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May 17, 2021

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U.S. Department of the Interior  
1849 C St. NW  
Washington, D.C. 20240

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Tom Vilsack, Secretary of Agriculture  
U.S. Department of Agriculture  
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Vicki Christiansen, Chief  
U.S. Forest Service  
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Rodney Smoldon, Forest Supervisor  
Colville National Forest  
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U.S. Fish & Wildlife Service  
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Travis Fletcher, District Ranger  
Republic Ranger District  
650 East Delaware Ave.  
Republic, WA 99166

**Re: 60-Day Notice of Intent to Sue Over Violations of the Endangered Species Act  
Related to Approval of the Sanpoil Project**

Dear Mses. Haaland, Christiansen, and Williams; and Messrs. Vilsak, Thompson, Casamassa, Smoldon, and Fletcher:

In accordance with the ESA's 60-day notice requirement,<sup>1</sup> this letter provides notice on behalf of the Kettle Range Conservation Group ("KRCG") of its intent to sue the United States Forest Service (the "Forest Service") and the United States Fish and Wildlife Service ("Fish and Wildlife") for violations of Section 7 of the Endangered Species Act ("ESA"), for failing to ensure that the Sanpoil Project (the "Project") does not jeopardize the Canada lynx (*Lynx canadensis*), and for failing to reinitiate ESA consultation in light of new information.

## I. BACKGROUND

### A. The Sanpoil Project Will Displace Lynx and Degrade Lynx Habitat

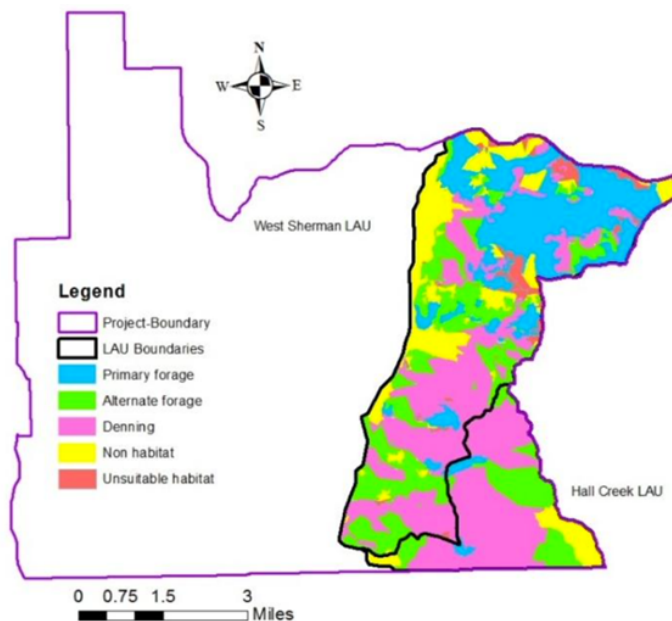
On December 11, 2020, the Forest Service published the Final Sanpoil Environmental Assessment ("Sanpoil EA") and approved the Project with a Decision Notice and Finding of No

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<sup>1</sup> See 16 U.S.C. § 1540(g)(2)(A)(i).

Significant Impact. The Sanpoil Project will allow timber harvest, controlled burns, and road work within 47,956 acres (the “Project Area”) of the Kettle River Range in the Colville National Forest (“Colville Forest”).<sup>2</sup> It will allow timber harvest on 8,410 acres, conduct controlled burns on 19,129 acres, open 10,585 acres up for increased cattle grazing, build approximately 4 miles of new temporary roads, and construct or reopen 12 miles of existing temporary roads.<sup>3</sup>

The Colville Forest supports numerous federally listed species, including the threatened Canada lynx.<sup>4</sup> In fact, the Kettle River Range within the Forest provides the second-largest block of potential lynx habitat in Washington.<sup>5</sup> The Project Area overlaps with two Lynx Analysis Units (“LAUs”), the West Sherman LAU and the Hall Creek LAU.<sup>6</sup> The Sanpoil Biological Assessment (“Sanpoil BA”) predicted the Project will impact 874 acres of lynx denning habitat, 502 acres of primary foraging habitat, and 1,124 acres of alternative prey habitat.<sup>7</sup>



Map from the Sanpoil Biological Assessment showing the Project's overlap with LAUs

<sup>2</sup> U.S. Forest Serv., U.S. Dept. of Ag., *Sanpoil Environmental Assessment* (Dec. 2020) at 15.

