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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
NORTHERN DIVISION

CENTER FOR BIOLOGICAL DIVERSITY and IDAHO CONSERVATION LEAGUE,

Plaintiffs,

v.

U.S. FISH AND WILDLIFE SERVICE; U.S. ARMY CORPS OF ENGINEERS.

Defendants.

Case No. 2:25-cv-710

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Plaintiffs Center for Biological Diversity ("Center") and Idaho Conservation League ("ICL") challenge actions by Defendants U.S. Fish and Wildlife Service ("Service") and U.S. Army Corps of Engineers' ("Corps") due to their failure to comply with the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq*. ("ESA"); National Environmental Policy Act, 42 U.S.C. §§ 4321–4370h ("NEPA"); and Administrative Procedure Act, 5 U.S.C. §§ 701–706 ("APA"), as well as relevant implementing regulations. Defendants' challenged actions relate to authorization of the Idaho Club Lakeside Marina Development ("Project"). Specifically, Plaintiffs challenge (1) the Service's July 30, 2025 Concurrence determining that the Project is "not likely to adversely affect" bull trout (*Salvelinus confluentus*)—a species threatened with extinction under the ESA—which is arbitrary, capricious, and unlawful, in violation of the APA; and (2) the Corps' failure to take a hard look at the environmental impacts of the Project, failure to consider new information showing impacts to bull trout that were not previously considered or included, and failure to prepare a supplemental NEPA analysis, in violation of NEPA, and therefore agency action unlawfully withheld and unreasonably delayed, and/or arbitrary, capricious, not in accordance with law, and in contravention of procedure required by law, in violation of the APA.

2. Defendants authorized a Project adjacent to Trestle Creek, a tributary to Lake Pend Oreille in northern Idaho, that would impact the creek and its surrounding habitat. Trestle Creek is one of the most important spawning streams for bull trout in the Pacific Northwest. It has among the highest number of documented bull trout redds—or egg nests—in all of Lake Pend Oreille's tributaries. Trestle Creek flows into Lake Pend Oreille next to the Project site. Bull trout migrate between the lake and Trestle Creek multiple times in their lifetime to spawn, and juvenile bull trout rear in the stream and its numerous branches before out-migrating to the

lake. Trestle Creek and Lake Pend Oreille are designated critical habitat for bull trout. The Service has determined that protection of this area is critical to the survival and recovery of bull trout.

3. As proposed, the Project would involve construction of a commercial marina on Lake Pend Oreille near the mouth of Trestle Creek and high-end private residences along the banks of the North Branch of Trestle Creek ("North Branch") and shore of Lake Pend Oreille. Project activities would also include altering the area around the mouth of Trestle Creek; rerouting the North Branch; constructing private docks, access roads, parking areas, and a 220-foot breakwater; and excavating portions of an island and peninsula where the North Branch currently empties into Lake Pend Oreille.

4. In 2019, the Corps issued a Clean Water Act permit to construct the Project within critical habitat for bull trout and consulted with the Service pursuant to section 7 of the ESA. 16 U.S.C. § 1536(a)(2). After the Center and ICL sent a Notice of Intent to Sue under the ESA in 2021, the Corps suspended its Clean Water Act permit for the Project until the agencies reinitiated and completed consultation under section 7 of the ESA for the Project's impacts on bull trout. In March 2022, the Service received an updated Biological Assessment from the Corps, which concluded that the Project "is likely to adversely affect" bull trout and critical habitat, and the Corps requested formal consultation with the Service.

5. As a result of that formal consultation, in 2022 the Service concluded that the Project would "take" bull trout—including by wounding, capturing, and killing individual members of the species—and have long-term negative effects on the species' critical habitat, but it nevertheless concluded that the Project would not jeopardize the continued existence of bull trout or adversely modify critical habitat—*i.e.*, a "no jeopardy" determination. The Center and

ICL filed suit in 2022 challenging the Service's determination under the APA and NEPA. In response, the Corps revoked the Project's Clean Water Act permit.

6. In May 2024, the Project developer submitted a new permit application to the Corps with proposed modifications to the Project plan. In January 2025, the Corps issued a new Biological Assessment ("BA"), again concluding that the Project "is likely to adversely affect" bull trout and critical habitat, and the Corps requested formal consultation with the Service. Subsequently, however, the developer proposed further revisions to the BA, leading the Corps to flip its prior conclusion to find that the Project "*is not* likely to adversely affect" bull trout or critical habitat. On July 30, 2025, the Service issued a letter concurring with the Corps' "not likely to adversely affect" determination for bull trout ("Concurrence"), and informal consultation under section 7 of the ESA ended.

7. The "not likely to adversely affect" determinations in both the Corps' BA and Service's Concurrence are unlawful because they failed to consider all relevant factors, are unsupported by the evidence, and are inconsistent with the best available scientific data and information. Defendants failed to adequately consider how relevant aspects of the Project would impact bull trout, failed to consider the Project's effects on the entire action area, failed to adequately explain the departures from their prior determinations in 2022, and improperly relied on mitigation measures that are not reasonably certain to occur or even described. Thus, the Service's Concurrence are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law, in violation of the APA. 5 U.S.C. § 706(2)(A).

8. The Service's completion of review and the Corps' issuance of a new Clean Water Act Permit allow Project construction in bull trout critical habitat to begin, but only

subject to explicit Permit conditions. At the time of the filing of this Complaint, construction activities have begun but are occurring outside of required work windows and sequencing.

9. The fact that construction activities have begun while the North Branch is flowing (in violation of the Permit) constitutes new information showing impacts to bull trout that were not previously considered or included in the Corps' initial environmental assessment. Thus, because new information shows that the Project will significantly affect the quality of the environment in a manner that the Corps did not previously consider, the Corps' failure to prepare a supplemental NEPA analysis violates NEPA, 42 U.S.C. §§ 4321-4370h, and the APA because it constitutes agency action unlawfully withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or agency action that is arbitrary and capricious and not in accordance with law and in contravention of procedure required by law, 5 U.S.C. § 706(2)(A), (D).

10. Plaintiffs seek declaratory relief that Defendants' actions violate the APA because they are arbitrary, capricious, and/or not in accordance with the ESA, NEPA, and other applicable statutes and regulations. Plaintiffs ask the Court to set aside/vacate the challenged actions and seek injunctive relief for these ongoing legal violations to ensure adequate interim protection for the bull trout and its critical habitat until Defendants comply with the law.

JURISDICTION AND VENUE

11. This action arises under the laws of the United States and involves the United States as a Defendant. Plaintiffs bring this action under the APA, 5 U.S.C. § 706(1), (2).

12. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. §§ 701-706 (APA review of agency action and failure to act), and the Court may issue declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

13. Venue is proper in this District pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because the violations alleged in this Complaint occurred in this District. Venue is proper in the Northern Division of this District because the harms alleged in this Complaint arise in Bonner County. *See* Local Civ. R. 3.1.

PARTIES

14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a nonprofit organization dedicated to the protection and restoration of biodiversity. The Center is based in Tucson, Arizona, with staff and offices throughout the country, including in Idaho. The Center has more than 93,000 members, including many who live near bull trout critical habitat in Idaho and have an interest in bull trout. Because the Center values bull trout and bull trout critical habitat, the Center places high priority on protecting and recovering this species across its range. The Center works toward this goal through education, advocacy, scientific study, and litigation.

15. Plaintiff IDAHO CONSERVATION LEAGUE is a nonprofit organization devoted to protecting Idaho's environment. ICL is based in Boise, Idaho, with staff and offices in Ketchum, Sandpoint, and McCall, Idaho. ICL has more than 7,050 members, including many who live near, work with, and visit bull trout critical habitat and many who have an interest in protecting and recovering bull trout. ICL has worked to protect bull trout and bull trout critical habitat in the past through education, advocacy, litigation, and monitoring.

16. All Plaintiffs have long-standing interests in the preservation and recovery of bull trout in Idaho, both because they and their members place a high value on the species and because the presence of bull trout is essential to the healthy functioning of the ecosystem. Plaintiffs have been active in seeking to protect and recover bull trout through a wide array of

actions, including public outreach and education, scientific analysis, and advocacy intended to promote achievement of healthy ecosystem functioning in the region.

