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Via Email and Certified Mail

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Re: Sixty-Day Notice of Intent to Sue for Violating the Endangered Species Act

The U.S. Forest Service (“Forest Service”), U.S. Fish and Wildlife Service (“USFWS”), and the officers and supervisors to whom this letter is directed (collectively, “the agencies”) are hereby notified that WildEarth Guardians and Oregon Wild (“Guardians”) intend to bring suit challenging the agencies’ failure to comply with Section 7 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1536, with regards to the Gate Insect and Disease Project, 27 Road Fuel Break Project, Gibson Insect and Disease Project, and Hootnanny Insect and Disease Project (collectively, “the Projects”).

The Projects authorize logging and burning over a collective 11,765 acres on the east side of Mt. Hood National Forest (“the Forest”), much of it in northern spotted owl habitat. As detailed below, the agencies have violated their procedural and substantive duties under the ESA by failing to adequately consult regarding the Projects’ impacts to the threatened spotted owl and its critical habitat and failing to ensure against jeopardy or adverse habitat modification.

To prevent further violations and harm to the spotted owl, Guardians intends to file suit after the statutory 60-day period has run unless the issues described in this notice are remedied.

PARTIES TO THIS LETTER

WildEarth Guardians is a nonprofit conservation organization with offices in Washington, Oregon, and five other states. Guardians has over 175,000 members and supporters across the United States and works to protect and restore wildlife, wild places, wild rivers, and the health of the American West. Guardians maintains an office in Portland, Oregon, and many of its members, staff, and supporters routinely work and recreate in the Mt. Hood National Forest.

Oregon Wild is a nonprofit conservation organization founded in 1974 with the mission of protecting and restoring Oregon's wildlands, wildlife, and waters as an enduring legacy for future generations. Oregon Wild advocates for Oregon's unique environments through a combination of education, public communications, direct lobbying, grassroots activism, litigation, and partnering with and elevating allied groups and voices. Oregon Wild has over 20,000 members and supporters, and it maintains offices in Portland, Eugene, Bend, and Enterprise, Oregon.

LEGAL BACKGROUND

The ESA commands all federal agencies to “seek to conserve endangered species and threatened species and . . . utilize their authorities in furtherance of the purposes of” the Act. 16 U.S.C. § 1531(c)(1). Its purpose is to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered and threatened species[.]” *Id.* § 1531(b). The ESA is intended not just to forestall extinction, but to allow species to recover to the point where they may be delisted. Federal agencies are thus mandated to actively work towards *recovery* of protected species. *Id.* §§ 1532(3) (defining “conservation” to mean both survival and recovery of species), 1536(a)(1) (requiring agencies to work towards species' recovery). To implement these sweeping policy goals, the ESA imposes a series of interrelated substantive and procedural obligations on all federal agencies.

Section 7(a)(2) of the ESA imposes a substantive duty upon each federal agency to ensure that any action authorized, funded, or carried out by such agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species,¹ or (2) result in the destruction or adverse modification of the critical habitat of such species. *Id.* § 1536(a)(2). To “jeopardize the continued existence” of a species 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 [its] reproduction, numbers, or distribution[.]” 50 C.F.R. § 402.02.

“Destruction or adverse modification” was for many years defined as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species.” 50 C.F.R. § 402.02 (2018). In 2019, the USFWS amended this regulatory definition to read “a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole* for the conservation of a listed species.” 50 C.F.R. § 402.02 (2019) (emphasis added). In 2026, however, a federal court ruled that the narrowing language “as a whole” was contrary to the ESA's

¹ A “threatened” species is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). Threatened species are granted largely the same protections as endangered species. *See id.* § 1533(d); 50 C.F.R. § 17.31(a).

plain text. *Ctr. for Biological Diversity v. U.S. Dept. of the Interior*, No. 24-CV-04651-JST, 2026 WL 898264, at *17–18 (N.D. Cal. Mar. 30, 2026). The court therefore vacated the amended language and reinstated the long-standing previous definition. *See id.* at *24–25. The ESA therefore prohibits “any adverse modification [of critical habitat], with no requirement that the adverse modification rise to a ‘considerable level.’” *Id.* at *17. The “prohibition on adverse modification is absolute.” *Id.* at *18. Thus, federal agencies must ensure that their actions do not cause even the “adverse modification to a small part of a species’ habitat[.]” *Id.*

To implement this substantive provision, ESA Section 7 also imposes a procedural requirement obligating any federal agency proposing an action (the “action agency”) to consult with—as relevant here—the USFWS to evaluate the proposed action’s effects on every listed species present in the project area. 16 U.S.C. § 1536(a)(2). If the action agency determines that a proposed action “may affect” any listed species, it must prepare a biological assessment (“BA”) analyzing the proposal and its potential impacts, and consult with the USFWS. 50 C.F.R. § 402.12. Both direct and indirect impacts are relevant to this determination. *Id.* § 402.02.

Where a proposed action’s only effects will be discountable, insignificant, or wholly beneficial to the species and its habitat, it is deemed “not likely to adversely affect” the listed species or adversely modify its critical habitat. *See* 50 C.F.R. § 402.12; U.S. Fish & Wildlife Serv. and Nat’l Marine Fisheries Serv., *Procedures for Conducting Consultation and Conference Activities under Section 7 of the Endangered Species Act* at xv–xvi (1998) (“Consultation Handbook”). Beneficial effects are “contemporaneous positive effects without any adverse effects to the species.” Consultation Handbook at xv. The significance or insignificance of an effect relates to the size of the impact and should never reach the scale where take occurs. *Id.* at xvi. A discountable effect is one that is “extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.” *Id.*

If the action agency determines that the proposal is not likely to adversely affect the listed species, and the USFWS issues a letter of concurrence with that determination (“LOC”), the consultation is complete. 50 C.F.R. §§ 402.12, 402.14(b) (detailing “informal” consultation requirements). However, if the agencies conclude that the proposal is likely to adversely affect the listed species, the USFWS must prepare a biological opinion (“BiOp”) to determine whether the activity will jeopardize that species’ continued existence. *Id.* § 402.14. The BiOp must include a summary of the information on which it is based, a detailed discussion of the effects of the action on listed species or critical habitat, and the USFWS’s opinion on whether the action is likely to jeopardize the continued existence of the species or result in destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h).

