

Final Record of Decision

Bog Creek Road Project



**U.S. Customs and
Border Protection**

**U.S. Department of Homeland Security
U.S. Customs and Border Protection**

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Bog Creek Road Project

Final Record of Decision

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1 BACKGROUND

The United States (U.S.) Department of Homeland Security, U.S. Customs and Border Protection (CBP) and the U.S. Department of Agriculture Forest Service (Forest Service) are proposing a road repair, maintenance, and motorized closure project in the Continental Mountain area of the Idaho Panhandle National Forests (IPNF) within the Bonners Ferry and Priest Lake Ranger Districts. The project has two objectives: 1) to provide improved east–west access for administrative use (as explained below) across the Selkirk Mountains on National Forest System (NFS) lands to enable CBP to execute its statutory mission to protect the U.S. northern border and for the safety of CBP and other law enforcement officers while carrying out their duties; and 2) to meet grizzly bear motorized access standards within the Blue-Grass Bear Management Unit (Blue-Grass BMU) of the Selkirk Grizzly Bear Recovery Zone (Selkirk Recovery Zone [SRZ]).

The primary road that provides east–west access around Continental Mountain is Bog Creek Road. The road was gated on both ends in the late 1980s for grizzly bear secure habitat and was maintained on a limited basis after that time. The road experienced minor failures in the mid-1990s, with a large failure occurring around 2000–2001, when a large culvert at approximately milepost (MP) 35 failed due to heavy surface water runoff. At that time, the road became impassable to most vehicles. Currently, the road is gated at the east end and barricaded at the west end.

CBP has identified Bog Creek Road as an important road for the agency to perform its statutory mission to protect the U.S. northern border. In recent years, the road has been infrequently used by CBP personnel traveling on all-terrain vehicles (ATVs) and on horseback. Agents from both the Metaline Falls station, located in Washington State, and the Bonners Ferry station in Idaho access the Blue-Grass BMU from both the west and east. Because of the impassability of Bog Creek Road, vehicular access to the Blue-Grass BMU is currently not available from the west, and the amount of vehicular operating time on restricted roads within the BMU is increased.

The IPNF has been working since the late 1980s to create secure habitat for grizzly bears and manage the habitat conditions of the SRZ. In 2011, the IPNF issued a record of decision (ROD) for the *Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones (Access Amendment)*¹ that set motorized² vehicle access and security standards to meet the agency’s responsibilities under the Endangered Species Act (ESA) to conserve and contribute to the recovery of grizzly bears. The ROD and accompanying biological opinion (BO) from the U.S. Fish and Wildlife Service (USFWS) required the standards in the Access Amendment be met by 2019. However, in their December 2019 BO for the Bog Creek Road Project,³ the USFWS clarified the standards for the Blue-Grass BMU must be met

¹ U.S. Department of Agriculture Forest Service (Forest Service). 2011. *Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones*. November. Available at: http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=24882. Accessed June 4, 2015.

² The term “motorized” as used throughout this ROD refers to wheeled motorized vehicles.

³ U.S. Fish and Wildlife Service (USFWS). 2019. *Biological Opinion for the Bog Creek Road Project (USFWS Project Number 01EIFW00-2019-F-0876)*. Spokane Valley, Washington: Idaho Fish and Wildlife Office.

by 2023. Additional detailed information on the *Grizzly Bear Recovery Plan* (Recovery Plan)⁴ and Access Amendment standards is contained in Chapter 1 of the final environmental impact statement (FEIS).

The Blue-Grass BMU is currently not meeting the motorized access standards set forth in the Access Amendment and the *Revised Land Management Plan, Idaho Panhandle National Forests* (Forest Plan).⁵ The Forest Service has been planning to bring the BMU into compliance with the Access Amendment and the Forest Plan.

In June 2018, CBP and the Forest Service published the draft environmental impact statement (DEIS) analyzing the impacts of the proposed Bog Creek Road Project. In February 2019, CBP and the Forest Service published their draft RODs and FEIS for the Bog Creek Road Project, containing changes resulting from comments on the DEIS. The FEIS also includes all comments received on the DEIS and the Forest Service's and CBP's responses (see FEIS, Appendix C).

