climate change may influence grizzly bear den emergence, and the potential conflicts from OSV use.

All the harmful effects of OSV use discussed above within the Selkirk and Cabinet-Yaak Recovery Zones, especially where high and medium quality denning habitat occurs, also apply outside these areas, in particular within areas labeled as Bears Outside Recovery Zone (BORZ), as well as additional areas where the USFWS identified grizzly bears "may be present."[26] We agree with the Forest Service statements that recognize the importance of BORZ and "may be present" areas to facilitate grizzly bear recovery between the recovery zones:

> Rather than measures of linear road miles, acres of secure habitat in a BORZ area were thought to be a better representation of the potential effects to grizzly bears from motorized access, as it provides a more accurate indication of the spatial mix of motorized routes on the landscape.
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> --
>
> Finally, as a result of their high level of mobility, large home ranges, and continued expansion of grizzly bears from established population centers, it has become necessary to evaluate areas that are neither in recovery zones nor BORZ areas, but where there have been verified bear sightings or where transient bears could be present.[27]

Ultimately, grizzly bear recovery requires protecting its habitat from motorized disturbance, especially where such use may reduce or preclude the ability of females to establish new dens, expand their home ranges or utilize areas of connectivity. The Forest Service dismisses the issue of connectivity by asserting it is only relevant in lower elevation areas:

> Additionally, since connectivity areas are generally at low elevations with limited (if any) over-snow vehicle use during the late spring when grizzly bears become active, this proposal is unlikely to affect habitat connectivity for this species.[28]

We remind the agency that in order to reach these lower elevations, grizzly bears must traverse higher elevation areas where grizzly bear emergence may be occurring at earlier times due to climate change effects.

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[25] Kaniksu OSV EA, Recreation Report at 5.
[26] Kaniksu OSV EA, Wildlife Report at 28-29 discussing BORZ and USFWS "may be present" maps.
[27] *Id.* at 29.
[28] *Id.* at 24.

In addition, the Forest Service proposes three dedicated OSV areas in the Cabinet-Yaak Grizzly Bear Recovery Zone, which can effectively be called "play areas." These are located at Moose Lake, Porcupine Creek and Wellington Creek. All three play areas impact grizzly core habitat. The agency states that "Areas that generally receive high amounts of over-snow vehicle use are not the same areas typically selected by grizzly bears for denning."[29] With the increasing use of snowbikes, steeper timbered areas are being utilized with a greater probability of impacting grizzly dens by OSV presence and high anthrophony sound levels. Impacts to grizzly core habitat from these three play areas will reduce core below standards in the North Lightning and Scotchman GBMU's. The Forest Service fails to consider how newer technologies for OSV use may increase grizzly bear disturbance. A detailed analysis of impacts to core habitat in the Cabinet Yaak Ecosystem is in the attachment titled "Effects of Proposed Play areas to Core Habitat in the North Lightning and Scotchman GBMU's in the Cabinet-Yaak Grizzly Recovery Area." Exhibit 3. The Forest Service acknowledges the issue of newer technologies in other sections of its analysis, but does not apply it to its grizzly bear section, either in these proposed play areas or across the remaining planning area. Specifically, the agency states the following:

> Additionally, technology has steadily progressed since, making areas that were once avoided or infrequently used by OSV more readily accessible to riders. The advent of snowbikes, in particular, has spread the footprint of OSV use into areas that formerly had limited accessibility for snowmobiling off-route due to tree densities and topography. The actual footprint of OSV use on the Idaho Panhandle National Forest (and surrounding locations) has likely increased during this time with the advancement in snowmobile technology and increase in winter recreation (resulting from population growth in outlying areas) – independent of any actions authorized or carried out by the Forest Service.[30]

This observation contradicts the assertion that OSV use does not occur as significant levels within timbered areas where it may harm denning grizzly bears or bears emerging from those dens:

> Most over-snow vehicle use occurs on groomed and ungroomed routes, shallow open basins, and meadows; while grizzly bears typically select timbered habitats or very steep slopes for their den sites, thereby limiting the potential for direct overlap between the two (USDI Fish and Wildlife Service 2008a).[31]

In addition, the Forest Service did not conduct proper cumulative effects analysis. For example, it did not fully consider state owned land within grizzly bear management units between the Myrtle and Priest Lake BMU. This includes omitting a complete OSV usage map that includes non-federal lands within the project area, including Idaho Department of Lands, private timber companies, other private lands and the adjacent Kootenai and Colville National Forests. Such information should inform the total impacts from OSV use on grizzly bear recovery.

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[29] Kaniksu OSV EA, Wildlife Report at 31
[30] *Id.* at 50.
[31] *Id.* at 31.

Further, the decline and resultant listing of whitebark pine as a threatened species, a keystone species with over 800,000 acres of potential habitat in the project area, affects grizzly bear's food supply, even if it is not a major food source. The large area of potential whitebark pine habitat needs extensive restoration, not cumulative chronic degradation from OSV impacts. The Forest Service must address how OSV damage to whitebark pine stands may affect seed production and the indirect impacts on grizzly bear recovery.

A Special Note on the Myrtle Grizzly Bear Management Unit

The Forest Service proposes to open a portion of the Myrtle GMBU in the Roman Nose Area to OVS use through May 31, "The Roman Nose area in the Selkirk Grizzly Bear Recovery Zone would be open to over-snow vehicle use between November 16 and May 31, once motorized access standards are met. For Roman Nose, this is anticipated to be in 2023."[32] The agency asserts the standards will be met presumably as part of the Westside Restoration Project. Yet, the Forest Service received a letter in Feb. 2023 requesting a supplemental EA/EIS and a re-analysis of grizzly bear core habitat for the Westside Restoration EA due to new information confirming four high use trails in the Myrtle Grizzly Bear Unit, Selkirk Mountain Recovery Area. Exhibit 4. This include Trail #165 within the Roman Nose Area. The Forest Service does not consider this change in circumstance in the EA, particularly in regards the cumulative effects. The omission must be corrected in subsequent analysis.

2. Wolverine

Our comments explained at length the need to carefully analyze potential impacts to wolverine, which the Forest Service failed to address in its analysis. Rather, it once again arbitrarily asserts that OSV use would not significantly affect wolverines:

> Current information does not indicate that other potential stressors or land management activities such as those proposed under the Kaniksu Over-Snow Vehicle Use Designation Project (or other activities such as timber harvest, infrastructure development, and transportation corridors) pose a threat to the distinct population segment of the North American wolverine.[33]

Here we must remind the agency that the analysis must support a determination that the proposed action would not harass wolverines or significantly disrupt wolverine habitat as required by the Travel Management Rule.[34] Asserting that winter motorized designations would not threaten the population ignores this fact, and further, the agency fails to provide detailed analysis that specifies where maternal and natal denning habitat occurs as was referenced in the agency analysis:

[32] Kaniksu OSV EA at 4.
[33] *Id.* at 56-57.
[34] 36 C.F.R. 212.55(b)

> Researchers have reported that female wolverines may be sensitive to human disturbance in the vicinity of natal and maternal dens and may abandon dens and move their kits a considerable distance if they detect human presence in the area (Copeland 1996, Magoun and Copeland 1998).[35]

Rather, the agency explains that it used "Mapping of wolverine habitat in the Northern Region of the Forest Service is based on the work of Inman et al. (2013), which used radio-telemetry data collected in the Yellowstone region of the United States and resource selection function modeling."[36] This approach was first described by Dr. Inman in the 2007 Wildlife Conservation Society, North America Program, General Technical Report:

> Gestation occurs for approximately 45 days and the peak period of parturition is mid-February through mid-March. Types of reproductive dens include natal dens (location of birth), maternal dens (used subsequent to natal den but prior to weaning), and rendezvous sites (used subsequent to natal den but after weaning; Magoun and Copeland 1998). The peak period of natal den use occurs from mid-February through mid-May. Use of maternal dens sites occurs during March and April, however in most cases natal dens are used through the time of weaning with a direct move from the natal den to a rendezvous site. Rendezvous sites are typically used during May and June, after which cubs travel with the mother.[37]

Given the importance of wolverine natal and maternal denning habitat within the project, a proper analysis would have identified areas that support both types of denning. However, the Forest Service does not differentiate between natal and maternal denning sites, and it may be that the delinations used in the wolverine analysis followed a newer methodology that only uses maternal, primary and dispersal habitat layers.[38] Here the Forest Service should explain why use of only maternal denning habitat is necessary, rather than both natal and maternal habitats. The agency did provide corresponding tables listing acres and miles of groomed and ungroomed trails, but no associated maps that illustrate where these occur within the planning areas.[39] In fact, the Forest Service only provided its wolverine habitat layers after we filed a Freedom of Information Act request for the GIS information. Looking closely at the GIS information, it is clear that the Forest Service must address fatal flaws in the data set regarding resolution. Specifically, it appears the agency used coarse