Even after consultation is complete, the agencies have a duty to ensure that it remains valid. To this end, an action agency must reinitiate consultation where discretionary federal involvement or control over the relevant action has been retained or is authorized by law and, as relevant here: (1) 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; or (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion. 50 C.F.R. § 402.16.

Strict compliance with these procedural duties is necessary for an agency to fulfill its substantive duties, and for the ESA to fulfill its fundamental purposes. An action agency cannot satisfy its duty to avoid jeopardy or adverse habitat modification simply through compliance with a BiOp—it has an independent duty to ensure that its reliance is not arbitrary or capricious. Without accurate, detailed, and current consultation on its actions, an agency may unwittingly push vulnerable species past the point of recovery.

FACTUAL BACKGROUND

1. The Northern Spotted Owl

The northern spotted owl (*Strix occidentalis caurina*) lives in structurally complex mature and old-growth forests from southern British Columbia south through Washington, Oregon, and northern California. “[D]ue to loss and adverse modification of spotted owl habitat as a result of timber harvesting,” as well as the inadequacy of existing regulatory mechanisms to conserve the species, the USFWS listed the northern spotted owl as “threatened” on June 26, 1990. 55 Fed. Reg. 26,114 (June 26, 1990) (codified at 50 C.F.R. § 17.11(h)). The rate of population decline has accelerated in recent years, and in 2023 the USFWS acknowledged that reclassification of the owl as endangered was warranted, indicating that the species is at significant risk of total extinction in the foreseeable future. 88 Fed. Reg. 41,560, 41,578 (June 27, 2023); U.S. Fish & Wildlife Serv., *Species Assessment and Listing Priority Assignment Form: Strix occidentalis caurina* at 9 (Aug. 12, 2022).

As the owl requires mature and old-growth habitat, the continuing loss of older forests has had a severely adverse impact on the species. Most spotted owls remain residents on their home range throughout the year; therefore, these home ranges must provide all the habitat components needed for the survival and successful reproduction of breeding owl pairs. Owls display high site fidelity and will inhabit the same territory for many years.

Designated critical owl habitat is broadly categorized as either: (1) nesting and roosting habitat; (2) foraging habitat; or (3) dispersal habitat. 77 Fed. Reg. 71,876, 71,906–07 (Dec. 4, 2012). “Nesting and roosting habitat” consists of forest stands with 60–90% canopy cover; a high basal area (over 240 square feet per acre); and multilayered, multispecies canopies with large-diameter overstory trees, large live trees with deformities, large snags and fallen trees, and sufficient space underneath the canopy for spotted owls to fly. 77 Fed. Reg. at 71,906–07; *see also Revised Biological Opinion for Timber Harvest and Routine Activities that are Likely to Adversely Affect Listed Species and Critical Habitat on the Mt. Hood National Forest* at 47–49 (June 6, 2023) (“2023 BiOp”).

Spotted owls in the Mt. Hood National Forest typically forage in old stands, but may also use younger stands with some old-growth structural characteristics—e.g., large trees, multi-layered canopy, or large snags and fallen trees—as foraging habitat. 77 Fed. Reg. at 71,905–06. Foraging activity is generally associated with high densities of large trees and high basal density per acre, and typically requires at least 40% canopy cover. *Id.* at 71,905–07.

Northern spotted owls also require “dispersal habitat,” which supports the “transience and colonization phase” as juveniles move away from their parents post-fledging. *Id.* 71,906. Dispersal habitat “may currently be marginal or unsuitable for nesting, roosting, or foraging,” but “dispersal success is highest when [dispersing owls] move through forests that have the characteristics of nesting-roosting and foraging habitats.” *Id.* Survival rates decrease when owls must disperse through forests without old-growth characteristics. Dispersal habitat “provides an important linkage function among blocks of nesting habitat both locally and over the owl’s range that is essential to its conservation.” *Id.* “Population growth can only occur if there is adequate habitat in an appropriate configuration to allow for the dispersal of owls across the landscape.” *Id.*

Nesting and roosting habitat also provides foraging habitat; collectively, these habitat types are described as “suitable” spotted owl habitat. *Id.* Suitable habitat also supports owl dispersal, although dispersal habitat is not considered suitable for nesting, roosting, and foraging. *See id.*

Most timber-related management activities alter owl habitat to some degree. *See* 2023 BiOp at 55–61. Some may alter habitat but “maintain the pre-treatment habitat type and functionality. Even if habitat quality is diminished, at least the minimal elements of pre-treatment habitat functionality are maintained[.]” *Id.* at 55. To maintain suitable habitat means that “a canopy cover of at least 60 percent, and other habitat elements (e.g., snags, down wood, large overstory trees, tree-height class-diversity, and older hardwoods), are maintained after treatment to adequately provide for spotted owl nesting, roosting, and foraging within the stand.” *Id.* To maintain dispersal habitat requires at least 40% canopy cover and other habitat elements remain after treatment to adequately provide for dispersal. *Id.*