2 ALTERNATIVES CONSIDERED

2.1 No-Action Alternative (Alternative 1)

For this project, the No-Action Alternative (Alternative 1) represents the effects of not implementing the proposed repair and maintenance of Bog Creek Road and motorized closure of seasonally restricted Forest Service roads, while taking into account the effects of other past, ongoing, and reasonably foreseeable activities occurring in the area. This alternative proposes that no repair and maintenance activities would occur on the 5.6-mile section of Bog Creek Road and that the 26 miles of seasonally restricted Forest Service roads would continue to be available for motorized use in accordance with seasonal access restrictions. There would be no change in Forest Service management of the roads and CBP activities in the Blue-Grass BMU.

Under the No-Action Alternative, the Forest Service would continue to work toward meeting the Access Amendment standards. However, it is unknown exactly which roads would be closed to motorized use to meet the standards, or when those roads would be closed. Therefore, future motorized closure actions are not analyzed as part of the No-Action Alternative.

2.2 Proposed Action (Alternative 2)

The Proposed Action was developed through collaboration between CBP, the Forest Service, and the public. It was designed to meet the goals and objectives established for the project while meeting other resource needs. The Proposed Action would consist of three components: 1) road repair and maintenance of Bog Creek Road (Forest Service Road [FSR] 1013) and change in motorized use designation; 2) change in motorized use designation for Blue Joe Creek Road (FSR 2546); and 3) motorized closure of selected seasonally restricted Forest Service roads.

⁴ U.S. Fish and Wildlife Service (USFWS). 1993. *Grizzly Bear Recovery Plan*. Missoula, Montana.

⁵ U.S. Department of Agriculture Forest Service (Forest Service). 2015. *Revised Land Management Plan, Idaho Panhandle National Forests*. Coeur d'Alene, Idaho.

Repair and Maintenance of Bog Creek Road

Repair and maintenance of Bog Creek Road (FSR 1013) would be conducted to allow the road to meet Forest Service road maintenance level 2 standards, which generally allow access for high-clearance vehicles. Maintenance level 2 roads are described in Forest Service Handbook 7709.58⁶ as:

Assigned to roads open for use by high-clearance vehicles. Passenger car traffic is not a consideration. Traffic is normally minor, usually consisting of one or a combination of administrative, permitted, dispersed recreation, or other specialized uses. Log haul may occur at this level. Appropriate traffic management strategies are either to (1) discourage or prohibit passenger cars or (2) accept or discourage high-clearance vehicles.

Repair and maintenance would consist of grading and resurfacing areas of the road that have been heavily eroded by surface water flows, filling potholes, and removing protruding boulders. Repair would also include installation of six new culverts and replacement of six of the existing 67 corrugated metal pipe culverts located along the length of the roadway because they have partially rusted through, otherwise exceeded their usable life, or do not meet current design standards for width and capacity. The road would not be widened, but limited areas that no longer meet minimum width requirements may require cut-and-fill work to achieve the desired road operating and safety standards. Trees and other vegetation within the roadway and to either side would be grubbed or cut back to facilitate improved vehicle passage.

The most intensive repair would occur at Spread Creek, where a culvert failure and road washout has made the road completely impassable. New culverts would be placed, and the road would be rebuilt to a Forest Service maintenance level 2 standard.

Implementation of the Decision would include gathering and transporting of fill materials (riprap, mixed soil/rock, and crushed aggregate) from two existing “borrow” pits to use in general resurfacing/fill and in installation of the culvert replacements. One proposed borrow pit is an existing pit located near MP 18.89 on FSR 1013. The other is located near the east end of Bog Creek Road.

The equipment that would be used in road repair includes dozers, graders, hydraulic excavators, and dump trucks. In addition, several pickup trucks or sport-utility vehicles (SUVs) will transport personnel to and from the area. Repair activities will occur between July 16 and November 15, and could last up to three seasons, beginning in 2020.

Upon completion, locking gates that minimize potential destruction, dismantling, or breaching would be installed at both ends of the 5.6-mile route and remain closed year-round. The road would be signed PUBLIC MOTORIZED ENTRY PROHIBITED – THIS ROAD IS UNDER SURVEILLANCE – VIOLATORS WILL BE PROSECUTED. CBP would regularly monitor road access and gates to ensure that no illegal motorized access is occurring along the road.

Bog Creek Road is currently designated as a seasonally restricted road. This administrative use is limited to 57 vehicle round trips per active bear year (April 1 through

⁶ U.S. Department of Agriculture Forest Service. 1995a. Chapter 10. Forest Service Handbook 7709.58. *Transportation System Maintenance Handbook* Amendment No. 7709.58. Effective July 28, 1995.

