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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

CENTER FOR BIOLOGICAL)
DIVERSITY, KETTLE RANGE)
CONSERVATION GROUP, and)
METHOW FOREST FORUM,)

COMPL. FOR DECLARATORY AND
INJUNCTIVE RELIEF - 1

	)	
Plaintiffs,	)	Case No.: _____
	)	
v.	)	COMPLAINT FOR
	)	DECLARATORY AND
U.S. FOREST SERVICE, TARA	)	INJUNCTIVE RELIEF
UMPHRIES, Supervisor of the	)	
Okanogan-Wenatchee National	)	
Forest, and U.S. FISH AND WILDLIFE	)	
SERVICE,	)	
	)	
Defendants.	)	
_____	)	

I. INTRODUCTION

1. This case challenges the U.S. Forest Service’s (“USFS”) approval of the Midnight Restoration Project (“Midnight Project” or “Project”), a sweeping logging project that authorizes extensive commercial and non-commercial timber harvest in mature and old-growth forests within Late-Successional Reserves in the Eastern Cascades of Washington. The Northwest Forest Plan (“NWFP”) was adopted to halt precisely this kind of logging—logging that removes and degrades late-successional and old-growth forest habitat essential to the survival and recovery of species that depend on that habitat, like the northern spotted owl and bull trout.

2. The Midnight Project abandons the NWFP’s core conservation framework by authorizing unprecedented levels of logging and road use within Late-Successional Reserves and Riparian Reserves that were expressly designated

to function as habitat, connectivity corridors, and refugia for late-successional forest species and aquatic organisms. Rather than protecting these reserves, the USFS approved a project that will substantially reduce canopy cover, remove large trees, degrade riparian function, and eliminate or downgrade critical nesting, roosting, foraging, and dispersal habitat for northern spotted owls, as well as vital aquatic and riparian habitat for decades. Much of this damage will persist for the foreseeable future and, in some areas, may not be fully restored.

3. The Project lies within the northern spotted owl's historical range, within a designated recovery unit, within critical habitat, and within forest types known to provide suitable habitat, particularly for dispersing and recolonizing individuals displaced by wildfire, barred owl competition, and past logging elsewhere in the region. Yet the USFS has not adequately surveyed the Project Area using required and best-available survey methods, leaving it and the U.S. Fish and Wildlife Service ("FWS") unable to reliably determine whether northern spotted owls currently occupy or use the area.

4. Bull trout are likewise imperiled by the Midnight Project. The Project Area contains designated bull trout critical habitat and functions as an important spawning, rearing, migration, and overwintering landscape for local bull trout populations in the Methow River watershed. The Project authorizes extensive road construction and reconstruction, stream crossings, logging, and ground disturbance

within Riparian Reserves and hydrologically connected areas that will elevate sedimentation, degrade water quality, alter streamflows, reduce large wood recruitment, and impair habitat complexity for decades. These impacts compound existing stressors—including low flows, elevated stream temperatures, past fire, and climate change—and further undermine bull trout survival and recovery in an already degraded watershed.

5. The FWS acknowledged in the Midnight Biological Opinion (“BiOp”) that the Midnight Project will substantially reduce and degrade northern spotted owl critical habitat, impair essential life-history functions, and decrease survival and reproduction. The FWS also concluded that these effects will reduce the likelihood that owls will occupy this area in the future, and result in the incidental take of 5% of the remaining population in the recovery unit. FWS likewise determined that the Project will significantly disrupt bull trout behavior, degrade habitat conditions for extended periods, and exacerbate stressors affecting local populations. For both species, the Project’s impacts—when added to past and ongoing habitat loss from wildfire, logging, and road networks—will further fragment habitat connectivity, reduce reproduction, resilience, and distribution, and accelerate regional decline, including the risk of extirpation for the northern spotted owl in the Eastern Cascades.

6. Despite these findings, FWS concluded in the Biological Opinion that the Project is not likely to jeopardize the continued existence of the northern spotted owl or bull trout, and is not likely to destroy or adversely modify their designated critical habitat. That conclusion cannot be reconciled with the agency's own findings. The Biological Opinion's no-jeopardy and no-adverse-modification determinations for the northern spotted owl therefore lack a rational connection between the facts found and the conclusions reached, and are arbitrary and capricious.

7. The Biological Opinion is equally deficient as to bull trout. FWS found that the Project will significantly disrupt normal and essential bull trout behaviors for a decade or more and will further degrade already-impaired critical habitat for an extended period, yet conceded that it could not describe or quantify the Project's effects on bull trout or their food base because of a lack of information and uncertainty—without disclosing what information was missing or why. FWS nonetheless concluded that the Project would not jeopardize bull trout or adversely modify their critical habitat and offered no explanation reconciling that conclusion with its admitted significant effects and acknowledged data gaps. The incidental take statements for both species suffer from the same defects, resting on the same incomplete information and flawed analysis. The Biological Opinion and its

incidental take statements thus violate the Endangered Species Act and are arbitrary and capricious.

8. The USFS further approved the Midnight Project without demonstrating compliance with the Northwest Forest Plan, the National Forest Management Act, the National Environmental Policy Act, or the Endangered Species Act. Despite the NWFP's explicit mandate that Late-Successional Reserves and Riparian Reserves must remain capable of playing an effective role in providing habitat for the species they were established to protect, and by authorizing precisely the type of habitat degradation the NWFP was designed to prevent, the USFS has abandoned the foundational conservation commitments that have governed federal forest management in the Pacific Northwest for more than three decades.

9. Plaintiffs seek declaratory and injunctive relief to halt implementation of the Midnight Project; to set aside the USFS's Decision Notice as unlawful under the Northwest Forest Plan, the National Forest Management Act, the National Environmental Policy Act, and the Administrative Procedure Act; to set aside the Fish and Wildlife Service's Biological Opinion as unlawful under the Endangered Species Act and the Administrative Procedure Act; and to prevent irreversible harm to northern spotted owls, bull trout, their habitats, and the integrity of the late-successional forest and aquatic reserve systems upon which their survival and recovery depend.

II. JURISDICTION

10. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331 (federal question), § 1346 (United States as a defendant), and § 2202 (declaratory judgment and further relief).

11. Venue in this case is proper under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this district, specifically, the Midnight Restoration Project is located within the Okanogan-Wenatchee National Forest, Methow Valley Ranger District, in the Eastern District of Washington.

III. PARTIES

12. Plaintiff Center for Biological Diversity (the “Center”) is a non-profit organization that is dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center is headquartered in Tucson, Arizona, with additional offices throughout the country, including in Washington. The Center has more than 114,801 active members, including over 4,900 members in Washington, some of whom reside, recreate and have an interest in conserving the lands and wildlife in the Okanogan-Wenatchee National Forest and in the Midnight Project Area. The Center and its members have a long-

standing interest in conserving native species and have consistently advocated for the conservation and protection of native species, including the northern spotted owl and bull trout.

13. Plaintiff Methow Forest Forum is a grassroots, community-led organization in Washington State. It is dedicated to promoting wildfire safety and ecologically responsible forest management in the Methow watershed. The group brings together noted ecologists and local resource professionals to publicly discuss and explore how local communities, healthy ecosystems, native species, and natural wildfire can safely coexist.

14. Plaintiff Kettle Range Conservation Group is a rural, grassroots, non-profit environmental charity formed in 1976 in Republic, Washington, with a membership of about 500 people. Kettle Range Conservation Group's mission is to defend wilderness, protect biodiversity, and restore ecosystems of the upper Columbia River Basin, including the Project Area. Kettle Range Conservation Group's work includes oversight of federal management of the Okanogan-Wenatchee and Colville National Forests; promotion of old growth forest protection and restoration; environmental education for citizens, business, and community groups; preservation of wilderness; and protection of fish and wildlife.

15. Richard Bailey is a member of the Center, the Council, and the President of the Methow Forest Forum. A resident of Winthrop in the Methow Valley, Mr.

Bailey regularly spends time in the Twisp River Watershed within the Midnight Project Area hiking, camping, and wildlife watching and will continue to do so into the future. He enjoys looking and listening for northern spotted owls and other wildlife while in the Project Area. He cares deeply about the health of the forest and his, and others' ability to enjoy the diverse forest ecosystem. His ability to enjoy these areas in their natural state and to find the wildlife he enjoys will be irreparably harmed by the USFS and Fish and Wildlife Service's authorization of the Midnight Project.

16. Timothy Coleman is a member of the Center and the Executive Director of the Kettle Range Conservation group and frequently brings his family to visit the Project Area to hike, fly fish, observe wildlife including northern spotted owl and bull trout, search for mushrooms and generally enjoy the old forests and connect with nature. He plans to visit the Project Area this summer to enjoy the undisturbed forest, listen for northern spotted owls, look for spawning or out-migrating bull trout in the many streams in the Project Area, and experience the solitude that being in late-successional forests provides. His ability to enjoy the Project Area will be irreparably harmed by the Defendants' authorization of the Project.

17. Defendant U.S. Forest Service is an agency of the United States and a division of the U.S. Department of Agriculture. The USFS is responsible for the management of lands and resources within the Okanogan-Wenatchee National

Forest, including those within the Midnight Project Area in accordance and compliance with the NWFP, the National Forest Management Act (“NFMA”), and the National Environmental Policy Act (“NEPA”) and other federal laws and regulations.

18. Defendant Tara Umphries is the Forest Supervisor for the Okanogan-Wenatchee National Forest and the USFS official responsible for the decision rejecting Plaintiffs’ objections to the Midnight Project. Tara Umphries is sued in her official capacity as the office of the Regional Forester.

19. Defendant U.S. Fish and Wildlife Service is an administrative agency within the U.S. Department of Interior and is responsible for conservation and recovery of terrestrial wildlife species listed under the Endangered Species Act.

IV. LEGAL FRAMEWORK

The Administrative Procedure Act

20. Because NEPA and NFMA do not include a citizen suit provision, this case is brought in part pursuant to the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 551-559, 701-706.

21. The APA allows persons and organizations to challenge final agency actions in the federal courts. *Id.* §§ 702, 704. The APA declares that a court 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).

22. 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, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The National Environmental Policy Act

23. Congress enacted NEPA, 42 U.S.C. §§ 4321-4370, to, among other things, “encourage productive and enjoyable harmony between man and his environment” and to promote government efforts “which will prevent or eliminate damage to the environment.” *Id.* § 4321. As a general matter, NEPA requires that federal agencies analyze and disclose to the public the environmental impacts of their actions. *Id.* § 4332(2)(C).

24. To this end, the Council on Environmental Quality (“CEQ”) promulgated regulations implementing NEPA. Among other things, the rules are intended to “ensure Federal agencies consider the environmental impacts of their actions in the decision-making process.” 40 C.F.R. § 1500.1(a) (2020). The purpose of NEPA is “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment.” 42 U.S.C. § 4321.

25. The Midnight Project Environmental Assessment (“EA”) states that “this project uses the regulations found at 36 CFR 220 and the CEQ NEPA regulations from 2020.” USDA FOREST SERV., MIDNIGHT RESTORATION PROJECT FINAL ENVIRONMENTAL ASSESSMENT (Oct. 2025) [hereafter “Midnight EA”] at 7.

26. NEPA demands a federal agency use “all practicable means and measures” to thoughtfully analyze the proposed action and inform the agency’s decision-making. 42 U.S.C. §§ 4331(a), 4332.

27. 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); *see also* 40 C.F.R. § 1501.4; 7 C.F.R. § 1b.7(a) (The agency “will prepare an environmental impact statement only with respect to proposed actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant impact on the quality of the human environment.” (Citing 42 U.S.C. § 4336(b)(1))). Where an agency is uncertain whether it must prepare an EIS, it may prepare an environmental assessment to determine whether the action may have significant impacts and thus require preparation of an EIS. 40 C.F.R. § 1501.3(a)(2).

28. In an EA, NEPA requires the agencies to discuss the environmental impacts of the proposed action and alternatives and provide sufficient evidence and

analysis for determining whether to prepare an EIS or finding of no significance (“FONSI”).

29. In an EIS, NEPA requires that agencies “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration.” *Id.* § 1502.15. NEPA also requires the action agency to set an appropriate baseline detailing the nature and extent of the resources in the area: “The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.” CEQ, CONSIDERING CUMULATIVE EFFECTS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT (Jan. 1997) at 41.

30. An EA must also identify the direct, indirect, and cumulative impacts of each reasonable alternative, including a project’s ecological, aesthetic, economic, social, and health effects. 40 C.F.R. §§ 1508.1(g)(3) (defining cumulative impact), 1508.1(g)(4) (defining effects), 1501.5(c)(2) (requiring EAs to disclose the “environmental impacts of proposed action and alternatives”). Direct impacts are those impacts “caused by the action and [that] occur at the same time and place.” *Id.* § 1508.1(g)(1). Indirect impacts are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.1(g)(2). Cumulative impacts “are effects on the environment that result from the incremental effects of the action when added to the effects of other past,

present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.1(g)(3).

