

Ecosystem Management Coordination

Nothing to Report

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Court Decisions

Litigation Update

New Cases

Notice of Intent to Sue

Forest Management and Wildlife | Region 1

NOI – Dated August 7, 2021, the Forest Service and U.S. Fish and Wildlife (FWS) received a 60-day Notice of Intent to Sue under the Endangered Species Act (ESA) from Alliance for the Wild Rockies (AWR), regarding the Ripley Project, Kootenai National Forest Plan Access Amendment and Cabinet-Yaak Recovery Zone BORZ Mapping on the Kootenai National Forest. AWR alleges the Forest Service failed to prepare a biological assessment (BA) for Canada lynx that may be in the project area. AWR also alleges the Forest Service and FWS (Agencies), as part of consultation on grizzly bear, failed to: (a) accurately calculate road density within the project area, by not including non-open, non-Forest roads in the their calculations; (b) consider best available science; (c) provide an accurate analysis of road density during and after the project; (d) address the link between the “temporary roads” of the present and the “undetermined roads” of the future; and (e) fully disclose the population and (non)recovery status of the Cabinet Yaak grizzly bear population. Finally, the Agencies’ decision not to designate the three sub-watersheds in the project area as a BORZ area or include them in the Cabinet Face or other BORZ area, is an “agency action” under ESA that requires consultation, because it determines which area will receive grizzly bear protections under the Access Amendment.

AWR alleges:

1. The Forest Service failed to prepare a BA for the Canada lynx for the project in violation of ESA, considering lynx may be present within the project during the 25 years of its implementation.
2. The Agencies’ consultation for the project and/or Forest Plan:
 - a. Violates ESA, because they did not consider non-open, non-Forest Service roads in the road density calculations (thus underestimating the road density within the project area), and the corresponding effects analysis has no scientific basis, and is not the best available

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- science. The BA must include an analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.
- b. Fails to apply the best available science in approving the project. The Agencies relied on Boulanger and Stenhouse (2014) but argues that 2.4 mi/sq.mi is an appropriate threshold for roads, when reality it is the maximum number roads tolerated by any bears in the study. If the goal is a viable population – the threshold is 1.2 mi/sq.mi maximum. There is no serious discussion of whether the project or Forest Plan is jeopardizing the survival and recovery of the grizzly population by reducing distribution, when road densities in the project area and in all BORZ areas is likely to displace grizzly bears.
 - c. Fails to provide an accurate analysis of road density during and after the project. The “during project” calculation does not include 19 miles of newly constructed roads, 11 miles of illegal roads, or the bermed/gated/barriered roads that will be reopened for the project under the “road maintenance on 93 miles” category.
 - d. Fails to address the link between the “temporary roads” of the present and the “undetermined roads” of the future. The Agencies must disclose the true effectiveness or ineffectiveness of road closure methods such as berms and gates and other barriers with a full disclosure of actual monitoring results.
 - e. Fails to fully disclose the population and (non)recovery status of the Cabinet Yaak grizzly bear population.
3. The Agencies’ decision not to designate the three sub-watersheds in the Ripley Project area as a BORZ area or include them in the Cabinet Face or other BORZ area, is an “agency action” under ESA that requires consultation because it determines which area will receive grizzly bear protections under the Access Amendment.

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