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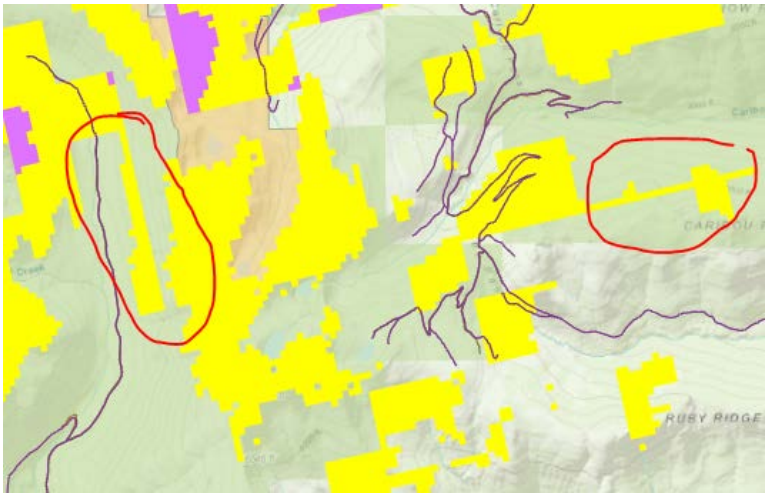
[35] Kaniksu OSV EA, Wildlife Report at 65.
[36] Kaniksu OSV EA at 56.
[37] Brock, B. L., R. M. Inman, K. H. Inman, A. J. McCue, M. L. Packila, and B. Giddings. 2007. Broad-scale wolverine habitat in the conterminous Rocky Mountain states. Chapter 2 in Greater Yellowstone Wolverine Study, Cumulative Progress Report, May 2007. Exhibit 5. Wildlife Conservation Society, North America Program, General Technical Report, Bozeman, Montana, USA. *See also*, Inman, Robert & Magoun, Audrey & Persson, Jens & Mattisson, Jenny. (2012). The wolverine's niche: Linking reproductive chronology, caching, competition, and climate. Journal of Mammalogy. 93. 634-644. 10.2307/23259959.
[38] Inman, R. M., B.L. Brock, K.H. Inman, S.S. Sartorius, B.C. Aber, B. Giddings, S.L. Cain, M.L. Orme, J.A. Fredrick, B.J. Oakleaf, K.L. Alt, E. Odell, and G. Chapron. 2013. Developing Priorities for Metapopulation Conservation at the Landscape Scale: Wolverines in the Western United States. Biological Conservation 166:276–286.
[39] Kaniksu OSV EA, Wildlife Report at 65-66.

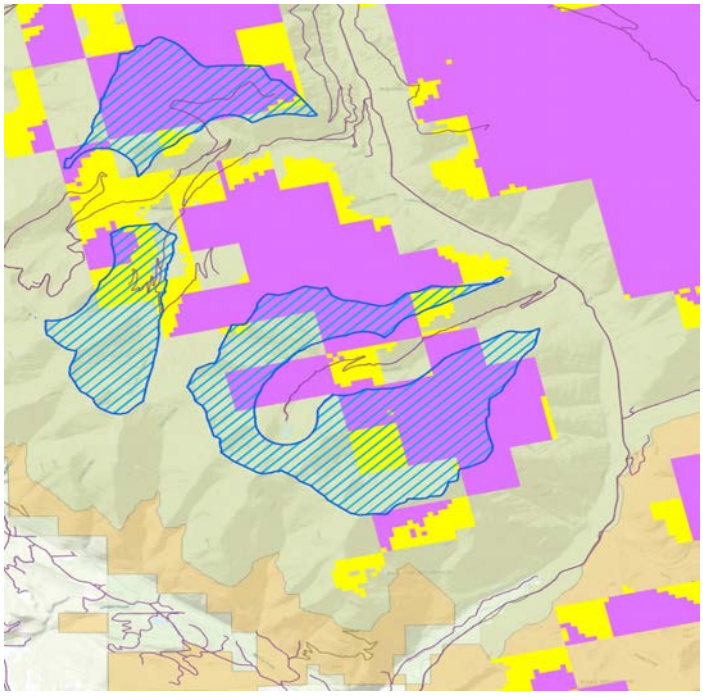
800 m raster data that usually indicates climate datasets were used. This is readily apparent in Figures 9 and 10 below showing primary wolverine habitat in yellow and maternal habitat in magenta. The examples show areas bounded by straight lines and strips which do not reflect the natural irregularities of the landscape. Inaccuracies result from careless use of data, resulting in a substandard analysis. The first image below of the Caribou Ridge to Pack River area shows strange liner features (circled in red) and right angles and gaps where habitat should be.

Figure 9. Primary and Maternal Wolverine Habitat Caribou Ridge to Pack River Area



The proposed play area in the Cabinets was overlaid to show the effects even at this coarse level analysis of OSV use in maternal habitat.

Figure 10. Primary and Maternal Wolverine Habitat in the Cabinet Play Area (blue hash marks).



Climate data can now be statistically downscaled using Climate BC/WNA/NA[40] and we urge the Forest Service to refine its data to provide better resolution and also to conduct field verification to ensure the accuracy of the mapped wolverine habitats.

Even if the Forest Service's data set were enough to satisfy NEPA's hard look mandate (which it is not), the agency still must better account for the harassment and significant disruption of wolverine habitat in its analysis. At one point the agency recognizes that "female wolverines may be sensitive to human disturbance in the vicinity of natal and maternal dens and may abandon dens and move their kits a considerable distance if they detect human presence in the area (Copeland 1996, Magoun and Copeland 1998)."[41] Yet, the Forest Service then asserts that more recent scientific evidence suggests otherwise referencing a central Idaho study:

> Preliminary results of an ongoing study in central Idaho designed to address whether winter recreational use is compatible with denning wolverines indicate that some wolverines do reside in landscapes that have relatively high levels of winter recreation, and at the home range scale are not excluded from these areas (Heinemeyer and Squires 2014, Heinemeyer and Squires 2013; Central Idaho Wolverine and Winter Recreation Research Study 2012; Heinemeyer et al. 2010; Heinemeyer et al. 2019).[42]

Similar observations were noted from the same study in a wolverine species status assessment report, but with the following caveat that the Forest Service does not acknowledge: "They also reported that wolverines responded negatively to increasing intensity of winter recreation, with off-road and dispersed recreation having a greater effect than recreation that was concentrated on access routes (Heinemeyer *et al.* 2017, p. 34).[43]

Factors affecting the wolverine's continued existence include projected decrease and fragmentation of wolverine habitat and range due to climate change, lack of secure habitat allowing for connectivity, trapping, lack of regulatory mechanisms to address the threats to wolverine habitat from climate change, and loss of genetic diversity due to small population size. A recent study expands on these threats explaining:

> Modeling suggests snow in wolverine range in the USA and southern British Columbia will diminish markedly in the coming century (McKelvey et al., 2011a). Projection models based on climate-change scenarios suggest a marked reduction of persistent spring snow in the lower half of inferred denning elevation bands (Barsugli et al., 2020) and across all elevations in currently occupied states (Peacock, 2011) for the USA population.
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[40] https://cfcg.forestry.ubc.ca/projects/climate-data/climatebcwna (last accessed 4/27/2023).
[41] Kaniksu OSV EA, Wildlife Report at 65.
[42] *Id.*
[43] U.S. Fish and Wildlife Service. 2018. Species status assessment report for the North American wolverine (Gulo gulo luscus). Version 1.2. March 2018. U.S. Fish and Wildlife Service, Mountain-Prairie Region, Lakewood, CO. p. 61.

> Wolverine ranges in the USA are restricted to mountain environments and are fragmented by developed private lands in valley bottoms. As snowpack decreases through the 21st century wolverine populations are expected to become more fragmented and isolated, especially in the USA (McKelvey et al., 2011a).
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> In the mountain regions of the USA wolverines' close association to snow interacts with backcountry winter recreation. Using simultaneous GPS monitoring of mountain wolverines and winter recreationists, Heinemeyer et al. (2019) showed wolverines avoided otherwise high-quality habitats in areas with higher recreation levels. The strength of avoidance increased with increased recreation, was greater for dispersed off-trail activities, and was greater for motorized than non-motorized recreation (Heinemeyer et al., 2019). As human pressures for recreational space mount, increasing effects on wolverines are expected in protected areas as last bastions of habitat, adding to the list of stressors for future wolverine.[44]

This study bolsters past findings that demonstrate wolverine may be sensitive to disturbance from motorized winter recreation activities, and may alter their behavior in response to motorized winter recreation activities. Wolverine may avoid areas where motorized winter recreation activities occur. Disturbance from foot and snowmobile traffic have been purported to cause maternal female wolverines to abandon natal dens and relocate kits to maternal dens.[45]

Snowmobile use commonly overlaps with wolverine denning habitat. Dispersed recreational activities like motorized winter recreation have the potential to negatively impact wolverine by disrupting natal denning areas.[46] Wolverines have one of the lowest successful reproductive rates known to mammals, and this is hypothesized as linked to winter energy constraints. Female wolverines select and enter dens and give birth in February to mid-March[47] and the overlap of winter recreation with this energetically taxing period is highly concerning. Any disturbance during this important winter period can negatively affect productivity and other vital rates.[48]

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[44] Jason T. Fisher, Sean Murray, Mirjam Barrueto, Kathleen Carroll, Anthony P. Clevenger, Doris Hausleitner, William Harrower, Nicole Heim, Kim Heinemeyer, Aerin L. Jacob, Thomas S. Jung, Andrea Kortello, Andrew Ladle, Robert Long, Paula MacKay, Michael A. Sawaya. Wolverines (Gulo gulo) in a changing landscape and warming climate: A decadal synthesis of global conservation ecology research, Global Ecology and Conservation, Volume 34, 2022, E02019, ISSN 2351-9894, https://doi.org/10.1016/j.gecco.2022.e02019.
[45] 78 Fed. Reg. 7878 (Feb. 4, 2013).
[46] J. Krebs *et al.*, Multiscale habitat use by wolverines in British Columbia, Canada, 71 Journal of Wildlife Management 2180 (2007); E.C. Lofroth and J. Krebs, The Abundance and Distribution of Wolverines in British Columbia, Canada, 71 Journal of Wildlife Management 2159 (2007); L.F. Ruggiero *et al.*, Wolverine conservation and management, 71 Journal of Wildlife Management 2145 (2007).
[47] Magoun, A.J. *et al.* (2017). Detecting Snow at the Den-Site Scale in Wolverine Denning Habitat, 41 Wildlife Society Bulletin 381.
[48] R. May *et al.*, Impact of infrastructure on habitat selection of wolverines *Gulo gulo*, 12 Wildlife Biology 285 (2006); Krebs (2007).

