

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

CENTER FOR BIOLOGICAL DIVERSITY;

ORDER

Plaintiff,

Civ. No. 6:24-cv-00930-AA

v.

U.S. FOREST SERVICE; BROOKE
ROLLINS, in her official capacity;
REBECCA BROOKE, in her official
capacity,

Defendants,

DOUGLAS COUNTY, OREGON;
COOS COUNTY, OREGON;
SAVE THE RIDERS DUNES, INC.,

Intervenor Defendants.

AIKEN, District Judge.

Before the Court is Plaintiff Center for Biological Diversity's Motion for Preliminary Injunction. For the reasons explained below, Plaintiff's Motion, ECF No. 116, is GRANTED.

BACKGROUND

The facts of this case are well known to the parties and are set out in the Court's Opinion & Order, dated August 9, 2026 ("Opinion"). ECF No. 129

LEGAL STANDARD

A preliminary injunction is an “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking a preliminary injunction must show that (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the plaintiff’s favor; and (4) an injunction is in the public interest. *Id.* at 20. “Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge.” *Roman v. Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020). The plaintiff must carry its burden of persuasion by a “clear showing” of the four *Winter* elements. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012).

The ESA mandates that “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the ESA].” 16 U.S.C. § 1531(c)(1). Accordingly, each federal agency must consult with the appropriate service, in this case, US Fish and Wildlife Service (“FWS”), to “insure” that the agency’s actions are “not likely to jeopardize the continued existence of any [listed species] or result in the destruction or adverse modification of habitat of such species” and to identify ways to modify the agency’s actions to avoid or reduce harms. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14. If a listed species “may be present” where a proposed action would occur, the agency must prepare “at the earliest possible time” a biological assessment

(“BA”) to determine whether the action “may affect” the listed species. 16 U.S.C. § 1536(c)(1); 50 C.F.R. §§ 402.12, 402.14(a). The agency must use “the best scientific and commercial data available” to determine whether the action “may affect” the listed species or its habitat. 16 U.S.C. § 1536(a)(2). Once consultation is initiated or reinitiated, the agency “shall not make any irreversible or irretrievable commitment of resources . . . which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.” 16 U.S.C. § 1536(d). “This prohibition is in force during the consultation process and continues until the requirements of Section 7(a)(2) are satisfied.” 50 C.F.R. § 402.09.

DISCUSSION

Plaintiff requests a preliminary injunction to protect the coastal marten, an ESA-listed threatened species, and its designated critical habitat during a six-day commercial OHV event, Winchester Bay UTV Takeover (the “Event”), planned by the Event organizer (the “Organizer”). Pl. Mot. at 1. The Organizer has not sought a special use permit (“SUP”) for the Event because he “has no planned commercial activities on NFS lands.” Holman Second Decl. ¶ 5, ECF No. 121. The Organizer maintains that the Event shall take place on the Douglas County land adjacent to the Oregon Dunes National Recreation Area (the “Dunes”). *Id.* ¶¶ 3, 5, 6; *see also id.*, Ex. 2, ECF 121-2.

Plaintiff seeks the closure of seven areas of habitat in the Middle Riding area, with roping, signage, and trail-cameras and a curfew of sunset to sunrise during the Event’s duration. Pl. Mot., Ex. 1, ECF No. 116-1. The Middle Riding Area, also

known as the Umpqua Dunes, is the Dunes area adjacent to the Event's Douglas County location. It is one of three Dunes riding areas, which are managed by the Forest Service, as detailed in the Routes Project and by the governing management plans. AR06718 (Routes Project ROD); AR02608-923 (Forest Plan); AR03660-813 (Dunes Plan). The Plans include directives to conserve listed species and critical habitat and to regulate OHV use.

As established in the Opinion, Forest Service violates the ESA by failing to reinitiate ESA consultation as to the Routes Project after the coastal marten was listed in 2020. The Routes Project was implemented in 2015, prior to the marten's listing. AR06718 (Routes Project ROD). Though the Routes Project contains no coastal marten protections, it provides protections for the threatened snowy plover. *See, e.g.*, AR6722, AR06731 (setting out snowy plover protections). Unlike the coastal marten, the plover was an ESA-listed species at the time the Routes Project was implemented.