17. Plaintiffs' members use Trestle Creek and the North Branch for traditional activities and recreational pursuits, including hiking, camping, wildlife viewing, and aesthetic enjoyment. Plaintiffs' members also use Trestle Creek and the North Branch to help educate young naturalists about bull trout and its habitat. In doing so, Plaintiffs' members and staff seek to observe, photograph, and study bull trout in their native habitat. Plaintiffs derive aesthetic recreational, scientific, inspirational, and other benefits from these activities.

18. For example, one member of both the Center and ICL regularly visits Trestle Creek and the inlet area of Lake Pend Oreille where the North Branch outflows into the lake to observe and study bull trout, especially during spawning. They regularly visit the area to enjoy the current scenic, unspoiled, natural values and to seek out, observe, and photograph wildlife including bull trout. They plan to visit Trestle Creek and the North Branch and enjoy the area and observe bull trout throughout the winter and through the spring and summer. Their ability to enjoy and observe bull trout and bull trout critical habitat will be irreparably harmed by the Permit's authorization and the Project.

19. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs' members use and enjoy the area in and around Trestle Creek, the North Branch, and the Project area for observing spawning bull trout, paddleboarding and canoeing, hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiffs' members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.

20. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs' members have been and will be adversely affected and irreparably injured by Defendants' authorization of the Project. These are actual, concrete injuries caused by Defendants' failures to comply with mandatory duties under federal law. The requested relief would redress these injuries, and this Court has the authority to grant Plaintiffs' requested relief.

21. Defendant U.S. FISH AND WILDLIFE SERVICE is an administrative agency within the U.S. Department of the Interior and is responsible for the conservation and recovery of wildlife species listed under the ESA, including bull trout.

22. Defendant U.S. ARMY CORPS OF ENGINEERS is an administrative agency within the U.S. Department of Defense and is responsible for the lawful investigations, development and maintenance of the Nation's water and related environmental resources.

LEGAL BACKGROUND

I. Endangered Species Act

23. The Endangered Species Act "represent[s] the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978). As the Supreme Court has recognized, "Congress intended endangered species be afforded the highest of priorities." *Id.* at 174.

24. Congress enacted the ESA to provide "a program for the conservation of endangered species and threatened species" and "a means whereby the ecosystems upon which [such] species depend may be conserved." 16 U.S.C. § 1531(b). The ESA defines "conservation" as "the use of all methods and procedures, which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary." *Id.* § 1532(3). To those ends, section 7 of the ESA requires all federal

agencies to work to recover listed species and contains procedural and substantive requirements to do so.

25. Substantively, section 7(a)(2) of the ESA requires federal agencies to ensure that "any action authorized, funded, or carried out" is not "likely to jeopardize the continued existence" of any endangered or threatened species, or "result in the destruction or adverse modification" of critical habitat. 16 U.S.C. § 1536(a)(2). In this context, to "jeopardize" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood both survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02.

26. To carry out section 7's substantive mandate, the ESA sets forth mandatory procedures requiring any federal agency proposing an action (*i.e.*, the "action agency") to consult with an expert agency—in this case, the Service—to evaluate the consequences of a proposed action on a listed species and determine whether the action is likely to jeopardize any listed species or destroy or adversely modify critical habitat and, if so, to identify ways to modify the action to avoid that result. 50 C.F.R. § 402.12.

27. During the consultation process, federal agencies must "use the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

28. If the action agency finds that listed species may be present in the action area, the action agency must prepare a "biological assessment" to determine whether the proposed action is likely to adversely affect the listed species. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

29. A biological assessment includes, among other things, "[a]n analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies." 50 C.F.R. § 402.12(f)(4).

30. Effects of the action include "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" and that "may occur later in time" or "outside the immediate area involved in the action." 50 C.F.R. § 402.02. An agency action "causes" a consequence if it "would not occur but for the proposed action and it is reasonably certain to occur." *Id.*

31. Cumulative effects of the action are the "effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation." *Id.*

32. If the action agency determines that the action "may affect" but is "not likely to adversely affect" listed species or critical habitat, and the Service concurs in writing, ESA regulations permit less comprehensive "informal consultation" to satisfy section 7 obligations. *Id.* § 402.13. The Service's written concurrence is the final action that constitutes the completion of this "informal" section 7 consultation process. *See id.* § 402.13(c).

33. If the Service does not concur with the action agency's "not likely to adversely affect" determination or if the action agency determines that the action "is likely to adversely affect" listed species or critical habitat, the agency must engage in "formal consultation" with the Service, as outlined in 50 C.F.R. § 402.14. *Id.* §§ 402.02, 402.14(a).

34. Formal consultation is "a process between the Service and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the [ESA] and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the [ESA]." *Id.* §§ 402.02, 402.14(c)(1).

35. In formal consultation, the Service must "evaluate the effects of the action and cumulative effects on listed species and critical habitat," when added to the "environmental

baseline" and "in light of the status of the species and critical habitat," to determine whether the action is likely to jeopardize species or destroy or adversely modify critical habitat. *Id.* § 402.14(g)(3)-(4). The "environmental baseline" must include the past and present impacts of all federal and nonfederal actions in the action area, including those that have already undergone consultation with the Service under section 7 of the ESA. *Id.* § 402.12.

36. At the conclusion of formal consultation, the Service must issue a "biological opinion" that "detail[s] how the agency action affects the species," 16 U.S.C. § 1536(b)(3)(A), and sets forth the Services' opinion as to whether the action is "likely to jeopardize" the continued existence of listed species, 50 C.F.R. § 402.14(h)(1)–(3).

37. If the Service determines that the action will incidentally "take" a listed species but *is not* likely to jeopardize the species or destroy or adversely modify critical habitat, the Service must provide an "incidental take statement" ("ITS"). *Id.* § 402.14(g)(7). The ITS must specify the impact of the incidental taking on the listed species, set forth any "reasonable and prudent measures" ("RPMs") that are necessary or appropriate to minimize the impact from take, and provide "terms and conditions" that the action agency must comply with to implement the RPMs and avoid jeopardy to the species. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

38. If the Service determines that the action *is* likely to jeopardize listed species or destroy or adversely modify critical habitat, the biological opinion must suggest "reasonable and prudent alternatives" ("RPAs") that would reduce the impacts of the action such that the action agency may avoid jeopardizing listed species. 16 U.S.C. § 1536(b)(3)(A).

39. If the agency action is expected to cause "take" of listed species, the Service must also include an ITS in its biological opinion that, where practicable, quantifies the amount of take allowed for each species. 50 C.F.R. § 402.14(i).

40. Take of a listed species by federal action without a valid ITS is a violation of section 9 of the ESA. 16 U.S.C. § 1538.

41. The ESA defines "take" broadly to encompass all manner of harm and harassment, including direct injury or mortality and any acts or omissions that disrupt or impair significant behavioral patterns. *Id.* § 1532(19); 50 C.F.R. § 222.102.

42. Compliance with a biological opinion and ITS protects the action agency and others acting consistent with the biological opinion from enforcement action under section 9 of the ESA's prohibition against take. 16 U.S.C. §§ 1536(o)(2), 1538(a); 50 C.F.R. § 17.31(a). However, take that does not comply with a legally valid biological opinion or that occurs absent a valid ITS under section 7, or absent an ESA section 10 incidental take permit, violates section 9 of the ESA. *See* 16 U.S.C. § 1536(b)(4), (o)(2).

43. Compliance with the procedural requirements of section 7 of the ESA—identifying the likely effects of the action through the consultation process before the action is taken—is integral to compliance with the substantive requirements of section 7 of the ESA.

44. Federal actions that "may affect" listed species or critical habitat may not proceed unless and until the federal action agency ensures, through completion of the section 7 consultation process, that the action is not likely to cause jeopardy to the species or adverse modification of critical habitat. 16 U.S.C. § 1536(a); 50 C.F.R. §§ 402.13, 402.14.

45. The reinitiation of consultation under the ESA is required and must be requested by the Service or the action agency for agency actions over which the action agency retains, or is authorized to exercise, discretionary involvement or control, if: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not

previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16(a)(1)-(4).

46. In order to maintain the environmental status quo pending the completion of consultation, section 7(d) of the ESA requires that during consultation, action agencies "shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation of any [RPMs or RPAs]" necessary to avoid jeopardizing the species. 16 U.S.C. § 1536(d). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied. 50 C.F.R. § 402.09.