If an action does not leave “at least the minimal elements of pre-treatment habitat functionality,” the habitat is downgraded or removed. Downgrading means “convert[ing] spotted owl nesting/roosting habitat to foraging or dispersal habitat or convert[ing] foraging habitat to dispersal habitat.” *Id.* at 56. Habitat removal occurs when suitable or dispersal habitat is altered “to an extent that it no longer supports nesting, roosting, foraging, or dispersal of spotted owls.” *Id.*

Due to the ongoing threat of habitat loss and increasing pressures from invasive barred owls, the outlook for the northern spotted owl is grim. In 2016, scientists estimated that the total owl population had declined by almost four percent annually since 1985. Kate Dugger et al., *The Effects of Habitat, Climate, and Barred Owls on Long-term Demography of Northern Spotted Owls*, 118 *Condor: Ornithological Applications* 57, 70 (2016). This population decline has only accelerated since that time. In 2020, the USFWS found that the threats to the spotted owl “are of such imminence, intensity, and magnitude to indicate that the northern spotted owl is now in danger of extinction throughout all of its range.” 85 Fed. Reg. 81,144, 81,146 (Dec. 15, 2020). Consequently, researchers have increasingly emphasized the importance of preserving all spotted owl habitat, regardless of occupancy status or whether it contains all features of “old growth” forest.

2. The Programmatic Consultations

The Projects purport to rely on two “programmatic” consultations covering virtually all timber-related activities across northwestern Oregon: the *Biological Assessment for Routine Land Management Activities with a Potential to Modify Habitat which are Not Likely to Adversely Affect*

Federally Listed Species within the Willamette Planning Province of Oregon (Sept. 7, 2017) and associated Letter of Concurrence (“2017 BA/LOC”), and the 2023 BiOp.

a. The 2017 “not likely to adversely affect” consultation

For many years, the Forest Service and the Bureau of Land Management prepared annual biological assessments on the impact of carrying out various activities that modify owl habitat in the Willamette Planning Province. 2017 BA at 1. However, in 2017 the agencies decided that they no longer needed to consider the effects of their actions on such a regular basis. *Id.* Instead, they drafted a BA estimating the “the number of actions, and the potential impacts of those actions, anticipated for implementation annually into the future.” *Id.*

The 2017 BA addressed “a suite of routine land management activities” purportedly designed to “well-established standards with well-known potential impacts that avoid disruption or adverse effects from habitat modification to the northern spotted owl and its critical habitat.” *Id.* at 2. These activities included timber harvest, fuels treatments, and prescribed burning under certain conditions.

Activities in suitable owl habitat must maintain the habitat and have only “direct and indirect effects to the functionality of the stand [that] would be discountable, insignificant or entirely beneficial, regardless of spotted owl occupancy.” *Id.* at 88. The 2017 BA also covered removal of critical dispersal habitat but only if the action:

1. Was not “in a nest patch of a known or potential spotted owl site”;
2. Would not reduce the ability of the action area to support spotted owl dispersal;
3. Would not “appreciably delay the development of future suitable habitat or adversely affect the physical or biological features (PBFs) of spotted owl critical habitat”; and
4. Would not result in “long-term removal of spotted owl dispersal habitat in [critical habitat.]”

Id. at 30, 86, 88. Again, any effects to the functionality of dispersal habitat or its ability to develop suitable habitat in the future must be “discountable, insignificant or entirely beneficial, regardless of spotted owl occupancy.” *Id.* at 88. “No treatment that results in long-term removal of spotted owl dispersal habitat in [critical habitat]” was covered by the 2017 BA, *id.* at 30, nor were activities that may have a long-term net beneficial effect but “include a short-term adverse effect.” *Id.* at 85.

The USFWS concurred with the Forest Service’s determination that such activities were not likely to adversely affect the spotted owl or its critical habitat and therefore would not require further consultation. *See* 2017 LOC.

b. The 2020 and 2023 “likely to adversely affect” consultation

In 2019, the Forest Service, USFWS, and BLM completed a similar programmatic consultation for all timber activities that *were* likely to adversely affect the northern spotted owl on federal lands in northwestern Oregon. *See* U.S. Forest Service and U.S. Bureau of Land Management,

2023 Revised Biological Assessment for Timber Harvest and Routine Activities that are Likely to Adversely Affect Listed Species and Critical Habitat on the Columbia River Gorge National Scenic Area, Mt. Hood National Forest, Willamette National Forest, and the Northwest Oregon BLM District at 3 (May 18, 2023) (“2023 BA”). This programmatic consultation was intended to cover all such activities for decades to come. However, less than one year into the intended coverage, much of the Willamette Planning Province was affected by unusually large, intense wildfires. *See id.* at 3–4. Because the BiOp no longer reflected conditions on the ground, the agencies reinitiated consultation.

In 2023, the Forest Service and BLM jointly completed the 2023 BA, and the USFWS issued the associated revised BiOp. The revised 2023 BiOp stressed the importance of maintaining dispersal habitat and unoccupied suitable habitat. *See, e.g.,* 2023 BiOp at 8, 82–84, 117–18. It required additional reviews of projects in spotted owl habitat and restricted actions that would remove suitable habitat. *See id.* at 24–35. And it identified areas where there was insufficient dispersal habitat to “fully support[] spotted owl movement to desired levels,” including much of the Forest’s eastern edge. *See id.* at 51–53. These “dispersal-limited landscapes ... might present a strong filter or barrier to spotted owl movement within and between provinces.” *Id.* The Forest Service was instructed to “minimize[e] or avoid activities that would further remove habitat within dispersal-limited landscapes.” *Id.* at 52. Consequently, the 2023 BiOp determined that removal of dispersal habitat in dispersal-limited landscapes “by regeneration harvest or heavy thinning, *may affect and is likely to adversely affect spotted owls.*” *Id.* at 105. Similarly, “removal of dispersal habitat in dispersal-limited landscapes, or that cause dispersal-limited landscapes, or in situations that would cause/exacerbate impairment of occupied spotted owl sites in [critical habitat],” would adversely affect designated critical habitat. *Id.* at 142. However, logging “below 40% canopy cover that removes [dispersal habitat] in landscapes that are not currently dispersal-limited and would not become dispersal-limited after harvest, *may affect and is not likely to adversely affect*” spotted owl or critical habitat. *Id.* at 105, 142. Any activity that removed or downgraded suitable habitat was considered likely to adversely affect owls and critical habitat.