The ESA requires Federal agencies to reinitiate consultation "where discretionary Federal involvement or control over the action has been retained or is authorized by law and . . . a new species is listed or critical habitat designated that *may be affected* by the identified action." 50 C.F.R. § 402.16(a)(4) (emphasis added). Further, ESA regulations require that an agency review its actions "at the earliest possible time" to determine whether "any action . . . may affect listed species or critical habitat[.]" 50 C.F.R. § 402.14(a) (2019). The coastal marten was listed in 2020 and the critical habitat was designated in 2024. The Forest Service was

obligated to consult “at the earliest possible time” after the marten’s 2020 listing. Yet the Forest Service waited more than five years to draft a biological assessment and has not yet reinitiated consultation.

Historically, organizers of commercial OHV events at Winchester Bay, such as DuneFest, have obtained special use permits (“SUP”) to conduct such events.¹ *See, e.g.*, AR04726–30 (2011 Decision Memo for DuneFest permit). But that changed when this litigation commenced in 2024. *See* Holman Second Decl. ¶¶ 4–10, ECF No. 121. Since 2024, organizers of commercial OHV events held at Winchester Bay (DuneFest and Winchester Bay UTV Takeover) have conducted commercial OHV events without SUPs, for which Forest Service cites various reasons. *Id.* Though the events are held on Douglas County land adjacent to the Dunes, the events provide direct access to the Dunes’ Middle Riding Area. As recounted in the Opinion, the commercial events are attended by thousands of people including vendors and sponsors and involve hundreds of riders. The events bring an unusually large number and concentration of riders onto the Dunes. And the events conduct large

¹ Under Forest Service regulations, commercial activities cannot be conducted on forest service land without an SUP. *See* 36 C.F.R. §§ 251.50, 251.51. And noncommercial activities with 75 or more people also generally cannot be conducted on forest service land without an SUP. *See* 36 C.F.R. § 251.50; *see also* Holman Second Decl. ¶¶ 4–10, ECF No. 121. To determine whether an activity falls in one of these categories, courts look to the substance of the activity, not the form. Though Organizer stated he would not charge a fee to the event, the event has the character of a trade show with the presence of vendors and sponsors. *Id.*, Ex. 2. Further the Organizer has advertised on social media that the Event will involve night riding and group riding activities. *Id.* Such event activities typically take place on the Dunes. *See* Opinion (describing such activities and their impacts in detail).

group riding activities, including night rides and group rides, which causes damage to the Dunes, including to critical habitat.

Here, the Organizer did not obtain a permit. When Forest Service noticed that “the event website” was advertising night rides, day rides, and other large group activities typically conducted during commercial OHV events, the Forest Service contacted the Organizer and advised the Organizer that he would need an SUP for such an event. Holman Decl. Ex. 2, ECF No. 121-2. The Organizer responded that the Treasure Hunt and the Poker Run would be conducted “100% on county land.” *Id.* The Organizer also stated that he was not going to charge a fee and he volunteered to provide signage at the county-Dunes boundary line with the language: “Entering Event Area” and “Leaving Event Area.” *Id.* But the Organizer did not address the issue of the night rides or day rides advertised on the Event website.

I. *Likelihood of Success on the Merits*

Plaintiff has already prevailed on the merits of its ESA claims, as set out in the Court’s Opinion.

II. *Likelihood of Irreparable Harm*

Plaintiff has also already shown likelihood of irreparable harm. In the Middle Riding Area, known as the Umpqua Dunes, the Routes Project converted trail riding to open riding in areas that overlap critical habitat. *See* AR06739 (Routes Project ROD) (Middle Riding Area converted to open riding, shown in purple and marten habitat shown in green). Among the Middle Riding areas converted into open riding were “2 acres of native forest” on “Banshee Hill,” AR06721 (Routes Project ROD), and

a large area of vegetated habitat that the Project aims to turn into “open sand[,]” AR06717–18 (*id.*); *see also* AR06739 (*id.*) (map of vegetated habitat to be converted into sand, shown in purple). Unlike the North and South Riding areas, the Forest Service provides no curfew for the Umpqua Dunes and authorizes open riding 24 hours a day. AR03689–90 (Dunes Plan). Nearly the entire Umpqua Dunes is designated critical habitat for the coastal marten. *See* AR09432 (map of critical habitat Unit 3 which overlaps Middle Riding Area in Douglas County).