47. The Corps' issuance of a Clean Water Act permit authorizing the deposition of dredge and fill material into waters of the United States is a federal agency action that requires consultation with the Service under section 7 of the ESA.

II. The National Environmental Policy Act

48. The National Environmental Policy Act is the nation's charter for protection of the environment. Its central goals are "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation." 42 U.S.C. § 4321.

49. To these ends, NEPA requires that federal agencies analyze and disclose to the public the reasonably foreseeable environmental effects of their actions. *Id.* § 4332(C).

50. To fulfill its mandates, NEPA requires federal agencies to prepare an environmental impact statement ("EIS") for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 33 C.F.R. § 333.20. If an agency is uncertain whether it must prepare an EIS, it may prepare an environmental assessment ("EA") to determine whether the proposed action may have significant impacts requiring preparation of an EIS. 42 U.S.C. § 4336.

51. NEPA also requires the action agency to evaluate a reasonable range of alternatives including a "no action" alternative when analyzing environmental impacts of the proposed action. 42 U.S.C. § 4332(2)(H).

52. The action agency must also identify the effects and impacts of each reasonable alternative to the action, including a project's ecological, aesthetic, economic, social, and health effects. 33 C.F.R. §§ 333.15(b)(iii); 333.20 333.61(d). (defining effects or impacts)

53. In the NEPA context, effects and impacts are "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives." 33 C.F.R. § 333.61(d).

54. An agency is required to prepare an EIS if substantial questions are raised as to whether a proposed action may significantly affect the quality of the human environment. 42 U.S.C. § 4336(b)(1). In determining whether an EIS is required, an agency must consider what "significantly" means. The Corps can consider various factors in determining significance: reliable data sources, public interest, the affected area and its resources, the activity's effect on "conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore,

erosion and accretion, recreation, water supply and conservation, water quality . . . and, in general, the needs and welfare of the people." 33 C.F.R. § 333.12(b).

55. The Corps has an ongoing duty under NEPA to prepare supplemental environmental analysis when the applicant "makes substantial changes to the proposed action that are relevant to environmental concerns"; or when "significant new circumstances or information about the significance of the adverse effects that bear on the proposed action or its effects" arise. 33 C.F.R. § 333.34.

III. The Clean Water Act

56. The Clean Water Act was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," 33 U.S.C. § 1251, and generally prohibits the discharge of pollutants into "waters of the United States," *id.* §§ 1311(a), 1362(7), which include the waters at issue here. The term "discharge of fill material" is defined as "the addition of fill material into the waters of the United States" or the placement of fill necessary for the construction of any structure in the waters of the United States. 33 C.F.R. §§ 323.2(f), 323.3(c); 40 C.F.R. § 232.2.

57. Under the Clean Water Act, the Corps is authorized to issue permits for discharges of "dredged or fill materials" into waters of the United States, but only if the proposed activity complies with stringent requirements set forth in regulations issued by the Corps (at 33 C.F.R. part 320) and the U.S. Environmental Protection Agency (the "Section 404(b) Guidelines" at 40 C.F.R. part 230). *See id.* § 1344(b); 33 C.F.R. §§ 320.2(f), 325.2. A permit must be denied if it is contrary to the public interest or does not comport with the Section 404(b) Guidelines. 33 C.F.R. §§ 320.4, 323.6; 40 C.F.R. §§ 230.10, 230.12.

58. To ensure the mandatory Clean Water Act requirements are satisfied, the Corps must fully evaluate the direct, secondary, and cumulative impacts of a proposed activity, including impacts to aesthetics, recreation, and fish and wildlife. *See*, *e.g.*, 33 C.F.R. §§ 320.4(a)(1), 336.1(c)(5) (endangered species), 336.1(c)(8) (fish and wildlife); 40 C.F.R. §§ 230.11(a)-(h), 230.20-23 (aquatic ecosystem), 230.30 (threatened and endangered species), 230.31 (fish and wildlife), 230.51 (recreational and commercial fisheries), 230.52 (water-related recreation), 230.53 (aesthetics). In particular, the Corps must set forth its findings in writing on the short-term and long-term effects of the discharge of dredge or fill activities, as well as compliance or noncompliance with the restrictions on discharge. 40 C.F.R. §§ 230.11, 230.12(b).

59. Regarding impacts on species like bull trout protected by the ESA, these obligations under the Clean Water Act and implementing regulations create for the Corps' its own duties. The Corps may not permit discharge if it would jeopardize a listed species, 40 C.F.R. § 230.10(b)(3); must address factual determinations regarding a permit's impacts in terms of "probable loss of value" to such species, *id.* § 230.30; and must evaluate the public interest in the preservation of such fish and wildlife values, 33 C.F.R. § 320.4(a)(1).

IV. The Administrative Procedure Act

60. This case is brought pursuant to the APA, which allows persons and organizations to challenge final agency actions in the federal courts. 5 U.S.C. §§ 551-559, 701-706.

61. The APA mandates that courts shall "hold unlawful and set aside" agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Id.* § 706(2)(A). An action is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the

problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

62. The APA also requires reviewing courts to "compel an agency action unlawfully held or unreasonably delayed." 5 U.S.C. § 706(1).

FACTUAL ALLEGATIONS

I. Bull Trout (*Salvelinus confluentus*) Life History and Habitat Requirements

48. The bull trout is a type of char in the salmonid family native to waters of western North America. The bull trout's range includes the Columbia River and Snake River basins, extends east to headwater streams in Idaho and Montana, stretches north into Canada and southeast Alaska, and encompasses the Puget Sound and Olympic Peninsula watersheds of western Washington and the Klamath River basin of south-central Oregon.

49. The bull trout is one of the most threatened salmonids. It has been nicknamed the "grizzly bear of the fish world" due to its large size, fierce disposition, and reliance on pristine, unspoiled cold-water habitat. *See, e.g.*, Montana Field Guide, Bull Trout – *Salvelinus confluentus*, https://fieldguide.mt.gov/speciesDetail.aspx?elcode=AFCHA05020. Bull trout may be found only in the coldest, cleanest waters of high mountainous areas and primarily live in deep pools of large, cold rivers and cold, clear lakes.

50. Bull trout require specific habitat components, known as "the four Cs": cold, clean, complex, and connected habitat. They require cold water temperatures (less than 12 degrees Celsius/54 degrees Fahrenheit); the cleanest water and stream substrates; complex stream habitat including deep pools, overhanging banks, and large woody debris; and connected spawning and rearing areas and downstream foraging, migration, and overwintering habitats.

51. Bull trout may be either resident or migratory. Resident bull trout complete their entire life cycle in the same streams where they spawn and rear. Migratory bull trout spawn in tributaries, where juveniles rear for up to five years before migrating either to a lake (adfluvial) or, in coastal areas, to saltwater (anadromous). Resident and migratory bull trout may be found together, and either form may spawn offspring exhibiting either resident or migratory behavior.

52. Bull trout live longer than any other salmonid. Although maximum age is unknown, bull trout have been recorded as old as 24 years old. Unlike Pacific salmon species that spawn once and then die, bull trout will spawn multiple times in their lifetime, migrating multiple times between spawning streams and their large river or lake habitats.

53. Migratory bull trout may begin their spawning migration as early as April, and some travel upstream up to 250 kilometers (155 miles) to find suitable spawning habitat.

54. Bull trout typically spawn between August and November, but sometimes as late as December, and will not begin spawning until the water cools to specific temperatures. Peak bull trout spawning occurs in September. Bull trout construct their egg nests, or redds, in low-gradient stream reaches with loose, clean gravel substrates. During spawning, females deposit eggs in redds they create by digging into gravel with their tails.

55. Bull trout hatch and emerge from redds in early April through May, depending on stream temperatures and flows. Once hatched, young fry remain in the gravel substrate as long as ideal temperatures are maintained. Upon emergence, juvenile bull trout may rear one to four years in their natal (or birth) stream before migrating either to river, lake/river, or nearshore marine areas to mature. Juvenile bull trout spend considerable time foraging and rearing in the creek where they were spawned until they grow to the optimal size to migrate out of the stream into the larger, connected waters.

56. Juvenile bull trout prey on aquatic and terrestrial insects, macro-zooplankton, and small fish. Adult bull trout are carnivorous, feeding primarily on a wide variety of fish species.