31. An EIS is required if substantial questions are raised whether a project may cause significant degradation of some human environmental factor.

32. NEPA requires agencies to “study, develop, and describe appropriate alternatives” to the agency’s proposed course of action. 42 U.S.C. § 4332(2)(H); *see also id.* § 4332(2)(C)(iii), (2)(F).

The National Forest Management Act

33. Through the National Forest Management Act, Congress established a two-step process for managing national forests. First, NFMA directs the USFS to prepare and implement comprehensive Land Resource Management Plans (commonly called “Forest Plans”) for each national forest. 16 U.S.C. § 1604(a). Each Forest Plan (including any associated amendments) establishes management direction for resources, uses, and protective measures through standards, guidelines, goals, and objectives for that forest. Second, the USFS must ensure that all site-specific projects within each forest, including but not limited to logging, road construction, and motorized use, are consistent with the relevant Forest Plan. *Id.* § 1604(i).

34. Forest Plans under NFMA must provide for the diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet multiple-use objectives. 16 U.S.C. §1604(g)(3)(B). In preparing Forest Plans, the USFS must also ensure that timber will only be harvested where watershed conditions will not be irreversibly damaged, and protection is provided for streams from detrimental changes in water temperatures and sediment. *Id.* §1604(g)(3)(E). The NFMA further places significant limits on clearcutting. *Id.* §1604(g)(3)(F).

The Endangered Species Act

35. Congress enacted the ESA in 1973 to provide a “program for the conservation of ... endangered species and threatened species” and “a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b).

36. The Supreme Court has declared that the ESA “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 Court recognized, “Congress intended endangered species to be afforded the highest of priorities.” *Id.* at 174.

37. The ESA provides for the conservation of “the ecosystems upon which threatened and endangered species depend.” 16 U.S.C. § 1531(b).

38. ESA Section 7 requires that all federal agencies work toward recovery of listed species and contains both a procedural requirement and a substantive requirement for that purpose.

39. To carry out the duty to avoid jeopardy and adverse modification of critical habitat, ESA Section 7 sets forth a procedural requirement directing any agency proposing an action (the “action agency”), here the U.S. Forest Service, to consult with the expert agency—in this case, the U.S. Fish and Wildlife Service—to evaluate the consequences of the proposed action on listed species and critical habitat. *See id* § 1536.

40. Substantively, Section 7 requires that federal agencies ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species, or result in the adverse modification of critical habitat for such species. *Id.* § 1536(a)(2). To “jeopardize the continued existence of” under the ESA means “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the 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.

41. To carry out these mandates, the action agency must first ask FWS whether any listed or proposed species may be present in the area of the agency action. 16

U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If listed or proposed species may be present, the action agency must prepare a “biological assessment” to determine whether the listed species may be affected by the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

42. A biological assessment must include, 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).

43. “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 of the Federal action subject to consultation.” 50 C.F.R. § 402.02.

44. After completion of the biological assessment, if the action agency determines that its proposed action “may affect” but is “not likely to adversely affect” a listed species or its critical habitat, the regulations permit “informal consultation,” during which FWS must concur in writing with the agency’s determination. *Id.* § 402.14(a), (b). If the agency determines that the action is “likely to adversely affect” a listed species or critical habitat, or if FWS does not concur with the agency’s “not likely to adversely affect” determination, the agency must engage in “formal consultation,” as outlined in 50 C.F.R. § 402.14. *Id.* §§ 402.02, 402.14(a).

45. After FWS evaluates the current status of the listed species and the proposed action's impact on the species using the best scientific and commercial data available, FWS reaches a biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.14(d), (g)(4).

46. The biological opinion must include, among other things, a summary of the information on which the opinion is based, a detailed discussion of the environmental baseline of the listed species, a detailed discussion of the effects of the action on listed species, and FWS's opinion whether the action is or is not likely to jeopardize the continued existence of the species, or result in the destruction or adverse modification of critical habitat. 50 C.F.R. § 402.14(h).

47. The "environmental baseline" is defined to include past and present impacts of all Federal actions and other human activities in the action area including those that have already undergone Section 7 consultation. *Id.* § 402.02.

48. The "action area" must include "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action." *Id.*

49. In addition, FWS must provide an "incidental take statement" if it concludes that an action is not likely to jeopardize the continued existence of a listed species

or result in the destruction or adverse modification of critical habitat. 50 C.F.R. § 402.14(g)(7). The incidental take statement must specify the amount or extent of such incidental taking on the listed species; any “reasonable and prudent measures” that FWS considers necessary or appropriate to minimize such impact; and the “terms and conditions” with which the action agency must comply to implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). Taking of listed species without the coverage of an incidental take statement is a violation of the ESA. 16 U.S.C. § 1538.

50. An action agency cannot rely on a faulty biological opinion to fulfill its substantive Section 7 duties to ensure it does not jeopardize the continued existence of a listed species. *See Defs. of Wildlife v. EPA*, 420 F.3d 946, 976 (9th Cir. 2005) (*rev’d on other grounds, Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644 (2007)) (holding that the action agency’s reliance on a BiOp that was “flawed in its basic legal premise” was arbitrary and capricious); *Res. Ltd. Inc. v. Robertson*, 35 F.3d 1300, 1304 (9th Cir. 1994) (“Consulting with the FWS alone does not satisfy an agency’s duty under the Endangered Species Act.”).

51. If Section 7 consultation is completed but later becomes inadequate, the agencies must reinitiate consultation. 50 C.F.R. § 402.16 (2015). “Reinitiation of consultation is required . . . [i]f 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.” *Id.* § 402.16(b).

V. FACTUAL ALLEGATIONS

The Northern Spotted Owl

52. The northern spotted owl (*Strix occidentalis caurina*) is a medium-sized, chocolate brown owl with dark eyes, and white spots on their head, neck, back and undersides.¹ They are the largest of the subspecies of spotted owl, inhabiting structurally complex forests. *Id.* They are relatively long-lived with reproductive life spans, investing significantly in parental care. *Id.*

53. The northern spotted owl was federally listed as a threatened species under the ESA in 1990 because of widespread loss of habitat across its range and the inadequacy of existing regulatory mechanisms to conserve it.

54. In 2020, the FWS found that a reclassification of the spotted owl from threatened to endangered was warranted but precluded by higher priority actions. 85 Fed. Reg. 81144 (Dec. 15, 2020).

55. The historical range of the northern spotted owl includes most mature forest stands throughout the Pacific Northwest, from southwestern British Columbia to

¹ U.S. Fish & Wildlife Service, *Northern Spotted Owl*, <https://www.fws.gov/species/northern-spotted-owl-strix-occidentalis-caurina> (last visited August 28, 2026).

Marin County, California. 85 Fed. Reg. 81144, 81145 (Dec. 15, 2020). The spotted owl is extirpated or very uncommon in certain areas of its historical range, including southwestern Washington and British Columbia. *Id.* Habitat loss was the primary factor leading to the listing of the spotted owl in 1990. *Id.* Habitat loss continues to be a stressor on the species due to continued timber harvest, wildfire, and the latent effects of past habitat loss. *Id.* The species alarmingly continues to experience significant decline, having lost 70% of its population since 1990, and losing between 3.8% and 8.4% annually. *Id.*

56. For analysis and conservation purposes, the 2011 Recovery Plan for the northern spotted owl divides the owl's range into 12 recovery units or "physiographic provinces." Recovery Plan at III-1. These provinces are used for applying the jeopardy standard under Section 7 of the ESA. *Id.*

57. The Midnight Project occurs within the Eastern Washington Cascades Province.

58. The Eastern Washington Cascades Province population of northern spotted owls continues to decline at a rate of 5 to 9 percent per year.

59. The 2011 Recovery Plan states that, "When a proposed federal action is likely to impair or preclude the capacity of a recovery unit [province] to provide both the survival and recovery function it provides, that action may represent jeopardy to the species. . ."

60. Spotted owls rely on older forest habitats because they generally contain the structures and characteristics required for the owl's essential biological functions of nesting, roosting, foraging, and dispersal. MIDNIGHT RESTORATION PROJECT FINAL WILDLIFE RESOURCE SPECIALIST REPORT (May 2025) [hereinafter "Midnight Wildlife Report"] at 5, STANDARDS AND GUIDELINES FOR MANAGEMENT OF HABITAT FOR LATE-SUCCESSIONAL AND OLD-GROWTH FOREST RELATED SPECIES WITHIN THE RANGE OF THE NORTHERN SPOTTED OWL (1994) [hereinafter "NWFP S&G"] at C-9. These structures include: a multi-layered and multi-species tree canopy dominated by large overstory trees; moderate to high canopy closure; a high incidence of trees with large cavities and other types of deformities; numerous large snags; an abundance of large, dead wood on the ground; and open space within and below the upper canopy for owls to fly. NWFP S&G at B-5, USDA Forest Serv., Midnight Restoration Project Final Environmental Assessment [hereinafter "MP EA"] at 31. Forested stands with high canopy closure also provide thermal cover as well as protection from predation.

61. Northern spotted owl habitat is categorized as nesting, roosting, foraging, and/or dispersal. These are the primary constituent elements of physical and biological features that provide for a species' life history processes and are essential to the conservation of the species. 77 Fed. Reg. at 71876, 71904. (Dec. 4, 2012).

62. To contribute to conservation, nesting, roosting, foraging, and dispersal habitat must be distributed in a spatial configuration that is conducive to the persistence of populations, survival, and reproductive success of resident pairs, and the survival of dispersing individuals until they can recruit into a breeding population. *Id.*

63. Nesting stands for spotted owls include a multispecies canopy cover between 60%-80%, with large (greater than 30 in dbh) overstory trees; a high incidence of large trees with various deformities; large snags, large accumulations of fallen trees, and other woody debris on the ground, and sufficient open spaces below the canopy for spotted owls to fly. *Id.*

64. In general, northern spotted owls select for old forests for foraging in greater proportion than their availability at the landscape scale. Habitats that meet the species' needs for nesting and roosting also usually provide for foraging (and dispersal) requirements of the owl. *Id.*

65. In northern spotted owl habitat east of the Cascades and in the Project Area, foraging habitat is associated with densities of large trees (greater than 26 in dbh) and increasing basal area. *Id.* at 71906. Northern spotted owls in this region prefer stands dominated by Douglas-fir and avoid stands dominated by ponderosa pine.

66. In the Eastern Washington Cascades Province, northern spotted owls select forests with canopy cover greater than 80% for roosting and foraging, followed by

forest with moderate canopy of 50-79% and prefer complex structures which includes snags and mistletoe brooms.

67. Spotted owl home ranges are centered on locations of historic spotted owl nest sites, fledged young, primary roost locations, diurnal locations, or nocturnal detections and should consist of more than 40% nesting, roosting, foraging habitat and more than 50% nesting, roosting, foraging habitat in core home ranges. United States USFS, Pacific Northwest Research Station, NORTHWEST FOREST PLAN SCIENCE SYNTHESIS TO INFORM LAND MANAGEMENT WITHIN THE NORTHWEST FOREST PLAN AREA (2018).

68. FWS has determined that population growth can only occur if there is adequate habitat in an appropriate configuration to allow for the dispersal of owls across the landscape. 77 Fed. Reg. at 71904.

69. Dispersal habitat optimally is nesting, roosting and foraging habitat. “Dispersal capable” habitat includes nesting, roosting, foraging and dispersal habitat.

70. Davis et al. (2016, p. 12) recommended that a landscape should contain at least 40 percent “dispersal-capable” forest cover to facilitate spotted owl movement and gene flow.

71. Forests with canopy cover between 40 and 50 percent are often called “dispersal habitat” for the purpose of distinguishing those forests from nesting/roosting and foraging habitat.

72. Marginal habitat with as low as 40% canopy cover might be used for dispersal, but ultimately survival of spotted owl is highest when they disperse through nesting, roosting and foraging habitat. Although habitat that allows for dispersal may not be suitable for nesting, roosting, or foraging, FWS expects dispersal success is highest when spotted owls move through forests that have characteristics of nesting, roosting, and foraging habitats. 77 Fed. Reg. 71902.

73. FWS states that “downgrading nesting/roosting and foraging habitat to 40 percent canopy cover has adverse effects to dispersing spotted owls by reducing the suitability of those forests for roosting and foraging during dispersal.

Downgrading nesting, roosting and foraging habitat to dispersal habitat is expected to decrease the survival probability of dispersing spotted owls. Forests with canopy cover below 40 percent are not expected to provide habitat functions for spotted owl during any life stage. While spotted owls can disperse across unsuitable habitat, their survival is expected to be low compared to owls dispersing through nesting/roosting, foraging, and dispersal habitat.”

74. Juvenile spotted owls disperse within their first year and the conditions of forest types between natal and breeding sites can facilitate or hamper survival and

movement process. USDA FOREST SERV., SYNTHESIS OF SCIENCE TO INFORM LAND MANAGEMENT WITHIN THE NORTHWEST FOREST PLAN AREA (2018) at 275.