November 15), apportioned as follows: ≤ 19 round trips in spring (April 1 through June 15); ≤ 23 round trips in summer (June 16 through September 15); and ≤ 15 round trips in fall (September 16 through November 15). Motorized use is permitted only for administrative purposes such as Forest Service, CBP, and other State and Federal administrative agencies. After road repair activities, the road would change to an *administrative open* designation (as-needed administrative motorized access). Under the *administrative open* road designation, Bog Creek Road would be open to as-needed administrative motorized access but not open to the public for motorized travel.

Repair and maintenance of Bog Creek Road and the change to an *administrative open* designation would allow for as-needed administrative motorized access from the west. The current seasonal restrictions, which limit the number of motorized administrative trips along Bog Creek Road, would be removed. Motorized administrative trips would be used by CBP, the Forest Service, other State and Federal administrative agencies, and Continental Lands private property owners.

The western approach road to Bog Creek Road, FSR 1013, which leads out of the Blue-Grass BMU, would remain as it is currently designated, as open to the public for unlimited motorized travel. The roads along the eastern approach to Bog Creek Road would retain their current seasonally restricted road classification. Administrative vehicle trips to Bog Creek Road from the east or trips from the west that continue past Bog Creek Road's eastern gate would therefore be limited under these terms.

The administrative agencies would coordinate trips to ensure that allowed motorized use is not exceeded. Consistent with the *Memorandum of Understanding Among U.S. Department of Homeland Security and U.S. Department of the Interior and U.S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders*, dated March 31, 2006, the limitation on access does not apply to exigent/emergency access as described in the memorandum of understanding (MOU).⁷ CBP does not anticipate that this authority would be used frequently but cannot predict the threats to human life, health, or safety or to national security that may arise in the future.

Winter motorized snowmobile use by the public is currently not allowed on Bog Creek Road as a result of the legal rulings of November 7, 2006, and February 27, 2007, relating to recovery of woodland caribou and the potential impacts of snowmobile use within the recovery area. Law enforcement members are currently exempt from the snowmobile closure. Long-term future actions for Bog Creek Road maintenance would include grubbing or trimming vegetation along the roadside, cleaning culverts, and periodic grading.

Open Administrative Use Designation for Blue Joe Creek Road

Blue Joe Creek Road (FSR 2546) extends from the eastern terminus of Bog Creek Road, running 5.5 miles alongside Blue Joe Creek, to the Continental Lands property. This

⁷ U.S. Department of Homeland Security, U.S. Department of the Interior, and U.S. Department of Agriculture. 2006. *Memorandum of Understanding Among U.S. Department of Homeland Security and U.S. Department of the Interior and U.S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders*. March 31. Available at: <https://cis.org/sites/cis.org/files/articles/2010/mou.pdf>.

section of road is currently designated as seasonally restricted, and motorized access is limited to 57 vehicle round trips per active bear year. The current seasonal restrictions that limit the number of motorized administrative trips along Blue Joe Creek Road would be removed. The road would be designated as *administrative open*, which would allow for as-needed administrative motorized trips. This change in designation, when combined with the Bog Creek Road designation change, allows for administrative trips by private property owners to access their property within the Blue-Grass BMU.

Motorized Road Closure of Selected Seasonally Restricted Forest Service Roads

Approximately 26 miles of seasonally restricted Forest Service roads would be closed to all wheeled motorized use within the Blue-Grass BMU, which is part of the SRZ. Closing the roads would allow the Forest Service to meet the requirements of at least 55 percent of the BMU as core habitat, no more than 33 percent of the BMU having an open motorized route density (OMRD) greater than 1 mile per square mile, and no more than 26 percent of the BMU having a total motorized route density (TMRD) greater than 2 miles per square mile, as specified in the Access Amendment.⁸ The means by which motorized road closure would take place would vary by site and would include both decommissioning and long-term storage. Decommissioning involves permanently removing a road from the Forest Service transportation system. Roads that are placed into long-term storage (e.g., a minimum of 10 years) remain on the system, but are rendered undrivable. On-the-ground road work may be very similar between decommissioning and long-term storage, as both are intended to prevent future failures and erosion hazards. Both methods may involve one or a combination of the following treatments: fully or partially recontouring the road prism, ripping the road surface, removing culverts and recontouring stream crossings, planting and seeding, mulching, or slashing disturbed areas.

All roads proposed for motorized closure under the Proposed Action are classified as seasonally restricted Forest Service roads. Motorized public access on these roads is only permitted to occur between November 16 and March 31. Non-motorized public access on these roads is permitted year-round.

