

Matthew K. Bishop (Mont. Bar No. 9968)
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
(406) 324-8011
bishop@westernlaw.org

Sarah McMillan (Mont. Bar No. 3634)
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
(406) 708-3062
mcmillan@westernlaw.org

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

GALLATIN WILDLIFE ASSOCIATION,
a non-profit organization; NATIVE
ECOSYSTEMS COUNCIL, a non-profit
organization; and WILDEARTH
GUARDIANS, a non-profit organization,

Plaintiffs,

vs.

MARY ERICKSON, in her official capacity
as Forest Supervisor for the Custer-Gallatin
National Forest; RANDY MOORE, in his
official capacity as the Chief of the U.S.
Forest Service; the UNITED STATES
FOREST SERVICE, a federal agency;
MARTHA WILLIAMS, in her official

No.

COMPLAINT

capacity as Director of the U.S. Fish and Wildlife Service; the UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency; DEB HAALAND, in her official capacity as Secretary of the Interior; and the UNITED STATES DEPARTMENT OF THE INTERIOR, a federal department,

Federal-Defendants.

INTRODUCTION

1. Plaintiffs bring this civil action against Federal-Defendants, the United States Forest Service (“Forest Service”) and the U.S. Fish and Wildlife Service (“FWS”), under Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, for violations of the ESA, National Environmental Policy Act (“NEPA”), and National Forest Management Act (“NFMA”).

2. This case challenges the Forest Service’s decision to approve the South Plateau Landscape Area Treatment Project (“South Plateau project” or “project”) on the Custer-Gallatin National Forest, just west of Yellowstone National Park and within the Greater Yellowstone Ecosystem (“GYE”). This case also challenges FWS’s biological opinion on how the South Plateau project may adversely affect grizzly

bears and FWS's related biological opinion for the 2021 revised Land and Resource Management Plan ("revised Forest Plan") for the Custer-Gallatin National Forest.

3. The South Plateau project is a 15-year project that includes over 16,000 acres of logging, including over 5,000 acres of clear-cuts. The project also includes construction of nearly 57 miles of roads. Few details about where, when, and how the logging will occur or where the roads will be built, however, are provided in the environmental assessment ("EA") prepared by the Forest Service. Nor is such information provided in the FWS's biological opinion for the project.

4. This area of the GYE provides important habitat for grizzly bear conservation and is actively occupied by the species, including females with cubs. The area, however, is also in need of improvement and considered one of the "most deficient" for grizzly bear conservation in the GYE. The area referred to as a "population sink" for threatened grizzly bears, i.e., a place where grizzly bear deaths and exceed births. It is also an area where open and total motorized route densities and human disturbance are already too high and where habitat security for grizzly bears is too low.

5. Both the Forest Service and FWS concede as much, noting that the existing conditions in the South Plateau project area are already causing "on-going adverse effects" to grizzly bears. But despite this fact, the Forest Service is proposing more

logging, more roads, and more human disturbance and development in this already precarious setting for grizzly bears. The South Plateau project will thus make an already bad situation for grizzly bears in this part of the GYE much worse.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331, 16 U.S.C. § 1540(c), and 5 U.S.C. § 704.

7. This Court has the authority to review the Forest Service's and FWS's action(s) and/or inaction(s) complained of herein and grant the relief requested under 16 U.S.C. § 1540(g) and 5 U.S.C. § 706.

8. Plaintiffs exhausted all available administrative remedies. Plaintiffs submitted comments on the draft EA for the South Plateau project and draft environmental impact statement ("EIS") for the revised Forest Plan. Plaintiffs also filed objections on the South Plateau project and revised Forest Plan, which were denied.

9. All requirements for judicial review required by the ESA are satisfied. Plaintiffs provided the Forest Service and FWS adequate, sixty-day written notice of its intent to sue for violations of the ESA as required by 16 U.S.C. § 1540(g)(2).

10. The relief sought is authorized by 28 U.S.C. § 2201, 28 U.S.C. § 2202, 16 U.S.C. § 1540, and 5 U.S.C. § 706.

11. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e).

12. Plaintiffs have organizational standing. Plaintiffs satisfy the minimum requirements for Article III standing. Plaintiffs – including their members, supporters, and staff – have suffered and continue to suffer injuries to their interests in grizzly bears and grizzly bear conservation as a result of the South Plateau project and the revised Forest Plan. This Court can redress these injuries by granting the relief requested. There is a present and actual controversy between the Parties.

PARTIES

13. Plaintiff, GALLATIN WILDLIFE ASSOCIATION (“GWA”) is a local, all volunteer wildlife conservation organization dedicated to the preservation and restoration of wildlife (including grizzly bears), fisheries, habitat, and migration corridors in Southwest Montana and the GYE using science-based decision making. GWA was founded in 1976 and recognizes the intense pressures on our wildlife, including grizzly bears, from habitat loss and climate change. GWA advocates for science-based management of public lands for diverse public values, including but not limited to hunting and angling.

14. Plaintiff, NATIVE ECOSYSTEMS COUNCIL, is a non-profit advocacy organization based in Three Forks, Montana dedicated to protecting and restoring native ecosystems in the Northern Rockies. In furtherance of this mission, Native Ecosystems Council’s members and supporters remain active in wildlife

management, including grizzly bear conservation. Native Ecosystems Council brings this action on behalf of itself, its members, and its supporters.

15. Plaintiff, WIDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians is specifically committed to ensuring the survival and recovery of grizzly bears in the lower-48 States. Guardians has approximately 235,000 active members and supporters across the American West, including many who reside in Montana, Idaho, Wyoming, and Washington. Guardians maintains an office in Missoula, Montana, where most of its work to conserve grizzly bears occurs. Guardians brings this action on behalf of itself, its members, and its supporters.

16. Plaintiffs have members and supporters who have standing to pursue this civil action in their own right and their interests in grizzly bears and grizzly bear conservation (at stake in this case) are germane to their respective organization’s purposes. Plaintiffs’ members, supporters, and staff are dedicated to ensuring the long-term survival and recovery of grizzly bears in the lower-48 States and ensuring the Forest Service and FWS comply with the law. Plaintiffs’ members, supporters, and staff understand the importance of taking a hard look at the environmental effects of agency actions and ensuring full compliance with Section 7 of the ESA’s

consultation provisions, including the requirement to utilize the best available science.

17. Plaintiffs' members, supporters, and staff live in or near and/or routinely recreate in or near the South Plateau project area and surrounding landscape and other areas in the Custer-Gallatin National Forest occupied by grizzly bears.

Plaintiffs' members, supporters, and staff enjoy observing – or attempting to observe – and studying grizzly bears, including signs of grizzly bear presence and/or photographing grizzly bears in areas where the species is known to den, travel, and occur, including throughout the Custer-Gallatin National Forest and in the South Plateau project area. The opportunity to view grizzly bears and grizzly bear signs in the wild, the Custer-Gallatin National Forest, and in the area affected by the South Plateau project is of significant interest and value to Plaintiffs' members, supporters, and staff and increases their use and enjoyment of the action area.

18. Plaintiffs' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from grizzly bears, including by seeing (or trying to see) grizzly bears in the wild. Plaintiffs' members, supporters, and staff also have an interest in working to conserve grizzly bears.

Ensuring that the Forest Service and FWS comply with the law as alleged in this case when preparing a revised Forest Plan and authorizing the South Plateau project and

making other important decisions affecting our public lands in areas occupied by grizzly bears is a key component of Plaintiffs' interests.

19. The Forest Service's revised Forest Plan and approval of the South Plateau project, which will authorize commercial logging and associated road construction in the GYE, will negatively affect grizzly bears and habitat security and the species use of the area. The revised Forest Plan and approval of the South Plateau project has harmed, is likely to harm, and will continue to harm Plaintiffs' interests in grizzly bears and grizzly bear conservation. Plaintiffs' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by the revised Forest Plan and South Plateau project. If this Court issues the relief requested, the harm to Plaintiffs' interests will be alleviated and/or lessened.

20. Federal Defendant MARY ERICKSON is named in her official capacity as Forest Supervisor for the Custer-Gallatin National Forest. As Forest Supervisor, Ms. Erickson is the federal official with responsibility for all Forest Service officials' actions and/or inactions challenged in this case.