75. In 2012, FWS redesignated critical habitat for the spotted owl. Critical habitat represents specific areas within the geographic range where physical or biological features essential to the conservation of the species are found, which may require special management consideration. 77 Fed. Reg. 71876 (Dec. 4, 2012).

76. FWS determined that some areas unoccupied at the time of listing nonetheless qualify as critical habitat because they are essential to the conservation—and thus recovery—of the northern spotted owl. *Id.* at 71907.

77. When designating critical habitat for the northern spotted owl, FWS designated the Eastern Cascades North Unit which contains nine subunits. 77 Fed. Reg. at 71927.

78. The Midnight Project is within Subunit ENC-1.

79. At the time of the critical habitat designation in 2012, FWS “considered this subunit largely occupied.” 77 Fed. Reg. at 71928.

80. FWS determined that “all of the unoccupied and likely occupied areas in [ENC-1] are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of northern spotted owl habitat.” 77 Fed. Reg. 71928.

81. FWS determined that for this subunit, “The increase and enhancement of northern spotted owl habitat is necessary to provide for viable populations of northern spotted owls over the long term by providing for population growth, successful dispersal, and buffering from competition with the barred owl.”

82. In evaluating whether activities, including timber harvest, are likely to destroy or adversely modify critical habitat, the FWS determined that the “overall consistency of the proposed action with the intent of the recovery plan or other landscape-level conservation plans” is a factor to consider. 77 Fed. Reg 71940.

83. FWS also determined that the critical habitat analysis should also include the “impact of the proposed action on the subunit’s likelihood of serving its intended conservation function or purpose.” *Id.*

84. FWS further determined that the critical habitat analysis should include “[t]he impact of the proposed action on the units likelihood of continuing to contribute to the conservation of the species.” *Id.*

85. The two primary threats to the spotted owl are habitat destruction from timber management, and the competition and predatory threat of barred owls.²

² U.S. Fish and Wildlife Serv., Revised Recovery Plan for the Northern Spotted Owl (June 2011) at vi, viii, 64; *See also* Linda Long & Jared Wolfe, *Review of the effects of barred owls on spotted owls*, 83 J. Wildlife Mgmt. 1281-1296 (2019) [hereinafter “Long & Wolfe (2019)”].

86. Barred Owls (*Strix varia*) are native to eastern North America and pose a threat to northern spotted owls. They arrived in Washington after European settlement resulted in the expansion of forest habitats across the northern United States and southern Canadian provinces and created a path of suitable habitat across the landscape enabling westward colonization. Long & Wolfe (2019).

87. Barred owls are larger and more aggressive than northern spotted owls. Barred owls and northern spotted owls compete for the same habitat and prey. Barred owls use a wider range of habitat types than northern spotted owls and forage on a wider range of prey species. Barred owls consistently outcompete northern spotted owls across habitat types. *Id.*

88. The presence of barred owls causes northern spotted owls to abandon occupied habitat, such that the two species may not coexist in the same areas. *Id.*

89. In addition to barred owl removal, habitat protection for spotted owls is very important to the conservation of spotted owls, “especially in provinces where habitat loss from severe fire has increased, like in the Eastern Washington Cascades.”

90. FWS determined that in the Project Area, increasing spotted owl habitat would have a “slightly greater positive effect on spotted owl occupancy compared to barred owl removal.”

91. In 2012, the USFWS published a revised “Protocol for Surveying Proposed Management Activities that may Impact Northern Spotted Owls” (“2012 Protocol.”)

92. The 2012 Protocol provides guidelines necessary for effectively monitoring and detecting northern spotted owls in an area using callback surveys. Callback surveys use recordings of spotted owl calls to solicit responses from territorial spotted owls.

93. The 2012 Protocol requires, among other things: one year of general surveys in the season immediately prior to project implementation; and surveys that must be conducted during all years of project implementation until the project is complete, or there is no potential for impacts to spotted owl due to habitat modification or disruption. The protocol further defines the survey area to include the project area plus an additional surrounding area.

94. Since 2012, best available science has determined that the use of passive acoustic monitoring is the most effective way for detecting spotted owls over a range of forest conditions.

95. The USFS published a paper called “Simulating the Effort Necessary to Detect Changes in Northern Spotted Owl (*Strix occidentalis caurina*) Populations Using Passive Acoustic Monitoring” in 2021 which sets forth the optimal survey method for placement of passive acoustic monitoring stations. *See* Damon B.

Lesmeister et al., *Simulating the Effort Necessary to Detect Changes in Northern Spotted Owl (*Strix occidentalis caurina*) Populations Using Passive Acoustic Monitoring*, U.S. Forest Serv. Rsch. Paper PNW-RP-618 (2021).

96. This placement method uses a grid of hexagons and triangles placed over the area at issue. “Within each hexagon, an array of four points to represent Autonomous Recording Unit (“ARU”) stations were systematically arranged, such that one station was located at the center of the hexagon, and three stations were arranged in an equilateral triangle around it.” *Id.*

97. The grid of hexagons and triangles are publicly available at <https://www.fws.gov/project/northern-spotted-owl-surveys-and-site-monitoring> (site accessed August 28, 2026).

98. In 2021, FWS drafted an updated Protocol for surveying spotted owl using Autonomous Recording Unit, which is a method of passive acoustic monitoring.

99. FWS expects a lower probability of detection using callback surveys. Where a high rate of detection is important, the FWS recommends the use of ARUs and thus the 2021 Protocol.

100. Both 2012 and 2021 Protocols for surveying for spotted owl require surveys to be conducted and completed one year prior to the Project implementation and requires surveys during Project implementation. *Id.*

Bull Trout

101. The bull trout (*Salvelinus confluentus*) was federally listed under the ESA as threatened across its entire range in 1999 due in large part to habitat degradation and fragmentation. 64 Fed. Reg. 58910 (Nov. 1, 1999).

102. In 2004, FWS designated critical habitat for bull trout in the Klamath River and Columbia River populations. 69 Fed. Reg. 59996 (Oct. 6, 2004). Bull trout within the Midnight Project are part of the Columbia River population, which encompasses Washington streams like those in the Okanogan-Wenatchee National Forest.

103. In 2010, the revised bull trout critical habitat rule expanded designated streams from 3,828 miles to 19,729 miles across affected basins in Washington, Oregon, Nevada, Idaho, and Montana. 70 Fed. Reg. at 56212; 75 Fed. Reg. 63898 (Oct. 18, 2010).

104. Adult bull trout are olive or drab in color with pale orange, round spots along their sides.³ Bull trout reach sexual maturity between four and seven years of age and are known to live for twelve or more years. 64 Fed. Reg. at 58911. These fish exhibit resident (tributary-bound) and migratory life histories, with the latter

³ U.S. Fish and Wildlife Service, *Bull Trout*, available at <https://www.fws.gov/species/bull-trout-salvelinus-confluentus> (last accessed August 28, 2026)

spawning in tributaries, rearing there 1-4 years, then migrating to lakes, rivers, or saltwater. *Id.*

105. Bull trout require among the coldest water temperatures of native salmonids, ranging from 36 to 59°F, with adequate thermal refugia for areas that exceed this range. 75 Fed. Reg. 63909; *See also* MIDNIGHT RESTORATION PLAN DRAFT BIOLOGICAL ASSESSMENT (2025) [hereinafter “Midnight Project BA”], at 286.

106. Bull trout require specific stream substrate conditions including a minimal amount of fine sediment (silt to coarse sand) to ensure oxygen circulation for egg survival and successful fry emergence. *Id.* at 286. Fine sediment can affect living space for aquatic invertebrates and may reduce the ability of juvenile fish to find invertebrate food items. *Id.* at 289.

107. Bull trout require unobstructed migration corridors, with minimal physical, biological, or water quality impediments to reach different habitats for spawning, rearing, and foraging. *Id.* at 285.

108. Bull trout require an abundant food base including terrestrial and aquatic insects, macrozooplankton, and small fish. *Id.* Their habitat must provide the necessary aquatic and adjacent terrestrial conditions to harbor and maintain prey species in sufficient quantity and diversity to meet their physiological requirements. *Id.*

109. Bull trout require complex aquatic environments with features such as large wood, side channels, pools, and undercut banks and unembedded substrates. *Id.*
110. Bull trout thrive best where there are sufficiently low levels of occurrence of non-native predatory, interbreeding, or competing species, such as lake trout, walleye, northern pike, smallmouth bass, brook trout, and brown trout. *Id.* at 287.
111. The Project is located entirely within the Methow River bull trout core area in the Mid-Columbia Recovery Unit.
112. The Project Area contains two local bull trout populations of the Methow River core area: Wolf Creek and Twisp River populations.
113. The Twisp River is one of the three primary tributaries to the Methow River and is considered critical refugium for bull trout in the Methow River.
114. Wolf Creek within the Middle Methow River watershed is also considered critical refugium for bull trout.
115. The annual bull trout redd counts (the number of spawning nests observed) in both Wolf Creek and Twisp River have declined since 2014.
116. Wolf Creek is the most important tributary for bull trout spawning in the Middle Methow River sub-watershed. *Id.* at 62.
117. The Lower Twisp River migration corridor is degraded and in poor condition due to low flow conditions, reduced floodplain connectivity, and

simplified instream habitat. Poor migratory conditions may be one of the factors limiting bull trout population size.

118. A declining trend in bull trout redd counts demonstrates a substantial drop in returning adult spawning bull trout to the Twisp River watershed.

119. Currently, the important spawning reaches in the Project Area are in a degraded state and may be for years due to higher stream temperatures and existing minimal refugia, lower amounts of off-channel habitat, localized high road density, and simplified channels.

120. Currently, stream temperatures in the Project Area will likely be elevated for years due to watershed-scale fire effects and wide-ranging climate effects.

121. Current threats to bull trout in the Twisp River Watershed are low flow condition, floodplain connectivity, channel complexity, sediment, temperature, and introduced aquatic species. Low flow conditions are exacerbated by management activities which ultimately prevent or delay bull trout spawning.

122. Current threats to Middle Methow and Wolf Creek bull trout are low flow, reduced floodplain connectivity, lack of side channel habitat, reduced channel and instream habitat complexity, increased sediment transport, elevated stream temperatures, migration barriers, and introduced aquatic species.

123. Forest management has historic and ongoing adverse impacts to bull trout habitat. Logging projects are known to destabilize soils and lead to erosion and

increase sediment in streams for years. Unstable lands prone to failure under natural conditions become more likely to slide after road construction and timber harvest. US FOREST SERV. & BLM, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT ON MANAGEMENT OF HABITAT FOR LATE-SUCCESSIONAL AND OLD-GROWTH FOREST RELATED SPECIES WITHIN THE RANGE OF THE NORTHERN SPOTTED OWL (1994) [hereinafter “NWFP FSEIS”] at 18. “Roads have unavoidable effects on streams no matter how well they are designed, located or maintained.” *Id.* at 3&4-58.

124. Roads degrade spawning and rearing habitat, and bull trout foraging, migrating, and overwintering habitat. Roads along foraging, migrating and overwintering habitat, and in floodplains reduce habitat complexity, create impediments to habitat access and passage, and discharge runoff (including deicer) that degrades and impairs water quality.

The Northwest Forest Plan

125. As a result of a deep history of logging, the forests in the Pacific Northwest consist of a highly fragmented mosaic of clearcuts, thinned stands and young plantations. NWFP FSEIS at G-1. In response to this, the Clinton Administration commissioned the Forest Ecosystem Management Assessment Team to formulate and assess management options for late successional forests within the range of the northern spotted owl in Oregon, Washington and California. The options were

intended to address a wide range of species associated with late successional forests, including bull trout. The options were presented as alternatives in a draft environmental impact statement which would ultimately result in the adoption of a coordinated management direction for lands administered by the USFS and BLM within the range of the northern spotted owl and to “protect and enhance late successional and old-growth forest ecosystems.” NWFP FSEIS at G-2.

126. On April 13, 1994, the USFS and Bureau of Land Management (“BLM”) issued the Record of Decision for the Northwest Forest Plan. *See* U.S. FOREST SERV. BLM, RECORD OF DECISION FOR AMENDMENTS TO USFS AND BUREAU OF LAND MANAGEMENT PLANNING DOCUMENTS WITHIN THE RANGE OF THE NORTHERN SPOTTED OWL (1994) [hereinafter “NWFP ROD”]. The alternative selected was Alternative 9, which provided “the ‘backbone’ for ecosystem management of forests on USFS and BLM lands within the range of the spotted owl by constructing a network of late successional forest and a scheme for protection of aquatic and riparian habitats.” NWFP FSEIS at G-2.

127. The NWFP established management requirements for all USFS and Bureau of Land Management land within the range of the northern spotted owl. It adopted the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (NWFP S&G, *supra*).

128. One of the purposes of the NWFP was to stop the removal of old forests and develop suitable forest with characteristics for spotted owl into the future.