2.3 Alternative 3 – Modified Proposed Action (Preferred Alternative/Environmentally Preferable Alternative)

Alternative 3 is the agencies' Preferred Alternative in the FEIS. It is a modified version of the Proposed Action that would close a different set of seasonally restricted Forest Service roads to motorized access. The repair and maintenance activities proposed for Bog Creek Road and the *administrative open* designation for Bog Creek Road and Blue Joe Creek Road are the same as described under the Proposed Action.

Under Alternative 3, approximately 25 miles of Forest Service roads within the Blue-Grass BMU would be closed to all motorized use. This would allow the Forest Service to meet the Access Amendment grizzly bear core habitat requirement of 55 percent and the TMRD requirement of 26 percent.

⁸ Forest Service, 2011.

Two of the nine roads proposed for motorized road closure under Alternative 3 would be different from the roads proposed for closure under the Proposed Action. These roads were selected to be included in this alternative because closing these roads would create more core grizzly bear habitat in upper Grass Creek, a place that has been heavily and continuously used by grizzly bears since at least the 1980s.

All roads proposed for motorized closure under Alternative 3 are classified as seasonally restricted Forest Service roads. Motorized public access on these roads is only permitted to occur between November 16 and March 31. Non-motorized public access on these roads is permitted year-round.

Section 5.2 of this ROD further discusses why the previously mentioned factors make Alternative 3 also the Environmentally Preferred Alternative.

2.4 Alternative 4 – Blue-Grass BMU West–East Open Access

Alternative 4 is a modified version of the Proposed Action that would open Bog Creek Road and roads along the eastern approach to Bog Creek Road to unlimited public motorized access year-round. Under Alternative 4, Bog Creek Road repair and maintenance and the motorized closure of seasonally restricted Forest Service roads would be identical to the Proposed Action. After repair of Bog Creek Road is completed, the 5.6 miles of the repaired Bog Creek Road would be designated as open for unlimited public motorized access year-round. However, winter motorized snowmobile use by the public is currently not allowed on Bog Creek Road as a result of the court orders of November 7, 2006, and February 27, 2007, relating to recovery of woodland caribou and the potential impacts of snowmobile use within the recovery area.

Approximately 4.5 miles of Blue Joe Creek Road would change to an administrative open designation (as-needed administrative motorized access). Additionally, the designation of roads along the eastern approach to Bog Creek Road (FSRs 2546, 1011, 636, and 1009) would also change from the current seasonally restricted designation (limited motorized access) to an open road designation (unlimited motorized access) to allow for continuous unrestricted public motorized travel around Continental Mountain.

2.5 Alternative 4 Modified

Alternative 4 Modified was developed for inclusion in the FEIS in response to stakeholder alternative suggestions during the DEIS public comment period. Alternative 4 Modified allows for similar east–west public access as Alternative 4, but limits it to a 1-month period per year, from July 15 through August 15. It also includes a different combination of roads proposed for motorized closure, compared with the alternatives analyzed in the DEIS. All other proposed project components are the same as under Alternative 4.

2.6 Alternatives Not Considered in Detail

Multiple public comments received during the review of the DEIS requested that the Forest Service provide unrestricted motorized access to some roads in the Blue-Grass BMU. The Forest Service reviewed the BMU's road system to determine whether other roads, beyond those analyzed in the DEIS, could be opened to unrestricted public access

through this EIS process. After review of grizzly bear habitat models and consultation with the USFWS, it was determined that by opening these roads the Forest Service would not be in compliance with Management Situation (MS) 1 requirements as directed by the Access Amendment and the Forest Plan (see Section 3.2.3.1 of the FEIS for further discussion on MS1 requirements). This does not preclude future changes to road designations in the BMU. Under the Access Amendment, the Forest Service can, in coordination with the USFWS, review and revise road designations within the BMU.

Additional alternatives that were dismissed from further consideration are described in Section 2.3 of the FEIS.

3 DECISION FRAMEWORK

3.1 Joint Process

CBP and the Forest Service worked together as joint lead agencies for this FEIS and are each issuing a separate final ROD. The Assistant Commissioner, Office of Facilities and Asset Management, CBP, is the deciding official for CBP. The Forest Supervisor, IPNF, is the deciding official for the Forest Service. Given the purpose and need, the deciding officials review the Proposed Action, the other alternatives, and the environmental consequences in order to make the following decisions:

CBP decision:

The CBP decision is whether to approve funding for and implement the repair and maintenance of Bog Creek Road, contingent on the Forest Service's approval.