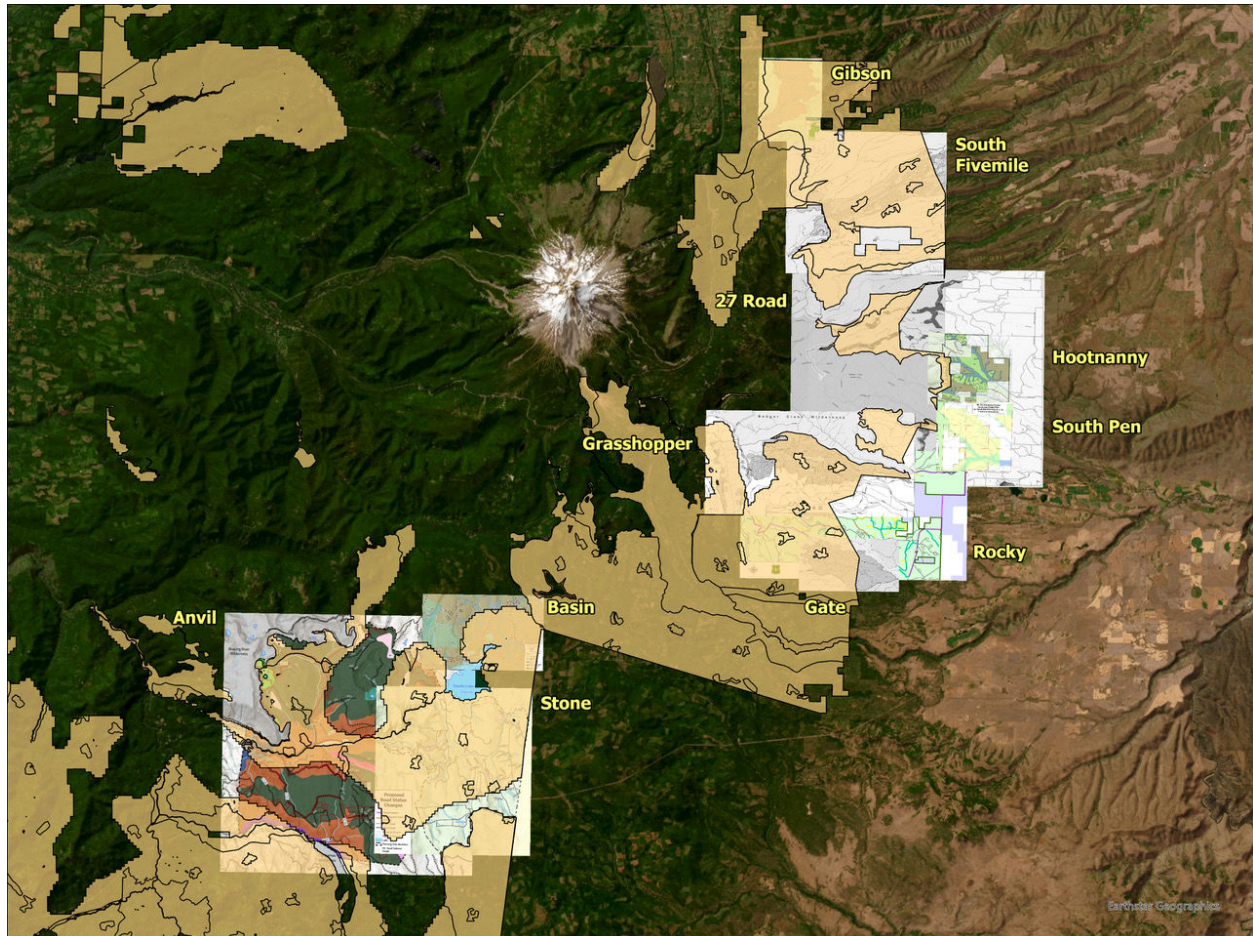
The 2023 BiOp also stressed that even projects which were expected to maintain nesting/roosting habitat “will need to be carefully reviewed by the project biologist ... to ensure that canopy cover plus sufficient other stand attributes are retained ... When in doubt, biologists should err on the side of reporting nesting/roosting habitat as downgraded, not maintained.” *Id.* at 143.

The 2023 BiOp, by its nature, did not analyze the effects of any specific projects. Instead, it set very broad parameters for expected impacts to spotted owls across the entire Forest over the course of many years, and described the general significance of such impacts to the species as whole. It also set specific caps on the amount of nesting/roosting, foraging, and dispersal habitat that could permissibly be removed or degraded over a 10-year period. The USFWS determined that this level of habitat destruction through management activities would not jeopardize the species. *See id.* at 162. This determination explicitly relied on the 2019 definition under which an activity must “appreciably diminish[] the value of critical habitat *as a whole*” to be considered adverse habitat modification. *See id.* at 66.

Under the programmatic 2017 BA/LOC and 2023 BiOp, the Forest Service has continued to approve numerous projects that degrade or entirely destroy spotted owl habitat.