As noted, researchers have reported that female wolverines may be sensitive to human disturbance in the vicinity of natal and maternal dens, and disturbance from foot and snowmobile traffic has been purported to cause maternal females to abandon or move dens.[49] One study found that females tended to avoid areas with heli-skiing and backcountry skiing areas.[50] Another study found that motorized recreation occurred at higher intensity across a larger footprint than non-motorized recreation in most wolverine home ranges.[51] Female wolverines exhibited stronger avoidance of off-road motorized recreation and experienced higher indirect habitat loss than male wolverines.[52] High-cirque snowmobile use, especially cross-country use and "high marking," may present a substantial threat to wolverines and their habitat.

These behavioral changes can negatively affect individuals' physiological stress levels and reproductive capacity in several ways, as evidenced in numerous studies on different species.[53] It may reduce the amount of time and thus ability of female wolverines to hunt or to utilize food caches. This would result in significant additive energetic effects, reducing foraging success for adult females already stressed by the demands of bearing and raising a litter. In addition, this could reduce kit survival rates by increasing the potential for predation and exposure to cold temperatures. These results indicate that winter recreation may impact wolverines in as yet unknown ways.

As snowmobiling and backcountry skiing continue to grow in popularity and as snowpack continues to decline due to climate change, there is increasing concern that wolverine denning habitat may become limiting. Recent warming has already led to substantial reductions in spring snow cover in the mountains of western North America.[54] Numerous recent and sophisticated studies support the conclusion that climate changes caused by global climate change are likely to negatively affect wolverine habitat.[55] Protection of denning habitat may be critical for the persistence of the species.

An additional concern related to snowmobile use is that motorized access leads to increased

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[49] S. Myrberget, The breeding den of the wolverine, 21 Fauna 108 (1968); Inman *et al.* (2008); Copeland (2009).
[50] Krebs (2007).
[51] Heinemeyer, *et al.* (2019). Wolverines in winter: indirect habitat loss and functional responses to backcountry recreation.
[52] *Id.*
[53] S.J. Creel *et al.*, Snowmobile activity and glucocorticoid stress responses in wolves and elk, 16 Conservation Biology 809 (2002).
[54] P. Mote *et al.*, Declining mountain snowpack in western North America, 86 Bulletin of the American Meteorological Society 1 (2005); G.T. Pederson *et al.*, A century of climate and ecosystem change in Western Montana: what do temperature trends portend? 96 Climatic Change (2010).
[55] Magoun (2017); J.P. Copeland *et al.*, The bioclimatic envelope of the wolverine (Gulo gulo): do climate constraints limit its geographic distribution? 88 Canadian Journal of Zoology 233 (2010); K.S. McKelvey *et al.*, Climate change predicted to shift wolverine distributions, connectivity, and dispersal corridors. 21 Ecological Applications 2882 (2011); S. Peacock, Projected 21st century climate change for wolverine habitats within the contiguous United States. Environmental Research Letters (2011); K.M. Johnston *et al.*, Projected range shifting by montane mammals under climate change: implications for Cascadia's National Parks, 3 Ecosphere 11 (2012).

trapping pressure (direct or indirect capture) for some furbearers that prefer more mesic habitat conditions generally found at higher elevations or in riparian habitats, such as marten, fisher, lynx, and wolverine. Trapping season for these species is limited to the winter months, and most trappers prefer the relatively easy access to suitable habitat provided by snowmobiles. Wolverine populations in small, isolated mountain ranges can be very susceptible to trapping pressure.[56] Trapping pressure for these species is dramatically reduced if there is less snowmobile access.

The best available science reveals that motorized winter recreation poses a threat to wolverine persistence and recovery, in addition to the threats posed by climate change. The cumulative effect of climate change and motorized winter recreation on wolverines is significant. As wolverines lose habitat to the effects of climate change, wolverine and motorized winter recreationists will be forced to share smaller and smaller habitat patches.[57] Decreasing areas with sufficient snow will amplify the effect of motorized winter recreation on wolverine due to the fact that motorized winter recreation will be concentrated in smaller areas on the Idaho Panhandle National Forest. Protected areas in the proposed action may not necessarily provide for all of the wolverine's life history requirements.

Further, general Revised Plan components may not be sufficient to adequately protect wolverine denning habitat:

- FW-DC-WL-01. Nests and den sites and other birthing and rearing areas for terrestrial threatened, endangered, proposed, or sensitive species are relatively free of human disturbance during the period they are active at these sites.
- FW-GDL-WL-25. Management activities on NFS lands should avoid/minimize disturbance at known active nesting or denning sites for other sensitive, threatened, or endangered species not covered under other forestwide guidelines.[58]

While regulations require the agency to ensure project consistency with each plan component, the wide latitude provided in the desired condition and guideline (i.e. "relatively free" and "should avoid/minimize" make it difficult for the agency to demonstrate that the project has been "designed in a way that is as effective in achieving the purpose of the applicable guidelines,"[59] or even that the plan components ensure the agency can "maintain a viable population of each species of conservation concern [wolverine] within the plan area." The Forest Service does not provide detailed enough analysis to demonstrate OSV designations within wolverine denning habitat will, in fact, contribute to the maintenance or attainment of the desired condition, and complies with the guideline. As such, we question if the proposed action complies with the 2015 Revised Forest Plan, and further, if the referenced components in the Revised Forest Plan comply with the 2012 Planning Rule.[60]

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[56] J.R. Squires *et al.*, Sources and patterns of wolverine mortality in western Montana, 71 Journal of Wildlife Management 2213 (2007).
[57] Heinemeyer (2019).
[58] 2015 Revised Plan at 29, 33.
[59] 36 C.F.R. 219.15(d).
[60] 36 C.F.R. 219.9(b)(2)

3. Big Game

Our scoping comments urge the Forest Service to take a hard look at how the proposed action may affect winter habitat security for mountain goat, bighorn sheep, moose and elk. Ultimately, the agency must designate OSV use in a manner that minimizes harassment of these species and significant disruption of their habitat, the importance of which was summarized in Eisen et al, 2021:

> Regardless of the species, however, ungulate winter survival strategy hinges on gaining weight in the fall and expending as little energy as possible while they slowly starve their way through winter. Avoiding excess movement is particularly important, as deep snow can increase the metabolic cost of winter movement up to five times normal levels at a time when ungulates are particularly stressed by forage scarcity and high metabolic demands.[61]

However, the Forest Service makes scant mention of ungulates and nothing that would constitute a hard look analysis. For example, among these species, mountain goats are particularly susceptible to motorized disturbances. Winter is a critical seasonal time period for mountain goat survival. Goats experience significant nutritional deprivation during the winter. Deep snow reduces the availability of food and increases energy expenditures.[62] To conserve energy, mountain goats try to limit their movements to small winter ranges. Displacement due to over-snow vehicle use will cause mountain goats to expend critical energy reserves. In fact, a 2017 Montana Fish, Wildlife and Parks report noted OSV use as one of the top factors limiting mountain goat populations.[63] Further, OSV use in mountain goat winter ranges can result in expenditure of critical energy reserves, trigger avalanches that bury goats, and indirect habitat loss.

> Several literature reviews from the 1980's and 1990's addressed the effects of snowmobile recreation on mountain goats.[58] [59] [60] However, contemporaneous literature lacked any direct research on the subject. The authors instead cited information from personal communications or research of other disturbance effects on goats. Their professional consensus was that snowmobile recreation in goat habitat during the energetically taxing seasons of winter and spring would elicit vigilance and flight behavior, add to goats' energetic burden, and ultimately lead to declines in herd health and productivity.[61,64]

Our scoping comments explained the need for the Forest Service to disclose and discuss the current state of mountain goat populations in the planning area, and identify mountain goat habitat that would be subject to OSV designations. Rather, the agency simply provides a cursory overview of where mountain goats may reside:

> Mountain goats inhabit relatively few, discrete areas of habitat in the Idaho Panhandle National Forest North Zone. Besides two highly visible locations in the vicinity of Lake

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[61] Hilary Eisen, Darça Morgan, Kylie Paul, and Kristina Boyd. May, 2021. Environmental Impacts Of Winter Recreation: Best Available Science. Winter Wildlands Alliance. Exhibit 6 at 6.
[62] Dailey, T. V., et Hobbs, N. T. 1989. Travel in alpine terrain: energy expenditures for locomotion by mountain goats and bighorn sheep. Can. J. Zool. 67 : 2368-2375.
[63] *See* Exhibit 6.
[64] See Exhibit 7 at 11.