Forest Service decision:

The Forest Service decision is: 1) whether to approve the repair and maintenance of Bog Creek Road; 2) whether to implement the motorized closure of seasonally restricted Forest Service roads to establish grizzly bear core area habitat to meet Access Amendment standards for the Blue-Grass BMU and to meet IPNF Forest Plan standards regarding the needs of the grizzly bear as defined in the Recovery Plan; and 3) whether to implement changes in the seasonally restricted designation of roads in the Blue-Grass BMU.

4 DESCRIPTION OF THE CBP DECISION

4.1 The Decision

The Decision was developed through collaborative efforts between CBP, the Forest Service, stakeholders, and the public, and meets the goals and objectives established for the project while meeting other resource needs. Based on the analysis of issues and the joint framework for decision-making for this project, CBP and the Forest Service have made a Decision that will fulfill CBP's need to provide "improved east-west access for administrative use to this section of the U.S.-Canada border across the Selkirk Mountains." CBP confirms that based upon the analysis in the FEIS, the Decision will best meet the purpose and need; address issues; respond to public comments; and comply

with laws, regulations, and policy. As such, CBP will implement the Decision as detailed below and as shown in the map in Appendix A to this final ROD. The Decision is within the range of actions and effects analyzed and disclosed in the FEIS.

The Decision includes the following project components:

1. The road repair and maintenance of Bog Creek Road between the existing gates on FSRs 1013 and 2546 within the Blue-Grass BMU, and change in designation for Bog Creek Road from *seasonally restricted* to *administrative open* (as-needed administrative motorized access). The direct, indirect, and cumulative effects of *administrative open* access on Bog Creek Road are disclosed in the FEIS.
2. The change in designation of approximately 21.9 miles of NFS roads (portions of FSRs 1009, 636, 1011, and 2546) from *seasonally restricted* to *administrative open*. This change will allow for access to Continental Lands by private property owners to access their property as per the special use permit that will be authorized in conjunction with this Decision. The special use permit will be structured to allow for unlimited motorized trips along the eastern approach and Blue Joe Creek Road (see also #6 below). Terms of the special use permit will require that access to the private property is direct and will not allow for use of public lands along the road corridor at any time. The direct, indirect, and cumulative effects of *administrative open* access on Blue Joe Creek Road are disclosed in the FEIS.
3. The motorized road closure of seasonally restricted FSRs 2464 (Lower), 2464 (Upper), 1322, 1322A, 1013D, 1013C, 1388 (see #5 below), 1388A, and 2.7 miles of FSR 2253. This establishes grizzly bear core area habitat to meet the Access Amendment standards in the Blue-Grass BMU. The direct, indirect, and cumulative effects of motorized road closure of these seasonally restricted FSRs are disclosed in the FEIS.
4. Under the Decision, the southern 3.6 miles of FSR 636 will remain as *seasonally restricted*. This designation will allow motorized access for a livestock permittee within the Blue-Grass BMU to several salting locations along FSR 636 that are visited periodically between April and November. The number of trips will be limited to six per active bear year and will be counted as per the current condition in the No-Action Alternative. The direct, indirect, and cumulative effects of maintaining FSR 636 as *seasonally restricted* are disclosed in the FEIS.
5. Although FSR 1388 will be closed to motorized use, snowmobile use will be allowed on this road. The direct, indirect, and cumulative effects of continuing to allow snowmobile use on FSR 1388 are disclosed in the FEIS.
6. The change in designation of 4.9 miles of FSR 1009 from *seasonally restricted* to *open* to the public from July 15 to August 15 annually. The direct, indirect, and cumulative effects of *open* access on these roads are disclosed in the FEIS.

4.2 Mitigation

Mitigation measures are additional site-specific actions developed to avoid or reduce effects to resources that may occur despite the implementation of design features. After analyzing the potential effects of proposed activities, CBP determined that most effects were eliminated or reduced through the implementation of design features and therefore

do not require additional mitigation. Design features will be incorporated into different phases of the project, as described in Appendix B of the FEIS. Additional details regarding project mitigation agreed to by the Forest Service, CBP, and the USFWS during Section 7 consultation are included in Appendix B of this ROD.