57. Kokanee salmon are the preferred, primary prey of adult bull trout in Trestle Creek and Lake Pend Oreille.

58. The preferred winter habitat of bull trout is known as unembedded cobble substrate—or streambed gravels that are free from sedimentation.

59. Sedimentation, or the delivery of fine sediments to the streambed, reduces bull trout egg survival, fry emergence, winter habitat, and forage opportunities for juveniles and adults.

60. The current distribution of bull trout is fragmented across its historical range. Bull trout occur in low numbers in many areas, and many populations are depressed and declining.

II. Threatened Status of Bull Trout, Critical Habitat Designation, and Recovery Plan

61. The Service listed bull trout in the coterminous United States as one distinct population segment that is threatened with extinction under the ESA in 1999. 64 Fed. Reg. 58910 (Nov. 1, 1999).

62. The Service determined that bull trout are threatened by the combined effects of: (1) habitat degradation, fragmentation, and alteration associated with dewatering, road construction and maintenance, mining, and grazing; (2) the blockage of migratory corridors by dams or other diversion structures; (3) poor water quality; (4) incidental harvest; (5) entrainment (a process by which aquatic organisms are pulled through a diversion or other device) into diversion channels; and (6) introduced nonnative species. *Id.*

63. The Service designated critical habitat for bull trout in 2010. 75 Fed. Reg. 63898 (Oct. 18, 2010). The primary conservation role of bull trout critical habitat is to support viable core area populations that reflect the overall structure of the metapopulation.

64. The Service developed a recovery plan for bull trout in 2015 ("Recovery Plan").

65. In the process of developing the Recovery Plan, the Service classified 109 "core areas" occupied by bull trout based on their importance to the species' survival and recovery.

66. The Recovery Plan distinguishes two types of core areas for bull trout conservation: complex core areas and simple core areas. Complex core areas contain multiple local bull trout populations, include both migratory and resident bull trout, and include diverse patterns of connected spawning and rearing and foraging, migratory, and overwintering habitats. Simple core areas are smaller, isolated habitats that typically contain a single population, may not include foraging, migratory, and overwintering stream habitat, and may include only the resident life history form or a very simple migratory pattern.

67. The Columbia Headwater Recovery Unit ("Recovery Unit") has 163 local bull trout populations within 35 core areas spanning Idaho, Washington, and Montana, and includes 15 complex core areas and 20 simple core areas.

68. The Lake Pend Oreille Core Area ("LPO Core Area") is the largest, most diverse complex core area in the Recovery Unit. Due to its complexity, the LPO Core Area is typically described in three parts (A, B, and C) that are largely disconnected from each other by dams. LPO Core Area B includes Lake Pend Oreille and its tributaries, including Trestle Creek.

69. The Recovery Unit Implementation Plan identifies upland/riparian land use and management as the single unmanaged threat to Core Area B.

70. Habitat connectivity is essential for the conservation and recovery of bull trout because migration facilitates gene flow among local populations when individuals from different local populations interbreed, or stray, to non-natal streams, and extirpated populations have the potential to become reestablished by migrating bull trout.

71. Migratory corridors link seasonal habitats for all bull trout life histories. For example, in Montana and northern Idaho, migratory (allacustrine) bull trout make extensive migrations in the Flathead River system, and migratory bull trout in the Pend Oreille River drainage make complex post-spawning migrations.

III. The Project Area

A. Lake Pend Oreille

72. Lake Pend Oreille is the largest and deepest natural lake in Idaho, located in Bonner County.

73. Dams effectively isolate Lake Pend Oreille, with the Cabinet Gorge Dam controlling inflow from the Clark Fork River and the Albeni Falls Dam controlling outflow into the Pend Oreille River. The manipulation of Albeni Falls Dam discharges cause seasonal lake level fluctuations that have altered the hydrology and morphology of the lake's tributary streams. The water level of Lake Pend Oreille fluctuates by 7.5 to 11.5 feet annually with the summer pool level being higher than the winter pool.

74. This year, the drawdown of Lake Pend Oreille to its winter level began September 22, 2025, with a target of 2,051-2,051.5 feet no later than November 15, 2025. The Corps holds the lake at a certain level until kokanee spawning is complete. Lake Pend Oreille reached its winter elevation on November 9, 2025. Due to atmospheric flood conditions, the Corps estimated the elevation would rise one to two feet in December. On December 18, 2025, Lake Pend

Oreille's elevation was 2053.69 feet. *See* NOAA, *Lake Pend Oreille at Hope*, available at https://water.noaa.gov/gauges/hopi1.

75. Due to its depth and size, Lake Pend Oreille provides excellent cold-water habitat for bull trout and supports a quality forage fish community. The bull trout population in Lake Pend Oreille basin is around 12,000 fish. This is largely due to lake's high-quality foraging, migratory, and overwintering habitat for bull trout and because the tributaries provide ideal spawning and rearing habitat. Bull trout numbers in the basin were undoubtedly higher before Cabinet Gorge Dam and Albeni Falls Dam were constructed, as the dams disconnect large portions of habitat and prevent bull trout from migrating in and out of the basin.

76. Other invasive sportfish live in Lake Pend Oreille and its tributaries, including northern pike, walleye, smallmouth bass, largemouth bass, lake trout, and brook trout. These fish are opportunistic predators that eat smaller fish, including juvenile and sub-adult bull trout, and compete with bull trout for habitat and prey and, as such, they are a natural threat to bull trout.

77. Piscivorous (fish-eating) predators of bull trout in Lake Pend Oreille typically rely on ambush predation, where the predatory fish wait in shaded and shadowy areas created by overwater structures, boats, and aquatic vegetation to ambush juvenile and subadult bull trout. Bull trout moving around structures are unable to see predators waiting in dark areas under or beside structures and are more susceptible to predation. In-water noise, such as from motorboats and construction, can impair the ability of bull trout to detect and avoid predators in their habitat.

B. Trestle Creek Watershed

78. Trestle Creek is a tributary of Lake Pend Oreille within bull trout critical habitat LPO Core Area B and enters the lake approximately three miles northwest of Hope, Idaho.

79. Trestle Creek is a keystone spawning ground for bull trout and has among the highest number of documented redds of all the lake's tributaries, historically supporting 10 to 54 percent of all the redds surveyed in Lake Pend Oreille and the lower Clark Fork River.

80. The downstream-most segment of Trestle Creek has frequently had a greater number of bull trout redds than any other stream in the basin. Annual redd counts show that as many as half the bull trout redds in the entire basin occur in Trestle Creek. Yet, the number of spawning nests has been declining sharply, with 2024 having the lowest number of nests on record (99 fewer redds than its 20-year average). Preliminary redd counts for 2025 show even more decline. There were 171 bull trout redds in Trestle Creek in 2021, representing approximately 39 percent of all redds counted in the Lake Pend Oreille basin that year. In 2024, there were only 51 bull trout redds in Trestle Creek.

81. The North Branch splits off from mainstem Trestle Creek approximately one mile upstream from Lake Pend Oreille, within the downstream-most segment of Trestle Creek, which as noted above has consistently supported the highest number of bull trout redds within the basin. Scientific reports suggest that Trestle Creek recently had a different or secondary outlet in the current location of a culvert where the North Branch currently flows into the lake.

82. Bull trout use the North Branch as a migration corridor between spawning grounds in Trestle Creek and Lake Pend Oreille, and juvenile bull trout rear and forage in Trestle Creek and the North Branch after emerging from redds in Trestle Creek. The North Branch also provides important forage habitat for bull trout of all ages.

83. Peak bull trout spawning in Trestle Creek occurs in September each year. Because bull trout spawn multiple times throughout their life cycle, bull trout of multiple life stages use Trestle Creek and the North Branch in all months of the year.

84. Juvenile bull trout rear for up to five years in Trestle Creek and the North Branch before they out-migrate to Lake Pend Oreille. Age-zero bull trout typically out-migrate into the lake from April to September, with the majority out-migrating in the spring during high flows. Age-one and older juvenile bull trout out-migrate to the lake from April through December, with most migrating both in the spring during high flows and in the fall once water temperatures decrease and seasonal rains increase.

85. Annual bull trout redd counts in Trestle Creek and the Lake Pend Oreille basin have been trending downwards since 2006 and are currently below the previous 10-year average.