> Pend Oreille (Scotchman Peak and Bernard Peak), there are several scattered populations in the Selkirk Mountains and occasionally other locations as well.
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> Winter helicopter surveys by the Idaho Department of Fish and Game have documented goats at several locations on the Idaho Panhandle National Forest portion of the Selkirk Mountains, with concentrations north of Trout Creek and in the area around West Fork Mountain.[65]

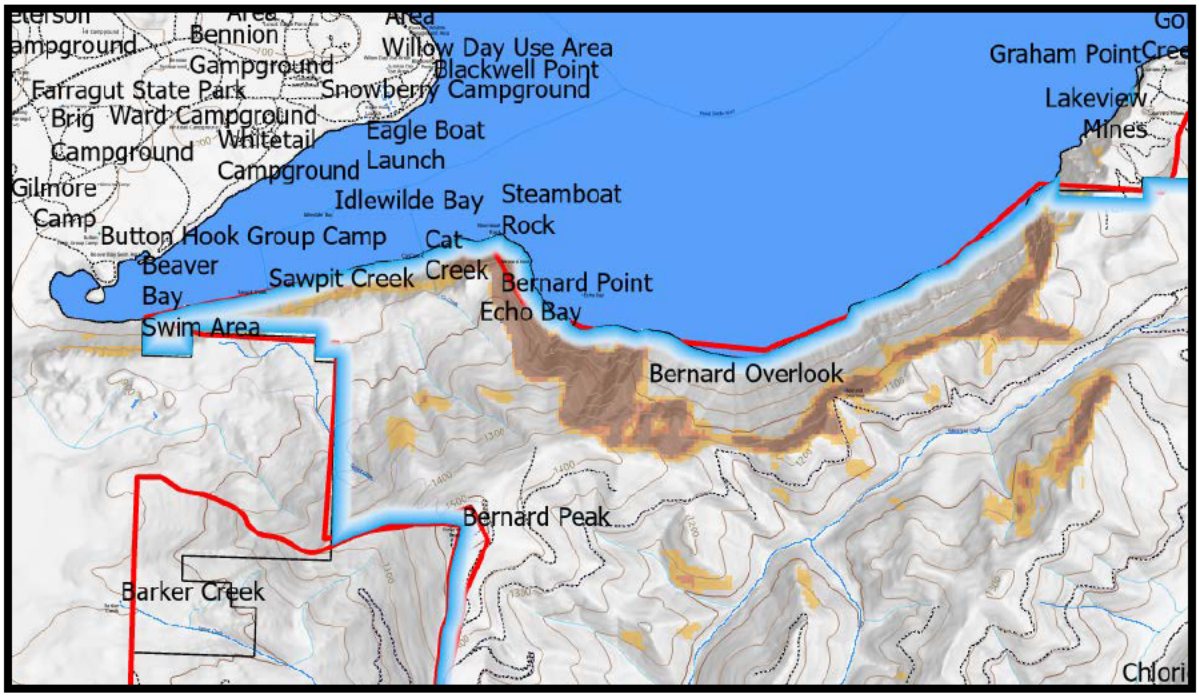
This tells us very little about how mountain goat populations are faring, or if the agency is successfully maintaining viable populations within the planning area. We were able to map mountain goat habitat in our sound modeling with GIS data available from IDFG, and given the harmful effects of OSV use on mountain goats, it is crucial for the agency to take a closer look at how OSV designations affect habitat quality in these areas. This is especially important where the agency asserts OSV designations will not harass individual mountain goats:

> There are no closures proposed around Bernard Peak – however, goats using this area are well-protected from motorized disturbance by the surrounding topography. While a popular motorized route (FSR 2707) closely parallels the ridgeline on the east side, the area of use for goats is generally on the more than 1,500-foot (vertical) steep face west of the ridge above Lake Pend Oreille. It is unlikely that goats would be aware of, much less disturbed by, OSV use of this route.[66]

The agency fails to explain how highmarking and other extreme motorized use would not disturb mountain goats, and given the agency failed to conduct any sound modeling, the conclusion is arbitrary at best. Further, the highly cherished Farragut goat herd is visible from Farragut State Park and from boats on Pend Oreille Lake. OSV's are allowed to access areas right along the wintering cliff habitat and even highmark in some less cliffy habitats potentially impacting goats looking for forage on the habitat adjacent to the wintering areas. We suggest a significant no OSV buffer and signage around the goat habitat mapped by Idaho Fish and Game, (Figure 11).

[65] Kaniksu OSV EA, Wildlife Report at 71-72
[66] *Id.* at 72.

Figure 11: Mountain goat habitat (brown colors) extends from north of Bernard Peak east to the Lakeview Mines area.



4. Canada lynx

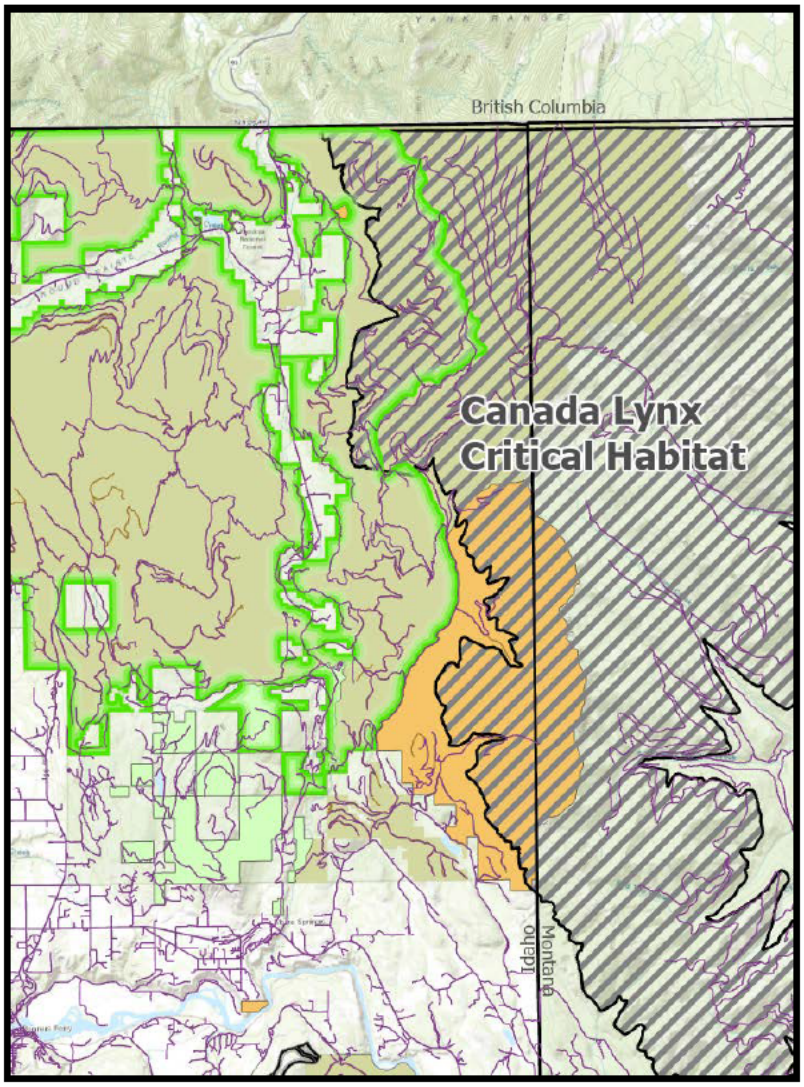
We raised concerns regarding the potential conflicts between OSV use and Canada lynx in our scoping comments, which are still relevant as the agency fails to properly address them or provide sufficient analysis to satisfy NEPA. For example, the analysis fails to provide maps illustrating where OSV designations would occur within core habitat, designated critical habitat, denning habitat and areas of connectivity. The agency must better disclose the location of OSV designations under each alternative as it relates to these lynx areas. We recognize that the agency did disclose some information regarding Canada lynx critical habitat: "Critical habitat on the Idaho Panhandle National Forest is contained within the American-Canuck and Deer-Skin lynx analysis units."[67] Further, the agency discloses that "Both alternatives would allow OSV use on approximately 71 percent (33,826 of 47,702 acres) of the lynx critical habitat on the Idaho Panhandle National Forest (the combined American-Canuck and Deer-Skin lynx analysis units"[68] We provide a rudimentary map illustrating where the proposed action would designate OSV within critical habitat, see Figure 12. Yet, the Forest Service does not identify the amount of core habitat, denning habitat or areas of connectivity. Further, the agency does not disclose how changing climate may affect the distribution of these habitats, even though the analysis states "Climate change would have the potential to alter the amount and distribution of lynx habitat on the Idaho Panhandle National Forest and adjacent

[67] Kaniksu OSV EA, Wildlife Report at 46
[68] *Id.* at 55.

ownerships."[69] The agency should further analyze those potential changes especially in regards to their ability to find prey given this disclosure:

> If a warming climate leads to less snowfall and warmer temperatures, snowshoe hare populations may decline as lynx predation efficiency increases. Gonzales et al. (2007) modeled the potential shift in boreal forest and areas that have continuous winter snow coverage for at least four months a winter. They predicted a potential decline of up to two-thirds of potential habitat in the lower 48 United States by the year 2100. Lynx habitat may shift northward as much as 125 miles. Areas that could lose potential lynx habitat in the long-term (around the year 2100) include the Idaho Panhandle National Forest (Gonzales et al. 2007).[70]

Figure 12. Canada Lynx Critical Habitat adjacent to Montana and British Columbia, extending south to the Goat Mountains. (Proposed action would designate use outside of the orange shaded areas).



[69] *Id.* at 48.
[70] *Id.*

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, the Forest Service must explain how it is complying with all relevant objectives, guidelines, and standards, and further explain when 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 HUG 11: 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.