<sup>3</sup> *Id.*

<sup>4</sup> See King et al., *Will Lynx Lose Their Edge? Canada Lynx Occupancy in Washington*, *The Journal of Wildlife Management*, May 2020 at 1, 3 (“2020 Lynx Study”) (noting lynx presence in Colville Forest); see also Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule, 65 Fed. Reg. 16,052, (Mar. 24, 2000) (“Federal Lynx Listing”) (listing Canada lynx as a threatened species); Wash. Admin. Code § 220-610-010 (listing Canada lynx as Washington State endangered species).

<sup>5</sup> 2020 Lynx Study at 3.

<sup>6</sup> Karen Honeycutt et al., U.S. Dept. of Ag., *Biological Assessment of the Sanpoil Vegetation Management Project* (Sept. 2018) (“Sanpoil BA”) at 19. In 2019, the boundaries of all LAUs were redrawn, pursuant to recommendations from the Interagency Lynx Biology Team. The Sanpoil EA and other project documents produced after 2019 reflect this change. However, the agency actions challenged here were based on data in the 2018 Sanpoil BA.

<sup>7</sup> Sanpoil BA at 21.

Trapping nearly extirpated lynx from the Colville Forest over 30 years ago.<sup>8</sup> However, a 2020 article disclosed that a 2016-2017 camera trap survey had captured four images of lynx in the Kettle River Range, including three in or around the Project Area.<sup>9</sup> Although the images may have been of transient lynx, the 2020 Lynx Study indicates they may also be evidence of a “persistent small remnant population” in the area.<sup>10</sup>

Even small populations of lynx, like the one that may exist in the Project Area, can play a vital role in supporting the species’ viability nationwide.<sup>11</sup> Washington has six Lynx Management Zones, including the Kettle Management Zone.<sup>12</sup> Along with the rest of the Northern Rockies/Cascades region, these zones create “the most likely stronghold for lynx populations in the contiguous U.S.”<sup>13</sup>

Like other keystone species, lynx benefit their local ecosystems and play the important role of managing populations of smaller prey species.<sup>14</sup> Because lynx primarily prey on the snowshoe hare, however, they are highly dependent on mixed-structure forests with diverse foliage—they hunt in younger forests with thick ground cover, but den in older forests with full canopies.<sup>15</sup>

The Forest Service’s historic mismanagement of this complex habitat has significantly contributed to lynx’s decline.<sup>16</sup> In fact, the Federal Lynx Listing indicates that the single greatest factor threatening the lynx is “the inadequacy of existing regulatory mechanisms” to preserve lynx habitat in national forests.<sup>17</sup> In Washington, lynx habitat has been eroded by timber harvests and other human disturbances, and destroyed by severe wildfires fueled by climate change.<sup>18</sup>

As a result, the Washington lynx population is in a “precarious” position.<sup>19</sup> The 2020 Lynx Study emphasizes that as the climate warms, preserving the species within the state will require “maintaining the greatest quantities of lynx habitat at high elevation as possible refugia...where favorable snow conditions may persist for some time.”<sup>20</sup> The study examined data showing that lynx habitat in Washington regenerates slowly, and may take up to 40 years to rebound after

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<sup>8</sup> See 2020 Lynx Study at 3.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> 2020 Lynx Study at 3-4.

<sup>13</sup> Federal Lynx Listing at 16,072.

<sup>14</sup> See Jeffrey Lewis, Washington Dept. of Fish and Wildlife, *Periodic Status Review for the Lynx*, (October 2016) at 2 (“2016 Lynx Assessment”).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> See Federal Lynx Listing at 16,052.

<sup>17</sup> *Id.* at 16,082.

<sup>18</sup> 2016 Lynx Assessment at 8.

<sup>19</sup> 2020 Lynx Study at 14.

<sup>20</sup> *Id.*

impacts from activities such as logging.<sup>21</sup> This conclusion builds on a 2018 study showing that it took lynx habitat in the Northern Rocky Mountains 35-40 years to regenerate after a timber harvest.<sup>22</sup> The Washington Department of Fish and Wildlife reached a similar conclusion in 2016, finding that after a timber harvest, “[g]iven slow growing conditions in high-elevation forests...a regeneration period of 10-40 years is generally required to create suitable winter habitat for...lynx.”<sup>23</sup>

This means it might take up to 40 years before lynx might return to the 2,500 acres of core denning, foraging, and alternative prey habitat impacted by the Sanpoil Project’s logging, burning, and road construction. By that time, “additional fires and other modification to habitat may further diminish habitat quality and availability, thereby reducing [the] probability of [lynx] persistence[.]”<sup>24</sup>