86. Kokanee salmon are a primary food source for adult and subadult bull trout in Lake Pend Oreille and Trestle Creek.

III. The Project

A. History of the Proposed Idaho Club Marina and Lakeside Development

87. The developer first applied to the Corps in 2007 for a permit under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 to construct the North Dock Area and South Dock Area and to reroute the North Branch. Joint Application and Supporting Documents for Pend Oreille Bonner Development, LLC, The Idaho Club-Lakeside Project, Trestle Creek Area, Bonner County, ID, September 2007 ("2007 Application").

88. The 2007 Application contained a biological evaluation and design plans that proposed to excavate the area, construct a marina, and reroute the North Branch of Trestle Creek. The 2007 Application did not seek any permits from the Corps for the upland development portions of the Project, including private residences, marina support facilities, bridges, roads, and supporting infrastructure for residences.

89. In 2009, the Corps issued a Clean Water Act section 404 permit for the North Dock Area, South Dock Area, and North Branch portions of the Project and initiated consultation with the Service under section 7 of the ESA regarding the Project's impacts on bull trout and bull trout critical habitat. The Corps determined that the Project was not likely to adversely affect bull trout or critical habitat, and the Service concurred with the Corps' assessment, thus avoiding formal consultation and the need by the Service to issue a Biological Opinion.

90. After a series of extensions by the Applicant and re-initiated consultation by the Service, on November 12, 2019, the Corps issued an Environmental Assessment and Statements of Findings ("EA/SOF") concluding that Project's effects were not sufficiently significant to warrant preparation of an EIS. The EA/SOF stated that the Service concurred with the Corps' determination that the Project "may affect, but is not likely to adversely affect bull trout, and will not adversely affect bull trout critical habitat."

91. On November 18, 2019, the Corps issued a Permit to "Construct the Trestle Creek Marina Project on Lake Pend Oreille and the North Fork of Trestle Creek" ("2019 Permit").

92. In March 2022, the Service received a "final" Biological Assessment from the Corps, which concluded that the Project "may affect and is likely to adversely affect" bull trout and critical habitat and requested formal consultation with the Service. This was the first time that the Corps acknowledged that the Project would harm bull trout and/or their critical habitat.

93. On August 12, 2022, the Service issued its final Biological Opinion concluding that the Project would not jeopardize the continued existence of bull trout and would not destroy or adversely modify designated critical habitat for bull trout and issued an Incidental Take Statement authorizing take of bull trout from Project activities—*i.e.,* the "no jeopardy" decision.

94. On September 15, 2022, the Corps revoked the 2019 Permit based on proposed changes to the Project and significant objections to the Project that were not earlier considered.

95. In May 2023, the developer submitted a new section 404 Clean Water Act permit application for the Project.

B. The 2025 Idaho Club Marina and Lakeside Residential Development Permit

96. On September 29, 2025, the Corp issued a new Clean Water Act section 404 Permit Number NWW-2007-01218 ("Permit") authorizing the Idaho Club Project.

97. The Project authorized by the Permit consists of construction of a commercial marina, marina support facilities, parking facilities, and roads where Trestle Creek and the North Branch meet Lake Pend Oreille.

98. The Project would also simultaneously construct new large single-family private residences and supporting infrastructure on the shores of Lake Pend Oreille and along the banks of Trestle Creek and the North Branch—*i.e.*, the private residential development.

99. Marina support buildings and additional supporting infrastructure for residences would be built on the banks of, or near Trestle Creek and the North Branch, along the shores of Lake Pend Oreille.

100. The Project would involve the excavation of a long-defunct marina area and the construction of a new, enlarged marina in Lake Pend Oreille with 90 boat slips and 8 private boat docks, with a total capacity for at least 98 boats. The Project would also involve the construction of a 358-foot breakwater at the edge of the marina.

101. The Project would also redirect the lower North Branch so that it enters mainstem Trestle Creek rather than entering Lake Pend Oreille in the proposed marina and conduct certain "restoration" activities. The restoration activities would require the discharge of 279 cubic yards

of native excavated material and 140 cubic yards of rock below the ordinary high-water mark across the North Branch and wetlands.

102. The construction of the new marina would require the use of heavy equipment to remove a handful of defunct boat slips, docking, a small boat ramp, and other related structures, as well as removing the piles for the existing docks and slips either by pulling them out or cutting them at their base and leaving them in place.

103. Constructing the marina will involve building a new fixed-dock system with 88 boat slips, a pump station for boat septic tank sewage disposal, one 13,324 square foot fixed dock, and another 1,920 square foot dock.

104. Dock installation in the marina will involve pile driving 526 steel 10-inch piles over 6 to 8 weeks at a rate of 16 piles per day. The BA acknowledged certain areas in the marina would require impact driving due to accessibility and substrate conditions, leading the Corps to determine pile driving was likely to adversely affect bull trout. The developer then made a firm commitment to use only a vibratory hammer to drive piles. However, the BA fails to explain how the project will proceed should the developer encounter substrates that are not compatible with a vibratory hammer.

105. To create the enlarged open water area that will accommodate boat traffic in the enlarged marina, the Project will excavate 12,500 cubic yards of material below the high-water mark from an existing island and peninsula near the mouth of the North Branch.

106. For reference, one large dumpster (18 feet by 7.5 feet by 4 feet) is approximately 20 cubic yards. Therefore, the Project will remove approximately 625 large dumpsters of excavated material to create the enlarged marina.

107. The Project will also excavate 3,500 cubic yards of material (about 175 large dumpsters) from above the high-water mark to further remove portions of the island and peninsula and will reshape up to 3,830 linear feet of shoreline which will result in the discharge of 2,915 cubic yards of fill to create a new shoreline. An additional 370 cubic yards of fill materials will be used during the North Branch reroute phase of the Project.

108. Before construction of the marina begins, the Project must first reroute the North Branch of Trestle Creek so that its outfall no longer connects to Lake Pend Oreille through the culvert at the proposed marina site but, instead, connects into mainstem Trestle Creek before emptying into Lake Pend Oreille.

109. Beaver dams are present in the Project area. The dams will be deconstructed by hand and excavator hook and removed as part of excavation activities. Beaver dams leave pools even in dry channel conditions. Accordingly, pools caused by existing beaver dams may result in North Branch water flow being present during construction activities. The Project will include dewatering specific locations related to beaver dam removal and restoration of the North Branch.

110. In sum, the Permit allows the Project to permanently discharge 279 cubic yards of native excavated material and 2,915 cubic yards of "riprap" rock into Lake Pend Oreille and Trestle Creek. The Permit also allows the Project to excavate 12,500 cubic yards of material and will disturb approximately 3,830 linear feet of shoreline on Lake Pend Oreille and remove portions of an island and peninsula.

111. The Permit contains Special Conditions. The Permit states that "authorization under this Corps permit is conditional upon [the applicant's] compliance with special conditions in this permit and following the construction procedures described in [the Permit] application and Biological Assessment."

112. Special Condition 1 states: "Permittee shall complete compensatory mitigation in accordance with and as specified in the mitigation plan titled '20250828_NWW-2007-01218_Idahoclub_MitigationPlan,' dated August 28, 2025, and according to the drawings dated August 28, 2025. Mitigation shall be accomplished concurrent with or prior to the discharge of fill material authorized by this permit."

113. The Mitigation Plan states:

> Restoration work in the NBTC will be completed in two phases: Phase 1 is proposed to be completed prior to marina construction and during the yearly no flow/dry conditions in the NBTC, typically between August and November, but may extend into the winter if dry conditions in NBTC continue. Phase 2 work, involving erosion protection of banks and vegetation restoration of the work areas related to the reconnecting of the NBTC to the Main Channel of Trestle Creek, will be completed during and immediately following the creek channel reconnection work primarily in late summer and fall, with planting in late fall and early spring.
>
> . . .
>
> The construction implementation plan is based on the entire restoration plan being implemented in one phase. Due to the intermittent nature of NBTC, it is proposed that all construction occur during dry channel conditions. The stream work will commence at the upstream section of the project area and proceed downstream.

114. The Water Quality Management Plan for the Project provides that for rerouting the North Branch: "This work to be performed between mid August and mid November when the North Branch has been historically dry. If, for any reason, the North Branch is not dry at the time of proposed work, the work will be postponed until the North Branch is dry."