In regards to these objectives and guidelines, the Forest Service only discusses HUG 11, and then arbitrarily asserts "Regarding the Northern Rockies Lynx Management Direction for human use projects, there would be no expansion of play areas since none would be designated through either alternative.."[71] The agency must define what it considers a "play area" since all designated areas could functionally serve as such, especially where they have historically been protected from OSV use, or where geography establishes surrounding barriers where access is generally confined to a discrete area, or where an OSV trail (groomed or ungroomed) leads to a high use area. For example, opening the upper Pack River that has been protected for decades should constitute designating a play area. In addition, the Forest Service explains that "The alternatives would nearly double the area where off-trail use would be allowed, mostly in the Smith Creek drainage and in an expanded Trapper Burn polygon."[72] Descriptors such as "drainage" and "polygon" certainly suggest these areas serve as de facto play areas. Earlier we explained that the Forest Service proposes three dedicated OSV areas in the Cabinet-Yaak Grizzly Bear Recovery Zone, which also can effectively

[71] Kaniksu OSV EA, Wildlife Report at 54.
[72] *Id.* at 58.

serve as de facto play areas. These are located at Moose Lake, Porcupine Creek and Wellington Creek.

The Forest Service must better disclose lynx habitats across the planning areas, address how climate change may affect the distribution and quality of lynx habitat, and demonstrate compliance with the objectives and guidelines within the NLRA.

5. Subnivean Species

Small mammals that remain active during the winter depend on the insulated space between the snowpack and the ground – the subnivean zone – for winter survival. When snow compaction from snowmobiles occurs, subnivean temperatures decrease, which can lead to increased metabolic rates in these small mammal species, such as voles, shrews, and mice. For example, if the subnivean air space is cooled by as little as 3 degrees Celsius, the metabolic demands of small mammals living in the space would increase by about 25 calories per hour.[73] Through controlled experiments, researchers have demonstrated that compaction due to snowmobile use reduced rodent and shrew use of subnivean habitats to near zero – a decline attributed to direct mortality, not outmigration.[74] Elsewhere, scientists have documented a decline in small mammals following snowmobile activity that compressed the subnivean zone.[75]

Because small mammals make up the majority of prey for many species, from raptors to mesocarnivores, habitat changes that affect subnivian populations could cascade through the food chain.[76] One way in which the Forest Service can minimize OSV impacts to subnivian mammals is to ensure that OSV use only occurs when there is enough snow accumulated to avoid compaction of the subnivian zone. The best way to do this is through implementation of minimum snow depths (discussed later in these comments), although season dates may be an effective management tool as well if they only permit OSV use when there is guaranteed to be a deep snowpack.

6. Failure to properly analyze impacts to Whitebark Pine

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[73] Neumann, P.W. and H.G. Merriam. 1972. Ecological effects of snowmobiles. The Canadian Field Naturalist. 86: 207-212

[74] Jarvinen, J.A. and W.D. Schmid. 1971. Snowmobiles use and winter mortality of small mammals. In Chubb, M. (ed.) Proceedings of the Snowmobile and Off the Road Vehicle Research Symposium. College of Agriculture and Natural Resources, Department of Park and Recreation Resources, Recreation Resources and Planning Unit, Tech. Rep. 8, Michigan State University, East Lansing, MI. https://www.snowmobileinfo.org/snowmobile-access-docs/Snowmobile-use-winter-mortality-ofsmall%20mammals_1971.pdf

[75] Sanecki, Glenn & Green, Ken & Wood, Helen & Lindenmayer, David. (2006). The implications of snow-based recreation for small mammals in the subnivean space in south-east Australia. Biological Conservation. 129. 511-518. 10.1016/j.biocon.2005.11.018.

[76] Brander, R.B. 1974. Outdoor recreation research: applying the results: ecological impacts of off-road recreation vehicles. North Central Forest Experiment Station, USDA Forest Service St. Paul, MN. General Technical Report NC-9. https://www.fs.usda.gov/treesearch/pubs/10074

The Forest Service explains the following:[77]

> As of January 17, 2023, the Service listed whitebark pine as a threatened species (Federal Register pp. 76882–76916) under the Endangered Species Act based on the 2018 Species Status Assessment (USDI Fish and Wildlife Service 2018). The assessment led scientists to conclude that after decades of decline, an estimated 51 percent of all standing whitebark pine trees were dead as of 2016.

Though critical habitat has yet to be established by the agency, there is a clear need to identify areas with whitebark pine stands within the planning area given the agency's disclosure:

> Populations of whitebark pine have not been widely recorded and the forest has not established a maintained spatial data layer (Stamm, personal communication, January 25, 2022). Many recorded observations of whitebark pine are secondary and 'incidental' and anecdotal.[78]

Yet, the Forest Service discloses that "Overall, within the ten project areas open to over-snow vehicle use, there are 7,670 acres (1 percent) of existing and 80,026 acres (10 percent) of potential whitebark pine habitat" impacted by OSV use."[79] It is likely that the Forest Service simply uses a satellite map, the accuracy of which at a stand level is not appropriate to satisfy NEPA's mandates because the agency has yet to field verify the images and it is likely saplings may not be visible in the satellite map, especially where the snowpack may just leave the tips exposed. Looking at the project's design features further exemplifies the need for more detailed mapping:

> The forest will consider monitoring options to assess potential over-snow vehicle damage to whitebark pine within the project area. Specifically, monitoring would try to assess potential over-snow vehicle impacts to whitebark pine populations and high-value, cone-bearing individuals in targeted areas within the project area.
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> Applies to Location: Areas with known occurrences or suitable habitat for whitebark pine.[80]

Identifying areas of known whitebark pine occurrences and displaying suitable habitat within areas proposed for OSV designation is a step that must occur before issuing a final decision. Further, the Forest Service cannot claim that it will "consider" monitoring potential damage given the species' status as threatened. While the Forest Service acknowledge the damage OSVs may cause individuals, it also dismisses is as significant claiming it has no relationship to factors threatening the species:

> The Proposed Action may result in loss of some incidental whitebark pine trees, but effects would be low. Overall, threats to whitebark pine are far greater from the four primary stressors than from potential incidental impacts of over-snow vehicle use.[81]

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[77] Kaniksu OSV EA, Botany BE at 8.
[78] Kaniksu OSV EA, Botany BE at 9.
[79] *Id.* at 13.
[80] Kaniksu OSV EA at 84.
[81] *Id.*

Yet, damaged whitebark pine trees may be more vulnerable to blister rust if they survive at all, and stressed trees also are more susceptible to mountain pine beetle. Further, OSV users often favor open ridgelines where whitepark pine trees occur. Below is a photo of chronic perennial impacts we see in higher elevation stands. Figure 13.

Figure 13. Whitebark pine habitat above Lower Roman Nose Lake.

There is a Pinus sp, probably whitebark pine in the center of the photo and subalpine larch in the upper right center quadrant.

We request that OSV travel in existing and potential whitebark pine habitat not occur until whitebark pine distributions are credibly field mapped since the distribution is based on anecdotal observations and satellite derived data.

7. Failure to analyze wetlands

OSV use can have significant impacts on wetlands. Wetlands are areas that are saturated with water, and they provide important ecological functions, such as water filtration, flood control, and habitat

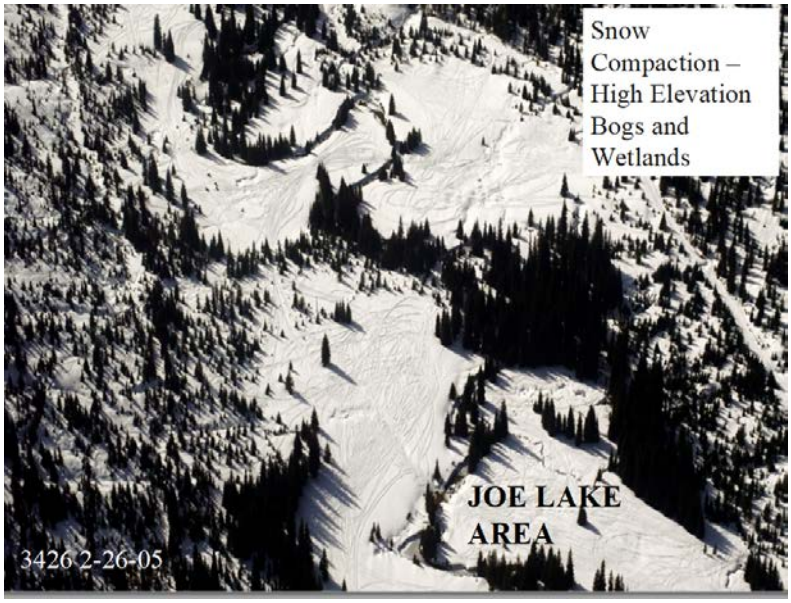
for various species. OSVs can cause soil compaction during times of low snowpack, which can lead to changes in soil structure and composition. In wetlands, soil compaction disrupts the hydrology of the area, which can harm the plants and animals that rely on wetland habitats. OSV damages wetland vegetation by running over plants or by creating ruts and trenches. This can lead to the loss of vegetation and habitat for wildlife. OSV use can cause erosion by exposing bare soil and removing vegetation after being exposed during times of snow melt. This results in sedimentation and increased nutrient levels in nearby waterways, which can harm aquatic ecosystems. As we demonstrate above, OSVs can create a significant amount of noise that can disturb wildlife within wetland areas, and interfere with their breeding and feeding habits. Anthrophony has long-term effects on the health and sustainability of wetland ecosystems. In addition, OSVs often spill fossil fuels during refueling or due to equipment failure. These spills can have severe impacts on the soil and water quality in lakes, streams and wetlands. In wetland habitats, OSVs can impact uncommon (Bog Birch, Betula pumila) and sensitive plants (some Salix sp. and species that occur on hummocks, eg Bog Wintergreen) that occur in the snow compaction zone, or just below the snow surface so that mechanical harm cannot be avoided or from being run over by careless OSV users.