129. The standards and guidelines of the NWFP are meant to “protect and enhance habitat for late-successional and old-growth forest related species including the northern spotted owl.” NWFP FSEIS at S-8. The land allocation and management direction of the NWFP are intended to constitute the USFS and Bureau of Land Management’s contribution to the recovery of the northern spotted owl. NWFP S&G at A-2; Recovery Plan, p. I-1.

130. FWS states that spotted owl recovery “relies heavily upon the principles of the NWFP as its foundation.” Recovery Plan, p. II-10.

131. The NWFP created six different land allocations, each with different management priorities and governed by different standards and guidelines. These land designations were created to take an ecosystem management approach to forest management, with support from scientific evidence, and maintain a healthy forest ecosystem with habitat that will support populations of native species, particularly those associated with late-successional and old-growth forests. NWFP S&G at A-1.

132. The three land allocations relevant to this case are “Matrix,” “Late-Successional Reserves” and “Riparian Reserves.” “Matrix” are areas in which scheduled timber harvest may proceed, subject to environmental requirements.

“Late-Successional” and “Riparian Reserves” are areas that generally limit logging and ground-disturbing activities to protect the ecosystem and conserve late-successional species like the threatened northern spotted owl.

Late Successional Reserves

133. Late Successional Reserves (“LSRs”) are the “backbone” of the Northwest Forest Plan, FOREST ECOSYSTEM MANAGEMENT ASSESSMENT TEAM: FOREST ECOSYSTEM MANAGEMENT: AN ECOLOGICAL, ECONOMIC, AND SOCIAL ASSESSMENT (1993) [herein after “FEMAT”] at I-1, and are managed to maintain, promote, and enhance conditions of late-successional and old-growth forest ecosystems to serve as habitat for late-successional and old-growth species like northern spotted owl. NWFP S&G at C-11, NWFP SEIS at G-2.

134. Late-Successional forests include mature and old-growth age classes. NWFP S&G at B-1. Four major structural attributes of old-growth Douglas-fir forests are “live old-growth trees, standing dead trees (snags), fallen trees or logs on the forest floor, and logs in streams.” *Id.* at B-2. Other important elements include multiple canopy layers, smaller understory trees, canopy gaps, and patchy understory. *Id.* Forests within LSRs are composed of stands from 2 to more than 80 years old, as well as unmanaged, late-successional, and old-growth stands. *Id.* at B-6.

135. The NWFP Objectives for LSRs states, “Late-Successional Reserves are to be managed to protect and enhance conditions of late-successional and old-growth

forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl. These reserves are designed to maintain a functional, interacting, late-successional and old-growth forest ecosystem.” *Id.* at C-11.

136. LSRs are managed with specific standards and guidelines, designed to protect and enhance late-successional and old-growth forest ecosystems. *Id.* at E-8.

137. Before any habitat manipulation activities are designed or implemented, a management assessment should be prepared for each LSR or group of smaller LSRs (“LSR Assessment”). *Id.* at C-11. These assessments are subject to review by the Regional Ecosystem Office. *Id.*

138. The Regional Ecosystem Office is part of an interagency structure implemented by the USFS and BLM to implement the Northwest Forest Plan and oversee necessary monitoring and research. The interagency structure includes the Interagency Steering Committee, Regional Interagency Executive Committee, the Regional Ecosystem Office, and provincial teams to continuously seek new information and understanding for managing old-growth and late-successional forest ecosystems in the Pacific Northwest. Section E of the Standards and Guidelines describe this interagency structure to ensure consistent and timely implementation.

139. The Regional Interagency Executive Committee establishes “overall policies governing the prompt, coordinated and effective implementation of the selected alternative by all relevant federal agencies, and address and resolve issues referred to it by the Regional Interagency Executive Committee.” NWFP FSEIS at 2.

140. The Regional Interagency Executive Committee serves as the senior regional entity to assure the prompt, coordinated, and successful implementation of the Northwest Forest Plan. *Id.* at 2-13. It is the primary conduit for communications between the Interagency Steering Committee and planning area agencies. *Id.* It is responsible for implementing Interagency Steering Committee objectives, reporting on NWFP implementation progress, and referring issues related to policies or procedures for implementing the NWFP to the Interagency Steering Committee. *Id.*

141. The Regional Ecosystem Office provides staff work and support to facilitate Regional Interagency Executive Committee decision making and prompt interagency issue resolution in support of implementation of the Standards and Guidelines. The Regional Ecosystem Office reports to the Regional Interagency Executive Committee and is responsible for developing, evaluating, and resolving consistency and implementation issues on topics including Geographic Information Systems, pilot watershed analyses, restoration guidelines, Endangered Species Act requirements, adaptive management guidelines, monitoring, and research.

142. The Regional Ecosystem Office is responsible for evaluating major modifications arising from the adaptive management process and coordinating the formulation and implementation of data standards.

143. The Regional Interagency Executive Committee and Regional Ecosystem Office function in an advisory capacity to review proposed actions and determine whether those actions are consistent with the objectives of the NWFP, without displacing decision-making authority vested in land management or consultation agencies.

144. In 1994, the Regional Ecosystem Office appointed the “Late Successional Reserve Work Group” (“LSR Work Group”) to conduct reviews of proposed actions in LSRs to ensure that activities in LSR's are consistent with Forest Plan Record of Decision requirements. The reviews are meant to serve as a basis for Regional Ecosystem Office recommendations to the Regional Interagency Executive Committee.

145. The LSR Work Group consists of core members but will utilize additional agency expertise (e.g., fire ecologists, fishery biologists, botanists, mycologists) on specific issues and projects. The LSR Work Group will provide direction on and where appropriate utilize individual agency process(es) developed to meet Northwest Forest Plan requirements for LSRs.

146. In 1998, the LSR Work Group approved “An Assessment of the Northeastern Cascades Late-Successional Reserves” (1998 LSRA).

147. In May 2024, the USFS published the “Okanogan-Wenatchee National Forest Late-Successional Reserve Assessment” (2024 LSRA).

148. The LSRA Work Group did not approve the 2024 LSRA.

149. The NWFP states that thinning or silvicultural activities within LSR must be reviewed by the Regional Ecosystem Office to “ensure that the treatments are beneficial to the creation of late-successional forest conditions.” NWFP FSEIS at G-9.

150. For the national forests east of the Cascades, the NWFP recognizes the increased risk of fire, and allows for “additional management activities” in LSRs. The NWFP sets forth specific guidelines to “Reduce Risks of Large-Scale Disturbance” through management activities. *Id.* at 7.

151. The NWFP states, “Certain risk management activities, if properly planned and implemented, may reduce the probability of these major stand-replacing events.” It states, “Risk reduction efforts are encouraged where they are consistent with the overall recommendations in these guidelines.” NWFP FSEIS at B-74.

152. The NWFP mandates that silviculture activities within LRS “shall focus on younger stands” with the objective to “accelerate development of late-successional conditions while making the future stand less susceptible to natural disturbances.”

Id. However, the scale of the treatments “should not generally result in degeneration of currently suitable owl habitat or other late-successional conditions.” *Id.*

153. In LSRs, management activities may only go beyond those that focus on young stands if: “(1) the proposed management activities will clearly result in greater assurance of long-term maintenance of habitat, (2) the activities are clearly needed to reduce risks, and (3) the activities will not prevent the Late-Successional Reserves from playing an effective role in the objectives for which they were established.” *Id.*

154. Even outside the designated LSR boundaries, the strategy is to retain adequate habitat conditions to facilitate the dispersal of northern spotted owls across the landscape. NWFP S&G at C-11.

155. Under NWFP’s standards and guidelines, a northern spotted owl “activity center” is defined as “an area of concentrated activity of either a pair of spotted owls or a territorial single owl. Timber management activities within the 100-acre area should comply with management guidelines for Late-Successional Reserves.” NWFP FSEIS at B-148.

156. Road construction through LSRs for silvicultural activities “generally is not recommended unless potential benefits exceed the costs of habitat impairment.”

NWFP S&G at C-16. New roads are to be kept to a minimum, be routed through non-LSR habitat, and designed to minimize adverse impacts. *Id.*

Riparian Reserves

157. Riparian Reserves provide an area along all streams, wetlands, ponds, lakes, and unstable and potentially unstable areas where riparian-dependent resources receive primary emphasis. *Id.* Riparian Reserves also serve as connectivity corridors between the Late-Successional Reserves for species like the northern spotted owl. *Id.* at B-13.

158. Complexity in riparian systems “may yield greater resistance to wildfires.” OKANOGAN CONSERVATION DISTRICT, OKANOGAN COUNTY COMMUNITY WILDFIRE PROTECTION PLAN (2024) at 243. Complex riparian systems provide refugia during and after a fire for wildlife and are critically important habitats and seedbanks for recovery. Their integrity also provides resilience to run-off and post-fire debris flows.

159. Riparian Reserves are critical to the conservation of the northern spotted owl, serving as essential dispersal habitat and connectivity corridors between larger blocks of old-growth forest. NWFP FSEIS at G-41; NWFP S&G at B-13. Riparian Reserves function as the primary link between LSRs, allowing owls to move between large habitat clusters. NWFP FSEIS at G-19; NWFP S&G at B-13. These

reserves also possess late-successional characteristics, offering high-quality habitat including large trees, snags, and downed logs.

160. As recognized by the USFS, “Riparian Reserves are important to the terrestrial ecosystem as well, serving, for example, as dispersal habitat for certain terrestrial species.” NWFP FSEIS at 2-25.

161. The NWFP BiOp states, “The riparian reserves would maintain current habitat subject to the prescriptions in Alternative 9, thus not allowing habitat to get any worse than present on a portion of the land base and resulting in an increase in habitat and habitat quality over time.”

162. The NWFP states, “As a general rule, standards and guidelines for Riparian Reserves prohibit or regulate activities in Riparian Reserves that retard or prevent attainment of the Aquatic Conservation Strategy objectives.” NWFP S&G at C-31. Management actions that do not maintain the existing condition and lead to improved conditions in the long term do not meet the intent of the Aquatic Conservation Strategy and should not be implemented. *Id.* at B-10.

163. The NWFP contains the Aquatic Conservation Strategy which was developed to “restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands.” *Id.* at B-9.

164. The NWFP states, “The Aquatic Conservation Strategy must strive to maintain and restore ecosystem health at watershed and landscape scales to protect

habitat for fish and other riparian-dependent species and resources and restore currently degraded habitats.” *Id.*

165. As part of the Aquatic Conservation Strategy, “Land use activities need to be limited or excluded in those parts of the watershed prone to instability.” *Id.*

166. The Aquatic Conservation Strategy states, “The important phrases in these standards and guidelines are ‘meet Aquatic Conservation Strategy Objectives,’ ‘Does not retard or prevent attainment of Aquatic Conservation Strategy Objectives,’ and ‘attain Aquatic Conservation Strategy Objectives.’” *Id.* at B-9, B-10.

167. The NWFP states, “Complying with the Aquatic Conservation Strategy objectives means that an agency must manage the riparian-dependent resources to maintain the existing condition or implement actions to restore conditions.” *Id.* at B-10.

168. The first Objective states, “Maintain and restore the distribution, diversity, and complexity of watershed and landscape-scale features to ensure protection of the aquatic systems to which species, populations and communities are uniquely adapted.” *Id.* at B-11.

169. The fourth Objective states, “Maintain and restore water quality necessary to support healthy riparian, aquatic, and wetland ecosystems. Water quality must remain within the range that maintains the biological, physical, and chemical

integrity of the system and benefits survival, growth, reproduction, and migration of individuals composing aquatic and riparian communities.” *Id.*

170. The sixth Objective states, “Maintain and restore in-stream flows sufficient to create and sustain riparian, aquatic, and wetland habitats and to retain patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows must be protected.” *Id.*

171. The last Aquatic Conservation Strategy Objective states, “Maintain and restore habitat to support well-distributed populations of native plant, invertebrate, and vertebrate riparian-dependent species.” *Id.*

172. Riparian Reserves are a “key element of the Aquatic Conservation Strategy.” *Id.* at A-5. Management actions that do not maintain the existing condition and lead to improved conditions in the long term do not meet the intent of the Aquatic Conservation Strategy and should not be implemented. *Id.* at B-10.

173. Riparian Reserve widths are prescribed in terms of the height of a site-potential tree or site-specific geomorphic criteria such as a 100-year floodplain, whichever is greater (see Appendix B6, Aquatic Conservation Strategy). A site-potential tree height is the average maximum height of the tallest dominant tree (200 years or older) for a given site class.

174. A site-potential tree height is the average maximum height of the tallest dominant trees (200 years or older) for a given site class.

175. Riparian Reserves are specified for five categories of water bodies. The widths of the Riparian Reserve depend on the classification of the water bodies.