3. The Projects

Between April 2023 and September 2025, the Forest Service approved four logging and fuels reduction projects in spotted owl critical habitat on the eastern side of the Forest: the Gate, 27 Road, Gibson, and Hootnanny Projects. The map below depicts these four Projects—and several other recent logging and burning projects—superimposed on spotted owl critical habitat.



Map credit: Ryan Talbott, WildEarth Guardians.

The Forest Service did not initiate consultation with the USFWS for any of the four Projects. Instead, it relied entirely on the programmatic consultations to satisfy its ESA obligations regarding effects on the northern spotted owl and its designated critical habitat.

a. The Gate Project

On April 27, 2023, the Forest Service approved the 2,975-acre Gate Insect and Disease Project on the Barlow Ranger District. U.S. Forest Service, *Gate Insect and Disease Project Decision Memo* at 2 (April 27, 2023) (“Gate DM”). The Gate Project authorizes 2,415 acres of commercial thinning and 560 acres of non-commercial thinning, as well as prescribed burning to reduce fuels and the construction of 11 miles of temporary roads. *Id.* at 3–4. It would reduce stand density to “approximately 60–120 square feet of basal area or an estimated 80–160 trees per acre,” although

“where site conditions allow,” this might leave as little as 40–100 trees per acre. *Id.* at 3. The Forest Service describes the Project as intended to “reduce the risk of landscape-level disturbance and increase forest resiliency to insect and disease.” *Id.* at 1.

The Gate Project authorizes thinning on 335 acres of foraging habitat and 1,587 acres of dispersal habitat. U.S. Forest Service, *Wildlife Biological Evaluation and Specialist Report for the Gate Insect and Disease Project* at 6 (April 17, 2023) (“Gate Wildlife Report”). Roughly two thirds of the project area is in designated critical owl habitat, including 332 acres of foraging habitat and 971 acres of dispersal habitat. *Id.* The proposed thinning will degrade but maintain these habitat functions, while the 11 miles of temporary road construction will remove an unknown amount of suitable and dispersal habitat. *Id.* at 9. “Treatments would not prevent owls from being able to disperse between blocks of suitable habitat North, South, or West of the analysis area. There is little to no habitat East of the project area.” *Id.* Additionally, the fuels treatments “will remove some components of [suitable habitat] in the short term.” Gate Wildlife Report at 16.

Having concluded that these activities were not likely to adversely affect the spotted owl or its critical habitat, the Forest Service relied on the 2017 BA/LOC to satisfy its consultation duty as to the Gate Project. Gate DM at 5; Gate Wildlife Report at 3. The Forest Service did not initiate project-specific consultation with the USFWS regarding the Project’s impacts, nor did it acknowledge the existence of the other Projects and their removal of further dispersal habitat. *See generally* Gate DM; Gate Wildlife Report.

b. The 27 Road Project

On January 29, 2024, the Forest Service approved the 27 Road Fuel Break Project, also on the Barlow Ranger District of the Forest due north of the Gate Project. *See* U.S. Forest Service, *27 Road Fuel Break Project Decision Memo* (January 29, 2024) (“27 Road DM”). The 27 Road Project will create up to a 1,000-foot-wide linear fuel break, reducing canopy cover to 35–50% across 2,807 acres “along segments of the 27 Road system.” *Id.* at 1. It also authorizes the construction of roughly ten miles of temporary roads. *Id.* at 2. Project activities will “include but are not limited to non-commercial thinning, commercial thinning, and fuels treatments (including but not limited to mastication, piling, and prescribed burning),” but the Forest Service did not specify how many acres of each activity would occur or exactly where within the 27 Road Project area. *Id.* at 1. Although the Forest Service stated that the Project would prioritize cutting smaller trees, it did not impose a size limit on the trees that might be logged. *Id.* at 5.

The 27 Road Project area includes 1,235 acres of spotted owl critical habitat and four known historic owl sites. U.S. Forest Service, *Wildlife Biological Evaluation and Specialist Report for the 27 Road Fuel Break Categorical Exclusion* at 6 (November 1, 2023) (“27 Road Wildlife Report”). Within designated critical habitat,

[c]ommercial and pre-commercial thinning treatments of roadside areas will downgrade approximately 119 acres of suitable (foraging) habitat to dispersal and remove 607 acres of dispersal habitat. Treatments that reduce the canopy cover to 40-percent (downgrading of foraging habitat to dispersal habitat) will delay the attainment of late seral habitat by as much as 75 to 100-years[.]

Id. at 7. However, the Forest Service stated that “treatments are not expected to prevent owls from occupying or producing and rearing young in treated areas or the larger planning area.” *Id.* at 10. Temporary roads will be built in suitable and dispersal habitat, but the agency asserted that “the function of the habitat at the stand scale would remain the same.” *Id.* at 9. Another 31 acres of dispersal habitat will be thinned but maintain function. *Id.* at 8.

The Forest Service conceded that downgrading 119 acres of suitable owl habitat would adversely affect the spotted owl and its critical habitat, although it asserted that the fuel break “may help ensure that the habitat is retained on the landscape long-term in the event of a large-scale fire.” 27 Road DM at 7. However, the Forest Service further asserted that removing 607 acres and degrading but maintaining another 31 acres of dispersal habitat, removing an unquantified amount of suitable and dispersal habitat through temporary road construction, and fuels treatments with temporary negative impacts were not likely to adversely affect spotted owls or critical habitat. *Compare id.* (only downgrading suitable habitat is likely to adversely affect spotted owl or critical habitat) *with* 27 Road Wildlife Report at 7–8 (Project will remove and downgrade dispersal habitat). The agency offered no further explanation for this determination in its decision, nor did it acknowledge the existence of the other Projects and the amount of dispersal habitat each would remove. *See generally* 27 Road DM; 27 Road Wildlife Report.