Cow Creek in the Smith Creek watershed (Figure 14) has rare and sensitive plant species in the wetlands adjacent to the streams. These areas are high use and impacts are occurring to these wetland communities. To adequately protect these areas and other wetlands, the Forest Service should adopt a 24" minimum snow depth threshold. Lower depths are insufficient to protect these areas, though here the Forest Service arbitrarily omits any consideration of establishing minum snow depths. Mullet and Morton (2021) found that on test areas in in Alaska, "Dwarf birch was the most intolerant of snowmobiles with ≥7% decline in mean height ($p \leq 0.05$) and ≥28% decline in mean live stem abundance ($p \leq 0.02$)."[82]

They also state that Snow depths ≥50 cm reduce snowmobile impacts to wetland shrubs but did not entirely eliminate them, "We suggest that OSV use not be allowed to damage wetland plants by prohibition of OSV use over all wetlands and that a minimum snow depth of 18" to allow dispersed OSV travel is insufficient as damage still occurs at depths of 20"+."

[82] Mullet, T. C., and John M. Morton. 2021. Snowmobile effects on height and live stem abundance of wetland shrubs in south-central Alaska. Journal of Outdoor recreation and Tourism. Volume 33, March 2021, 100347. https://doi.org/10.1016/j.jort.2020.100347

Figure 14. Cow Creek wetlands, (mistakenly labeled Joe Lake Area). Taken 2005 on a caribou monitoring flight sponsored by Lighthawk. This area is still heavily used.



C. The Forest Service must consider unauthorized use

The Forest Service must consider the effects of proposed actions on its ability to enforce the entire existing and proposed designated system of roads, trails and areas on the forest. NEPA requires the agency to take a hard look at the impacts of illegal motorized use on forest resources and the likelihood of illegal use continuing or expanding under each alternative.[83] The Forest Service must consider the impact of its proposal action in conjunction with the persistent and ongoing winter motorized use violations. On March 19, 2023, through a Light Hawk sponsored aerial monitoring trip, we documented numerous instances of unauthorized use (Exhibit 8). The agency must analyze how the proposed action would contribute to existing illegal motorized use and create new opportunities, especially given the proposed action would designate trails within protected areas. For example, the agency seeks to designate an ungroomed trail to the Trout Creek Trailhead through an area closure that also terminates in the closed area. Other instances are easily found where the agency proposed to designate both groomed and ungroomed trails through area closures or on trails that terminate at the boundary of protected areas.

The Forest Supervisor should work closely and transparently with LEOs to propose and analyze an alternative that will best meet their law enforcement capacity, and the results of this collaboration should be transparent to the public. There are solutions that can make enforcement easier e.g. not having roads dead-end at Wilderness boundaries, or creating seasonal closures that correlate with

[83] See *Sierra Club v. U.S. Forest Serv.* , 857 F. Supp. 2d 1167, 1176-78 (D. Utah 2012).

when there is sufficient snow coverage on areas designated for OSV use. The current EA does not evaluate how to lighten the load of these enforcement officers, and instead increases the burden on them.

III. Lack of an appropriate range of alternatives

NEPA requires agencies to "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public."[84] In taking the "hard look" at impacts that NEPA requires, an EA must "study, develop, and describe" reasonable alternatives to the proposed action.[85] The Tenth Circuit explains that this mandate extends to EAs as well as EISs. "A properly-drafted EA must include a discussion of appropriate alternatives to the proposed project."[86] This alternatives analysis "is at the heart of the NEPA process, and is 'operative even if the agency finds no significant environmental impact.'"[87] Reasonable alternatives must be analyzed for an EA even where a Finding of No Significant Impact is issued because "nonsignificant impact does not equal no impact. Thus, if an even less harmful alternative is feasible, it ought to be considered."[88] When an agency considers reasonable alternatives, it "ensures that it has considered all possible approaches to, and potential environmental impacts of, a particular project; as a result, NEPA ensures that the most intelligent, optimally beneficial decision will ultimately be made.

Here the Forest Service arbitrarily omitted several alternatives and failed to include a reasonable range of alternatives, including one that better protects habitat for sensitive and at risk species. Rather, the agency only considered the proposed action and Alternative A both of which closely resemble each other. Specifically, Alt. A would designate 770,637 acres for OSV use, which is just 8,548 acres less than the proposed action. That is approximately 74% of the planning area compared to approximately 75% under the proposed action. Alt. A configures the OSV designations differently by allowing use across 151,820 acres past March 31, of which 9,785 would be open through May 31. The increased timeframe of availability negates any wildlife protection gained under Alt. A's omission of 4,327 acres available under the proposed action in areas when access amendment standards are met. In addition, Alt. A has just 1 mile less of groomed OSV trail

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[84] 40 C.F.R. § 1502.14 (emphasis added).

[85] 42 U.S.C. § 4332(2)(C) & (E); 40 C.F.R. § 1508.9(b) (an EA "[s]hall include brief discussions . . . of alternatives").

[86] *Davis v. Mineta, 3*02 F.3d 1104, 1120 (10th Cir. 2002) (granting injunction where EA failed to consider reasonable alternatives).

[87] Diné Citizens Against Ruining Our Env't v. Klein , 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010) (quoting Greater Yellowstone Coal. v. Flowers , 359 F.3d 1257, 1277 (10th Cir. 2004)). See also *W. Watersheds Project v. Abbey* , 719 F.3d 1035, 1050 (9th Cir. 2013) (in preparing EA, "an agency must still give full and meaningful consideration to all reasonable alternatives" (emphasis added) (internal quotation and citation omitted)); 40 C.F.R. § 1502.14 (describing alternatives analysis as the "heart of the environmental impact statement").

[88] *Ayers v. Espy*, 873 F. Supp. 455, 473 (D. Colo. 1994) (internal citation omitted).

compared to the proposed action, and both have 52 miles of ungroomed trails available until March 31 in areas protected from winter motorized use. Differences in ungroomed trail designations are notable, (129 miles less under Alt. A) but still insignificant given there are still 1,045 miles under Alt. A. An agency violates NEPA's mandate to analyze a range of reasonable alternatives where it considers "essentially identical" alternatives, as the Forest Service does here.[89]

Further, the Forest Service omitted several suggested alternatives with arbitrary and capricious rationales. For example, the agency states " Commenters recommended we consider opening and closing over-snow vehicle use areas based on minimum snow depths. We considered this request; however, minimum snow depths would be challenging to enforce." EA at 18. This despite acknowledging that "Snow depth is the greatest factor that determines severity of damage [to white bark pine trees]. The deeper the snow, the more protected are young trees such as seedlings and saplings (Baker and Buthman 2005)." *Id.* at 61. The assertion that minimum snow depths are too challenging to enforce does not make sense when the agency proposes many other designations that are also challenging to enforce, such as the 52 miles of groomed trails within areas protected from cross-country OSV use. Further, other national forests have implemented minimum snow depth requirements. For example, recognizing the significant impacts of its OSV proposed action, the Plumas National Forest developed an environmental impact statement with five alternatives with some including minimum snow depths:[90]

> Alternative 2 - modified proposes a minimum snow depth requirement of 12 inches within the designated cross-country OSV-use areas; 6 inches along designated OSV trails; and 12 to 18 inches along designated groomed trails
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> Alternative 5 proposes a minimum snow depth requirement of 24 inches within the designated cross-country OSV-use areas; 12 inches along designated OSV trails; and 12 to 18 inches along designated groomed trails.

We strongly recommend that the Forest Service expand the range of alternatives to include one that truly minimizes the damage and disruption from winter motorized use, and select it as the proposed action in order to ensure compliance with all applicable laws and regulations. Such an alternative would, at a minimum, include the following provisions:

- Protect highly suitable grizzly bear denning habitat from OSV use, and restrict OSV use past March 15 to protect bears emerging from hibernation and clarify that protections may start sooner if bears begin to emerge sooner;
- Protect the Greater Upper Pack River and Hidden Lake areas to provide quiet recreation opportunities;
- Does not create de facto cross-country "play areas" within the Moose Lake, Porcupine Creek and Wellington Creek areas or other drainages and "polygons," bounded by steep geography;

[89] *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1039 (9th Cir. 2008).
[90] USDA Forest Service Plumas National Forest. August, 2019. Plumas National Forest Over-snow Vehicle Use Designation Final Environmental Impact Statement. p. xii,xv.

- Better identifies and protects maternal wolverine denning habitat from OSV designations, and restrict use to only groomed trails within primary wolverine habitat;
- Protects mountain goat habitat, moose and bighorn sheep winter range from cross-country travel;
- Protects mapped whitebark pine stands and replanted areas from cross-country travel.
    - Includes a design feature requiring monitoring areas of potential whitebark pine habitat to maintain mapped inventories.
- Creates and adopts a monitoring and enforcement plan that effectively monitors high use areas, directs issuing citations for violators, and includes automatic closures for areas with repeated violations.
- Establishes minimum snow depths should be at least 24 inches for cross-country travel and 18 inches for travel on groomed trails.
- Protect areas with a ROS allocation of primitive and semi-primitive, non-motorized in the 2105 IPNF Revised Forest Plan.

Adopting these changes will ensure the Forest Service does not prioritize motorized recreation over the needs of at-risk species and will effectively comply with regulations that direct the agency to minimize the harm from poorly managed OSV use.