176. The categories of water bodies pertinent to this case are as follows:

- a. **Fish-bearing streams** - Riparian Reserves consist of the stream and the area on each side of the stream extending from the edges of the active stream channel to the top of the inner gorge, or to the outer edges of the 100-year floodplain, or to the outer edges of riparian vegetation, or to a distance equal to the height of two site-potential trees, or 300 feet slope distance (600 feet total, including both sides of the stream channel), whichever is greatest.
- b. **Permanently flowing nonfish-bearing streams** - Riparian Reserves consist of the stream and the area on each side of the stream extending from the edges of the active stream channel to the top of the inner gorge, or to the outer edges of the 100-year floodplain, or to the outer edges of riparian vegetation, or to a distance equal to the height of one site-potential tree, or 150 feet slope distance (300 feet total, including both sides of the stream channel), whichever is greatest.
- c. **Seasonally flowing or intermittent streams, wetlands less than 1 acre, and unstable and potentially unstable areas** - This category

applies to features with high variability in size and site-specific characteristics. At a minimum, the Riparian Reserves must include:

- i. The extent of unstable and potentially unstable areas (including earthflows),
- ii. The stream channel and extend to the top of the inner gorge,
- iii. The stream channel or wetland and the area from the edges of the stream channel or wetland to the outer edges of the riparian vegetation, and
- iv. Extension from the edges of the stream channel to a distance equal to the height of one site-potential tree, or 100 feet slope distance, whichever is greatest.

177. The NWFP defines intermittent streams as “any nonpermanent flowing drainage feature having a definable channel and evidence of annual scour or deposition. This includes what are sometimes referred to as ephemeral streams if they meet these two physical criteria.” NWFP S&G at B-14.

178. “Watershed analysis and appropriate NEPA compliance is required to change Riparian Reserve boundaries in all watersheds.” NWFP S&G at C-31. In 1995, the USFS completed the Twisp River Watershed Analysis. *See* U.S. FOREST SERV., TWISP RIVER WATERSHED ANALYSIS (1995) [hereinafter “Twisp Watershed

Analysis”]. This is the most recent Watershed Analysis that includes the Project Area.

179. The Twisp Watershed Analysis did not modify the Riparian Reserve Buffers.

180. The Twisp Watershed Analysis states, “The basic objective will be to implement default riparian reserves width included in the [NWFP] [Record of Decision]. Where site-specific conditions warrant, riparian reserve width could be increased to provide an added measure of protection and/or habitat value. Where conditions allow, riparian reserve width could be narrowed if necessary protection of riparian value is assured.” Twisp Watershed Analysis at 9-15.

181. The Twisp Watershed Analysis provides eight criteria which, when evident, should *increase* the Riparian Reserve width:

- a. Roads are located within or immediately adjacent to riparian area.
- b. Stream crossings by road are prevalent.
- c. Special wildlife travel corridors are a consideration (e.g. riparian areas within lynx habitat or deer migration corridors.)
- d. Degraded vegetative conditions are exhibited within riparian areas.
- e. Inventoried Rosgen Stream Types C and E.
- f. Areas, exhibiting evidence of mass soil movement.
- g. Areas within large scale, natural disturbances (e.g. fire areas).

- h. Areas adjacent to or upstream of identified anadromous spawning or rearing reaches.

182. The Midnight Project will construct or reconstruct over 36 miles of haul routes within Riparian Reserves, indicating at least one criteria is met to expand Riparian Reserves in the Project Area.

183. The Twisp Watershed Analysis states that Riparian Reserve widths should be narrowed only when “topographic conditions distinctly separate riparian influence zones at distances less than default widths.” *Id.* at 9-15.

184. The criteria for narrowing the Riparian Reserve buffer is not evident in the Midnight Project Area.

185. For management activities within Riparian Reserves, the NWFP states, “Do not use mitigation or planned restoration as a substitute for preventing habitat degradation.” NWFP S&G at C-37.

Matrix Habitat

186. The NWFP also created Matrix habitat as another land allocation.

187. The NWFP Standards and Guidelines state, “most timber harvest and other silviculture activities would be conducted in that portion of the matrix with suitable forest lands, according to standards and guideline.” *Id.* at C-39.

188. The NWFP requires that matrix management (or harvest) “provide specific measures for course woody debris.” *Id.* at C-40.

189. Subsection B of the specific measures states, “In eastern Oregon and Washington, . . . a minimum of 120 linear feet of logs per acre greater than or equal to 16 inches in diameter and 16 feet long should be retained. Decay class 1 and 2 logs can be counted towards these totals. Down logs should reflect the species mix of the original stand.” *Id.*

190. Subsection C states, “Coarse woody debris already on the ground should be retained and protected to the greatest extent possible from disturbance during treatment (e.g., slash burning and yarding) which might otherwise destroy the integrity of the substrate.” *Id.*

The Methow Valley and the Midnight Project Area

191. The Midnight Restoration Project is located within the Okanogan-Wenatchee National Forest, Methow Valley Ranger District, in Washington's Eastern Cascades.

192. The Project Area lies within the range of the northern spotted owl and all management practices must conform to the requirements of the NWFP.

193. In November 2019, the USFS introduced the 77,000 acre “Twisp Restoration Project.” This 2019 Project garnered significant opposition from the public and was modified in response. Then in July of 2021, the Cedar Creek Fire burned portions of the 2019 Project Area.

194. The USFS decided to divide the 2019 Project into two separate Projects: The Midnight Restoration Project (“Midnight Project”) and the Twisp Restoration Project (“Twisp Project”).

195. The USFS published the Midnight Restoration Project Final Environmental Assessment in October, 2025.

196. On August 27, 2026, the USFS issued its Finding of No Significant Impact and Decision Notice.

197. The USFS and FWS engaged in formal consultation regarding the Project’s effects to ESA-listed species. The FWS signed its Biological Opinion on June 26, 2026 finding that the Project would not jeopardize the continued existence of northern spotted owl or bull trout or result in the destruction or adverse modification of spotted owl and bull trout critical habitat.

198. The Project Decision authorizes approximately 51,890 acres of commercial harvest, non-commercial harvest, prescribed fire, fire-line construction, road construction and reconstruction, and road decommissioning.

199. The Project will take 20 years to implement with commercial harvest activities occurring immediately after Project implementation and lasting up to 8 years.

200. Specifically, the Project Decision Notice authorizes commercial logging on 11,374 acres, non-commercial logging on 13,895 acres, fuel reduction on 27,352

acres, fireline construction of 129.2 miles, 10.4 miles of temporary road construction, and hazard tree removal.

201. The Project authorizes 4,503 acres of commercial logging in LSRs, 6,440 acres of commercial logging in Matrix habitat, and 374 acres of commercial logging in Riparian Reserves.

202. The commercial harvest in LSRs will target trees with large diameters and mistletoe infestation, which are the type of trees preferred by owls for nesting.

203. The Project will reduce canopy cover to between 30-60%.

204. Since the adoption of the Northwest Forest Plan, the USFS has not authorized commercial logging within LSRs to this extent.

205. The USFS states that the Midnight Project is necessary to move the current vegetation structure toward “desired reference conditions” because “there is currently far less old forest and more young, dense forest than is desired for resilient landscape.”

206. The USFS also states the Project is necessary to protect northern spotted owl habitat because the remaining habitat in the Project Area is likely to burn at high severity unless forest stands are harvested.

207. The USFS also states the Project is necessary to protect the community from wildfire.

208. The majority of logging in LSR authorized by the Project is over 6 miles away from the nearest group of homes in Winthrop and Twisp.

209. The LSRA Work Group has not approved the Midnight Project or determined its compliance with the 2024 LSRA or the 1998 LSRA.

The Project's Impact to Northern Spotted Owl

210. Northern spotted owl habitat would be directly and adversely modified by the Project.

211. The Project will commercially harvest within six historic owl home ranges.

212. The home range and core ranges within the Project Area are already below thresholds necessary for survival and reproduction.

213. Within the Project Area, the LiDAR model identified 2,332 acres of nesting, roosting habitat, 7,631 acres of foraging habitat, and 5,876 acres of dispersal habitat. According to the BiOp, the Project will result in the downgrade and removal of 4,804 acres of nesting, roosting, foraging and dispersal habitat.

214. The Project will result in downgrade and removal of 4,804 acres of current Northern spotted owl nesting, roosting, foraging, and dispersal habitat.

215. A total of 3,632 acres of nesting, roosting, and foraging habitat will be downgraded and removed as a result of Project activities.

216. FWS stated that downgrading nesting, roosting, and foraging habitat to dispersal habitat has adverse effects to dispersing owls by reducing the suitability

of those forests for roosting and foraging during dispersal and is expected to decrease the survival probability of dispersing owls.

217. This is in addition to the significant amount of spotted owl habitat already removed as a result of the Crescent Mountain and Cedar Creek Fires.

218. Further, 1,567 acres of nesting, roosting, foraging habitat will be downgraded or removed within four known spotted owl home ranges in the LSR.

219. For spotted owls residing in or dispersing into the Project Area, the Project's reduction of nesting, roosting and foraging habitat will, as FWS determined, further drop habitat amounts below applicable thresholds and significantly reduce survival and reproduction, with effects expected to extend beyond Project completion for more than 40 years and up to 155 years.

220. The Project will generally result in the degeneration of currently suitable spotted owl habitat.

221. FWS determined that the reduction of nesting, roosting and foraging habitat from the Project will decrease nest survival, productivity and fecundity, increase nest predation, and reduce parental nest attendance.

222. FWS determined that the habitat loss and downgrade in the Midnight Project Area, including in the Twisp LSR and riparian reserves, and compounded by the habitat loss from the Twisp and Mission Restoration Projects currently being implemented within the vicinity, will reduce connectivity between the Twisp and

Sawtooth LSRs, will increase habitat fragmentation, reduce connectivity between the three LSRs and increase isolation.

223. FWS determined that the loss of habitat connectivity from the Project will result in adverse effects on the Eastern Washington Cascades province.

224. FWS determined that the Project will reduce the survival of northern spotted owls in the Project Area, including territorial individuals, breeding pairs, and dispersing owls and “increase isolation of several thousand acres of habitat in the southern portion of the Sawtooth Range, including approximately 18,297 acres of dispersal capable habitat in the Sawtooth Late Successional Reserve to the south of the Project Area. This will expose an additional 13 dispersing spotted owls to project effects due to isolation.”

225. FWS determined that the Project will make it less likely that spotted owls will attempt and succeed at reproduction in the Project Area.

226. FWS determined that the Project will result in the loss of a breeding pair and two additional dispersing owls due to Project effects.

227. The loss of a breeding pair equates to a 5% reduction in the breeding population in the province.

228. FWS determined that in small populations like that of the Eastern Washington Cascade province, “declines in numbers can exacerbate downward populations trends.”

229. FWS determined that this loss, when scaled to the “range-wide population” represents a .03% reduction over a 20-year period and would not jeopardize the continued existence of the species.

230. FWS determined that the Project “will reduce the ability of the [critical habitat] subunit to meet its intended function. . . [and] also reduce the subunit’s and units ability to support a self-sustaining population of spotted owls.”

231. FWS determined that the Project will reduce the conservation function of the subunit and negatively affect the species’ distribution in the northeastern portion of its range.

232. FWS concluded that the Project would not result in adverse modification of its critical habitat for northern spotted owl.

233. The USFS did not disclose or analyze the Project for compliance with the NWFP’s coarse woody debris requirement.

Midnight Project’s Spotted Owl Surveys

234. As explained above, the Protocol for spotted owl surveys requires USFS to implement a protocol-level survey one year prior to project implementation.

235. The Midnight Biological Assessment Table 26 says the last survey done for northern spotted owl was in 2021.

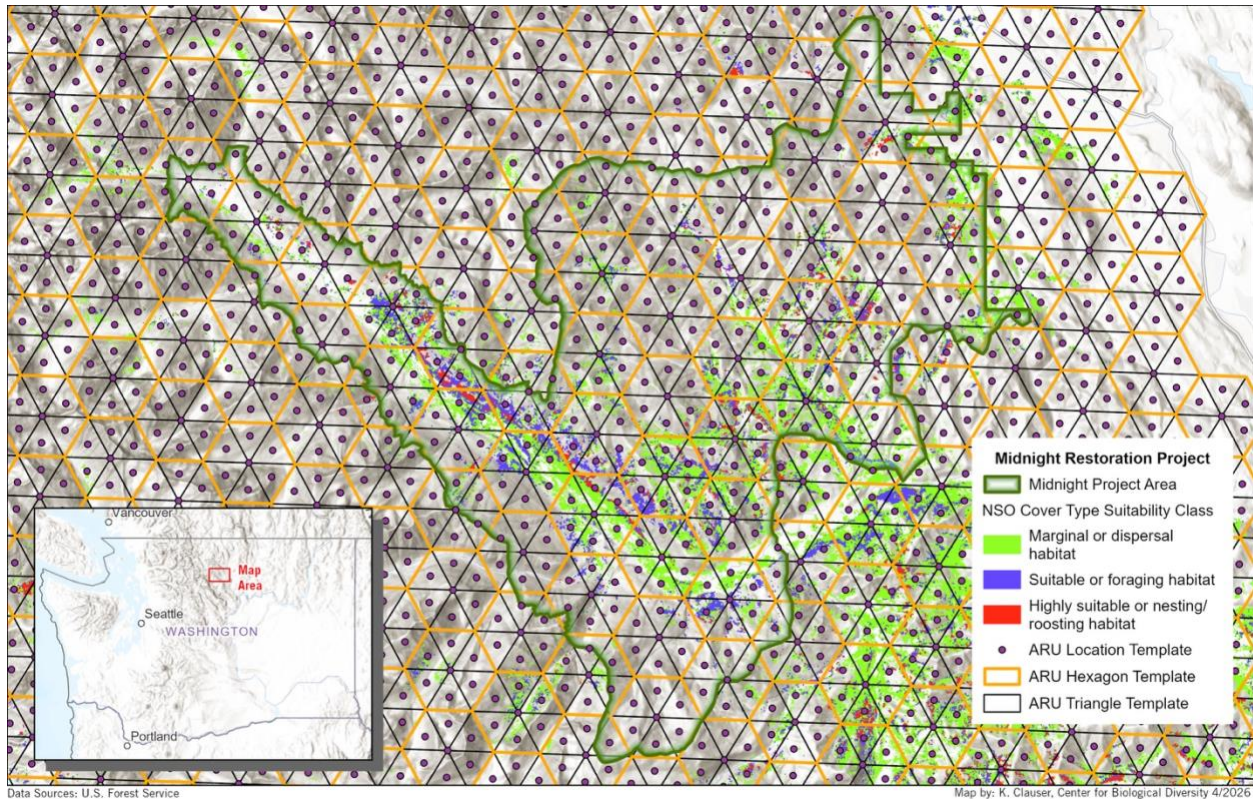
236. The BA states that a number of “annual surveys in the vicinity” were conducted between 1986-2002, 2014-2015, and 2019-2021.