The Forest Service did not initiate project-specific consultation with the USFWS regarding the 27 Road Project’s impacts on spotted owl or critical habitat.

c. The Gibson Project

The 2,999-acre Gibson Insect and Disease Project, approved on July 31, 2024, is directly north of the 27 Road Project.² It authorizes 1,097 acres of commercial thinning and 1,902 acres of non-commercial thinning and construction of seven miles of temporary roads. U.S. Forest Service, *Gibson Insect and Disease Project Decision Memo* at 3–4 (July 31, 2024) (“Gibson DM”). The Project has no diameter limits, although the Forest Service stated that it would focus on cutting “intermediate and suppressed trees[.]” *Id.* at 3. In some areas, canopy cover would be reduced to 25%. *Id.* at 4. The area “has been heavily impacted by past management treatments.” U.S. Forest Service, *Wildlife Biological Evaluation and Specialist Report for the Gibson Insect and Disease Categorical Exclusion* at 6 (June 5, 2024) (“Gibson Wildlife Report”).

The entire Gibson Project area is designated critical habitat for spotted owls and contains one historic known owl site. *Id.* The Project will downgrade 220 acres of suitable habitat to dispersal habitat and “delay the attainment of late seral habitat by as much as 75 to 100-years, depending on site conditions,” *id.* at 7–8, which the Forest Service concluded was likely to adversely affect the spotted owl and its critical habitat. *Id.* at 10.

The Project will also remove 646 acres and degrade another 210 acres of dispersal habitat, and temporary road construction will remove an unknown amount of suitable and dispersal habitat—

² The 3,000-acre South Fivemile Insect and Disease Project, virtually all of which is in spotted owl critical habitat, lies directly between the 27 Road and Gibson Projects. It too will degrade, downgrade, or entirely remove thousands of acres of suitable and dispersal habitat, and it too relied on the 2017 and 2023 programmatic consultations.

but the Forest Service asserted that these actions were *not* likely to adversely affect spotted owls or critical habitat. *Id.* The agency did not acknowledge the existence of the other Projects or the amount of dispersal habitat each would remove. *See generally id.*

The Forest Service relied on the 2023 BiOp to satisfy its ESA obligations for the Gibson Project. *Id.* at 11, 17. It therefore did not initiate project-specific consultation with the USFWS regarding the Gibson Project’s impacts.

d. The Hootnanny Project

Finally, on September 19, 2025, the Forest Service approved the Hootnanny Insect and Disease Project directly to the east of the 27 Road Project. *See* U.S. Forest Service, *Hootnanny Insect and Disease Project Decision Memo* (Sept. 19, 2025) (“Hootnanny DM”). Like the Gate and Gibson Projects, the Hootnanny Project is intended to “address insect and disease threats” by “reduc[ing] stand density on approximately 2,983 acres.” *Id.* at 3. It authorizes 1,775 acres of commercial thinning, including 637 acres in riparian reserves, and 1,208 acres of non-commercial thinning, as well as 16.1 miles of temporary road construction. *Id.* at 3–4.

The Hootnanny planning area contains 174.5 acres of suitable owl habitat, 1,002 acres of dispersal habitat, and 497 acres of designated critical habitat. U.S. Forest Service, *Wildlife BE and Report for Hootnanny Insect and Disease Project* at 5 (August 14, 2025) (“Hootnanny Wildlife Report”). Project activities would remove 373 acres and degrade 273 acres of dispersal habitat, degrade 130 acres of suitable habitat, and remove an unknown amount of dispersal and suitable habitat for road construction. *Id.* at 6–8. The Forest Service concluded that none of these treatments would “negatively affect the functionality of any owl home ranges or limit regional owl movement and survival” and that the Project was not likely to adversely affect the spotted owl or its critical habitat. *Id.* at 6–8, 13–15. The agency therefore relied on the 2017 BA/LOC and did not initiate project-specific consultation with the USFWS regarding the Hootnanny Project. *Id.* at 1.

e. Neighboring projects

Between 2019 and 2023, the Forest Service also approved the Rocky, South Pen, South Fivemile, and Grasshopper Projects, which adjoin or are in close proximity to the four Projects described above; the South Fivemile and Grasshopper Projects also removed, downgraded, or degraded substantial areas of critical habitat. *See* Attachments 1–2. The Anvil, Basin,³ Stone Creek, and

³ The Forest Service approved the Basin project on January 29, 2026 following a 15-day public scoping period that ended on October 31, 2025. Although Guardians commented on the project, the Forest Service failed to notify Guardians—or the public—of its decision. The Basin project authorizes commercial thinning and construction of an unknown amount of temporary roads, landings, and skid trails. *See* Attachment 5 at 1–2. The Forest Service acknowledged that spotted owls “presently or historically” occur within the project area, and that the project has the potential to modify critical habitat. *See id.* at 3–4. However, the agency never disclosed how much critical habitat was present, whether surveys had been conducted, whether suitable or dispersal habitat was present, or how exactly the project would impact the species or habitat. *See id.* Instead, it offered the conclusory statement that the project was not likely to adversely affect spotted owls and therefore fell under the 2017 BA/LOC. *Id.* The Forest Service’s failure to provide public notice of the Basin project approval, and the paucity of information it offered regarding spotted owl impacts, exemplifies the lack of transparency and erosion of public process for decisions that impact this iconic species.

South Wasco Projects, all of which encompass large amounts of critical owl habitat, are slightly to the southwest but do not directly border the other eight projects. *See* Attachments 3–5. Between them, these twelve projects have impacted or will impact a sizeable portion of the spotted owl habitat—including designated critical habitat, and areas in dispersal-limited landscapes—on the Mt. Hood National Forest. Yet the agencies failed to account for the full effects of this landscape-scale habitat removal and modification.