### **B. Sanpoil BA and Fish and Wildlife Concurrence Conclude Project Will Not Adversely Affect Lynx**

On September 7, 2018, the Forest Service sent the Sanpoil BA to Fish and Wildlife. In the Sanpoil BA, the Forest Service acknowledges that it does not have accurate estimates of populations of threatened and endangered species in the Project Area.<sup>25</sup> In particular, the Forest Service noted it is “unlikely that all activity centers such as dens or nests have been found.”<sup>26</sup> Lacking such information, the Sanpoil BA indicates that the Forest Service assumes the Project Area is potentially occupied by all of species with habitat in the area, including listed species such as lynx.<sup>27</sup>

The Sanpoil BA acknowledges that the Project Area overlaps with a combined 15,637 acres of the West Sherman and Hall Creek LAUs.<sup>28</sup> Timber harvests and “underburning” would impact “approximately 3,638 acres” of these LAUs, 2,587 of which the Forest Service characterizes as lynx habitat.<sup>29</sup> Such treatments would render the land “unsuitable habitat” for lynx, and any individual lynx or lynx populations would be displaced.<sup>30</sup>

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<sup>21</sup> *Id.* at 12-13

<sup>22</sup> Holbrook et al., *Spatio-temporal responses of Canada lynx (Lynx canadensis) to silviculture treatments in the Northern Rockies*, 422 U.S. Forest Ecology and Management 114, 123 (2018) (“2018 Silviculture Impact Study”).

<sup>23</sup> 2016 Lynx Assessment at 5.

<sup>24</sup> *Id.*

<sup>25</sup> Sanpoil BA at 16.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 19.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> *Id.* at 22-23.

Nevertheless, the Sanpoil BA concludes that there would be no adverse impact to lynx,<sup>31</sup> based largely on the assumption that any negatively impacted habitat would quickly regenerate. For example, the Sanpoil BA assumes that the primary prey habitat that is impacted would return to prime quality “within 15-20 years.”<sup>32</sup> Likewise, the Sanpoil BA suggests that any impact to lynx denning habitat would be negated after about “15 years” and that alternate prey habitat would be negatively impacted for only “up to 20 years.”<sup>33</sup> The Sanpoil BA does not provide any support for these predictions.

Similarly, the Sanpoil BA does not provide any basis for its conclusion that recent photographs of lynx in and around the Project Area just reflect “one...individual.”<sup>34</sup> The Sanpoil BA acknowledges that the Project will displace this lynx, but concludes, again without explanation, that this displacement is not even likely to significantly impact that displaced lynx.<sup>35</sup>

On December 20, 2018, Fish and Wildlife sent a reply that largely parrots the conclusions of the Sanpoil BA (“FWS Concurrence”), including the claim that the Project would not adversely impact lynx because the habitat that is logged and burned will regenerate in “about 15 years.”<sup>36</sup> The FWS Concurrence acknowledges that “[d]isturbance during project activities may cause any individuals to be displaced from the area,” but concludes, without support, that “the effects would be insignificant to transient individuals.”<sup>37</sup>

The FWS Concurrence also concludes that three of the Project’s design criteria will mitigate impacts to lynx.<sup>38</sup> The first of these criteria prohibits unauthorized vehicle access on temporary roads.<sup>39</sup> The second directs the service to close temporary roads post-Project.<sup>40</sup> The third suggests that certain trees, like live trees that are over 14 inches in diameter and contain old raptor nests, should be retained in “all units possible”.<sup>41</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Id.* at 22.

<sup>34</sup> *Id.* at 23. It is likely the Forest Service is referencing the same photographs discussed in the 2020 Lynx Study, but the Sanpoil BA does not provide sufficient details to be certain. In addition, the Forest Service independently confirmed lynx presence in the Kettle River Range in its recent analysis of the upcoming Bulldog Project, which will take place just north of the Sanpoil Project Area. In the draft Biological Evaluation for the Bulldog Project, the Forest Service noted that lynx tracks were reported and confirmed within the project boundary by biologists from both the Forest Service and the Washington Department of Natural Resources. See Kelsey Retich, U.S. Dept. of Ag., *Draft Bulldog Vegetation Management Project Biological Evaluation for Terrestrial Wildlife* (February 2020) at 17 (“Draft Bulldog BE”).