21. Federal-Defendant, RANDY MOORE is sued in his official capacity as Chief of the United States Forest Service. As Chief, Mr. Moore is the federal official with responsibility for all Forest Service officials' actions and/or inactions challenged in this case.

22. Federal Defendant UNITED STATES FOREST SERVICE, is an agency within the United States Department of Agriculture that is responsible for applying and implementing the federal laws and regulations challenged in this case.

23. Federal Defendant MARTHA WILLIAMS is sued in her official capacity as Director of the United States Fish and Wildlife Service. As Director, Ms. Williams is the federal official with responsibility for all FWS officials' actions and/or inactions challenged in this case.

24. Federal Defendant, UNITED STATES FISH AND WILDLIFE SERVICE, is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this case.

25. Federal Defendant, DEB HAALAND, is sued in her official capacity as Secretary of the Interior. As Secretary, Ms. Haaland is the federal official with responsibility for all FWS officials' actions and/or inactions challenged in this case.

26. Federal Defendant, the UNITED STATES DEPARTMENT OF THE INTERIOR, is the federal department responsible for applying and implementing the federal laws and regulations challenged in this case.

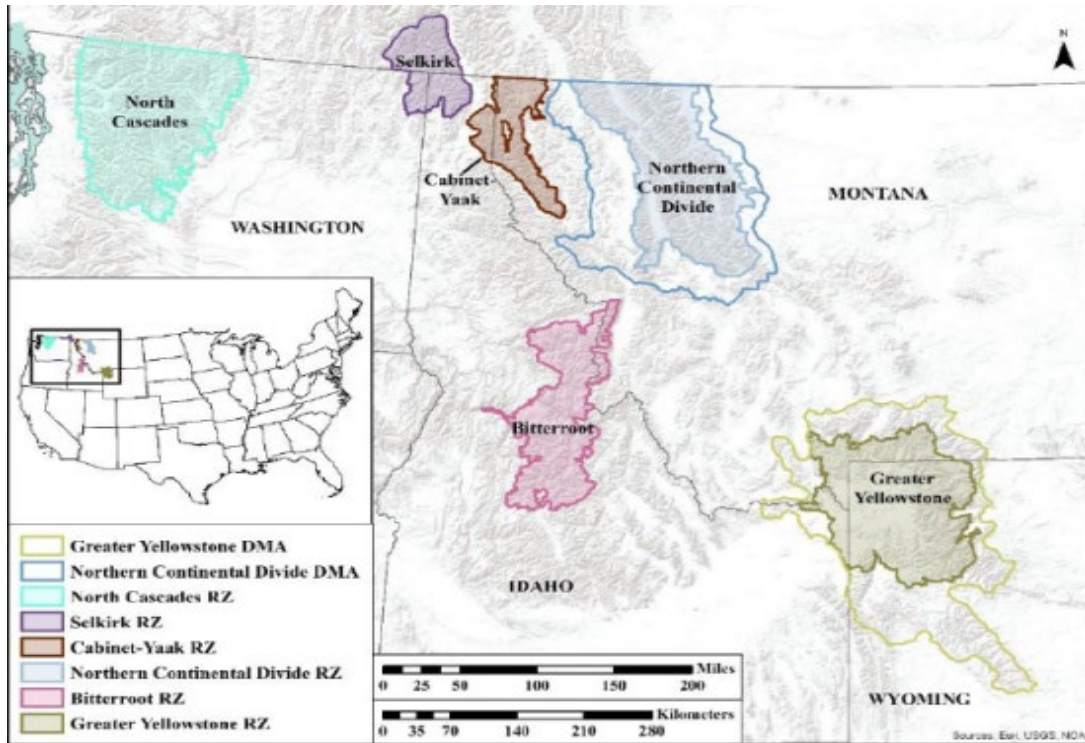
BACKGROUND

Grizzly bears in the GYE

27. Historically, there were an estimated 50,000 grizzly bears in the western United States. With the arrival of Europeans grizzly bears were seen as a threat to livestock and human safety and subject to government funded bounty programs aimed at eradication. Grizzly bears were shot, poisoned, and trapped wherever they were found. The resulting declines in range and population were dramatic: grizzly bears were reduced to roughly two percent of their former range by the 1930s.

28. In 1975, grizzly bears in the lower 48 States were listed as a threatened species under the ESA, mainly due to loss of habitat and range, isolated populations (and loss of connectivity), and mortality from humans. The 1975 ESA listing recognized all grizzly bears in the lower 48 States as a single, threatened species.

29. Recovery of grizzly bears in the lower 48 States is focused on six areas, or “recovery ecosystems” or “recovery zones,” including the Cabinet-Yaak, Selkirks, Northern Continental Divide, Selway-Bitterroot, North Cascades, and Greater Yellowstone Ecosystem (“GYE”). The GYE is the southernmost grizzly bear population in North America.



30. A grizzly bear's individual habitat needs and daily movements are largely driven by the search for food.

31. Grizzly bears are opportunistic omnivores that eat a wide variety of foods including plants, berries, roots, insects, small mammals, and ungulates. Food resources for grizzly bears are especially important during the period leading up to denning (August-October) when bears must consume energetically rich foods to build up fat reserves to survive the denning and post-denning period.

32. In the GYE, grizzly bears rely heavily on four primary food sources: cutthroat trout, ungulates (elk, deer, and bison), army cutworm moths, and whitebark pine seeds. Grizzly bears rely more heavily on meat when other high-quality food sources (like whitebark pine seeds) are less abundant.

33. The main threats or stressors to grizzly bears and grizzly bear recovery in the lower 48 States, including within the GYE, include: human-caused mortality (due to management removals, accidental killings, illegal killings, mistaken identity kills); motorized access and human intrusions into secure habitat; developed recreational sites and recreational activities; timber, energy, and mineral development; private land development; climate change; and the loss of important food sources.

34. In the GYE, human activities are the primary factor impacting grizzly bears and the ability of bears to find and access foods, mates, cover, and den sites.

35. Protecting large blocks of secure habitat for grizzly bears that are free from human intrusion and influence is critical to grizzly bear conservation in the lower 48 States and the GYE. Female grizzly bears select for areas with greater secure habitat. Survival is also higher in such areas.

36. Grizzly bears are only able to survive where the frequency of contact with humans is very low. Areas of secure habitat without human presence or with low levels of human presence result in significantly lower amounts of human-caused mortality.

37. Secure habitat for grizzly bears is generally any area large enough for a grizzly bear to forage for 24-48 hours without incurring (significant) hazards

associated with roads. The average size of areas used by grizzly bears for foraging during a 24-48 hour period varies by study but generally includes 270-370 acres, 716 acres, or 2245 acres. Core security areas in the Northern Continental Divide Ecosystem ("NCDE") were set at greater than a minimum of 2,500 acres. There is no optimal or "best" sized secure habitat area for grizzlies but anything less than 2,500 acres entails significant risk of human-caused mortality for a grizzly bear.

38. The management of motorized access routes is the most effective tool available to manage human use levels and create habitat security where it is needed.

39. Managing motorized access to maintain large blocks of secure habitat is important to the survival and reproductive success of grizzly bears, especially adult female bears.

40. Motorized routes pose a significant threat to grizzly bears and habitat security needed for recovery. Motorized routes bring humans into grizzly bear habitats and reduce the quality and quantity of large-intact blocks of grizzly bear habitat. This increased human presence increases the risk of grizzly bear mortalities as human-grizzly bear encounters may lead to defense of life kills, management removals, vehicle strikes, or poaching. Most grizzly bear deaths occur within 500 meters (0.3 mile) of roads and nearly all grizzly bear deaths occur within 1000 meters (0.6 mile) of roads.

41. Roads may have compounding or long-lasting impacts on grizzly bear behavior. Roads may fragment habitat and effectively cut grizzly bears off from important resources. Roads may also displace grizzly bears into degraded or lower quality habitat, or to developed areas resulting in an increased risk of human-bear conflicts. These impacts may be long lasting. Grizzly bears may pass avoidance behavior along to their cubs. After a road is closed, grizzly bears may continue to avoid habitat around that road for more than one generation.