115. For island and shoreline work, the Water Quality Management Plan provides: "Based on our historical observation, and review through the Fall of 2023, once the lake is drawn down approximately three feet (3') to 2059.5', and no flow input from the North Branch of

Trestle Creek is entering the boat basin, work on shoreline edges, channel excavations, and boat basin levelling can begin."

C. The Corps' 2024 Biological Assessment, 2025 Addendum, and EA/SOF

116. The Corps issued an "Environmental Assessment and Statement of Finding" for the Permit on September 29, 2025 ("EA/SOF").

117. The EA/SOF states that the Project's construction sequencing will begin will the Restoration of the North Branch of Trestle Creek as Phase 1. It states:

> The applicant has indicated that restoration activities will occur first as Phase 1. These activities include reestablishing the connection between the [North Branch] and the main stem of Trestle Creek. This will involve excavating a new channel to facilitate the reconnection. If groundwater or surface water is encountered during excavation, all work will be temporarily suspended until the [North Branch] is dry and conditions are suitable to proceed.

118. Phase 2 of the Project involves the marina and dock excavation and construction. The EA/SOF states:

> The applicant has indicated that Phase 2 of the project will involve excavating the bed of Lake Pend Oreille and portions of the existing islands, followed by shoreline stabilization and the installation of riprap. Subsequently, construction of the marina dock piles, supports, and associated structures will take place, followed by the assembly and placement of the marina docks.

119. The EA/SOF further states that Phases 1 and 2 are scheduled to occur during dry or minimal flow conditions.

120. The analysis in the EA/SOF of the impacts on wildlife is limited to one paragraph.

121. The EA/SOF does not consider impacts to bull trout from suspended sediments in the mainstream upon channel connection on juvenile and adult bull trout, increased boat traffic and use around the mouth of Trestle Creek, effects of fish handling and stranding of bull trout in beaver dam pools, increased angling, increased predation, and the impacts on kokanee salmon.

122. The EA/SOF does not incorporate the BA into its own NEPA analysis for bull trout.

123. In December 2024, the Corps issued a BA that examined the effects of the Project on bull trout and bull trout critical habitat in the action area. Even though the Corps' analysis only considered some but not all of the aspects of the Project that are likely to impact bull trout, the Corps still determined that the Project "is likely to adversely affect" bull trout and critical habitat because the Project would impact the North Branch (critical habitat) and its outlet area into existing beaver ponds which bull trout could inhabit, potentially employ strike pile driving, and involve activities related to fish salvage and site isolation that result in stress to bull trout from handling and stranding. As a result of its "likely to adversely affect" determination, on January 17, 2025, the Corps requested formal consultation with the Service.

124. On January 16, 2025, the Corps notified the Service that it designated "a Non-Federal Representative for consultation purposes, including the preparation of a BA, for the proposed Idaho Club Marina and Lakeshore Community project." According to the Corps, under this designation, the representative was authorized to have technical conversations with the Service, discuss modifications of the proposed project to minimize or avoid adverse effects, and prepare the BA.

125. The developer subsequently proposed revisions to the Corps' BA based on further modifications of the Project proposal in two addenda to the BA, dated April 2, 2025, and April 21, 2025, respectively. Addendum One states, "The following are items of clarification requested by [the Service] resulting from a BA review meeting on March 19, 2025, at the US Army Corps of Engineers Office, regarding the Idaho Club Marina and Lakeshore Development Project Joint Permit Application."

126. The addenda included "firm commitments" from the developer to modify the project in two ways.

127. Addendum One stated:

> Following our meeting, the Project owner also reviewed the timing limits for the work associated with the restoration of the North Branch (sometimes referred to as the East Branch) of Trestle Creek (NBTC). The Project is making a firm commitment that all work performed within the channel of the NBTC and shall only be performed when there is no active flow in the channel.
>
> This commitment eliminates the need or request for fish handling or electrofishing.

128. Addendum One also stated that the developer had made a "firm commitment to utilizing only vibratory pile driving for any work that must be performed in any waters that are directly connected to the lake or Trestle Creek," and that "[i]f impact driving is needed on any pilings, that work shall only be performed when the lake winter draw down has isolated those locations from any direct connection to the lake or stream."

129. In Addendum Two, the developer made additional effect conclusions. First, the developer concluded "the potential for standing [sic] of fish and need for handling fish has been eliminated." Next, the developer concluded that although beaver ponds and pools may remain, dewatering the pools by removing the beaver dams in late fall or winter would result in "a near zero potential of bull trout" being present. Finally, the developer concluded both (1) that the section of the North Branch at issue "provides no spawning or rearing habitat"; and (2) that it "serves primarily as a flushing passage flow out to the marina in the spring[.]" However, the BA had already found that rearing does occur in portions of Trestle Creek and the North Branch within the action area.

130. Based on those changes, and the developer's opinions, the Corps revised and reversed its prior BA finding and determined instead that the Project "may affect but is *not likely to adversely affect*" bull trout or bull trout critical habitat. The developer and the Corps included the modifications as addenda to the BA and submitted the addenda to the Service.

131. The BA defined the action area to include 154 acres of construction activities and an additional 1,000-foot buffer in all directions.

132. The BA acknowledged that construction activity causes sediment mobility and turbidity which "has been linked to a number of physiological responses (*i.e.*, gill flaring, coughing, avoidance, increase in blood sugar levels), which indicate some level of stress" on juvenile and adult salmonids, like bull trout. Yet, the BA does not analyze the effects of sediment dispersal the Project will have on the mainstem of Trestle Creek. The mainstem of Trestle Creek is within the action area and is a significant feature of the Project since the Project will reroute the North Branch to the mainstem.

133. The BA limited its sediment dispersal analysis of the North Branch reroute to the North Branch, completely disregarding impacts on the mainstem. The BA assumed that the reconnection of the North Branch to the mainstem Trestle Creek would occur between August and November but acknowledged that adult bull trout migrate into Trestle Creek and upstream from May to October, and juvenile bull trout out-migrate in the spring and fall. The BA failed to address the timing overlap of the reconnection of the North Branch to mainstem Trestle Creek with bull trout presence in the area and how suspended sediments and sedimentation from the reconnection would impact bull trout that use the mainstem for spawning, rearing, and migration.

134. The BA overlooked the effects of the boat launch to bull trout by assuming there would be none, since boat launching will occur at the Corps' Albeni Falls Project Public Ramp

nearby. While the BA discussed boat traffic and use at the marina, it failed to analyze the effects of increased boat traffic and use on the area around the mouth of the mainstem of Trestle Creek. The BA instead assumed that the absence of a boat launch at the Project marina site would limit boat interactions with bull trout.

135. The mouth of the mainstem of Trestle Creek—where adult and juvenile bull trout hold and migrate in and out of Trestle Creek at various times of the year—empties into Lake Pend Oreille directly between the public boat launch and the Project's marina. Boats launched at the public ramp will necessarily cross the area around the mouth of Trestle Creek to get to the proposed marina. Yet, the BA failed to consider the related effects on the area around the mainstem (where displaced bull trout from the North Branch will now inhabit) and its outflow into Lake Pend Oreille.

136. The BA failed to address how increased boat activity between the Project's marina and the public boat launch would affect the mouth of Trestle Creek and the bull trout, including from the discharge of pollutants, propeller impacts, sediment mobilization, sound levels, and temperature changes. Disturbances at the outflow of Trestle Creek are at minimum likely to result in take of bull trout. Accordingly, the BA's determination that boating would result in insignificant effects to bull trout is in error.

137. The BA mistakenly assumed that rerouting the North Branch "in the dry" would not result in harm to bull trout.

138. Contrary to this mistaken assumption, Project activities including dewatering beaver pools and ponds and diverting the North Branch will likely be happening at the same time that adult bull trout are spawning in Trestle Creek and juveniles are out-migrating into Lake Pend Oreille through the Project area.

139. The BA acknowledged that pools behind the existing beaver dams would create the potential for stranding fish. Regardless, it failed to consider the effects of necessary fish-handling procedures to remove fish from the pools and, instead, relied on the developer's "firm commitment" to conduct the North Branch reroute when there is no active flow in the channel. However, the BA failed to explain how that commitment negates the presence of pools or ponds and the need to remove fish from those locations.