237. The BA does not explain how the surveys referenced in its analysis were conducted.

238. The BA also states that surveys are conducted wherever barred owls are found.

239. FWS determined that the surveys used by the USFS for the Project do not meet minimum survey requirements and did not cover the action area. Therefore, the USFS surveys could not be relied upon by FWS to determine occupancy.

240. Below is the Project Area vicinity map with owl habitat overlayed with publicly available Autonomous Recording Unit hexagon and triangle grids the USFS must use to place Autonomous Recording Units to conduct surveys according to protocol.



241. According to the Protocol, a total of four Autonomous Recording Unit surveys should be placed within each yellow hexagon that contains suitable and highly suitable (foraging, nesting, roosting) habitat: One survey at the center of the hexagon, the other three in a clover-leaf pattern in alternating triangles within the hexagon).

242. The FWS estimated that more than 100 Autonomous Recording Units were necessary to meet protocol requirements for the Midnight Project.

243. In the most recent survey for the Project in 2023, the USFS utilized less than 10 Autonomous Recording Units across the entire Project Area.

244. No ARUs or any survey efforts were disclosed in Little Bridge or Canyon Creeks where suitable and highly suitable habitat exists.

Project's Impact to Aquatic and Riparian Resources

245. The Project Area includes designated bull trout critical habitat that supports spawning and rearing. 50 C.F.R. § 17;75 Fed. Reg. 63898, 64003 (October 18, 2010). Logging and road construction/reconstruction is authorized near and within bull trout critical habitat along the Twisp River.

246. There are 335 miles of roads within the Project Area.

247. The Project would reconstruct 145 miles of roads.

248. The Project will reconstruct 28.5 of currently closed roads and use them for hauling.

249. The Project will use and reconstruct 14.5 miles of unauthorized roads for hauling.

250. The Project will construct and use another 8.3 miles of road to access and haul timber.

251. The Project will add 4.5 miles of “unauthorized, non-system roads” to the National Forest Road system.

252. The Project will decommission 58.1 miles of roads. The Decision Notice allows the decommission to occur after timber removal and as late as 15-20 years from Project initiation.

253. A total of 36.3 miles of haul routes used for the Project will be within Riparian Reserves. All 36.3 of those miles are hydrologically connected areas.
254. The haul routes will cross intermittent and perennial streams in 77 locations.
255. The Project will construct or utilize 49 water crossings with “some connection” to bull trout critical habitat.
256. FWS determined that the Twisp River and Wolf Creek local bull trout populations will be affected by the Project.
257. FWS concluded that the Project’s in-water work would degrade water quality and expose bull trout to high turbidity which would likely prevail during and after construction and would travel as far as 600 ft before the sedimentation concentrations would be diminished.
258. FWS concluded that the Project would degrade water quality, habitat access and habitat elements of the Twisp River and Tributaries and Wolf Creek.
259. FWS determined that the Project will increase snowmelt rates and increase snow disappearances in some perennial and non-perennial fish-bearing streams and intermittent streams and will reduce shade, reduce temperature buffering capacity.
260. FWS determined that the Project will further impede and delay bull trout movements due to the longer periods of reduced flow and suppressed base flows that will last decades.

261. FWS determined that “combined with natural, seasonal low flow conditions and the progressive, predictable effects of climate change, suppressed base flows [from the Project] will exacerbate conditions that already present significant obstacles and limitations on bull trout movements and migration.”

262. FWS determined that the Project will also reduce native salmonid prey production. FWS concluded that the proposed action will have foreseeable adverse effects and consequences for bull trout prey resources in the action area.

263. FWS stated, “a period of reduced native salmonid prey production and availability is likely to result, but we cannot with available information describe or quantify the measurable losses.”

264. FWS determined that the Project will also elevate peak flows, erosion and sedimentation in perennial and non-perennial fish-bearing streams, the damaged and resulting condition which will be evident “one to three years after/following implementation.”

265. FWS determined that the Project will have measurable and adverse consequences for spawning and early rearing habitat.

266. FWS determined that reduced low flows and suppressed base flows would start two to four years following implementation and adversely affect bull trout spawning for years.

267. FWS determined that the reduced recruitment of large wood would adversely impact bull trout for years.

268. FWS stated that with the available information and uncertainty, it is impossible to identify the most affected portions of the action area and sub-watersheds.

269. FWS stated that it is difficult to reliably determine the Project's impact to salmonid numbers and reproduction with the "available information."

270. FWS stated that the Project "will significantly disrupt normal and essential bull trout behaviors, including the ability to successfully feed, move, and shelter (also, forage, migrate, seek refugia, overwinter, rear, and/or spawn) in portions of the action area."

271. FWS determined that larger numbers of bull trout will be significantly disrupted when feeding, moving, and sheltering in portions of the action area and may be unable to utilize preferred habitats, be exposed to additional predation, and experience reduced growth, reproductive potential or long-term survival.

272. FWS determined that the Project will not measurably reduce the likelihood of persistence at the scale of the local populations, Methow River bull trout core area, or Mid-Columbia Recovery Unit, and will not prevent the Primary Constituent Elements of designated bull trout critical habitat from being

maintained or degrade the current ability to establish functioning Primary Constituent Elements in the Project Area.

273. FWS determined that the Project would not result in jeopardy or result in adverse modification of designated bull trout critical habitat.

274. The Midnight Project will commercially and non-commercially log and construct and reconstruct haul roads within Riparian Reserves.

275. The Project will remove over 374 acres of overstory within Riparian Reserves which spotted owl utilize for nesting, roosting and foraging habitat. Removal of habitat within Riparian Reserves will reduce habitat connectivity.

276. The Biological Assessment indicates that the treatments within the Riparian Reserves will remove all spotted owl habitat for 40 years after implementation and contribute to the overall reduced survival, reproduction, and dispersal of spotted owls.

277. The Midnight Project Riparian Reserve buffers for fish-bearing and non-fish bearing perennial streams is 100 feet on either side and 75 feet on either side of intermittent streams.

278. The Project allows for commercial harvest in Riparian Reserves during the summertime, if the purchaser “can provide an equivalent harvest method that maintains low soil disturbance impacts with no more than 1-2% ground

disturbance, which is equivalent to expected low impacts seen in areas where winter harvest has been required.”

279. Commercial summer harvesting in Riparian Reserves would not meet ACS objectives unless it uses methods that maintain low soil disturbance, limiting ground disturbance to no more than 1–2%.

280. The Project allows harvested trees and equipment to “skid” through Riparian Reserves in the summertime. The USFS concedes that skidding through Riparian Reserves in the summer will not meet ACS objectives.

281. The USFS states that this adverse effect will be mitigated with concurrent or prior road decommissioning to mitigate skidding-related sediment impacts to streams.

282. The USFS designated intermittent streams in the Project Area based on data supplied by Sundance Geographic System (“GIS”) Analyst merged with a sub-watershed shapefile from National Hydrography Dataset (“NHD”). USDA FOREST SERV., MIDNIGHT RESTORATION PROJECT FINAL HYDROLOGY RESOURCE SPECIALIST REPORT (2025) [hereinafter “Midnight Hydrology Report”] at A-2.

283. Below is a map of the Riparian Reserves USFS identified in the Project Area. USDA FOREST SERV., MIDNIGHT RESTORATION PROJECT FINAL AQUATIC RESOURCE SPECIALIST REPORT (2025) [hereinafter “Midnight Aquatic Specialist Report”] at A-20.

284. Below is a map of all action area streams USFS identified in the Project area from the Project Area. Midnight BA.

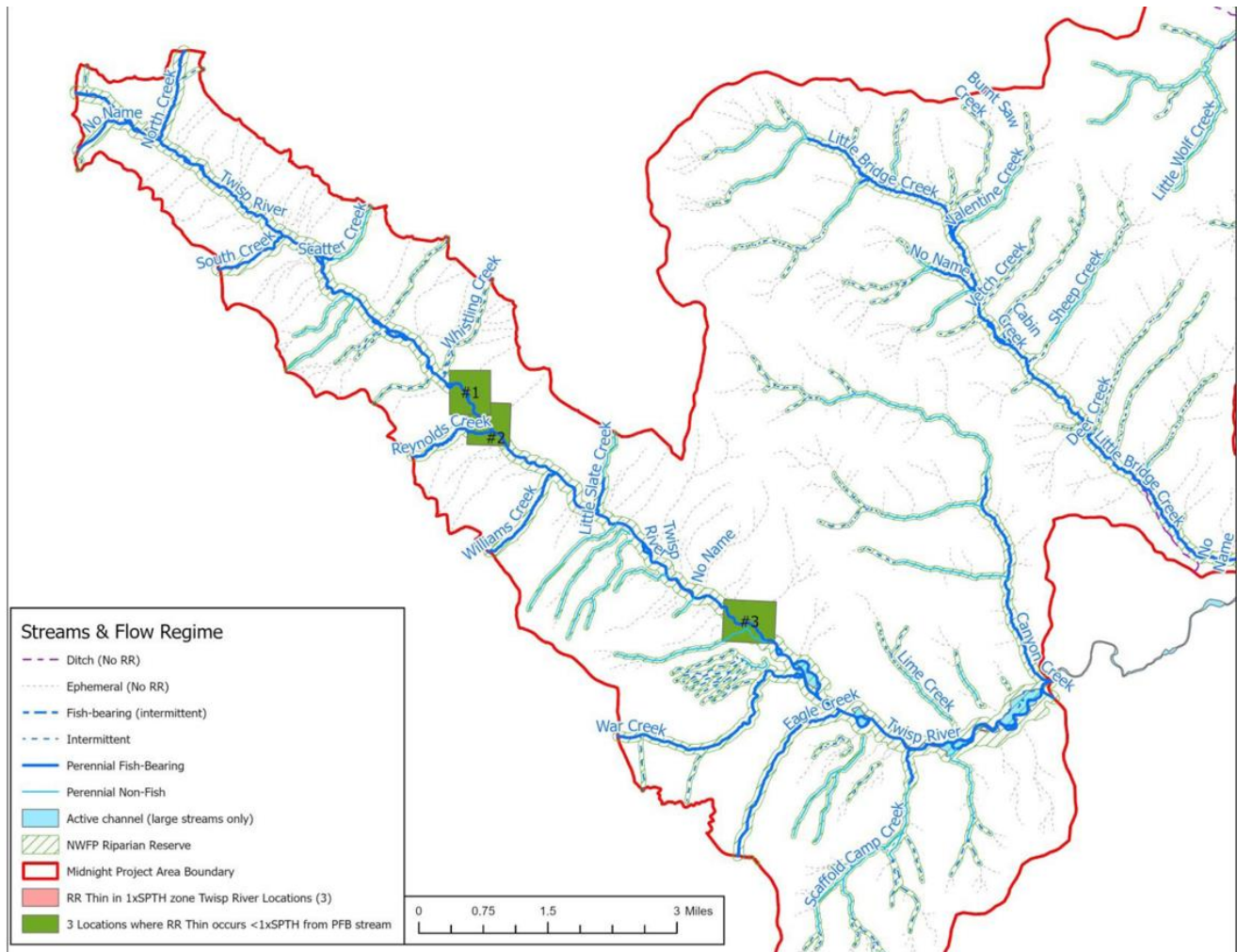
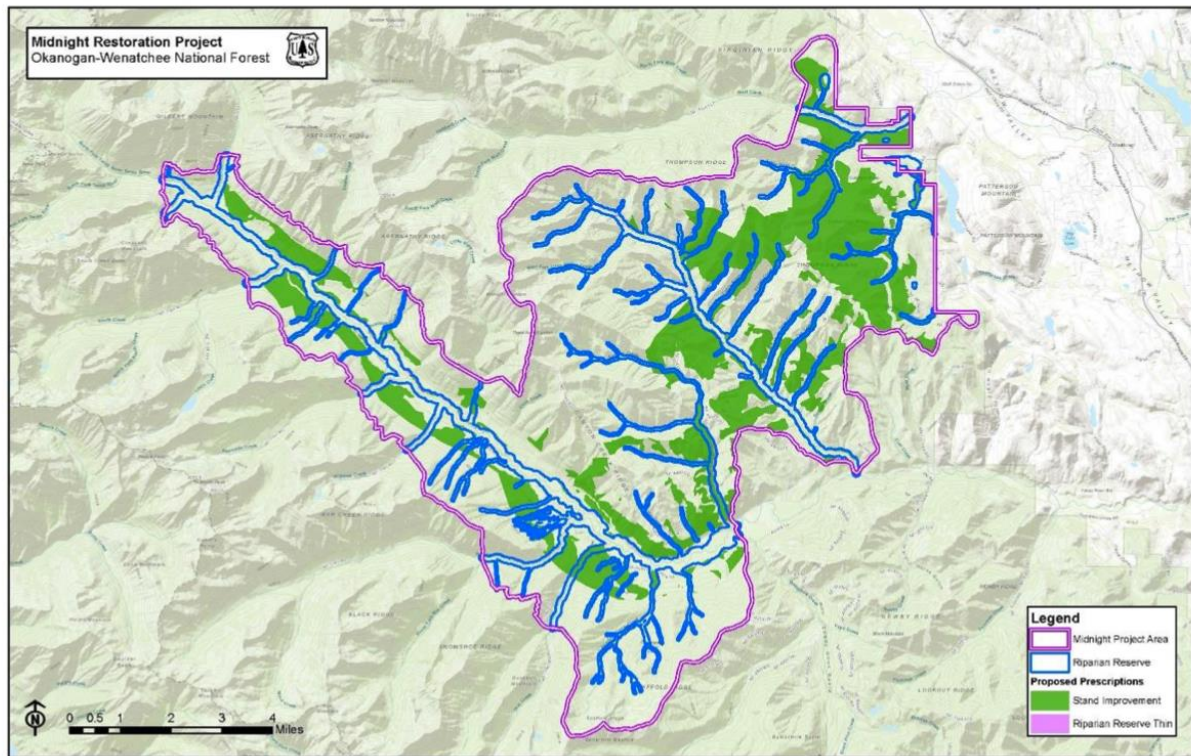