In addition, we request that the Forest Service amend the 2015 Revised Idaho Panhandle Revised Land Management Plan to change the management area designation for the Upper Pack River area from MA 1e, where OSV use is allowed to MA 1b Recommended Wilderness. This area has very high primitive recreational use and very high ecological values for 4 threatened species. OSV noise modeling shows high impacts from anthrophony along with impacts from cross-country travel. There is added stress to winter wildlife from the unpredictability of these vehicles and changing the management direction will ensure the agency can fully consider Wilderness designation in the future, while also protecting wildlife habitat and primitive recreation opportunities.

Current Status of Upper Pack River

> MA 1e. The Selkirk area, managed as Primitive Lands, has wilderness characteristics and totals 19,730 acres. It may be recommended as an addition to the National Wilderness Preservation System in the future. This area is different from recommended wilderness (MA1b) because winter motorized recreation (snowmobiling) and mountain biking are desirable uses and allowed in this area.[91]

Change to MA1b – Recommended Wilderness

> These areas (table 8) are recommended as additions to the National Wilderness Preservation System. This MA represents approximately 17 percent of the Inventoried Roadless Areas. For each recommended wilderness, the wilderness character and potential for the area to be

[91] 2015 IPNF Forest Plan at 49

included in the National Wilderness Preservation System remain intact until Congressional action is taken. This MA, if within an Idaho Roadless Area classified as Wild Land Recreation, has additional management requirements as described in the Idaho Roadless Rule (36 CFR 294 Subpart C)

And change the Desired Condition to

MA1b-GDL-AR-01. Only non-motorized equipment and hand-held motorized equipment is allowed for management activities. Along with other DC's which are part of MA 1b.

IV. The Forest Service failed to properly minimize impacts when designating each area and trail open to OSV use.

Our comments explained that in response to the growing use of dirt bikes, snowmobiles, all-terrain vehicles, and other off-road vehicles (ORVs) and the corresponding environmental damage, social conflicts, and public safety concerns, Presidents Nixon and Carter issued Executive Orders 11,644 and 11,989 in 1972 and 1977, respectively, requiring federal land management agencies to plan for ORV use based on protecting resources and other uses.[92] When designating areas or trails available for ORV use, agencies must locate them to:

1. minimize damage to soil, watershed, vegetation, or 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.[93]

The Forest Service codified these "minimization criteria" in subparts B and now C of its travel management regulations.[94] The agency has struggled, however, to properly apply the criteria in its travel management decisions, leading to a suite of federal court cases invalidating Forest Service travel management plans.[95] Collectively, these cases confirm the Forest Service's substantive legal obligation to meaningfully apply and implement – not just identify or consider – the minimization criteria when designating each area and trail, and to show in the administrative record how it did so.

We appreciate that the Forest Service created a detailed minimization screening process to assist in compliance with the travel management rule directions, however, the agency falls short in several instances, primarily because it makes the mistake of conflating not designating areas with

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[92] Exec. Order No. 11,644, 37 Fed. Reg. 2877 (Feb. 8, 1972), as amended by Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977).
[93] *Id.* § 3(a).
[94] 36 C.F.R. §§ 212.55, 212.81(d).
[95] *See Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *37-52 (D. Idaho Mar. 11, 2015); *The Wilderness Soc'y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at *22-32 (D. Idaho Oct. 22, 2013); *Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2012); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011); *WildEarth Guardians v. Mont. Snowmobile Ass'n*, 790 F.3d 920, 929-933 (9th Cir. 2015).

minimization. To be clear, the regulation requires the agency to minimize harmful effects on trails and ***within*** areas it designates for OSV use. Certainly we support protecting areas from motorized disturbances, but where the agency proposes to designate OSV use, it cannot simply state that wildlife can go somewhere else if they are displaced by motorized disturbances. Further, the agency makes several statements that OSV use will harm individuals of various species, but that the effects are minor because overall populations will remain intact. These statements conflate compliance with the Endangered Species Act with satisfying the minimization criteria. To be clear, the Travel Management Rule concerns itself with both habitat and individuals. The agency cannot focus on maintaining just populations and assert its met its duty under the TMR. Rather, the Forest Service must actually minimize impacts to individuals as well as habitat, and it can do so by implementing different minimization strategies.

In fact, designating groomed trails versus allowing cross-country travel can be an effective minimization tool if there is adequate monitoring and enforcement to ensure compliance with the designation. In addition, establishing minimum snow depths for trails and areas can help reduce damage to soils and vegetation. Further, designating OSV use in a manner that reduces opportunities for violations of protected areas is an additional tool. For example, designating areas bounded by natural barriers such as steep cliff faces is more effective in managing use than creating artificial boundaries that occur in open snow fields.

We were disappointed to see the Forest Service dismiss our proposal to establish minimum snow depths with an arbitrary rationale that doing so would be too difficult, "We considered this request; however, minimum snow depths would be challenging to enforce."[96] Given the example we provide above, we urge the agency to adopt a minimum snow-depth threshold as did the Plumas NF, and include monitoring snow depths in a detailed implementation plan.

Minimize Damage to Soil, Watershed, and Vegetation

The Forest Service fails to demonstrate how it located OSV areas and trails to minimize damage to soil, watershed, and vegetation. Part of the reason for this is the failure to provide the necessary analysis as we detailed above. Another reason is the arbitrary assumptions the agency makes in its analysis. For example, the Forest Service states in regards to whitebark pine that

> Individual trees, especially young trees that are repeatedly directly affected are the most likely to be damaged. Damage could potentially kill the tree or prevent it from growing into a cone bearing tree. Overall, where over-snow vehicle use occurs, direct effects are expected to be low and affect individual trees rather than stands and would not result in loss of entire populations.[97]
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[96] Kaniksu OSV EA at 18.
[97] Kaniksu OSV EA, Botany BE at 11.

> Potential indirect effects to whitebark pine from compaction is most likely to be concentrated in popular areas open to over-snow vehicle use and areas where repeated high marking occurs. Snow compaction could cause small magnitudes of change and result in delayed snowmelt and increased erosion in soils surrounding whitebark pine trees, particularly saplings and seedlings. These changes may affect individual trees but are not expected to affect stands of whitebark pine trees.[98]

Both examples show the error that the agency makes throughout its analysis that assumes it can allow harm to individuals, because the stands will survive. Not only is this a misapplication of the minimization criteria, the agency fails to provide the necessary supporting evidence for its claim. This is especially true where individual whitebark pine species are not in a stand at all.

Minimize Harassment of Wildlife & Significant Disruption of Wildlife Habitat

The Forest Service must demonstrate in the record how it located OSV trails and areas to minimize harassment of wildlife and significant disruption of wildlife habitat. This is especially true for grizzly bears, Canada lynx and the North American wolverine, but also for big game and other species dependent on winter habitat. As we noted above, the agency makes several statements asserting that it is acceptable to harass individuals or even significantly disrupt their habitat because they can simply go somewhere else in the planning area. The prime example is in regards to grizzly bears within the Roman Nose Area. We wholly reject the idea that it is acceptable to introduce harmful OSV use once the area has reached its secure habitat objectives under the 2015 Revised Forest Plan. Not only will this hinder further recovery of the population, it is a violation of the minimization criteria. The Forest Service rightly describes the dangers posed by motorized disturbance:

> Although grizzly bears abandoning their dens due to OSV use appears to be unlikely, the potential costs of doing so may be high. While a lone male bear may relocate to a new den mid-winter at relatively low cost, such a move may be fatal to the offspring of a female with cubs of the year.
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> Levels of disturbance that may cause a female grizzly bear to prematurely leave her den in the spring or move away from the den area earlier than normal after emergence could potentially impair the fitness of the female and the cubs.[99]

These are just two examples where the agency acknowledges the harm OSVs may cause denning grizzly bears or when bears emerge prematurely. Yet, the Forest Service still proposes to allow OSV use in the Roman Nose Area through May 31, even though bears begin to emerge starting in late March, and the timing may actually be sooner due to climate change effects. The rationale offered by the agency demonstrates the flaw in applying the minimization criteria:

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[98] *Id.*

[99] Kaniksu OSV EA, Wildlife Report at 31, 32.

> After March 31, approximately 2,290 acres (0.9 percent) would remain open to OSV use until May 31 in the Cabinet-Yaak recovery zone (Moose Lake), and about 1,740 acres (less than 0.5 percent) in the Selkirk recovery zone (Roman Nose Lakes) would remain open – once the respective ecosystems meet all motorized access standards (estimated to be 2023 in the Selkirk recovery zone and 2028 in the Cabinet-Yaak recovery zone).37
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> Although both of these areas contain predicted denning habitat, the relatively high levels of human use in summer as well as winter over recent decades make it unlikely that grizzly bears would choose to den there. Consequently, we do not anticipate late-season OSV use of these areas would have considerable effects on grizzly bears.[100]

Looking closely at these statements, it appears that the agency suggests the area represents such a small amount of the overall recovery zone, that it is then acceptable to allow harmful OSV use. It then explains that bears may not even choose to den in the area because of past disturbances, which undermines the entire rationale for achieving the habitat security standards. Rather than allowing disruptive activities to persist that would continue to potentially preclude denning, it is more logical to actually protect these areas to allow bears a chance to fully utilize them. However, given the intense recreational interests, the Forest Service should minimize the harassment and disruption by allowing use only on groomed trails to just the Lower and Middle Roman Nose Lakes, as we noted under our section on noise analysis.

More examples exist related to disruption of other wildlife habitat that we note in the above sections, but the general theme is that the agency cannot state wildlife displacement is acceptable because there is plenty of habitat elsewhere.