140. The BA explained that the structures and shading created by piers and docks attract and provide habitat for potential predators of bull trout. The BA further explained that increased water temperatures—such as those associated with bank stabilization and unvegetated riprap—can attract warm-water predators, particularly in colder climates where such predators congregate in relatively warmer areas. Despite these acknowledgements, the Corps relied on the Project's proposed use of light-transmissive decking, light-colored pilings and docks, and shoreline riprap vegetation to discount the Project's creation and expansion of ideal ambush-predator habitat within the marina.

141. The BA assumed without supporting evidence that bull trout would avoid the marina area once they migrate out of Trestle Creek due to warmer water conditions and noise in the marina. The BA also made the unsupported assumption that the effects of the Project related to predation on bull trout would be expected to slightly improve. In doing so, the Corps ignored evidence that bull trout currently use the existing dock area during the fall and spring when water temperatures are cooler, as well as the likelihood that bull trout would similarly enter and use the proposed marina during colder periods or times of low-use and minimal noise. As a result, the Corps failed to explain or analyze how the conditions created by the Project marina would increase rather than decrease predatory fish habitat in the marina and predation on bull trout.

142. On July 30, 2025, the Service issued its Concurrence agreeing with the Corps' "not likely to adversely affect" determination for bull trout and bull trout critical habitat.

143. On September 29, 2025, the Corps issued an Environmental Assessment and Statement of Findings ("EA/SOF") regarding the Permit application.

144. Concurrently, the Corps provided the applicant with Department of Army Permit NWW-2007-01218—*i.e.*, the "Permit"—authorizing the Project to proceed. The EA/SOF and the final Permit reference the Corps' December 2024 BA and April 2025 addenda as well as the Service's July 30, 2025 Concurrence.

The Service's Unlawful Concurrence

145. In its July 30, 2025 Concurrence, the Service improperly relied on the Corps' analysis in the BA to concur that the Project was "not likely to adversely affect" bull trout.

146. The Service's Concurrence relied on the same faulty premise as the BA: that rerouting the North Branch would occur "in the dry" and therefore would not strand bull trout, harm individual fish, or otherwise adversely affect the species or its critical habitat. Relying on that incorrect assumption, the Service improperly determined that the effects of rerouting the North Branch would be discountable.

147. The Service improperly agreed with the BA's findings that the effects of stranding bull trout in the beaver dam pools would be discountable. In doing so, the Service improperly ignored its own findings acknowledging that bull trout overwinter in beaver ponds and pools. It also ignored its previous observations of the Project site where it observed a beaver dam retaining water that would require dewatering and electrofishing and led the Service to determine in 2022 that fish handling activities were likely to adversely affect bull trout. The Concurrence provided no explanation for the Service's reversal of its own prior finding.

148. In the Concurrence, the Service acknowledged that construction of the residential lots, roads, and commercial structures would increase the potential for sediment runoff into Lake Pend Oreille and the North Branch. The Service failed to acknowledge or explain, however, the full extent of the effects of these activities in light of Service's own scientific findings that residential development and urbanization are some of the biggest threats to bull trout, because "[r]esidential development alters stream and riparian habitats through contaminant inputs, stormwater runoff changes in flow regimes, streambank modification and destabilization, increased nutrient loads, and increased water temperatures from the removal of streamside vegetation." Species Status Assessment ("SSA") for Coterminous Distinct Population Segment of Bull Trout, at 77.

149. The Service further disregarded its own prior findings that dredging and side channel filling have led to "reduction, simplification, and degradation" of bull trout habitat, along with "elevated in-stream fine sediment and related decreases in the proportion of high-quality spawning sites." *Id*. In discounting or ignoring these threats, the Service failed to analyze them as a relevant factor or made the unsupported leap to finding the effects from the residential development to be insignificant.

150. The Service improperly discounted the Project's potential to increase predatory fish in the area by narrowly focusing on interactions between smallmouth bass and bull trout, while ignoring that the proposed docks, decking, boat slips, and riprap would create ideal habitat for other non-native predatory fish, and that bull trout are likely to use the new marina once constructed. The Service relied on the same unsupported assumptions in the BA—that bull trout out-migrating into Lake Pend Oreille from Trestle Creek would avoid the marina due to warm temperatures and increased noise—without adequately considering bull trout use of the marina

during cooler, quieter conditions. As a result, the Service failed to consider the Project's increased risk of predation on bull trout by other predatory species, such as walleye, northern pike, and largemouth bass.

151. The Service also did not consider increased angling as a Project effect on bull trout. To the extent the Concurrence relied on the BA's consideration of increased angling, that analysis was likewise deficient. The BA's discussion of fishing was limited to one sentence on recreational fishing that did not mention increased angling as an effect of the Project.

152. The Concurrence improperly disregarded increased angling as an effect despite the Service's own studies acknowledging that angling "can have direct and indirect effects on bull trout," including "illegal activities such as poaching." SSA, at 84-85. The Project would bring hundreds of recreators to a currently undeveloped site at and around the mouth of a bull trout core spawning stream. Kokanee, the primary prey of adult bull trout in Trestle Creek and Lake Pend Oreille, are also a favored target of recreational anglers. Yet in the Concurrence, the Service provided no discussion of the likely effects from increased angling in this area.

153. The Concurrence also contradicted the Service's April 18, 2024 "Standing Analysis for the U.S. Army Corps of Engineers Lake Pend Oreille Docks and Piers." That Standing Analysis was developed by the Service for the Corps to streamline their permitting of small one- and two-family docks in the Pend Oreille basin. In the Standing Analysis, the Service determined construction of even small docks "may affect" bull trout. In its analysis, the Service specifically identified Trestle Creek as an important bull trout spawning and rearing area and specifically excluded the mouth of Trestle Creek (including the Project area) from coverage "to avoid blocking migration corridors that may have an effect on small juvenile (0-5 years old) bull trout that out-migrate through downstream migration corridors." Standing Analysis, at 14, 23.

Based on that reasoning, the Service implemented a 300-foot buffer from the banks and mouth of Trestle Creek.

154. Even more, "due to migration behavior and pathways largely being unknown for out-migrating bull trout," the Service found an additional need to exclude the unique delta at and around the mouth of Trestle Creek from its Standing Analysis. Standing Analysis, at 23.

155. The Concurrence improperly disregarded the Standing Analysis to determine the Project, which entails constructing large docks with the capacity for nearly 100 boats within 300 feet of the mouth of Trestle Creek, was not likely to adversely affect bull trout. That determination is unreasonable considering the Service's own findings determining that small one-and two-family docks had the potential to block migration corridors, specifically identifying the Project area as one to be excluded.

156. The Concurrence also arbitrarily recycled much of the same effects analysis from the Standing Analysis to reach its "not likely to adversely affect" determination for the Project. Standing Analysis, at 31-37. In doing so, the Concurrence failed to account for the exponential increase in those impacts and their compounded harms when applied to a project nearly100x greater in size and located in critical bull trout habitat.

157. The Concurrence also improperly disregarded its own data revealing that the incidental take capacity for bull trout resulting from small dock construction on Lake Pend Oreille was "utilized at a much faster rate than anticipated *due to the rapid development of the lake shoreline, exhausting the full extent of uses analyzed in the programmatic [Biological Opinion]*." Standing Analysis, at 6 (emphasis added). The Service failed to acknowledge that take of bull trout would undoubtedly occur from small dock construction across the lake while

simultaneously concluding that take would not occur from the construction of a large, multi-dock commercial marina at the mouth of a core bull trout migration corridor.

CONSTRUCTION ACTIVITIES OCCURRING IN VIOLATION OF THE PERMIT

158. As stated above, the Permit, Mitigation Plan, and BA expressly condition Project construction on the successful completion of the North Branch reroute (Phase 1), which may occur when the North Branch is fully dry and after the Corps confirms that dry conditions exist.

159. Based on information and belief, Trestle Creek has maintained an active flow throughout 2025 due to atmospheric conditions. The North Branch was observed actively flowing, with substantial surface water present throughout the reach adjacent to the Project area on or about July 29, 2025, August 28, 2025, October 21, 2025, December 7, 2025, and December 10, 2025.

160. Despite these non-dry conditions in the North Branch, the Permit applicant has initiated and is continuing construction activities on the Project site, in direct violation of the Permit's timing and sequencing requirements.