42. Timing and location of motorized access is an important determinant in roads impacts on grizzly bears. Roads that are located near important food sources or habitats, or used when such food sources are in abundance, have a heightened impact on grizzly bears.

43. Increased human presence from roads disturbs or displaces grizzly bears. Adequate road management, including protecting blocks of secure grizzly bear habitat with no motorized access, is the highest priority for grizzly bear recovery in the GYE.

44. Cover is important for grizzly bears, including for habitat security. Cover provides security (and screening) for grizzly bears. Cover influences selection of foraging and bedding locations. Grizzly bears favor areas with adequate cover.

45. Timber harvest can negatively impact grizzly bears and undermine habitat security by removing cover, disturbing or displacing bears from habitat, and increasing human-bear conflicts or mortalities through unsecured attractants, increased human-bear encounters, and new roads and/or increased vehicular traffic on existing roads.

46. Recreation undermines grizzly bear security and may lead to human-grizzly bear encounters and disrupt access to food resources. Hunting specifically may increase the chances of grizzly bear mortalities due to defense-of-life or mistaken identification killings.

47. Human-caused mortalities due to accidental killings, management removals, mistaken identify killings, defense of life killings, and illegal killings are the leading cause of grizzly bear mortalities rangewide, including within the GYE.

48. The number of human-caused grizzly bear mortalities in the GYE has increased over time. Between 1980 and 2001, there were 170 human-caused grizzly bear mortalities in the GYE. Between 2002 and 2019, there were 435 human-caused grizzly bear mortalities in the same area—over a twofold increase.

49. In the GYE, the loss of important food sources for grizzly bears is an additional threat or stressor. Over the last two decades, there have been significant changes to the amount of available food sources for grizzly bears in the GYE.

50. Seeds from whitebark pinecones were once important food for grizzly bears in the GYE and more so for female bears than male bears. Roughly 70 percent of mature cone-producing whitebark pine trees were lost in the GYE between 2000 and 2010 due to a climate-driven outbreak of mountain pine beetles. Losses of whitebark pine seeds accelerated after 2007. Seed availability has remained low since 2007. Low whitebark pine seed availability is associated with increased human-bear conflicts and mortalities, as bears rely on a more meat-based diet and are forced to use lower elevations to find food.

51. Cutthroat trout was once an important food source for grizzly bears in the GYE. This food source has declined since the late 1990s and early 2000s, mainly due to the introduction of invasive species like lake trout, brook trout, and brown trout.

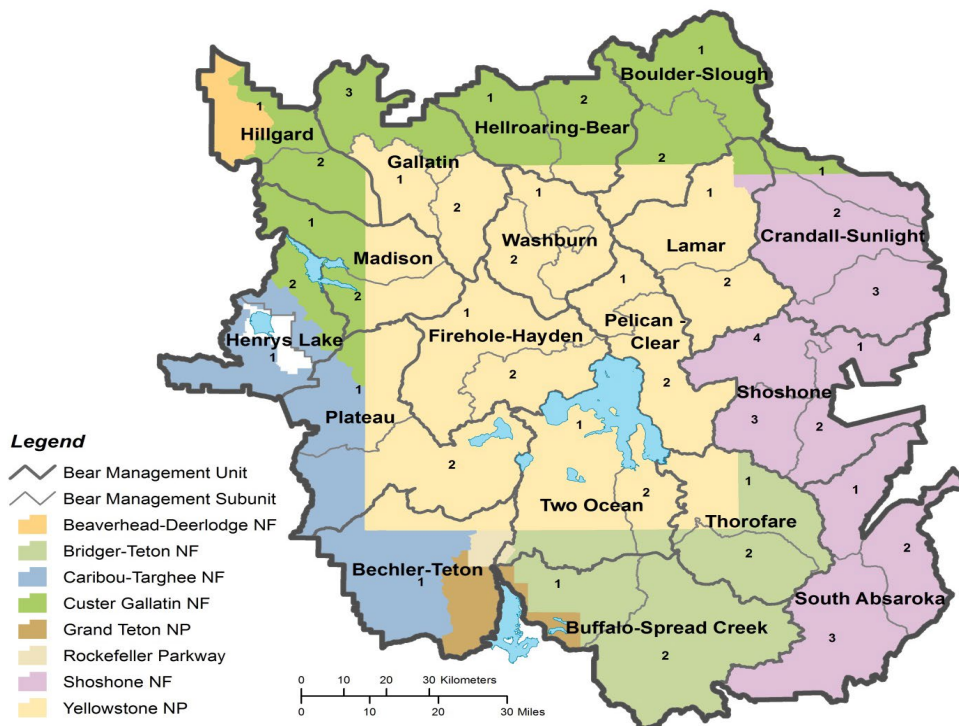
52. The best available science reveals that in the wake of losses of cutthroat trout and whitebark pine seeds, grizzly bears' overall consumption of meat increased. Consumption of meat by grizzly bears in the GYE has steadily increased since the early 2000s. The best available science reveals that in years of poor whitebark pine seed production, grizzly bears shift their diets and consume more meat. Human-grizzly encounters already increase as bears foraging in lower elevations and

consumption of ungulate carcasses increases the likelihood of encounters with hunters and other humans.

53. The range and distribution of grizzly bears in the GYE has increased over the last twenty years even though the population has largely stabilized during the same time period. This means there is less grizzly bear density in the GYE.

54. The most recent population estimate for grizzly bears in the GYE is roughly 965 individuals.

55. To help manage and conserve grizzly bears and grizzly bear habitat in the GYE, grizzly bear management units (“BMUs”) and subunits were mapped in the region. A BMU approximates a female grizzly bear’s lifetime home range. Subunits approximate an adult female’s annual home range.



56. Conservation of grizzly bears in the GYE at the BMU and subunit levels is largely focused on ensuring there are sufficient areas that provide adequate food sources and secure habitat (habitat away from roads).

The 2021 revised Custer-Gallatin National Forest Plan

57. In January 2022, the Forest Service released a final, revised Forest Plan for the Custer-Gallatin National Forest (“revised Forest Plan”). The Forest Service prepared an EIS for the revised Forest Plan. The Forest Service prepared a biological assessment for the revised Forest Plan. FWS prepared a biological opinion for the revised Forest Plan.

58. The revised Forest Plan replaced the previous 1986 Forest Plan for the Gallatin National Forest and the 1986 Forest Plan for the Custer National Forest.

59. The biological opinion for the revised Forest Plan supersedes the previous biological opinions issued for the Gallatin and Custer National Forests, including the 2015 Forest Plan amendment that incorporated the 2007 Conservation Strategy for grizzly bears in the GYE.

60. The revised Forest Plan adopted new habitat standards for grizzly bears.

61. The revised Forest Plan adopted the new habitat standards for grizzly bears from the 2016 Conservation Strategy for grizzly bears in the GYE, including the

“1998 baseline” standard for livestock allotments, developed sites, and secure habitat.

62. The 1998 baseline for secure habitat requires the Forest Service to maintain or improve “secure habitat” at or above 1998 levels inside the GYE recovery zone. The goal is to have “no net decrease in the 1998 baseline levels of secure habitat” inside the recovery zone in the GYE.

63. The 1998 baseline defines “secure habitat” for grizzly bears as “any contiguous area greater than 10 acres in size” and “more than 500 [meters] from an open or gated motorized route.”

64. The 1998 baseline requires the Forest Service to monitor the density of “open” and “total” motorized routes outside areas of “secure habitat.”

65. The 1998 baseline defines “open” motorized route density as the measure of density of motorized routes (roads and trails) that are open to the public for one or more days during the non-denning portion of the year when grizzly bears are active (March 1- November 30). Open motorized route density is reported as the percentage of a subunit with levels greater than 1 mile of open routes per square mile. “Total” motorized route density is the measure of density of motorized routes open to the public and/or administrative personnel for one or more days during the

non-denning period. Total motorized routes density is reported as a percentage of a subunit with levels greater than 2 miles per square mile.

66. The best available science reveals that grizzly bear subunits with more than 19% open route density, 19% total route density, and less than 68% secure habitat are harmful to grizzly bears.

67. The Forest Service uses the “motorized access model” to calculate and track compliance with the 1998 baseline, including levels of secure habitat, open route density, and total route density within grizzly bear subunits in the GYE.