Figure 80. Overview of Twisp River locations where RR Thin occurs <1xSPTH distance from the channel.

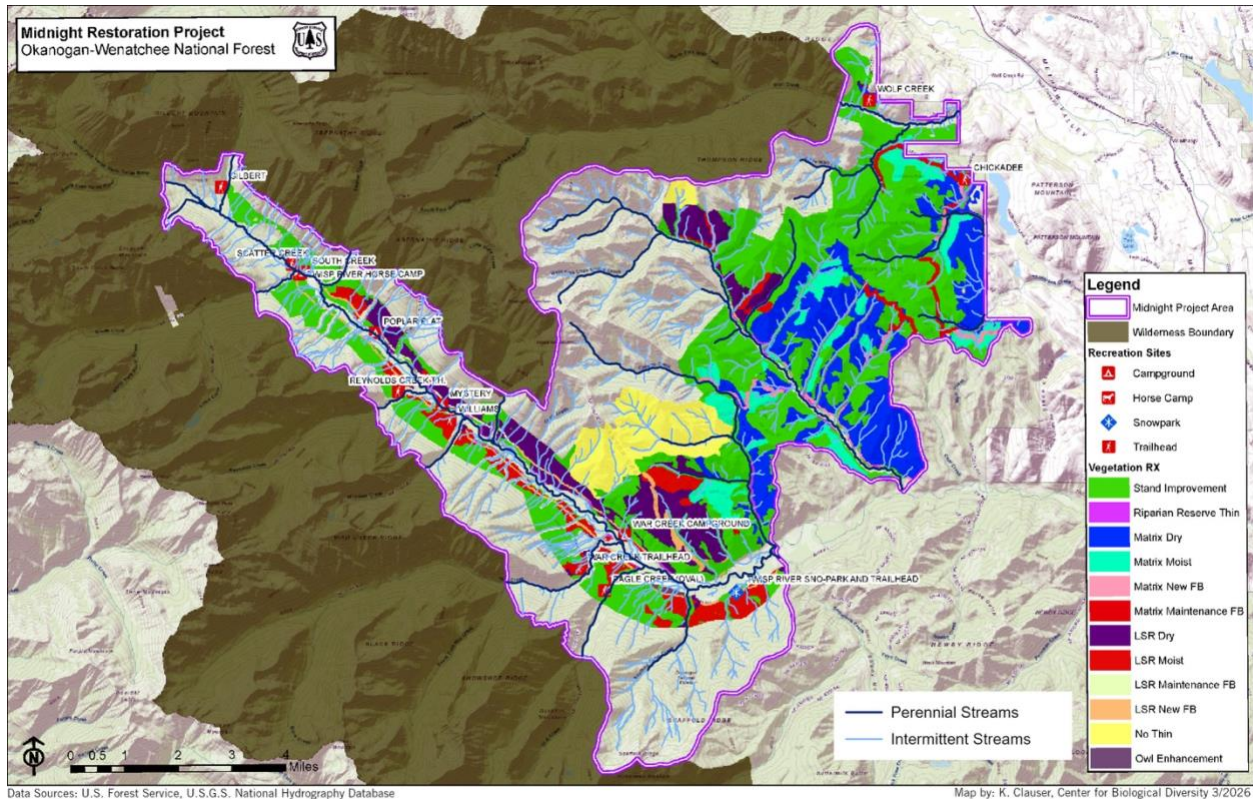
285. Tables 100 and 103 of the BA categorize some of the streams shown in the map. Several streams in the map are missing from the tables.

Figure 2. Midnight Restoration Project Area and Proposed Vegetation Treatments in Riparian Reserves



286. The Midnight BA indicates that all intermittent streams identified in the above map are fish-bearing streams.

287. The Center for Biological Diversity used the same data USFS used to map intermittent streams. The map below was generated by the Center's GIS specialist and indicates that many perennial and intermittent streams have no buffers for Project units:



288. Plaintiffs’ members have also identified through field observation, streams in the Project Area that qualify as Intermittent Streams but were not designated as such in the Project.

289. The USFS did not explain why it did not classify streams that meet the definition of “Intermittent Stream” for the Project.

290. The Project Area contains many areas of steep and unstable slopes that also should receive protection as “Intermittent Streams” according to the NWFP.

291. The Washington Department of Natural Resources stated that their landslide risk model would indicate that “most of the Project Area is moderate-to-high relative risk for shallow landslides.”

292. The USFS “decided to pursue other erosion identification tools that are more locally prescriptive.”

293. The USFS’s model shows that there is overlap between “potential ground disturbance” and commercial treatments but determined that “Generally, contiguous unstable linear features potentially affected by veg[etation] [management], treatments were spatially separated from the stream network.”

294. This conclusion is based on inaccurate classification of intermittent streams.

295. The areas that USFS determined were unstable slopes were not classified as “Riparian Reserves.”

296. The total acres designated as Riparian Reserves in the Project Area by USFS is therefore inaccurate and significantly more acres should be classified as Riparian Reserves.

297. Ground-disturbing activities, including logging above and below steep and unstable slopes, have the potential to cause landslides to expand and to adversely impact aquatic habitat.

298. The USFS did not consider the impact of logging on steep slopes or above or below steep and unstable slopes and the impact to the aquatic habitat.

299. Plaintiffs’ members have also, through recent field observation, identified and viewed recent landslides in the Project Area near intermittent and perennial

streams. These unstable areas were not characterized or protected as required under NWFP.

VI. CLAIMS FOR RELIEF

First Claim for Relief

The USFS violates NFMA and NEPA because the Midnight Project authorizes timber harvest in the Twisp Late-Successional Reserve that is inconsistent with the Northwest Forest Plan Standards and Guidelines.

300. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

301. NEPA and its implementing regulations require that agencies take a “hard look” at the environmental impacts of proposed actions. *See* 40 C.F.R. § 1500.1(b).

302. The USFS’s approval of the Midnight Project must be consistent with the Okanogan National Forest Land Resource Management Plan, NWFP, NFMA, and NEPA. *See* 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(d).

303. The Project will log 9,247 acres in Late-Successional Reserves and remove or downgrade 4,408 acres of spotted owl habitat.

304. The NWFP states that Late-Successional Reserves “are to be managed to protect and enhance conditions of late-successional and old growth forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl.”

305. The objectives of silvicultural activities in LSR should be “to accelerate development of late-successional conditions while making the future stand less susceptible to natural disturbances.”

306. The NWFP provides specific “Guidelines to Reduce Risks of Large-Scale Disturbance” that applies to management actions taken to reduce wildfire risks within LSRs.

307. The NWFP Guidelines state that silvicultural activities aimed at reducing risk shall focus on younger stands in LSR.

308. The NWFP Guidelines state that logging in older stands for the purpose of wildfire protection *may* be appropriate if the following conditions are met: 1) the “activities will clearly result in greater assurance of long-term maintenance of habitat; 2) the activities are clearly needed to reduce risk; and 3) the activities will not prevent the [LSR] from playing an effective role in the objectives for which they were established.” NWFP S&G at C-13.

309. The NWFP Guidelines also state that “the scale of salvage and other treatments should not generally result in the degeneration of currently suitable owl habitat or other late-successional conditions.” NWFP S&G at C-13.

310. The USFS states that the purpose of commercially and non-commercially logging the Twisp LSR is to reduce the risk of large-scale wildfire.

311. The Project activities authorized in the Twisp LSR are not focused on young stands.

312. The Project activities do not accelerate development of late-successional conditions.

313. The Midnight Project will remove a significant amount of nesting, roosting, and foraging spotted owl habitat within the Twisp LSR which will be degraded for over 60 years.

314. The USFS has not demonstrated and cannot demonstrate that the Midnight Project will clearly result in greater assurance of long-term maintenance of northern spotted owl habitat in the LSR.

315. The USFS has not demonstrated that the activities authorized by the Midnight Project Decision Notice within the LSR are clearly needed to reduce the risk of wildfire.

316. The USFS has not demonstrated and cannot demonstrate the activities authorized by the Midnight Project Decision Notice will not prevent the LSR from playing an effective role in serving as habitat for northern spotted owls.

317. The Project will remove a significant amount of habitat within historic owl activity centers. The Midnight Project is not consistent with the 2024 LSRA, which prohibits habitat removal near spotted owl activity centers.

318. The Midnight Project has not been approved by the LSR Work Group for consistency with the applicable LSRA.

319. The USFS is therefore unable to demonstrate compliance with the Northwest Forest Plan's Standards and Guidelines, in violation of NFMA, 16 U.S.C. §1604(i), 36 C.F.R. §219.15(d).

320. The Midnight EA is inadequate under NEPA because by failing to demonstrate that the Project is consistent with the Northwest Forest Plan, the agency did not take a “hard look” at the Project’s true effect and failed to inform the public of the Project’s environmental impact. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005).

321. USFS’s decision to approve the Midnight Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA. 5 U.S.C. § 706(2)(A). The Decision Notice for the Project should be held unlawful and set aside. *Id.*

Second Claim for Relief

The Midnight Project violates NFMA, NEPA, and the APA because it conducts timber harvest within Riparian Reserves that is inconsistent with the NWFP.

322. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

323. The USFS set Riparian Reserve buffers for the Project that are inconsistent with the buffers set forth in the NWFP.

324. The NWFP prohibits management within Riparian Reserves and sets forth buffers for each type of stream: intermittent, non-fish bearing perennial, and fish-bearing perennial.

325. The NWFP requires Riparian Reserves to be applied at specified widths unless adjusted via appropriate analysis.

326. The Project’s Riparian Reserve buffers are significantly narrower than that which is required under the NWFP.

327. The Project fails to designate areas as Riparian Reserve that qualify as such under the NWFP.

328. The USFS fails to provide methodology describing how intermittent streams were identified and how intermittent streams were recategorized as ephemeral streams.

329. The Project authorizes commercial and non-commercial logging units that overlap and include intermittent and perennial streams that qualify as Riparian Reserves but that the USFS failed to designate as Riparian Reserves.

330. The activities authorized do not adhere to the ecological protection needs for intermittent and perennial streams required by the NWFP.

331. The USFS failed to take into consideration slope class and rock type in designating the widths needed for streamside protection along intermittent streams.