Martens are known to live in the Middle Riding Area’s Umpqua Dunes, which is south of the Umpqua River. AR06762 (Linnell et al., 2018). In 2018, the marten population south of the Umpqua River was estimated at only about 30 adult individuals. AR07177 (2019 Status Assessment). The coastal marten subpopulation in the Middle Riding Area is small and isolated and at high risk of extirpation. AR07345 (Restoration Project EA) (explaining that the Oregon Dunes marten population is “vulnerable to extirpation” because of its small size and isolation from other populations); AR08001 (Listing Rule) (stating same); AR08053 (Recovery Outline) (same). The record also shows that the destruction and fragmentation of marten habitat and corridors pose the greatest threat to the survival of the Oregon coastal marten Distinct Population Segment. AR06750 (Moriarty et al., 2016). The Event is slated to occur when marten mothers are still caring for their kits, AR07529 (Restoration Project BA), a “critical and sensitive period” for female martens and their kits, SuppAR160. (Delheimer et al. 2021).

Finally, as set out in detail in the Opinion, the record also shows that large group riding events, including night riding, which can include up to 75–100 OHVs, direct riders to areas on or adjacent to critical habitat. The Court determined that “commercial OHV events bring activity to the Dunes of a different magnitude, intensity, and impact[,]” further increasing the risk of harm the marten and its habitat. *See* Opinion at 28–37 (surveying the types of OHV-caused harm to the marten or its habitat such as damage to vegetated and forested areas of habitat and corridors (often in sand areas), direct damage to the marten by high levels of unchecked OHV noise and other human disturbance that disrupt key survival behaviors, and increased risk of marten strike on Highway 101 and on the Dunes).

Once a species has been extirpated or harmed beyond the point of recovery, that harm is irreparable. As discussed in the Opinion, the population at issue is small enough that the loss of even one or two individuals may be irrecoverable.

III. *Balance of Equities and Public Interest*

The third and final *Winter* factor also weighs in Plaintiff’s favor. The public interest favors protecting listed species and their habitat. The public interest favors protecting natural resources in the Dunes. And the public interest favors the ability of all recreational users to use the Dunes. As to the balance of equities, the Forest Service is required by the Routes Project, and the Dunes and Forest Plans to protect listed species and their habitat and to regulate OHV use to do so. *See, e.g.* AR06330–33 (Routes Project BiOp) (requiring ongoing monitoring, reporting, enforcement, and public education as to snowy plover); AR03718, AR03783–92 (Dunes Plan)

(authorizing Forest Service to close riding areas to “protect special habitats” and “to restrict[] [OHV riding] at night,” and setting forth monitoring procedures for listed species and critical habitat on the Dunes); AR03742 (Dunes Plan); AR02693 (Forest Plan) (directing Forest Service to protect listed species); AR03745 (Dunes Plan); AR02694 (Forest Plan) (directing Forest Service to protect critical habitat); AR03737 (Dunes Plan); AR02689 (Forest Plan) (directing Forest Service to [r]estrict or prohibit specific types of motor vehicles off roads in areas not already restricted if needed to protect resources, provide for public safety, or minimize conflicts among users”); AR03719 (Dunes Plan) (directing Forest Service to “use signs and barriers where necessary to protect special habitats within and adjacent to [open riding areas]”). Forest Service is not being asked to do anything that it is not already obligated to do. The public interest in riding OHVs on the Dunes is minimally affected because the relief is tailored to provide plentiful OHV riding opportunities. The Organizer’s interest in holding the Event is not affected because the Organizer has stated that he intends to hold the Event only on Douglas County land. The Organizer volunteered, in email communications with the Forest Service, to install signage at the boundary between the Event space in Douglas County and the Dunes.