<sup>35</sup> Sanpoil BA at 23.

<sup>36</sup> Brad Thompson, Wash. Fish and Wildlife Office, U.S. Dept. of Int., *Biological Assessment of the Sanpoil Vegetation Management Project* (Dec. 2018) at 6.

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Based on these findings, Fish and Wildlife concurred with the Forest Service's conclusion that the Project "may affect, but is not likely to adversely affect" lynx.<sup>42</sup>

## II. ENDANGERED SPECIES ACT

Section 7 is acknowledged as "the heart of the Endangered Species Act," and requires federal agencies to ensure that any action they authorize, fund, or carry out is "not likely to jeopardize the continued existence of any endangered [or threatened] species."<sup>43</sup> To ensure compliance with this substantive mandate, the ESA and its implementing regulations impose specific procedural duties, which require an agency to engage in consultation over any action that "may affect" a listed species or its designated critical habitat.<sup>44</sup>

An agency begins this process through an informal consultation that involves preparation of a biological assessment.<sup>45</sup> The biological assessment must evaluate the potential "effects of the action" on listed and proposed species and designated and proposed critical habitat within the "action area", then determine whether any such species or habitat are "likely to be adversely affected by the action."<sup>46</sup> The ESA requires that biological assessments "analyze the effect of the entire agency action" in question.<sup>47</sup>

Formal consultation, involving preparation of a more detailed Biological Opinion, is "excused only where," on the basis of the biological assessment: (1) an agency determines that the proposed action is not likely to adversely affect any listed species or critical habitat, and (2) the regional director of Fish and Wildlife, or authorized representative, provides a written concurrence.<sup>48</sup> Following the conclusion of the consultation process, both the action agency and Fish and Wildlife have the duty to reinitiate consultation if new information reveals potential effects on a listed species or its habitat that were not previously considered.<sup>49</sup>

The conclusion that an action "is not likely to adversely affect" a species is appropriate only "when effects on listed species are expected to be discountable, or insignificant, or completely

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<sup>42</sup> *Id.*

<sup>43</sup> 16 U.S.C. § 1536(a)(2).

<sup>44</sup> *Id.*; 50 C.F.R. § 402.14(a).

<sup>45</sup> 50 C.F.R. §§ 402.02, 402.12.

<sup>46</sup> *Id.* § 402.12(a), (c).

<sup>47</sup> See *Conner v. Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988) (examining a biological opinion); see also *Mont. Wilderness Ass'n v. Fry*, 310 F. Supp. 2d 1127, 1149 (D. Mont. 2004) (applying this standard to biological assessments).

<sup>48</sup> See *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1126 (9th Cir. 1998); 50 C.F.R. § 402.14(b).

<sup>49</sup> 50 C.F.R. § 402.16(a)(2).

beneficial.”<sup>50</sup> Discountable effects are those “extremely unlikely” to occur, while insignificant effects cannot be “meaningfully measure[d], detect[ed], or evaluate[d],” and should “never reach the scale where take occurs.”<sup>51</sup> An agency cannot claim that an effect will be insignificant or discountable if it is unable to qualify that conclusion.<sup>52</sup>

In assessing potential effects on listed species, agencies must “use the best scientific and commercial data available.”<sup>53</sup> Agencies thus may not “disregard available scientific evidence that is in some way better than the evidence it relies on.”<sup>54</sup>

Any agency failure to comply with the substantive or procedural mandates of the ESA is subject to judicial review under the ESA’s citizen suit provision.<sup>55</sup>

### **III. VIOLATIONS OF THE ESA**

#### **A. Both Agencies Failed to Ensure the Sanpoil Project is Not Likely to Jeopardize Lynx**

The Forest Service and Fish and Wildlife violated the ESA by relying on a fundamentally flawed biological assessment that failed to adequately assess the Project’s potential impacts to lynx and that did not use the best available science. Due to these errors, both agencies failed to satisfy their obligation to ensure that the Project is not likely to jeopardize lynx.<sup>56</sup>

To find that the Project’s impacts will be “both insignificant and discountable”,<sup>57</sup> the agencies would have needed to find that effects on lynx were both “extremely unlikely” to occur and that a person would not be able to “meaningfully measure, detect, or evaluate” any effects.<sup>58</sup> But these conclusions cannot be supported by the facts before the agencies at the time of their determination.