ESA VIOLATIONS

The Forest Service and USFWS have violated, are violating, and, if the Forest Service implements the Projects without curing the deficiencies detailed below, will further violate their procedural and substantive duties under the ESA. The Forest Service cannot rely on either the 2017 NLAA BA/LOC or the 2023 BiOp to ensure against jeopardizing the spotted owl or adversely modifying its critical habitat; the agencies therefore must immediately undertake proper consultation on the Projects’ impacts.⁴

1. The Forest Service cannot rely on the 2017 consultation.

Although it invoked the 2017 BA/LOC for the Gate and Hootnanny Projects, the Forest Service cannot lawfully rely on this programmatic consultation to satisfy its ESA obligations as to spotted owls. First, the **2017 consultation no longer reflects conditions on the ground**; in light of the conclusions reached in the 2023 BiOp, the agencies must reinstitute consultation on the effects of the “routine land management activities with a potential to modify habitat within the Willamette Planning Province of Oregon” which they had previously concluded were “not likely to adversely affect” the spotted owl or its critical habitat. And even if the 2017 consultation was still valid, the Gate and Hootnanny Projects improperly rely on it to cover activities that are likely to adversely affect the spotted owl. The agencies must therefore undertake more in-depth, ESA-compliant consultation for these Projects.

a. The 2017 Biological Assessment is invalid.

In 2023, the Forest Service, BLM, and USFWS jointly concluded that **recent wildfires** throughout the Willamette Planning Province, in conjunction with other new information on the spotted owl’s status and trajectory, had **rendered the 2020 programmatic BiOp for timber harvest and routine activities invalid**. *See supra* at 6–7. The agencies therefore prepared a revised BA and BiOps for each of the relevant administrative units. *See* 2023 BA at 3–8. The 2017 BA and associated LOC purport to cover the same federal lands, and the same activities, as the 2023 BiOp. *See id.* Yet the agencies have failed to revisit their conclusions regarding the effects of these “routine land management activities” in spotted owl habitat.

The agencies’ conclusions in the 2023 BA and BiOp and the information on which their analyses were based constitute “new information [that] reveals effects of the action that may affect listed

⁴ Additionally, because neither programmatic consultation contains an incidental take statement, the Forest Service is liable under ESA Section 9 for any harm or harassment of owls caused by the Projects. The agency’s failure to fully analyze the Projects’ impacts creates a very real possibility that their implementation will cause incidental take, subjecting the Forest Service to Section 9 liability and warranting immediate injunctive relief.

species or critical habitat in a manner or to an extent not previously considered” in the 2017 consultation. 50 C.F.R. § 402.16(a)(2). Because the Forest Service clearly retains “discretionary involvement or control” over its ongoing timber and fuels programs, including the Projects described in this Notice, the agency must reinitiate consultation with the USFWS regarding their impacts on the spotted owl. *See id.* Until the agencies have completed a valid consultation, the Forest Service may not implement the Projects in a manner that may impact the northern spotted owl or its habitat. *See* 16 U.S.C. § 1536(d).

b. The Projects’ removal of dispersal habitat is likely to adversely affect the spotted owl and critical habitat.

Even if the 2017 consultation remained broadly valid, it would not cover the Project activities for which it has been invoked here.⁵ The Forest Service failed to demonstrate that removing hundreds of acres of dispersal habitat—particularly in the adjoining Project areas within such a short timeframe—was unlikely to adversely affect the spotted owl and its critical habitat. The agency must therefore reevaluate the Projects’ impacts in a new, ESA-compliant consultation with the USFWS.

A “not likely to adversely affect” determination is only appropriate when an action’s impacts are entirely “discountable, insignificant, or wholly beneficial.” *See supra* at 3. Here, the Forest Service failed to directly assert, much less reasonably establish, that the impact of removing a collective 2,236 acres of dispersal habitat in the four adjoining Project areas—and thousands of acres more in the other eight projects nearby—would be entirely beneficial or that adverse impacts were either “extremely unlikely to occur” or too insignificant to “meaningfully measure, detect, or evaluate.”

Of course, merely reciting a conclusory statement that an action’s effects will be insignificant or wholly beneficial is not enough. The Forest Service intends to reduce canopy cover to an undisclosed level below 40%, which the agency has acknowledged will delay the development of suitable habitat for at least 75 years.⁶ These are long-term, significant, and likely adverse effects. As the 2017 BA recognizes, any activity that would “appreciably delay the development of future suitable habitat” or result in the “long-term removal of spotted owl dispersal habitat in [critical habitat]” is likely to adversely affect the owl and critical habitat. *See* 2017 BA at 86, 88. This is neither insignificant nor beneficial to the spotted owl.

Nor may the Forest Service rely on the Projects’ purported long-term benefits to minimize even their immediate adverse effects. As the 2017 BA repeatedly stresses, even activities “proposed to maintain recovery potential ... that include *a short-term adverse effect are not covered by this*

⁵ For each of the four Projects, the Forest Service wrongly concluded that removing dispersal habitat was unlikely to adversely affect the spotted owl or its critical habitat—without considering the context of that removal. However, because the 27 Road and Gibson Projects also authorize the downgrade or removal of suitable habitat, the Forest Service invoked the 2023 BiOp to cover these Projects while still maintaining that only impacts to suitable habitat might have adverse effects. This conclusion is insupportable, regardless of which consultation it invokes.

⁶ Assuming that the former habitat is ever allowed to recover. The Forest Service has expressed an intent to maintain significantly lower canopy cover, which is fundamentally incompatible with the continued existence of northern spotted owls in the area. That the Projects “may” help to mitigate insects, disease, or wildfires that may otherwise impact owl habitat is of little relevance if the Projects themselves will indefinitely preclude development of owl habitat.