68. The motorized access model generates a 500 meter buffer around all relevant motorized features. All areas “larger than 10 acres in size” that fall outside the 500 meter buffer are then designated as “secure habitat” under the 1998 baseline.

69. The 2016 Conservation Strategy includes a table (Table 1) with the 1998 baseline values for secure habitat, open route density, and total route density by grizzly bear subunit.

70. In the GYE, all grizzly bear subunits are measured against what existed in 1998, with the exception of three subunits (Gallatin #3, Henry’s Lake #2, and Madison #2) which are were deemed “in need of improvement” and are thus

measured against 2006 levels, following route closures in the 2006 Gallatin Travel Plan.

71. The 1998 baseline values for the Henry's Lake #2 subunit (as amended to reflect improvements following the 2006 travel plan) are: 49.9% open route density; 35.2% total route density; and 45.7% secure habitat.

72. The 1998 baseline values for the Madison #2 subunit (as amended to reflect improvements following the 2006 travel plan) are 33.7% open route density; 24% total route density; and 66.5% secure habitat.

73. The 1998 baseline values for the Plateau #1 subunit are: 22.2% open route density; 12.9% total route density; and 68.8 secure habitat.

74. According to the Forest Service, the 1998 baseline represents the "best estimate" of what was known to be on the ground in 1998 and establishes a benchmark against which future improvements and/or impacts can be assessed.

75. The revised Forest Plan formally adopted the 2016 Conservation Strategy habitat standards including its 1998 baseline approach into forest plan components.

78. Desired condition FW-DC-WL-WLGB in the revised Forest Plan states that habitat conditions in the recovery zone of the GYE "associated with the availability of secure areas" will be "commensurate with, or improved (for bears), relative to levels that existed in 1998."

79. Standard FW-STD-WGLB-01 in the revised Forest Plan states that the percentage of secure habitat within each grizzly subunit shall not be reduced below 1998 baseline levels (or 2006 level for those subunits identified as needing improvement). Management actions that result in “temporary” or “permanent” reductions in secure habitat below 1998 baseline levels are only allowed “so long as they follow” the applicable rules of FW-STD-WLGB-02 and FW-STD-WLGB-03.

80. Standard FW-STD-WLGB-02 in the revised Forest Plan states that any construction of new motorized routes (roads or trails), reconstruction of motorized routes, or opening of previously decommissioned motorized routes inside the GYE recovery zone must, *inter alia*, replace any losses in secure habitat by restoring secure habitat in the same subunit and ensure such replacement habitat is in place before project implementation and for a minimum of 10 years.

81. Standard FW-STD-WLGB-03 in the revised Forest Plan states that inside the recovery zone in the GYE, a project that results in temporary reductions in secure habitat below 1998 baseline levels must meet the following conditions: (1) only one project may be active within a given subunit at any one time; (2) the total acreage of secure habitat affected below baseline levels in a BMU shall not exceed 1 percent of the acreage in the largest subunit in the BMU; and (3) new temporary roads shall be limited to administrative purposes associated with the project and

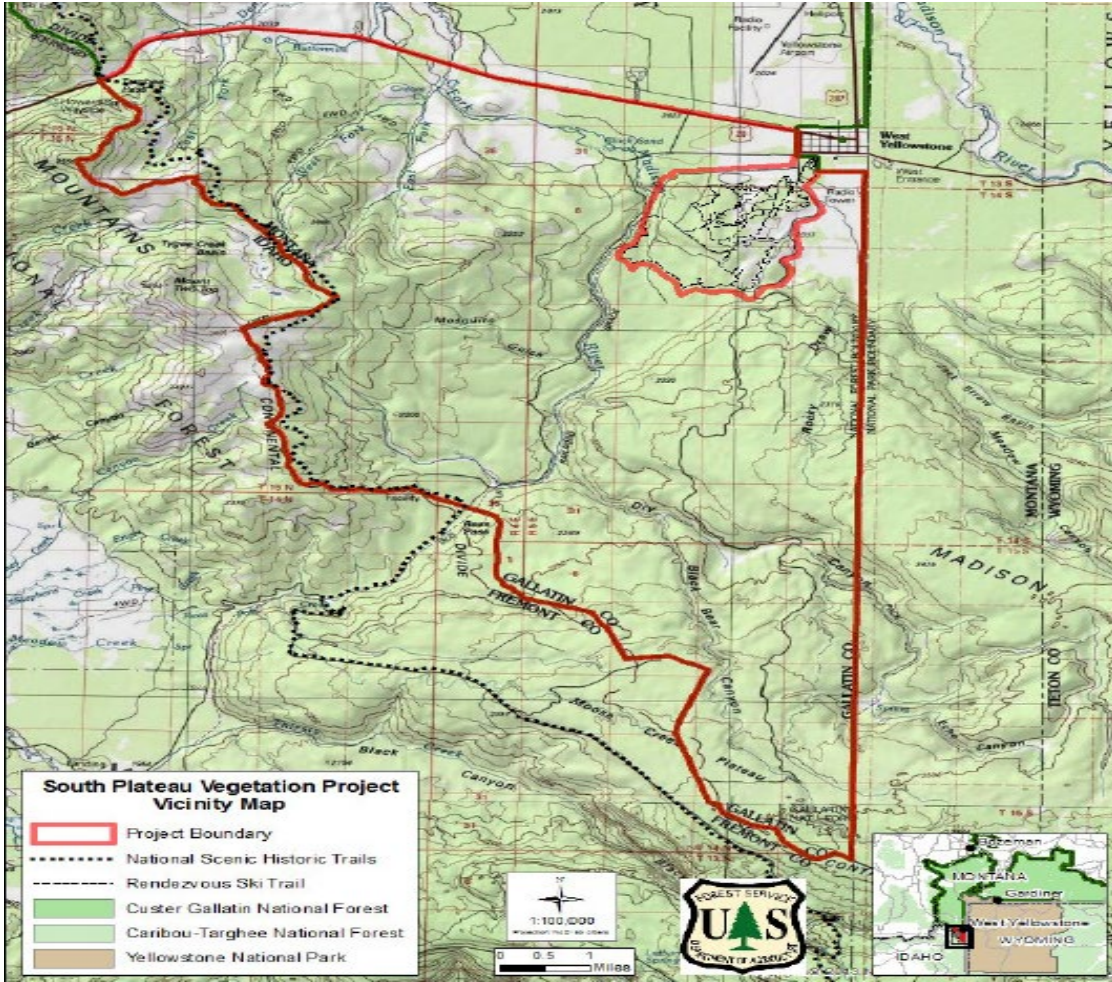
project activities shall not reduce secure habitat below baseline levels for more than four consecutive years.

82. In the revised Forest Plan, the Forest Service stated that the 1998 baseline for secure habitat remains the “current best science” and indicates that conditions as they existed in 1998 provide “adequate conditions inside the [GYE] recovery zone to support and conserve a healthy grizzly bear population.”

The South Plateau project

83. In August 2023, the Forest Service issued a final decision and related “finding of no significant impact” approving the South Plateau project.

84. The South Plateau project is located in the Custer-Gallatin National Forest immediately adjacent to Yellowstone National Park. The project is bounded by US Highway 20 to the north, the Montana-Idaho border to the west and south, and Yellowstone National Park to the East. The Town of West Yellowstone and Rendezvous Ski Trail are just outside the project area to the northeast. A portion of the project area is located within the Caribou-Targhee National Forest.



85. The South Plateau project is located entirely within the grizzly bear recovery zone (or “primary conservation area”) of the GYE.

86. The project area is occupied by both male and female grizzly bears and is within the home range of a “substantial number of individual bears.” Female grizzly bears with cubs have been documented in the project area. There are known grizzly bear dens in the project area.

87. The South Plateau project area lies within the Madison, Henry's Lake, and Plateau grizzly bear BMUs. The South Plateau project is within three grizzly bears subunits: Henry's Lake #2, Madison #2, and Plateau #1.

