

Ecosystem Management Coordination

Happy Friday!

Court Decisions

Nothing to Report

Litigation Update

Nothing to Report

New Cases

Recreation | Region 8

Friends of the Florida Trail, Inc. v. Shawn Thomas, et al. (20-481, D. N. Florida) **Region 8**— On October 5, 2020, the plaintiff filed a complaint in the District of Northern Florida against the Forest Service pursuant to the Administrative Procedures Act (APA), National Environmental Policy Act (NEPA), and the National Trails Systems Act (NTSA). The plaintiff claims we violated NEPA and the NTSA when we approved the **Big Bend Reroute** of the **Florida National Scenic Trail** (FNST) via a Decision Memo and use of a categorical exclusion (CE). Specifically, they consider the 90-mile reroute of the trail to be a significant federal action worthy of a more substantial environmental review [environmental impact statement (EIS) or environmental assessment (EA)].

The plaintiff claims the Forest Service violated NEPA and the NTSA, and the APA, when the Agency issued its Decision Memo on July 24, 2020 that approved the replacement of 50-mile segment of the FNST with a new 90-mile segment. They claim the reroute changed the nature and direction of the FNST by locating it outside the approved trail corridor in violation of the Agency's 1986 FNST Comprehensive Plan. They also claim the Forest Service's Decision Memo and CE was inappropriate, when an EIS or EA was warranted. They further claim the Agency's decision did not to follow the Optimal Location Review Process Guidelines and preempts Congress's sole authority to determine this substantial relocation of the FNST.

The purpose of the proposed Big Bend reroute is to increase public safety and improve users' experience by realigning a 50-mile segment of the trail from a potentially unsafe location along a road to existing trails and administrative roads on predominately state-owned lands between

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Twin Rivers State Forest and the Aucilla River Wildlife Management Area. The proposed reroute would also maximize trail protection and permanency and better align designated FNST routes with the nature and purposes of the FNST, consistent with the National Trails System Act.

Notice of Intent

Forest Management/Wildlife | Region 5

NOI – Dated September 3, 2020, the Forest Service and the U.S. Fish and Wildlife Service (FWS) received a 60-day Notice of Intent by Unite the Parks, Sequoia ForestKeeper, and the John Muir Project intend to sue, pursuant to the Endangered Species Act (ESA), and the Administrative Procedures Act (APA), to challenge the Agencies violations of the ESA regarding the federal listed Pacific fisher in the Southern Sierra Nevada District Population Segment impacted by commercial logging projects on the Sierra and Sequoia National Forests listed in the FWS’ programmatic Biological Opinion (BO). (24 projects on Sierra NF, and 15 projects on the Sequoia NF) The Pacific fisher was Federally listed, on May 15, 2020, in the southern Sierra Nevada, and the FWS programmatic BO was issued on June 10, 2020.

The NOI claims the Agencies have violated sections 7 of the ESA and the APA by failing to properly account for the scientific information showing the presence of numerous Pacific fisher dens in the project areas. Consequently, the Forest Service’s Programmatic Biological Assessment (BA), and the FWS’ programmatic BO, are not based on the best available scientific information, do not offer rationally based conclusions regarding projects harm to the Pacific fisher’s habitat, and fails to ensure the protection of important species habitat in the project areas. The Forest Service and FWS decisions and conclusions with respect to these projects impacts to the species violates the ESA and are arbitrary and capricious under the APA.

Claims The NOI claims that the Forest Service and FWS violated ESA and APA, because they:

1. Failed to perform an adequate analysis of baseline conditions;
2. Failed to use the best available science in considering the impacts of Forest Service actions on fishers;
3. Failed to adequately apply the interim scientific recommendations;
4. Failed to rationally conclude that the projects are likely to harm habitat, inhibit fisher recovery and jeopardize the continued existence of the fisher;
5. Failed to outline reasonable alternatives to the actions taken; and
6. Jeopardy analysis failed to analyze the actions’ impact on the fisher’s recovery (separate from analyzing its impact on survival).

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In addition, the NOI claims “Most of the projects are occurring simultaneously; they include extensive post-fire salvage logging and commercial logging; include extensive herbicide application, fuel break construction, road construction and maintenance, and hazard tree removal, which will affect large trees in denning habitat. Most, if not all, of these projects will remove canopy cover and understory plant species, and they will alter and harm occupied fisher habitat, directly and indirectly, and hence, they constitute a threat to the species, which may lead to its extinction.”

Other Cases

Nothing to Report

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