The Forest Service acknowledged that lynx are present in and just outside the Project Area, but failed to discuss potential impacts to those lynx in any meaningful way. Without explanation, the Forest Service made the assumption that the three recent photographs of lynx corresponded to just one individual, photographed three times.<sup>59</sup> Despite acknowledging its limited understanding

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<sup>50</sup> *Endangered Species Consultation Handbook, Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act (1998)* at 3-12 (available at [https://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf)) (“ESA Handbook”).

<sup>51</sup> *Id.* at 3–12.

<sup>52</sup> See *Rock Creek Alliance v. United State Fish and Wildlife Serv.*, 390 F. Supp. 2d 993, 1009 (D. Mont. 2005) (holding that Fish and Wildlife was arbitrary and capricious in deciding that grizzly bears would not be adversely affected by a displacement, because the agency did not explain or support its conclusion).

<sup>53</sup> 16 U.S.C. § 1536(a)(2).

<sup>54</sup> *Nat’l Family Farm Coal. v. U.S. Env’t Prot. Agency*, 966 F.3d 893, 925 (9th Cir. 2020) (internal quotations omitted).

<sup>55</sup> 16 U.S.C. § 1540(g)(1)(A).

<sup>56</sup> See 16 U.S.C. § 1536(a)(2).

<sup>57</sup> FWS Concurrence at 6.

<sup>58</sup> See ESA Handbook at 3–12.

<sup>59</sup> Sanpoil BA 19.

of endangered and threatened species within the Project Area,<sup>60</sup> the Forest Service failed to consider the significant possibility that the photographs may reveal the existence of a “persistent small remnant population” of lynx in one of the remaining core habitats for the species in the state.<sup>61</sup>

Instead of taking the time to explore this possibility and compile a Biological Opinion to thoroughly analyze how the Project might impact and displace this potential lynx population, the Forest Service summarily concluded that the Project would not pose a threat to the one lynx that it summarily decided was the only lynx in the area.<sup>62</sup> Fish and Wildlife concurred, and also failed to justify its assumption that only one lynx was photographed in the Project Area, or that the Project would not significantly impact that lynx.<sup>63</sup> Indeed, Fish and Wildlife concluded there were no resident lynx in the Project Area based on the “lack of lynx dens” in the area<sup>64</sup>—ignoring the fact that the BA conceded that it is “unlikely” that the Forest Service has found all denning areas.<sup>65</sup> An agency cannot comply with the ESA by summarily discounting a potential impact to a listed species without examining evidence to support its conclusion.<sup>66</sup>

The Sanpoil BA also fails to analyze the full scope of the Forest Service’s proposed activities, as the Ninth Circuit has held the ESA requires.<sup>67</sup> The Sanpoil EA indicates the Project will open up an additional 10,585 acres of grazing that will “decrease the amount of forage available” for species including grizzly bear, although it does not specify where this increased grazing will be.<sup>68</sup> It also includes maps that show plans for extensive road work within the LAUs.<sup>69</sup> But there is no mention in the BA about the impact to lynx or lynx habitat from the Project’s road construction and maintenance, or the increase in grazing that will follow from land being cleared by logging and burning. Because the agencies thus did not look at the “entire agency action,”<sup>70</sup> they could not properly evaluate the full extent of the Project’s potential impact on lynx.

Both agencies also failed to consider the “best scientific...data available” when concluding that the Project was not likely to affect lynx.<sup>71</sup> Their conclusions were based on the assumption

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<sup>60</sup> Sanpoil BA at 16.

<sup>61</sup> See 2020 Lynx Study at 13.

<sup>62</sup> Sanpoil BA at 23.

<sup>63</sup> Fish and Wildlife’s only attempt to explain its decision that the Project would not significantly affect lynx is through its reference to the Project’s design elements as mitigating factors. FWS Concurrence at 6. But neither agency explains how lynx would be protected from the Project’s significant impact by such action as the Forest Service prohibiting already unauthorized vehicles, closing roads after the Project is complete, or trying to preserve some trees in certain areas.

<sup>64</sup> FWS Concurrence at 6.

<sup>65</sup> Sanpoil BA at 16.

<sup>66</sup> See *Rock Creek Alliance*, 390 F. Supp. 2d at 1009.

<sup>67</sup> See *Connor*, 848 F.2d at 1453; see also *Mont. Wilderness Ass’n*, 310 F. Supp. 2d at 1149.

<sup>68</sup> Sanpoil EA at 41, 51.

<sup>69</sup> *Id.* at 24-25.