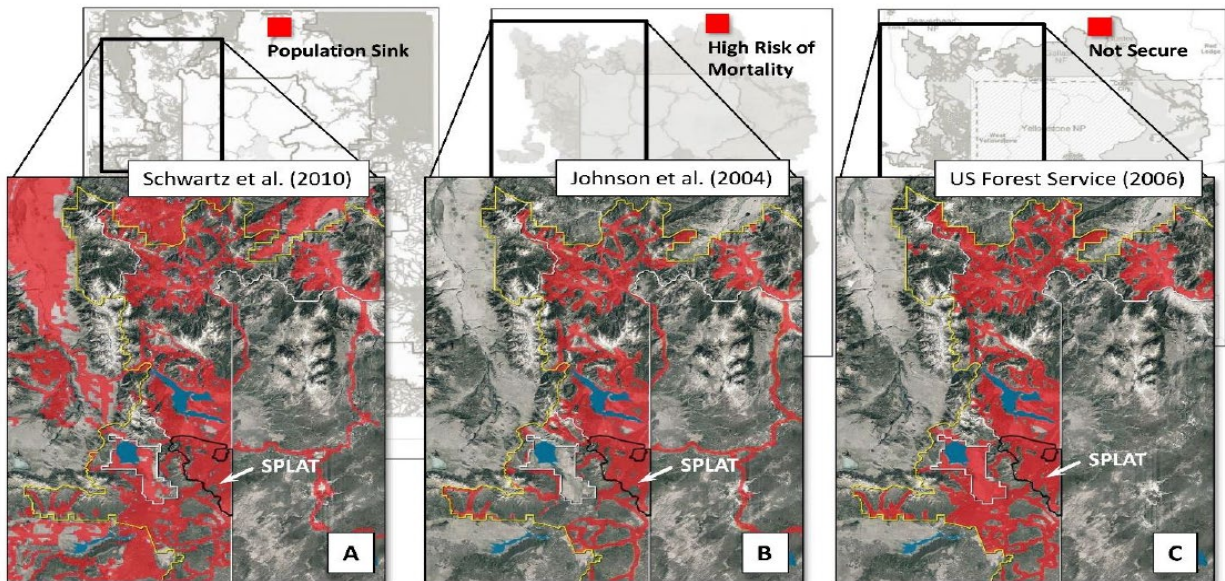
88. The Henry's Lake BMU and Henry's Lake #2 subunit are already experiencing adverse conditions for grizzly bears, including high amounts of open and total motorized route density and low amounts of habitat security. The Yale Creek Fuels Reduction Project ("Yale Creek project") is another forest treatment project in the Caribou-Targhee National Forest and southwest of the South Plateau project. The Yale Creek project states temporary roads for that project would reduce grizzly bear secure habitat by 1,012 acres. The Yale Creek project is also in the Henry's Lake BMU.

89. The Madison BMU and Madison #2 subunit are already experiencing adverse conditions for grizzly bears, including high amounts of open and total motorized route density and low amounts of habitat security. The North Hebgen Multiple Resource Project ("North Hebgen project") is a forest treatment project north of the South Plateau project that is also located in the Madison#2 subunit. The North Hebgen project authorizes 5,670 acres of forest treatments and 15.6 miles of temporary road construction. The North Hebgen project is anticipated to take 8-12 years to implement.

90. The 2016 Conservation Strategy for grizzly bears in the GYE identified three subunits in the GYE as “in need of improvement.” Two of these three subunits - the Henry’s Lake #2 subunit and Madison #2 subunit - are located inside the South Plateau project area.

91. The Henry’s Lake #2 and Madison #2 subunits in the South Plateau project area are among the most deficient subunits for grizzly bear conservation in the entire GYE recovery zone.

92. The best available science, including Schwartz (2010), Johnson (2004), and the 2006 Gallatin National Forest Amendment, show the South Plateau project area (depicted as “SPLAT” in the following Figure) to be a population sink for grizzly bears, an area where there is a “high risk of mortality,” and an area that is “not secure.”



93. Schwartz (2010) shows areas in red (see above) where modeled annual survival of adult female grizzly bears is less than 0.91. This threshold is a surrogate for identifying areas that function as population sinks, i.e., bear deaths exceed bear births). Johnson (2004) shows areas in red with the highest modeled mortality risk for grizzly bears in the GYE. U.S. Forest Service (2006) shows areas that are not “secure” for grizzly bears. All three of these representations of habitat security reveal that the South Plateau project area is located in one of the least secure areas of the GYE for grizzly bears.

94. The South Plateau project is located in an area where the loss of whitebark pine seeds has been most pronounced.

95. Human activity in and around the South Plateau project has increased over the last twenty years. The population of Gallatin County, where the project is located, increased from 67,831 in 2000 to 118,960 in 2020. There has also been an increase in tourism and recreation. At least 5 million people visit and recreate in the National Parks and National Forests of the Greater Yellowstone Ecosystem annually. Yellowstone National Park has seen an approximate 19 percent increase in visitors each decade for the last 70 years. The 2016 Conservation Strategy discussed this increase, acknowledging that “[t]ourism has a large and increasing influence on the

economy" and "[v]isitation to the GYE for wildlife viewing and other recreational activities is expected to increase in the future."

96. Most private lands in and near the South Plateau project area are densely roaded and highly disturbed. There is potential for additional future development on private lands in the project area. Additional activities in and around the project area include forest treatment projects, grazing, development associated with the Town of Yellowstone and West Yellowstone Airport, potential construction of a new campground, and road maintenance.

97. The South Plateau project area is roughly 39,909 acres. Over 90 percent of the project area is forested, primarily with lodgepole pine. The remaining area includes grasslands, wetlands, and shrub dominant areas.



98. The South Plateau project authorizes vegetation treatments on over 40 percent, or 16,462 acres, of the project area.

99. The South Plateau project authorizes over 5,500 acres of clearcuts. The Forest Service does not specify where the clearcuts will occur in the project area. The Forest Service says forest stands dominated by lodgepole pine that are “more than 80 to 90 years old” and more than “6 inches diameter at breast height” will be suitable for clearcuts. Clearcut units will be logged using heavy ground-based equipment. Clearcut openings can be up to 40 acres in size. The Forest Service will not commit to replanting trees following the clearcuts.

100. The South Plateau project authorizes commercial thinning on over 6,500 acres. Commercial thinning will occur with heavy ground-based equipment. The Forest Service does not specify where commercial thinning will occur in the project area. The Forest Service estimates the clearcut harvest and commercial thinning alone will produce about 83 million board feet of sawtimber.

101. The South Plateau project authorizes over 2,500 acres of non-commercial thinning.

102. The South Plateau project authorizes over 1,800 acres of fuels treatment.

103. The Forest Service does not identify or disclose the location, size, or timing of the proposed vegetative treatments. Instead, the Forest Service provides that this will be determined during project implementation.

104. The South Plateau project authorizes construction of up to 56.8 miles of temporary roads. The Forest Service does not specify where the temporary roads for the project will be located. The Forest Service said the location of the temporary roads is not known. The Forest Service does not know how many temporary roads will be located in the Henry's Lake #2 subunit. The Forest Service does not know how many temporary roads will be located in the Madison #2 subunit. The Forest Service does not know how many temporary roads will be located in the Plateau #1 subunit.

105. Project activities for the South Plateau project are expected to be implemented over 15 years.

106. The Forest Service prepared an EA for the South Plateau project.

107. The EA does not specify the precise size, location, or timing of the vegetation treatments. The EA notes that these will be determined during project implementation. The EA identifies certain areas as preliminarily suitable for treatment actions. The EA states the "precise location and size of the treatment units

will be determined by applying the Design Features.” The specific type of treatment within an area will be determined using the Treatment Matrix.

108. The EA states “the exact locations of temporary roads are not yet known.” The Forest Service will use project Design Features to determine road location during implementation.

109. The EA states that “[t]he temporary road maximum extent was projected on maps for the purpose of analysis (such as in the Wildlife Report), but locations have not been vetted and are entirely subject to change. Draft temporary road locations that have been field verified will be released with draft/preliminary sale layouts on the project webpage.”

110. The EA states that “[b]y planning and implementing management actions using the Treatment Matrix, Design Features, Resource Review Checklists, and Monitoring Plan (Appendices A-D), the extent of project actions and associated effects will be appropriately limited such that the need for action will be met while no effects thresholds will be crossed.”