332. By not classifying known intermittent streams, the USFS is conducting harvest activities in Riparian Reserves in violation of the NWFP.

333. The USFS fails to adequately consider the impact of the Project in regard to steep, unstable, and potentially unstable slopes and the impacts on the aquatic systems.

334. The NWFP prohibits timber harvest within Riparian Reserves that retards or prevents attainment of the Aquatic Conservation Strategy objectives.

335. Bull trout are riparian-dependent species.

336. The Project will conduct commercial and non-commercial treatment within Riparian Reserves that is inconsistent with Aquatic Conservation Strategy Objectives.

337. The Project will significantly degrade designated bull trout critical habitat for a prolonged period by exacerbating peak high flows, reducing base flows, increasing turbidity, and degrading water quality in a manner that adversely affects bull trout.

338. The USFS is unable to demonstrate that the activities authorized in the Riparian Reserves are necessary to meet Aquatic Conservation Strategy objectives.

339. The Project allows for summer harvest in the Riparian Reserves that the USFS concedes does not meet Aquatic Conservation Strategy Objectives.

340. The Project allows for skidding in Riparian Reserves that does not meet Aquatic Conservation Strategy Objectives.

341. The Project offsets this violation of Aquatic Conservation Strategy Objectives by decommissioning roads. This violates the NWFP prohibition of the use of mitigation or planned restoration to offset habitat degradation. NWFP S&G at C-37.

342. The USFS is unable to demonstrate compliance with the NWFP's standards for Riparian Reserves and fails to take a hard look at the Project's impacts in violation of NFMA, NEPA and the APA.

343. USFS's decision to approve the Midnight Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA. 5 U.S.C. § 706(2)(A). The Decision Notice for the Project should be held unlawful and set aside. *Id.*

Third Claim for Relief

The USFS fails to take a hard look at the Project's impact on Northern Spotted Owls.

344. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

345. The USFS concedes in the Midnight EA that it applies the 2020 CEQ NEPA regulations at 40 C.F.R §§ 1500 *et seq.*

346. NEPA requires federal agencies, including the USFS, to take a "hard look" at the direct, indirect, and cumulative impacts of proposed major federal actions.

42 U.S.C. § 4332(C)(i)-(ii); 40 C.F.R. §§ 1502.16, 1508.25(c) (1978). Among the impacts NEPA requires agencies to disclose, are impacts to listed species like the Northern spotted owl.

347. Best available information requires the USFS conduct annual owl surveys on the year prior to project implementation to determine owl distribution, reproductive status, and presence of owl activity centers.

348. The USFWS's Protocols for surveying owls establish specific methodological requirements necessary to conduct adequate and reliable surveys for northern spotted owl.

349. The USFS has failed to conduct adequate surveys of northern spotted owl in the action area.

350. The Midnight Project Area constitutes important habitat for northern spotted owls and there is a high probability that the Midnight Project Area is occupied by a reproducing pair or territorial individuals.

351. The amount of nesting and roosting habitat in the Midnight Project Area makes it important and optimal habitat for dispersing individual northern spotted owls.

352. Optimal dispersal habitat is essential for northern spotted owl recovery as it provides habitat for individuals displaced by barred owls and habitat loss due to wildfire and logging projects. Dispersing owls play a critical role in maintaining the species distribution, recruitment, territory occupancy and territorial colonization rates.

353. The Midnight Project Decision Notice authorizes the removal of a substantial amount of spotted owl dispersal capable habitat.

354. The USFS has failed to take a hard look at the Project impacts on dispersing owls.

355. Further, the USFS has failed to take a hard look at the impact to spotted owls from authorizing commercial logging in ecologically critical areas (i.e. LSRs and Riparian Reserves); removing nesting, roosting, foraging habitat and dispersal

habitat for the long-term; and logging mature and old growth forest that is already properly functioning habitat within historical fire regime in an attempt to influence fire.

356. The USFS has failed to take a hard look at the cumulative effects of this large-scale Project when combined with past and reasonably foreseeable future timber sales in the same critical habitat unit.

357. The USFS further failed to take a hard look at the Project's impacts on riparian areas and aquatic species because it failed to adequately assess, designate and consider intermittent streams and steep slopes.

358. The USFS's failure to take a hard look at the Project's impacts results in a violation of NEPA and the APA.

359. The USFS's decision to approve the Midnight Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA. 5 U.S.C. § 706(2)(A). The Decision Notice for the Project should be held unlawful and set aside. *Id.*

Fourth Claim for Relief

The USFS failed to demonstrate compliance with the NWFP's requirement for coarse woody debris retention in Matrix, in violation of NFMA and NEPA.

360. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

361. The NWFP requires USFS to provide specific amounts of coarse woody debris. Specifically, each project must retain "a minimum of 120 linear feet of logs

per acre greater than or equal to 16 inches in diameter and 16 feet long should be retained. Decay class 1 and 2 logs can be counted towards these totals. Down logs should reflect the species mix of the original stand.” NWFP S&G at C-40.

362. The Record contains no information regarding compliance with this standard.

363. The Decision Notice does not contain any design features demonstrating that the Project would meet this standard.

364. The USFS therefore fails to demonstrate compliance with the NWFP in violation of NFMA and NEPA and is arbitrary and capricious in violation of the APA.

365. The USFS’s decision to approve the Midnight Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA. 5 U.S.C. § 706(2)(A). The Decision Notice for the Project should be held unlawful and set aside. *Id.*

Fifth Claim for Relief

The USFS failure to prepare an Environmental Impact Statement for the Midnight Project, violates NEPA.

366. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

367. NEPA and its implementing regulations require federal agencies to take a hard look at the environmental consequences of proposed actions and the

reasonable alternatives that would avoid or minimize such impacts or enhance the quality of the human environment. See 42 U.S.C. § 4332(2)(C)(i).

368. Federal agencies must prepare an EIS for any federal action that may have a significant environmental effect. 42 U.S.C. § 4332.

369. In assessing the appropriate level of NEPA review, the USFS is required to determine whether the project “is likely to have significant effects and is therefore appropriate for an environmental impact statement.” 40 C.F.R. § 1501.3(a)(3).

370. The USFS failed to prepare an EIS to analyze the impacts of the Midnight Project despite, among other things: 1) the northern spotted owl’s continued decline and dependence on mature and old-growth forest for its survival and recovery; 2) that logging previously unmanaged older forests for the alleged benefit of the species is highly controversial and involves a substantial degree of scientific uncertainty; 3) the number of acres of LSR to be logged is itself significant; 4) the Project will have long term direct, indirect and cumulatively significant adverse impacts to not only the species in the Project Area, but the community of Twisp; 5) the Project will adversely affect northern spotted owls; and 6) the Project will result in violations of the Northwest Forest Plan.

371. Failing to prepare an EIS prior to authorizing the challenged decision, instead relying upon the issuance of a FONSI, when the impact of the Project is

plainly “significant” and several of NEPA’s “significance” finding factors exist with respect to the Midnight Project, violates NEPA.

372. The USFS’s decision to approve the Midnight Project is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA. 5 U.S.C. § 706(2)(A). The Decision Notice for the Project should be held unlawful and set aside. *Id.*

Sixth Claim for Relief

The Biological Opinion and Incidental Take Statement are Arbitrary and Capricious under the APA.

373. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

374. FWS determined that the Project will reduce the northern spotted owl’s ability to reproduce, survive, forage, and disperse for over 40 years *after* completion of the 20-year Project.

375. All northern spotted owl critical habitat subunits and units must function to contribute to the species’ recovery.

376. FWS determined that the maintenance of critical habitat is necessary to provide for viable populations over the long term by providing for survival and reproduction, refugia from habitat disturbances, support during dispersal, and buffering from competition with the barred owl.

377. FWS determined that the further loss of habitat from the Project will reduce the ability of the subunit to buffer northern spotted owl from barred owl competition and reduce the spotted owl distribution and remove refugia habitat.

378. FWS determined that the Project will remove 1,472 acres of critical habitat and will not be able to serve its intended conservation function or purpose after Project completion.

379. FWS determined that the Project will further remove or downgrade 3,353 acres of critical habitat that will reduce its ability to buffer against future additional losses.

380. FWS determined that the Project will further reduce the ability of the subunit to support a well-distributed and interconnected population.

381. FWS determined that prior to Project activities, habitat destruction and fire has resulted in an already significant reduction of critical habitat in the Project Area.

382. FWS did not consider the overall consistency of the Project with the intent of the NWFP. 77 Fed. Reg. 71940.

383. FWS determined that because the Project will only reduce a fraction of critical habitat of the larger Eastern Cascades North critical habitat unit, the adverse effects from the Project “are not expected to appreciably diminish the overall conservation and recovery role of the larger critical habitat unit.”

384. FWS did not reconcile this conclusion with its own subunit findings.

385. FWS determined that the Project would result in the loss of reproduction for a pair of northern spotted owls and increased breeding dispersal which would equate to a 5% reduction in the breeding population that is already declining by 5-9% per year and facing extirpation within decades.

386. FWS determined that this loss results in the reduction of reproduction, number, and distribution of northern spotted owls within the Eastern Washington Cascades province.

387. FWS discounted this loss by scaling it to the “range-wide” population, despite the Recovery Plan and FWS’s own acknowledgment that an action impairing a *recovery unit’s* survival and recovery function may represent jeopardy.

388. In light of FWS’s own findings in its Biological Opinion, the Biological Opinion’s conclusion that the Project “is not likely to jeopardize the continued existence of the northern spotted owl and is not likely to destroy or adversely modify designated [owl] critical habitat” is arbitrary and capricious under the APA.

389. FWS also determined that the Project will further exacerbate the already degraded condition of bull trout critical habitat in the Project Area to a significant extent for an extended period of time.

390. FWS was unable to reliably determine the effect of the Project on the availability of the bull trout's food base.

391. FWS was unable to describe or quantify the effects to bull trout due to lack of information and uncertainty of the Project but failed to disclose what information was lacking and why.

392. FWS determined that the Project will significantly disrupt normal and essential bull trout behaviors for decades.

393. FWS concluded that the Project would kill or injure a small or a very small number of bull trout and a larger number would be significantly disrupted when feeding, moving and sheltering in portions of the action area.

394. FWS nonetheless concluded that the Project would not result in jeopardy to the species or adverse modification to its habitat.

395. FWS did not adequately explain why the Project's admitted significant effects to bull trout and bull trout critical habitat would not result in jeopardy to the species or adverse modification of its habitat.

396. Under the ESA, the FWS must ensure not only the survival but also the recovery of listed species. *See* 16 U.S.C. § 1536(a)(2); *Alaska v. Lubchenco*, 723 F.3d 1043, 1054 (9th Cir. 2013) (explaining that "the goal of the ESA is not just to ensure survival, but to ensure that the species recovers to the point that it can be delisted," and that agencies must consider whether a proposed action could impede

achievement of recovery plan goals). Accordingly, FWS was required to consider whether the proposed action would prevent the northern spotted owl and bull trout from achieving its Recovery Plan's delisting criteria.

397. For northern spotted owls, FWS found that recovery in the province depends on habitat protection yet approved the removal of recovery-essential habitat for more than 40 years without explaining how the Project does not appreciably reduce the likelihood of recovery.

398. For bull trout, FWS found that recovery depends on habitat protection but authorized the Project that would reduce the species' ability to survive and reproduce for decades without explaining how the Project does not reduce the likelihood of recovery.

399. FWS's "no jeopardy" determinations are arbitrary and capricious and not in accordance with the ESA. Although FWS found that the Project would degrade critical habitat, reduce survival and reproduction, and further diminish habitat below levels necessary to support recovery for northern spotted owl and bull trout, the agency nevertheless concluded—without reasoned explanation—that the Project would not jeopardize the species. In light of the FWS's own findings that the Project would impair both the species' recovery and its survival, the determination that the Project does not cause jeopardy lacks a rational connection between the facts found and the conclusion reached, and is therefore, arbitrary and capricious.

400. The Project Biological Opinion's no jeopardy and no adverse modification conclusion concerning northern spotted owls and bull trout violates the ESA and is arbitrary and capricious under the APA.

401. FWS violated the ESA in preparing and approving the Biological Opinion. 16 U.S.C. § 1536; 50 C.F.R. § 402.14. The Biological Opinion is arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA. 5 U.S.C. § 706(2)(A). The Biological Opinion should be held unlawful and set aside. *Id.*

VII. RELIEF REQUESTED

- A. Declare that the USFS Decision Notice for the Project is unlawful under NFMA and NEPA, and arbitrary and capricious under the APA;
- B. Declare that the FWS Biological Opinion for the Project is unlawful under the ESA, and arbitrary and capricious under the APA;
- C. Set aside and vacate the Decision Notice and Biological Opinion;
- D. Enjoin any implementation of the Project pending full compliance with law;
- E. Award Plaintiffs costs and reasonable attorney's fees as authorized by the ESA, 16 U.S.C. § 1540(g), and the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other statute; and

F. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 31st day of August, 2026.

/s/ Brandon Jones-Cobb

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