<sup>70</sup> See *Connor*, 848 F.2d at 1454; see also *Mont. Wilderness Ass’n*, 310 F. Supp. 2d at 1150.

<sup>71</sup> See 16 U.S.C. § 1536(a)(2).



that any negative impacts to lynx habitat will be reversed in 20 years or less.<sup>72</sup> Not only does neither agency provide any support for this estimate, but they do not address the significant scientific evidence showing that lynx habitat may take up to 40 years to regenerate.<sup>73</sup> In addition, neither agency addresses the possibility that the habitat will *never* be allowed to regenerate. Although the Project is slated to *begin* immediately, the Sanpoil EA does not indicate when work in any particular area will take place. The Forest Service estimates the Project's logging production over a 10-year period,<sup>74</sup> while some of the effects of the Project, like increased grazing in new areas, could continue indefinitely. Meanwhile, the Forest Service's plan for 2020-2040 indicates that it is already anticipating that it will begin another project in the area in 2040.<sup>75</sup> This could mean that any estimate for recovery of damaged lynx habitat, at any time, is theoretical at best.

In concluding that the Project was not likely to adversely affect lynx, the Forest Service and Fish and Wildlife made unfounded assertions about the lynx population, failed to explore the full effects of the Project on the species, and failed to consider the best available science. Both agencies knew, or should have known, that: (1) the Project Area may be home to perhaps the only remaining lynx population in the Kettle River Range; (2) the full scope of the Project's activities would have a significant impact on this potential population, on transient lynx known to be present in the area, and on core lynx habitat; and (3) that the best available science showed that the habitat may not regenerate for 35-40 years, if at all.

#### **B. Both Agencies Failed the Obligation to Reinitiate Formal Consultation.**

Both the Forest Service and Fish and Wildlife had an ongoing obligation, throughout the Sanpoil Project planning process, to reinitiate consultation if new information revealed effects not previously considered.<sup>76</sup>

Although the Forest Service obviously knew that the camera traps had captured images of lynx in the area, the full 2020 Lynx Study was not published until after the Sanpoil BA and FWS Concurrence. The 2020 Lynx Study contained information that might have been new to the agencies, such as the conclusion that there may be a permanent population of lynx residing in the Kettle River Range, and that the study showing the slow regeneration of lynx habitat in Montana would also apply to Washington. If the agencies knew this information when they wrote their opinions, they should have considered it at that point. If not, they should have reinitiated consultation after the 2020 Lynx Study was published.

Additionally, in the "winter of 2020," the Forest Service and the Washington Department of Natural Resources confirmed a report of lynx footprints in the Kettle River Range just north of the

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<sup>72</sup> Sanpoil BA at 22-23.

<sup>73</sup> See 2018 Silviculture Impact Study at 114 (published five months before the Sanpoil BA was completed).

<sup>74</sup> Sanpoil EA at 35.

<sup>75</sup> Colville National Forest Planning Areas, 2020-2040, at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd641568.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd641568.pdf). (last visited May 17, 2021).

<sup>76</sup> 50 C.F.R. § 402.16.

Project Area.<sup>77</sup> This finding should have caused the Forest Service to reevaluate the possibility that a population of lynx may be living in the area, and to reinitiate consultation. This lack of due diligence violates section 7(a)(2) of the ESA.

#### IV. CONCLUSION

The Forest Service and Fish and Wildlife insufficiently analyzed the Sanpoil Project's potential impacts to Canada lynx. The Forest Service must complete a full Biological Opinion that thoroughly analyzes the possibility of a lynx population residing in the area and that considers the full impacts of the Project on both transient lynx and a potential lynx population, including addressing recent science showing that lynx habitat in Washington may take up to 40 years to regenerate.

If action is not taken to cure this ESA violation, then after 60 days has elapsed from the date of the notice, the Kettle Range Conservation Group intends to amend its suit in *Kettle Range Conservation Group v. U.S. Forest Service, et. al.*, No. 2:21-cv-161 (E.D. Wash., filed May 13, 2021) (attachment A), to add claims brought under the ESA's citizen suit provision, 16 U.S.C. § 1540(g)(1)(A), and the Administrative Procedure Act, 5 U.S.C. § 706.

Kettle Range Conservation Group hopes to hear from you soon regarding the steps you plan to take to cure these violations. It can be reached through its attorney, Claire Loeb Davis, through the contact information provided below.

Respectfully,



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*Attorney for Kettle Range Conservation Group*

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<sup>77</sup> Draft Bulldog BE at 17.