Defendants contend that the requested relief lacks connection to Plaintiff’s claim. USFS Resp. at 12; Int. Resp. at 6. But Plaintiff’s First Claim alleges that the Forest Service violates the ESA by failing to reinitiate consultation on the Routes Project after the marten was listed in 2020. The Routes Project contains details for how the Forest Service manages OHV use on the Dunes and sets out listed species

protections for the snowy plover. Had the Forest Service consulted, as it was required to do, the Routes Project would contain marten protections as it contains snowy plover protections. The lack of marten protections that resulted from the agency's failure to consult is the heart of Plaintiff's Routes Project claim—a claim on which it prevailed. The Event will bring riders to the Middle Riding Area. The Event thus will likely result in an increased number of OHVs in the Middle Riding Area, even if no official Event activities take place. The protections provided here will stay in place until the parties have had the opportunity to brief and the Court to consider more durable protections, as directed in the Opinion.

Forest Service contends that it does not have the time or resources to close such areas or habitat or to install roping or signage. USFS Resp. at 20, ECF No. 127. It also contends that it does have the staffing to enforce such closures or to enforce a curfew. And it contends that cameras are hard to install and are likely to be stolen, removed, or damaged. In recognition of the burden on Forest Service, the Court has reduced the number of areas to be closed and the number of cameras to be used. Further, the Forest Service shall provide a copy of the camera footage to Plaintiff, who can annotate it.

In sum, all *Winter* factors favor Plaintiff. Accordingly, Plaintiff is entitled to preliminary relief as outlined below.

IV. *Bond*

Defendants request that any injunctive relief be conditioned on a bond. Under Federal Rule of Civil Procedure 65(c), a court may issue a preliminary injunction

“only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). “Rule 65(c) invests the district court with discretion as to the amount of security required, *if any*.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (internal quotation marks omitted) (emphasis in original) (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)). “The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Id.*

The Court declines to issue a bond. There is no harm to Forest Service because it is already obligated to protect listed species and critical habitat. And there is no harm to Intervenors because the relief is narrowly tailored and will not prevent the use of OHVs on the Dunes outside of the protected marten habitat. Riding opportunities in the Middle Riding Area and elsewhere on the Dunes abound, and the Event will continue as planned.

CONCLUSION

For the reasons explained above, Plaintiff’s Motion for Preliminary Relief, ECF No. 116 is GRANTED.

1. Closures with Signage. Banshee Hill shall be closed. And the southwestern edge of Umpqua Dunes shall be closed. These areas will remain closed until the determination of longer-term interim measures as directed in the Court’s

August 9, 2026, Opinion. The areas to be closed are designated on the map in Plaintiff's PI Motion.

- The Forest Service shall rope off the two closed areas.
 - The Forest Service shall post signs at the closed areas. The signs shall be brightly colored and no smaller than 20 x 24 inches.
 - The Forest Service shall monitor and replace any damaged removed/lost posts or signs
 - The Closures and Signage shall remain in place until longer-term interim measures have been determined.
2. Curfew. The Forest Service shall impose a curfew from 10:30 pm until 6:00 am in the North Riding Area. The curfew shall remain in place until the determination of longer-term interim measures as directed in the Opinion.
 3. Cameras. The Forest Service shall install trail cameras at the two closed areas. The cameras shall remain in place only until Monday, August 17, 2026, after the Event ends. The Forest Service shall monitor and repair or replace them as needed during the Winchester Bay UTV event. At the completion of the Event, the Forest Service shall provide Plaintiff a copy of the footage.
 4. Monitoring. The Forest Service shall monitor closed areas, signage, roping, and cameras at least daily and immediately replace or repair items as needed.
 5. Organizer Signage. The Organizer had volunteered to place signage at the boundary of the County event space and the Dunes. If the Organizer chooses to do so, the Organizer may find it beneficial to notify attendees and participants of the closures and curfew outlined above.

It is so ORDERED and DATED this 10th day of August 2026.

/s/Ann Aiken
ANN AIKEN
United States District Judge