BA. *Id.* at 85 (emphasis in original). Even the most laudable restoration goals do not render adverse effects insignificant; the ESA is concerned with impacts, not intentions.

The 2017 BA also explicitly excludes activities that would “reduce the ability of the action area to support spotted owl dispersal.” *Id.* at 88. Although the Forest Service made boilerplate assertions that the Projects would not impede dispersal on a landscape level, this is not supported by the anticipated effects or the consultations on which the agency purported to rely—collectively, the Projects will remove or degrade thousands of acres of dispersal habitat in an area that the agencies have already identified as dispersal-limited. Particularly given the Projects’ close proximity to one another and to eight similar projects that will also remove large swaths of suitable and dispersal habitat, the Forest Service cannot credibly claim that its actions will not negatively impact spotted owl dispersal capability in the area.

Finally, the Forest Service’s determination that the Gate and Hootnanny Projects are “not likely to adversely affect” the spotted owl or critical habitat was based on an improper analysis. To gauge whether the relevant activities would have adverse impacts, the agency looked at whether the effects were “consistent with maintaining the intended recovery role of spotted owl critical habitat *range-wide*,” *i.e.*, on the value of critical habitat as a whole. 2017 BA at 85 (emphasis added). But this is not the proper scale on which to determine whether an action—or even the suite of actions purportedly covered by the 2017 BA/LOC—is likely to have an adverse impact on critical habitat. Indeed, this is not even the proper scale on which to determine whether an action will adversely modify critical habitat—a higher bar than “likely to adversely affect.” *See supra* at 2–3. Instead, the agencies must consider whether the actions will result in any detectable adverse effects at the project scale, not merely whether they will impact the functionality of critical habitat as a whole.

The Forest Service must reinstate consultation to determine whether the Gate and Hootnanny Projects’ proposed removal and degradation of thousands of acres of dispersal habitat, and degradation of thousands of additional acres of suitable habitat, will adversely affect or jeopardize the northern spotted owl or its critical habitat.

2. The Forest Service cannot rely on the 2023 Biological Opinion.

Because the 2023 BiOp relied on an unlawful definition of “adverse habitat modification,” the agencies’ reliance on that BiOp to satisfy their ESA Section 7 obligations for the 27 Road and Gibson Projects was equally unlawful. The agencies must therefore consult on these Projects’ impacts to the spotted owl and its critical habitat.

The USFWS concluded that the Forest’s timber program was not likely to destroy or to adversely modify designated critical habitat based on the 2019 revised regulation, which defined adverse modification as “a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole* for the conservation of a listed species.” 2023 BiOp at 66 (quoting 50 C.F.R. § 402.02 (2019)) (emphasis added). But this contradicts the ESA’s plain text and meaning:

Nothing about the term “adverse modification” requires that impact to be especially large. An adverse modification to a small part of a species’ habitat is an adverse modification to the habitat as a whole. In other words, even if adverse impacts are

analyzed at the level of the habitat as a whole, impacts too small to constitute “appreciable diminishment of the overall value of the habitat as a whole” would still count as adverse modification of the habitat as a whole.

Ctr. for Biological Diversity, 2026 WL 898264, at *18. Thus, the requirement that a project “appreciably diminishes” the value of critical habitat *range-wide* “impermissibly limits the scope of the Section 7 prohibition on adverse modification of critical habitat.” *Id.* The 2023 BiOp’s “no jeopardy or adverse habitat modification” conclusion is therefore invalid, and the Forest Service cannot rely on it to satisfy its substantive or procedural duties under ESA Section 7. Without a valid biological opinion, the Forest Service may unwittingly jeopardize the spotted owl or unlawfully destroy its critical habitat by implementing multiple logging projects with likely adverse effects.

The agencies must immediately reinitiate consultation on the actions purportedly covered by the 2023 BiOp, including the 27 Road and Gibson Projects.

The Forest Service cannot rely on the 2017 BA/LOC or the 2023 BiOp to satisfy its procedural and substantive ESA obligations as to the Gate, 27 Road, Gibson, and Hootnanny Projects. Because the Projects will have cumulative and synergistic effects, making individual analysis inadequate, the agencies should re-consult on them as a whole. Until valid, ESA-compliant consultation is completed, the Forest Service may not take any implementing actions that may affect the northern spotted owl or its critical habitat. *See*

CONCLUSION

WildEarth Guardians and Oregon Wild have grave concerns regarding the impact of the Gate, 27 Road, Gibson, and Hootnanny Projects on the northern spotted owl. To avoid litigation, we advise the U.S. Forest Service and the U.S. Fish and Wildlife Service to initiate Section 7 consultation on the Projects. Any implementation before ESA-compliant consultation is completed will further violate ESA Section 7, risk violation of ESA Section 9, harm and potentially jeopardize a threatened species, and warrant emergency injunctive relief.

Thank you for your attention to this matter. Please do not hesitate to contact us with any questions.

Sincerely,

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ATTACHMENTS

1. Excerpts from South Fivemile Insect and Disease Project Decision Memo (April 19, 2022)
2. Excerpts from Grasshopper Restoration Project Documents: Final Environmental Assessment (Sept. 2022), Wildlife Report (Jan. 9, 2023), Decision Notice/Finding of No Significant Impact (Jan 11, 2023)
3. Excerpts from Stone Creek Vegetation Management Project Documents: Final Environmental Assessment (Sept. 2025), Decision Notice/Finding of No Significant Impact (Sept. 24, 2025)
4. Excerpts from Anvil Vegetation Management Project Preliminary Assessment (May 2026)
5. Excerpts from Basin Thinning Project Finding of Applicability and No Extraordinary Circumstance (Jan. 29, 2026)