111. The United State Environmental Protection Agency (“EPA”) raised concerns about the Forest Service’s analysis in the EA. EPA concluded it was unable to evaluate the likelihood significant effects will be avoided given the lack of site-specific information about project activities. EPA stated that the “lack of site-

specificity hampers informed decision-making as part of the NEPA process, and therefore meaningful public participation on the individual treatment projects, both important for understanding the potential for significant impacts and determining mechanisms for avoiding them.” EPA recommended the Forest Service prepare a programmatic NEPA document that “commits to tiered, site-specific NEPA analyses that provides opportunities for public involvement and comment on individual treatment projects.”

112. The EA includes a section on potential effects to grizzly bears.

113. In the EA, the Forest Service recognized that grizzly bears need at minimum food, seasonal foraging habitat, denning habitat, and security in an area of sufficient size for survival. The EA acknowledged the South Plateau project has the potential to affect these fundamental grizzly bear needs.

114. In the EA, the Forest Service said the cumulative effects to grizzly bears from the South Plateau project will be “relatively minor.”

115. In the EA, the Forest downplayed the effect to grizzly bears from the removal of vegetation and forest cover. In the EA, the Forest Service said grizzly bears are likely to benefit from the vegetation treatments and will use clearcuts.

116. In the EA, the Forest Service states that its overall objective for managing grizzly bear habitat inside the recovery zone is to manage the habitat in the area at

the same level that existed in 1998 – i.e., under the 1998 baseline approach adopted in the 2021 revised Forest Plan.

117. In the EA, the Forest Service analyzed the potential effects of the South Plateau project on grizzly bear security based on three “motorized access indicators” for the GYE which were included in the 2016 Conservation Strategy: (1) the amount of “open motorized route density”; (2) the amount of “total motorized route density”; and (3) the amount of available “secure habitat” for grizzly bears as defined by the 1998 baseline.

118. In the EA, the Forest Service measured changes to open motorized route densities against the 1998 baseline (as amended to reflect improvements following the 2006 travel plan in the Henry’s Lake #2 and Madison #2 subunits). The South Plateau project will result in an increase in undesirable open motorized route densities during project implementation in the Henry’s Lake #2 subunit.

119. In the EA, the Forest Service measured changes to total motorized route densities against 1998 baseline levels (as amended to reflect improvements following the 2006 travel plan in the Henry’s Lake #2 and Madison #2 subunits). The EA determined that total motorized route densities will increase during project implementation but will still be maintained “below 1998 levels” for the Henry’s

Lake #2 and Madison #2 subunits. Total motorized route densities will increase above 1998 baseline levels in the Plateau #1 subunit.

120. In the EA, the Forest Service used the 1998 baseline (as amended to reflect improvements following the 2006 travel plan in the Henry's Lake #2 and Madison #2 subunits) to evaluate effects to "habitat security." The EA defined habitat security according to the 1998 baseline as areas at least 10 acres in size and 500 meters from a motorized route.

121. The analysis in the EA revealed the project will result in further declines in "secure habitat" for grizzly bears during project implementation. The EA reports that the Henry's Lake #2 subunit will go from roughly 52% secure habitat to 49.3% secure habitat during project implementation. The Madison #2 subunit will go from roughly 67.4% secure habitat to 67.1% secure habitat during project implementation. The Plateau #1 subunit will go from roughly 70.6% secure habitat to 69.3% secure habitat during project implementation.

122. The EA states that it will comply with the revised Forest Plan's grizzly bear standards by staggering projects and "by design."

123. The EA recognizes the South Plateau project will have some impact on grizzly bear habitat and food sources. The Forest Service acknowledged project activities will likely displace bears and ungulates in response to the activities

themselves and resulting changes in habitat and foraging availability. The Forest Service also recognized the project will reduce secure habitat, and that it will reduce available denning habitat and denning quality. The Forest Service concluded that grizzly bears will be able to adjust to these changes.

124. The EA recognizes that other projects in the area may impact secure grizzly bear habitat. Applying the 1998 baseline, the EA concludes there will not be significant effects from the South Plateau project or in combination with other projects because the project will comply with Forest Plan standards for impacts to secure habitat below baseline.

125. The Forest Service prepared a biological assessment for the South Plateau project.

126. The biological assessment determined that the South Plateau project was likely to adversely affect grizzly bears. The Forest Service reached this conclusion after considering the environmental baseline, effects of the action, and cumulative effects. The Forest Service's baseline analysis focuses on secure habitat and the 1998 baseline. The Forest Service noted how the existing baseline condition is in compliance with the 1998 baseline. The Forest Service explained in the biological assessment that its overall objective for grizzly bear habitat inside the recovery zone is to comply with the 1998 baseline. The Forest Service explained in the biological

assessment that the 1998 baseline's secure habitat standard was used for its analysis of impacts to grizzly bears.

127. The Forest Service acknowledges in the biological assessment that the exact location of project forest treatments and temporary roads is unknown. When evaluating the effects of the South Plateau project, the Forest Service based its analysis on "the most current information available" about the location of temporary roads. The Forest Service recognized that project activities would reduce grizzly bear secure habitat below baseline in the Henry's Lake #2 and Madison #2 subunits. The Forest Service further recognized that "[b]ecause increased access has been shown to increase mortality risk to grizzly bears, the temporary reduction in secure habitat and temporary increase in total motorized route densities in the three affected subunits through implementation of vegetative treatments indicates the project increases the potential for conflicts between humans and grizzly bears." The Forest Service relied on compliance with the 1998 baseline when evaluating the effects of the action.

128. When evaluating the cumulative effects of the project, the Forest Service's biological assessment recognized that the South Plateau project, combined with other actions occurring in the action area, including private land development, will result in cumulative impacts on grizzly bears. The Forest Service concluded that such cumulative effects are not significant.

129. The FWS prepared a biological opinion for the South Plateau project.

130. The biological opinion determined that the South Plateau project was not likely to jeopardize the continued existence of grizzly bears. FWS's "no jeopardy" finding was informed by the fact that the South Plateau project would comply with the 1998 baseline standard for habitat security, following project implementation (after the temporary routes are closed).

131. When evaluating the environmental baseline, the biological opinion discusses a number of factors that may be affecting grizzly bears in the GYE and action area. When evaluating the environmental baseline, FWS noted that the Forest Service was in compliance with the 1998 baseline.

132. When evaluating the effects of the action, FWS acknowledged in its biological opinion that the exact extent and location of project treatments and temporary road construction is unknown and will be determined during project implementation. FWS, applying the 1998 baseline, determined the South Plateau project will add to already ongoing adverse effects in the Henry's Lake #2 and Madison #2 subunits. FWS concluded this could result in grizzly bear displacement and disrupt feeding patterns or breeding.

133. In the biological opinion, FWS concluded the South Plateau project's temporary road construction is likely to adversely affect grizzly bears. FWS stated

that “[a]s the amount of secure habitat that would be affected in the Madison #2 subunit is about 228 acres, standard FW-STD-WLGB-03 will be met.” FWS did not consider the Yale Creek Project in its analysis. FWS concluded that “additional measures” would be taken, such as reducing project impacts to secure habitat or implementing the project in stages, for project activities in Henry’s Lake #2 subunit to comply with FW-STD-WLGB-03.

134. When evaluating cumulative effects, the biological opinion found the project would exacerbate temporary grizzly bear disturbance and displacement.

FIRST CAUSE OF ACTION
(Violation of the ESA –1998 baseline)

135. Plaintiffs incorporate all preceding paragraphs.

136. Section 7 of the ESA requires the Forest Service to consult with FWS on how its revised Forest Plan may affect threatened grizzly bears.

137. The Forest Service prepared a biological assessment for the revised Forest Plan and found that it was “likely to adversely affect” threatened grizzly bears. In response, the FWS prepared a biological opinion on grizzly bears for the revised Forest Plan. The biological opinion determined that the revised Forest Plan was not likely to jeopardize the continued existence of grizzly bears.

138. Section 7 of the ESA requires the Foerst Service to consult with FWS on how the South Plateau project may affect threatened grizzly bears.

139. The Forest Service prepared a biological assessment for the South Plateau project and found that it was “likely to adversely affect” threatened grizzly bears. In response, the FWS prepared a biological opinion on grizzly bears for the South Plateau project. The biological opinion determined that the South Plateau project was not likely to jeopardize the continued existence of grizzly bears.