161. On December 7 and 10, 2025, heavy construction equipment was operating within the Project area. An excavator was observed dredging the marina basin, disturbing soils and sediments in an area in which the Permit prohibits work absent prior completion of the North Branch reroute. Construction crews were also observed conducting shoreline work along Lake Pend Oreille and working adjacent to the currently flowing North Branch.

162. According to the terms of the Permit, none of these activities can proceed while the North Branch is flowing.

163. A new channel has been excavated on the Project site immediately adjacent to the North Branch. This new channel excavation is directly connected to the planned North Branch

reroute and represents Phase-1-type construction activity occurring while the North Branch is flowing—conditions under which such activity is strictly prohibited pursuant to the Permit, the Mitigation Plan, and the BA.

164. The North Branch reroute has not been completed. According to the terms of the Permit, the North Branch reroute must be completed before other Project activities can proceed.

165. On December 10, 2025, Plaintiffs requested that the Corps suspend and/or revoke the Clean Water Act Permit due to the ongoing Permit violations. Plaintiffs requested a response from the Corps by December 17, 2025. As of the date of this filing, the Corps has failed to respond, which constitutes a functional denial of Plaintiffs' request.

166. In refusing to suspend the Project Permit, the Corps has failed to enforce its own Permit conditions, evaded its obligation to respond within a reasonable period of time, failed to consider new information, failed to evaluate harm to bull trout and critical habitat based on Permit violations, failed to properly consider all relevant factors, failed to provide a rational connection between the facts found and the conclusion, and reached a conclusion that runs counter to the facts and evidence before the agency.

167. The Corps' failure to apply and enforce Permit conditions violates the agency's duties to do so. The Corps' imposed Permit conditions meant to mitigate the harm to bull trout and critical habitat. By failing to enforce the Permit, the Corps has failed to consider ongoing Project construction impacts to bull trout based on the developer's failure to follow required sequencing, restrictions on construction during flow conditions in the North Branch, and harmful effects to bull trout from the North Branch flowing into the Project site during ongoing construction, including the likelihood of take of bull trout.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATION OF THE APA

The Service's "Not Likely to Adversely Affect" Concurrence is Arbitrary and Capricious and Contrary to Law.

168. All previous paragraphs are incorporated by reference.

169. In a letter dated July 2025, the Service concurred that the Project is "not likely to adversely affect" bull trout and their critical habitat.

170. The Service's "not likely to adversely affect" Concurrence is a final agency action subject to judicial review under section 706(2)(A) of the APA.

171. The Service's Concurrence is arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA, ESA regulations, or ESA procedures. 5 U.S.C. § 706(2)(A), (D).

172. In concurring with the Corps that the Project is "not likely to adversely affect" bull trout or bull trout critical habitat, the Service failed to properly consider all relevant factors, failed to provide a rational connection between the facts found and the conclusion, and reached a conclusion that runs counter to the facts and evidence before the agency.

173. The Service failed to consider and apply its own scientific findings relating to bull trout, and ignored or provided inadequate analysis on a number of relevant factors including, but not limited to, the harmful effects of increased sedimentation on juvenile and adult bull trout and bull trout critical habitat, a permanent residential community in previously undeveloped critical habitat, increased boat traffic between the marina and public boat launch, increased angling and predation around the mouth of Trestle Creek, fish handling and stranding impacts from beaver dam pool dewatering, and effects to kokanee, the primary prey of adult bull trout in Trestle Creek.

174. The Service's determination in the Concurrence that the Project is "not likely to adversely affect" bull trout or bull trout critical habitat is unsupported by the evidence, fails to consider relevant factors, and inconsistent with the best available scientific evidence and information. The Service's "not likely to adversely affect" determination is, therefore, arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(2)(A).

175. The Service's Concurrence should be held unlawful and set aside. *Id.* § 706(2).

176. The Service's violations of the APA have caused and/or threaten to cause serious injury to Plaintiffs' and Plaintiffs' members rights and interests.

SECOND CLAIM FOR RELIEF
VIOLATION OF NEPA AND THE APA

The Corps failed to take a hard look at the effects to bull trout and bull trout critical habitat, in violation of NEPA.

177. All previous paragraphs are incorporated by reference.

178. NEPA requires that agencies take a "hard look" at the environmental impacts of proposed actions. *Kleppe v. Sierra Club,* 427 U.S. 390, 410 (1976) n. 21.

179. The EA failed to take a hard look at impacts to bull trout and critical habitat.

180. As detailed above, the Project activities will impact bull trout and critical habitat. However, the EA failed to adequately discuss and disclose these impacts on bull trout including, but not limited to, the effect of suspended sediments on juvenile and adult bull trout in mainstream Trestle Creek upon the new North Branch channel connection, boat traffic and use around the mouth of Trestle Creek, effects of fish handling and stranding of bull trout in beaver dam pools, increased angling, and predation.

181. The EA further failed to consider the impacts of the construction and existence of seven new private residences, marina construction, and the reroute of the North Branch, in violation of NEPA.

182. The EA's deficient analysis assumed that the Permit's Special Conditions will be followed. Because Special Condition 1 has been violated, the Corps' analysis is no longer valid.

183. In view of the Project's impacts on bull trout survival and recovery, along with other environmental impacts, the Corps' decision not to prepare an EIS is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

184. The Corps' EA therefore violated NEPA and is not in accordance with law and without observance of procedure required by law under the APA. 5 U.S.C. § 706(2)(A)(D).

THIRD CLAIM FOR RELIEF
VIOLATION OF NEPA AND THE APA

The Corps failed to conduct a supplemental environmental analysis of the impacts of the Project, including lethal take of bull trout, based on significant new information.

185. All previous paragraphs are incorporated by reference.

186. NEPA requires a federal agency to, "to the fullest extent possible," prepare "a detailed statement on . . . the environmental impact" of "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C)(i).

187. The agency must be alert to new information that may alter the results of its original environmental analysis and continue to take a hard look at the environmental effects of its planned action, even after a proposed action has received initial approval.

188. If new information shows that the action will affect the environment in a significant manner or to a significant extent not already considered, a supplemental environmental analysis must be prepared. 33 C.F.R. § 333.34.

189. Here, since the Corps' issued its EA/SOF and the Permit, the developer is undertaking work that is expressly prohibited according to the Permit's Special Condition 1, Mitigation Plan, and BA under current hydrologic conditions and in a sequence that the Permit does not allow. The noncompliance with this aspect of the Permit is harming bull trout and bull trout critical habitat.

190. The Project applicant's noncompliance constitutes new information that shows that the Project will affect the quality of the human environment in a significant manner or to a significant extent not already considered including to impacts to wetlands, bull trout, bull trout critical habitat, and other terrestrial and aquatic species.

191. The Project applicant's noncompliance is also a substantial change to the proposed action that is relevant to environmental concerns.

192. This information could have a substantial bearing on the Corps' environmental impacts conclusion and on its consideration under the Clean Water Act of whether the "public interest" supports authorizing the highly destructive actions at issue. 33 C.F.R. § 320.4(a).

193. The Corps' failure to prepare a supplemental environmental assessment, EIS, or any other supplemental NEPA analysis violates NEPA and constitutes agency action unlawfully withheld and/or unreasonably delayed, in violation of the APA, 5 U.S.C. § 706(1), and/or constitutes agency action that is arbitrary and capricious or not otherwise in accordance with law and in contravention of procedure required by law, in violation of the APA, 5 U.S.C. 706(2).

RELIEF REQUESTED

For the above stated reasons, Plaintiffs request that this Court award the following relief:

A. Declare that the Service's Concurrence for the Project is arbitrary, capricious, and/or unlawful under the APA;

B. Vacate the Concurrence and remand to the Service with an order to comply with its obligations under the APA;

C. Declare that the Corps' decision to authorize the Project as described herein violates NEPA and the APA;

D. Set aside and remand the challenged Permit, EA, and SOF consistent with the requirements of NEPA and the APA;

E. Enjoin Defendants' authorization of Project activities until they have fully complied with all of their obligations under NEPA and the APA;

F. Order the Corps to prepare supplemental NEPA analysis;

G. Order the Corps to take the actions necessary to prevent any further irreversible and irretrievable adverse impacts to the bull trout and its critical habitat until the Defendants can demonstrate full compliance with the APA and NEPA;

H. Award Plaintiffs their reasonable attorneys' fees and costs associated with this action as the Court may deem is just and proper; and

I. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

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Respectfully submitted this 18th day of December 2025.

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