Minimize Conflicts and Protect Important Quiet Use Areas

The Forest Service has a duty to minimize conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands. The Forest Service must "consider the effects . . . with the objective of minimizing . . . [c]onflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands."[101] Here it is important to note that the emphasis is on recreational ***uses.*** However, the Forest Service focuses on conflicts between users.

> The mixture of motorized and non-motorized forms of backcountry recreation can result in user conflicts. Use of the same area by multiple people, participating in the same form of recreation, can also result in user conflicts.[102]

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[100] *Id.* at 37-38
[101] 36 C.F.R. §§ 212.55, 212.81(d).
[102] Kaniksu OSV EA at 25.

The regulation's focus on recreational uses rightly puts the issue on the agency's management, where motorized designations must occur where they do not maintain or increase conflicts, such as within areas with Recreation Opportunity Spectrum allocations with primitive or semi-primitive, non-motorized settings. It is not the responsibility of individual recreationists to manage conflicts, especially given the fact that conflict between the two groups are asymmetrical, that is where non-motorized users are disproportionately affected by motorized disturbance, but not vice-versa. As such, we urge the agency to fully implement the Forest Plan direction for ROS allocations by protecting primitive or semi-primitive, non-motorized settings from motorized use. Further, the Upper Pack River should remain non-motorized.

V. Failure to include a monitoring and enforcement plan

In order for the travel management plan to be successful, the Forest Service must devote time and resources to effectively monitor OSV use and the resulting impacts to natural resources. In addition, the agency must also provide for effective enforcement of the designated system. For this reason we urge the Forest Service to follow the examples from other units and develop a monitoring and enforcement plan.

The White River travel plan covers both summer and winter uses and defines modes of travel across the forest by area and by route. To ensure the travel plan was successfully implemented, the Forest Service drafted a Travel Management Implementation Plan (TMIP) to accompany the travel plan.[103] The TMIP was specifically focused on the 3 year period immediately following the publication of the travel plan: 2012-2015.

The White River emphasized the "4Es" throughout travel planning and implementation – Education, Engineering, Enforcement, and Evaluation (monitoring). Recognizing that "without appropriate and adequate information and education materials available for the public, and personnel to create and distribute them, the designation process alone will not provide the change in awareness and behavior necessary to ensure that the desired positive effects of the new travel rule are realized."[104] Education materials included up-to-date information posted on the forest website, public information kiosks, digital brochures and interactive maps, motor vehicle and over-snow vehicle use maps, visitor use maps, brochures on responsible use, specific brochures for high-use areas, brochures on safety in mixed-use areas, and talking points for forest staff. However, the plan went beyond education, recognizing that enforcement is absolutely necessary since education alone would not achieve compliance with the designations. Here it's important to note that the proposed action includes design features that focus mostly on just education.[105]

[103] Available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5365835.pdf
[104] *Id.* at 6.
[105] Kaniksu OSV EA at Appendix A.

At the start of the enforcement phase of the TMIP, the Forest Service increased the number of staff who were trained and certified as Forest Protection Officers (FPOs) and encouraged all staff to spend more time in the field, to increase agency visibility and presence as District staff are primarily responsible for enforcing the TMP. The TMIP also calls for close coordination between forest law enforcement officers (LEOs) and district staff, with districts identifying priority or problem areas and LEOs coordinating with FPOs to carry out enforcement. A successful enforcement plan will ensure the agency conducts routine patrols at identified "hot spots" where compliance is an ongoing issue – such as where proposed wilderness boundaries are near OSV routes.

Another example the IPNF should look to for understanding the monitoring and implementation of travel management is the Custer Gallatin NF, where the agency immediately launched into implementation once its 2006 TMP was complete. While the Custer Gallatin NF's Travel Plan Implementation Strategy[106] is not as detailed as the White River TMIP, it provides a basic outline for how the forest intended to implement its new travel plan.

Ultimately, the Idaho Panhandle NF must do more than cross its fingers and hope that motorized recreationists follow the rules, even after being educated. It must include a detailed and effective monitoring and enforcement plan.

VI. The Finding of No Significant Impact is without merit

This project may have a significant impact on the environment and thus the FS must prepare an EIS. The Council for Environmental Quality's (CEQ) regulations require agencies to prepare an EIS if a project may significantly affect the human environment. CEQ's regulations define significance in terms of context and intensity, which necessitates identification and analysis of the scope of beneficial and adverse impacts, unique characteristics of the geographic area, degree of likely controversy, degree of uncertainty, degree to which an action may affect species listed or critical habitat designated under the ESA, degree to which an action affects public health and safety, and cumulative impacts including other actions that may be individually insignificant but collectively significant.

It is premature and predecisional for the agency to assert the proposed action will not have significant impacts because this is the first opportunity for the public to evaluate and comment on the draft EA, and it is unusual for a draft analysis to include a FONSI determination without considering those public comments. Ultimately, this project may significantly affect the human environment because it:

- Will have a significant impact in the context of the affected region, affected interests, and locality. As we discuss in length above, the effects of site-specific proposed actions will significantly impact the locale of the IPNF and the people who visit it in a myriad of ways,

[106] Available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5130759.pdf

including their ability to enjoy quiet recreational activities. This is particularly true within the Hidden Lake and Upper Pack River areas, especially where area designations adjacent to protected areas will facilitate illegal as we documented in several instances.

- Will have a severe impact in terms of intensity, in light of the impacts listed below.
    - Will cause significant impacts, both beneficial and adverse . The proposed actions will provide additional motorized recreational opportunities for a relatively small segment of forest users, while diminishing value for many other users. Potential beneficial impacts may include less resource damage from motorized recreation, if the FS can effectively enforce user compliance with the designated trails and areas, which is far from certain. Significant potential adverse impacts include harassment of wildlife and displacement from critical habitats, diminished quality of wildlife habitat, and increased resource damage from uncontrolled illegal motorized use. Further, the Forest Service expects the OSV designations to be in place for 20 years with effects lasting even longer, which cannot be dismissed as insignificant:

        > The Kaniksu Over-Snow Vehicle Use Designation Project is expected to be in force for up to 20 years, or until it is revised. It is possible that the proposal could have effects beyond the 20-year implementation period if over-snow vehicle (OSV) use were to cause irreversible impacts to wildlife populations.[107]

    - Involves a geographic area with unique characteristics. The planning area includes "24 inventoried roadless areas, totaling approximately 327,519 acres, within the project area."[108] Many of these areas provide crucial habitat for a range of wildlife as we discussed and have unique characteristics that make them especially suitable as winter habitat. Further, within the Selkirk IRA the proposed action will "Seasonally opens areas which were previously closed along the north end and near Kootenai Peak," and within the Upper Priest IRA it also "Seasonally opens half of inventoried roadless area to over-snow vehicle travel."[109] Assertions that these actions will not significantly affect roadless quality or the potential for wilderness designation are not supported by the analysis.
    - Will result in effects on the human environment that are likely to be highly controversial. For example, there is a controversy in fact regarding the Forest Service's assertion that its project design features will "reduce any expected adverse impacts to minimal or low levels and these impacts would not be significant." Specifically, as we note above, the agency believes that public education to OSV users about the location and importance of whitebark pine trees will minimize damage to this threatened species, without providing any evidence to support this assertion.

[107] Kaniksu OSV EA, Wildlife Report at 13.
[108] Kaniksu OSV EA at 68.
[109] *Id.* at 70.

Similarly, the agency expects OSV users to stay on groomed trails as they bisect protected areas, even though we provide evidence of illegal motorized use.

- Involves effects that are highly uncertain or involve unique or unknown risks, which is certainly the case regarding the agency's reliance on unproven project design features, and from the lack of an enforcement and monitoring plan.
- May adversely affect species listed or critical habitat designated under the Endangered Species Act, including grizzly bear and Canada lynx

VII. Endangered Species Act

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.

Conclusion

The Forest Service has yet to demonstrate compliance with NEPA, the Travel Management Rule, the Endangered Species Act and the National Forest Management Act. We urge the agency to correct the deficiencies we explain herein, and develop a travel management plan that better protects at-risk and sensitive wildlife, and provides non-motorized settings per the ROS allocations.

Cordially,

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Exhibits

1. Methods, Kaniksu Winter Recreation EA Soundscape Analysis by Paul Sieracki, Geospatial Analyst.
2. Biological Opinion on Amendment 24 to the Flathead National Forest Plan (December 19, 2008)
3. Effects of Proposed Play areas to Core Habitat in the North Lightning and Scotchman GBMU's in the Cabinet-Yaak Grizzly Recovery Area
4. Westside Restoration_Supplemetal NEPA Requet_IETF_AWR_FOC_2.6.2023
5. Brock, B. L., R. M. Inman, K. H. Inman, A. J. McCue, M. L. Packila, and B. Giddings. 2007. Broad-scale wolverine habitat in the conterminous Rocky Mountain states. Chapter 2 in Greater Yellowstone Wolverine Study, Cumulative Progress Report, May 2007
6. Hilary Eisen, Darça Morgan, Kylie Paul, and Kristina Boyd. May, 2021. Environmental Impacts Of Winter Recreation: Best Available Science. Winter Wildlands Alliance.
7. Boyd, Kristina. 2020. Literature Review: Impacts Of Human Recreational Land Use On Mountain Goats (Oreamnos Americanus). Produced for The Wilderness Society
8. Aerial Monitoring Examples conducted during a Light Hawk sponsored over-flight, May 19, 2023.