140. When engaging in consultation under Section 7 of the ESA, including in preparing a biological assessment and/or biological opinion, the Forest Service and FWS must utilize the “best scientific and commercial data available” (“best available science”). 16 U.S.C. § 1536(a)(2).

141. When consulting on the revised Forest Plan, the Forest Service’s biological assessment and FWS’s biological opinion utilized the 1998 baseline standard for secure habitat.

142. When consulting on the South Plateau project, the Forest Service’s biological assessment and the FWS’s biological opinion utilized the 1998 baseline standard for secure habitat.

143. The Forest Service and FWS stated that adopting the 1998 baseline for secure habitat remains the “current best science” and indicates that conditions as they existed in 1998 provide “adequate conditions” inside the GYE recovery zone to support and conserve a healthy grizzly bear population.

144. The 1998 baseline is not the “current best science.”

145. The 1998 baseline conflicts with the best available science on secure habitat needs for grizzly bears in the GYE.

146. The 1998 baseline only considers two static habitat variables: size (a minimum of 10 acres) and distance from a motorized route (greater than 500 meters or 0.31 miles).

147. The best available science reveals the 10 acre minimum size for secure habitat is too small to provide actual security for grizzly bears. No scientific literature or published paper supports a minimum size of 10 acres for habitat security. Grizzly bears typically use areas of roughly 720-2,220 acres in size over a one to two day period. The best available science reveals that a minimum of 620-2,500 acres is required for secure habitat. Using a minimum of 10 acres for habitat security artificially inflates the amount of available secure habitat for grizzly bears in the GYE. Using a minimum of 10 acres in size for secure habitat is insufficient to provide security for grizzly bears. Using a minimum of 10 acres in size for secure habitat creates high mortalities risks and population sinks for grizzly bears (like the project area).

148. The best available science reveals the 1998 baseline’s blanket 500-meter (0.31 mile) distance from motorized routes for secure habitat is insufficient. The

500-meter parameter only measures distance, not the negative effects from increased traffic levels, the availability of roadside cover, topographic roughness, and whether or not the road is located in rich habitat that attracts bears to lethal roadside environs (an ecological trap effect). The distance from a motorized route is only one factor in providing secure habitat for grizzly bears in the GYE. In the GYE, vegetation cover, levels of traffic, and distributions of attractive habitats vis-a-vis roads have changed since 1998. The 1998 baseline also ignores pedestrians who might use "closed" roads, the effectiveness of closures, and the comparative lethality of people on those roads.

149. The 1998 baseline does not account for all habitat variables required for actual habitat security. The 1998 baseline does not account for habitat quality. The 1998 baseline does not account for the availability of high-quality food sources. The 1998 baseline does not account for the configuration and distribution of habitat. The 1998 baseline does not account for the juxtaposition of habitat and roads. The 1998 baseline does not account for the levels and types of human use on motorized routes or the availability of cover or screening. The 1998 baseline fails to include a cover component.

150. The 1998 baseline is outdated. The 1998 baseline does not account for changes to grizzly bear food sources, habitat, and demographics since 1998. The

1998 baseline does not account for climate change effects to grizzly bear habitat (including an increased need for thermoregulation and increase in drought conditions) since 1998. The 1998 baseline does not account for the increase in grizzly bear dispersal and distribution in the GYE since 1998. The 1998 baseline does not account for the change in important food sources since 1998, including the loss of whitebark pine seeds, native cutthroat trout, and declines in ungulates in the GYE. The 1998 baseline does not account for the escalation in grizzly bear conflicts and mortalities in the GYE since 1998. The 1998 baseline does not account for the sharp increase in private land development, recreation, and visitation to Yellowstone National Park and the project area and neighboring counties since 1998. The 1998 baseline does not account for the wildfires and insect outbreaks since 1998. The 1998 baseline does not account for increased motorized access on federal, private, and state lands since 1998. The 1998 baseline does not account for the fact that human and natural environments have become more adverse since 1998, which has resulted in more bears dying or being harmed even though the amount of “secure habitat” remains within 1998 baseline levels. The 2016 Conservation Strategy admits that the 1998 baseline is outdated.

151. The Forest Service’s biological assessment and FWS’s biological opinion and related “no jeopardy” findings for the revised Forest Plan and South Plateau

project – both of which utilize the 1998 baseline – fail to apply and conflict with the best available science and are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A).

SECOND CAUSE OF ACTION
(Violation of the ESA –arbitrary biological opinion)

152. Plaintiffs incorporate all preceding paragraphs.

153. Section 7 of the ESA requires the Forest Service to consult with FWS on how the South Plateau project may affect threatened grizzly bears.

154. In accordance with Section 7 of the ESA, the Forest Service prepared a biological assessment for its South Plateau project. The biological assessment determined that the South Plateau project “may affect, and is likely to adversely affect” grizzly bears. In response, FWS prepared a biological opinion for the South Plateau project. FWS’s biological opinion determined the South Plateau project would not jeopardize the continued existence of grizzly bears.

155. FWS’s biological opinion and related “no jeopardy” finding for the South Plateau project fail to utilize and apply the best available science on grizzly bears as required by Section 7 of the ESA, 16 U.S.C. § 1536(a)(2). This includes the best available science on population trends and mortality numbers, threats to the species, secure habitat requirements for grizzly bears, or how the South Plateau project, including road construction and logging, is likely to affect grizzly bears.

156. FWS's biological opinion for the South Plateau project failed to properly define and analyze the environmental baseline. The "environmental baseline" is the condition of the listed species before the proposed action. 50 C.F.R. § 402.02. The baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area and the impact of State or private actions which are contemporaneous with the consultation in process.

157. In the biological opinion, FWS relied on an outdated 1998 baseline instead of the actual baseline conditions in the project area. FWS failed to consider other state, private, and federal projects occurring in the action area in the environmental baseline. FWS failed to account for the escalation in grizzly bear mortalities in the environmental baseline. FWS failed to account for the loss of important food sources for grizzly bears in the environmental baseline. FWS failed to account for the significant increase in human presence, visitation, and recreational use in the environmental baseline. FWS failed to account for the existing conditions in the project area that have and continue to create a population sink for grizzly bears, including high rates of grizzly bear mortality.

158. FWS's biological opinion failed to properly define and analyze the "effects of the action." The "effects of the action" are "all consequences to listed

species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.” 50 C.F.R. § 402.02. FWS’s biological opinion provides insufficient detail about the project’s authorized activities for meaningful analysis. The biological opinion fails to disclose the timing, location, or size of logging and other forest treatments authorized by the South Plateau project. The biological opinion does not disclose where or when temporary roads authorized by the project will be constructed, how such roads will be used, or how long they will be on the landscape.

159. FWS’s biological opinion failed to properly define and analyze the “cumulative effects.” Cumulative effects” are “those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.” 50 C.F.R. § 402.02. There are a number of future State and private actions reasonably certain to occur in the action area, including increased recreational use and private development and related projects.

160. FWS's biological opinion and related "no jeopardy" finding failed to combine and add the aggregate effects of the action to the environmental baseline and cumulative effects. The biological opinion fails to adequately account for how the project's impacts on grizzly bears intersect with and add to the existing (and negative) conditions in the action area and surrounding environment, including the compounding impacts of the project, North Hebgen Project, Yale Creek Project, and other federal, state, and private projects on the species. The Forest Service's reliance on a faulty biological opinion and "no jeopardy" finding is a substantive violation of Section 7 of the ESA.

161. The Forest Service's biological assessment and FWS's biological opinion and related "no jeopardy" finding for the South Plateau project are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A).

**THIRD CAUSE OF ACTION
(Violation of NEPA- effects)**

162. Plaintiffs incorporate all preceding paragraphs.

163. NEPA requires the Forest Service to adequately disclose, consider, and analyze the direct, indirect, and cumulative effects of its proposed actions on the existing baseline conditions in the project area.

164. Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action and occur later in time or are farther removed in distance but are reasonably foreseeable. Cumulative effects are the impacts on the environment that result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

165. The EA for the South Plateau project fails to take into account the actual baseline conditions in the project area for grizzly bears.

166. The EA relies on the 1998 baseline as a proxy for habitat security for grizzly bears. The EA fails to account for changes to grizzly bear habitat, mortality, and threats since 1998 in the project area. The EA fails to account for the rise in grizzly bear mortalities in the project area since 1998, including the spike in mortalities following the loss of important food sources in the GYE for grizzly bears, including whitebark pine and cutthroat trout. The EA fails to account for the increase in distribution and range of grizzly bears in the project area. The EA fails to account for the increase in visitation, recreation, and development in the project area since 1998. The EA fails to account for the project area being a “population sink” for grizzly bears in the baseline. The EA fails to account for the high levels of

motorized route density (open and total) in the project area and the low levels of grizzly bear security in the project area.

167. The EA for the South Plateau project fails to adequately analyze the direct and indirect effects of the proposed action on grizzly bears.

168. The EA fails to adequately analyze how the proposed logging and loss of forest cover from the project will directly and indirectly affect grizzly bears and habitat security. The EA fails to adequately analyze how the proposed logging and loss of forest cover will directly and indirectly adversely affect climate change and impact carbon emissions.

169. The EA for the South Plateau project fails to adequately analyze the cumulative effects of the proposed action on grizzly bears.

170. The EA fails to adequately consider and analyze the cumulative effects from other private, state, or federal activities taking place in the project area and within the same grizzly bear subunits (Henry's Lake #2, Madison #2, and Plateau #1). This includes, but is not limited to, livestock grazing (on federal, state, and private lands), private land and residential development, Idaho's and Montana's state grizzly bear management plans, increased hunting, trapping, and snaring in the project area (in both Idaho and Montana), management removals of grizzly bears, other logging projects (for example, the Yale Creek project, North Hebgen project,

Black Mountain salvage project, and other vegetation projects in the same BMUs and/or subunits), an escalation in grizzly bear mortalities, other roads and motorized routes, climate change, airport expansion and improvements, increased visitation to Yellowstone National Park, increased recreation in the project area, existing motorized route densities (which are already causing adverse effects), including illegal motorized use on “closed” routes. The EA fails to account for and analyze how the South Plateau project is occurring in an area that is already experiencing high risks of grizzly mortality and is a population sink. The EA also fails to adequately consider and analyze other projects occurring in the neighboring Caribou-Targhee National Forest which overlaps with the same subunits.

171. The EA for the South Plateau project fails to include enough information or specific information about the project, i.e., where logging and related road work will occur, when it will occur, and how it will occur and for how long, in order to take a hard look at the direct, indirect, and cumulative effects of the project on grizzly bears as required by NEPA.

172. The Forest Service’s failure to define the actual baseline conditions for grizzly bears and analyze the direct, indirect, and cumulative effects to grizzly bears is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

**FOURTH CAUSE OF ACTION
(Violation of NEPA – EIS required)**

173. Plaintiffs incorporate all preceding paragraphs.

174. NEPA requires the Forest Service to prepare an EIS for all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

175. The South Plateau project qualifies as a major federal action significantly affecting the quality of the human environment.

176. The South Plateau project is likely to have “significant effects” requiring an EIS. 40 C.F.R. § 1501.3(a)(3).

177. The South Plateau project is occurring in an important and ecologically critical area for grizzly bear recovery, the recovery zone in the GYE. The South Plateau project involves direct, indirect, and cumulative effects that are highly controversial and involve a high degree of uncertainty. The South Plateau project involves cumulatively significant effects to grizzly bears and will further reduce habitat security and increase motorized road density in the affected subunits. The South Plateau project is large in size (in terms of total acreage affected) and will occur over a long period of time (15-20 years). The South Plateau project includes both short-term and long-term effects to grizzly bears and grizzly bear habitat in the GYE. The South Plateau project is controversial. The South Plateau project will

result in a violation of federal law, including Section 7 of the ESA and NFMA, as alleged herein. The South Plateau project will adversely affect threatened grizzly bears in the GYE.

178. Plaintiffs have raised substantial questions about whether the South Plateau project will have “significant effects” requiring an EIS.

179. The Forest Service has failed to provide a convincing statement of reasons for why the South Plateau project will not or is not likely to have “significant effects” requiring an EIS.

180. The Forest Service’s decision not to prepare an EIS for the South Plateau project is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

FIFTH CAUSE OF ACTION
(Violation of NFMA – non-compliance with revised Forest Plan)

181. Plaintiffs incorporate all preceding paragraphs.

182. NFMA requires that all site-specific projects be consistent with the applicable forest plan, here the revised 2021 Custer-Gallatin Forest Plan. 16 U.S.C. § 1604(i).

183. The South Plateau project is inconsistent with forest plan standard FW-STD-WGLB-01. This standard states that the percent of secure habitat within each grizzly subunit shall not be reduced below 1998 baseline levels (or 2006 levels for

those subunits identified as needing improvement in the 2007 conservation strategy). Management actions that result in “temporary” or “permanent” reductions in secure habitat below 1998 baseline levels are only allowed “so long as they follow” the applicable rules of FW-STD-WLGB-02 and FW-STD-WLGB-03.

184. The South Plateau project will result in reductions below the applicable baseline levels. The South Plateau project does not follow the applicable rules included in FW-STD-WLGB-02 and FW-STD-WLGB-03. There is not enough specific information on the South Plateau project, i.e., where, when, and how logging and related road work will occur in the grizzly bear subunits to ensure compliance with FW-STD-WGLB-01.

185. The South Plateau project is inconsistent with forest plan standard FW-STD-WLGB-02. This standard requires that any construction of new motorized routes (roads or trails), reconstruction of motorized routes, or opening of previously decommissioned motorized routes inside the GYE recovery zone must, *inter alia*, replace any losses in secure habitat by restoring secure habitat in the same subunit and ensure such replacement habitat is in place before project implementation and for a minimum of 10 years.

186. The South Plateau project will result in losses to secure habitat that are not replaced by a restoration of secure habitat in the same subunit (of equivalent

quality and quantity) for 10 years. There is not enough specific information on the South Plateau project, i.e., where, when, and how logging and related road work will occur in the grizzly subunits, to ensure compliance with FW-STD-WGLB-02.

187. The South Plateau project is inconsistent with forest plan standard FW-STD-WLGB-03. This standard states that inside the recovery zone in the GYE, a project that results in temporary reductions in secure habitat below baseline levels must meet the following conditions: (1) only one project may be active within a given subunit at any one time; (2) the total acreage of secure habitat affected below baseline levels in a BMU shall not exceed 1 percent of the acreage in the largest subunit in the BMU; and (3) new temporary roads shall be limited to administrative purposes associated with the project and project activities shall not reduce secure habitat below baseline levels for more than four consecutive years.

188. The South Plateau project is not the only “active” project in the subunits that is reducing secure habitat (the North Hebgen project and others are also occurring). The total acreage affected from the South Plateau project alone, and in conjunction with other projects, exceeds 1 percent of the acreage in the largest subunit in the BMU. Reductions in secure habitat from temporary roads will reduce habitat below baseline levels for more than four consecutive years. There is no information in the EA on baseline levels in the affected BMUs. The Forest Service

never analyzed compliance with this standard at the BMU level (just the subunit level). There is not enough specific information on the South Plateau project, i.e., where, when, and how logging and related road work will occur in the grizzly subunits or BMUs to ensure compliance with FW-STD-WGLB-03.

189. The Forest Service's decision to approve the South Plateau project without first demonstrating or ensuring compliance with forest plan standards for grizzly bears is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

- A. Declare the Forest Service violated and continues to violate the ESA, NEPA, and NFMA as alleged above;
- B. Declare FWS violated and continues to violate the ESA as alleged above;
- C. Vacate the Forest Service's authorization of the South Plateau project, related EA, and any decisions or permits authorizing the South Plateau project or any of its constituent activities;
- D. Vacate FWS's biological opinions for the revised Forest Plan and South Plateau project;

E. Remand this matter back to the Forest Service and FWS with instructions to comply with NEPA, the ESA, and NFMA, as outlined herein;

F. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses of litigation pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g) and/or the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412;

G. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request;

H. Issue any other relief this Court deems necessary, just, or proper.

Respectfully submitted this 18th day of December, 2023.

/s/ Matthew Bishop
Matthew Bishop

/s/ Sarah McMillan
Sarah McMillan

Counsel for Plaintiffs