To minimize the risk of grizzly bear mortality related to repair activities on Bog Creek Road and the presence of repair personnel in the Blue Grass BMU, CBP will require personnel to implement measures that limit the attraction of the job site and camp to grizzly bears. Personnel will keep the job site and camp clean and free of food and other waste that could attract grizzly bears. The camp will be enclosed by an electric fence. Personnel will be prohibited from carrying firearms beyond Forest Service gates, but for one exception described below. Furthermore, a bear safety plan and a full-time bear safety monitor will be required. The bear safety monitor may be armed and will be responsible for educating other personnel on bear safety; ensuring that the electric fence is maintained, that the job site is clean, and that all other design features and project conditions related to grizzly bear safety are implemented; and documenting and reporting to the Forest Service and USFWS grizzly bear observations.

The Decision provides offsets for habitat and genetic connectivity loss and mortality risk increase at Bog Creek, with habitat and genetic connectivity gain and mortality risk decrease at Grass Creek. In order to demonstrate that these offsets occur, CBP commits to provide funds to the USFWS or another party for a period of up to 10 years to survey, monitor, and research grizzly bear movement and activity in the SRZ, primarily in the Blue-Grass BMU, on the U.S.–Canada international border where grizzly bear are most likely to cross, and along potential, historic, and known grizzly bear travel corridors. Funds could be used to acquire physical assets, such as camera traps and tracking collars, or pay for research personnel, transportation expenses, and other related services.

To minimize the risk of grizzly bear mortality related to as-needed motorized use of Bog Creek Road and Blue Joe Creek Road, CBP will assist in funding an Idaho Department of Fish and Game (IDFG) Conservation Officer or provide funds to another party for a period of up to 10 years to work with CBP, Forest Service, USFWS, IDFG, local governments, communities, and individuals to collect information on grizzly bear sightings, develop infrastructure for reporting grizzly bear sightings, develop grizzly bear conservation training and capacity building where grizzly bear knowledge is lacking, and conduct educational programs focused on the importance of grizzly bear conservation. The Conservation Officer will also be responsible for duties associated with seasonal open motorized access to 4.9 miles of FSR 1009, as described above. Interpretive signs or educational materials, as well as two additional heavy-duty gates, would also be installed at appropriate locations along FSR 1009 and near Silver Creek.

The Forest Service, CBP, and USFWS will meet within 30 days if any of the following incidents occur in association with the seasonal (i.e., between July 15 and August 15 of each year) open public motorized use along the 4.9-mile segment of FSR 1009: 1) any grizzly bear removal conducted in response to a human-bear conflict or habituation situation; 2) any grizzly bear mortality resulting from self-defense; or 3) a malicious killing/poaching of a grizzly bear. The agencies shall discuss the circumstances surrounding the incident(s) and determine an appropriate response action to ensure that seasonal open motorized use of this 4.9-mile segment of FSR 1009 remains compatible with grizzly bear recovery. Response actions may include, but are not limited to:

1) modifying the timing or location of the seasonal open motorized use; 2) placing restrictions on permitted uses or activities (i.e., area closures or other restrictions) during the seasonal open motorized use period; 3) suspending seasonal open motorized use of FSR 1009; or 4) no change to current seasonal open periods.

4.3 Monitoring Activities

Monitoring must be summarized in the ROD “where applicable for any mitigation” (40 Code of Federal Regulations [CFR] 1505.2). Additional details regarding project monitoring agreed to by the Forest Service, CBP, and the USFWS during Section 7 consultation are included in Appendix B of this ROD.

As described in Section 4.2, a full-time bear safety monitor will be responsible for ensuring avoidance and minimization of grizzly bear mortality during repair activities. CBP will prepare a summary monitoring report to be made available to the Forest Service and USFWS after the completion of repair activities. Annual reports will be developed by USFWS, IDFG, or other funded parties to document progress and results from grizzly bear movement and activity research and the development of educational and outreach programs. Where appropriate, reports and papers resulting from these projects will be peer reviewed and made available to the public.

The Forest Service and CBP will meet with the USFWS every 2 years for a period of 10 years following the completion of the Bog Creek Road repair and implementation of the seasonal motorized use of the 4.9-mile segment of FSR 1009 to discuss the effectiveness of the CBP-funded Conservation Officer and monitoring programs. The CBP-funded Conservation Officer shall coordinate with the Forest Service, CBP, and USFWS to provide a report at least 30 days prior to the meeting.

In addition, the Forest Service and CBP shall work with the USFWS to develop a plan to monitor the American Falls Trail (Trail #28) and the Upper Priest River Trail (Trail #308); the monitoring plan shall include provisions to document the average number of trail users per week. The monitoring plan shall be finalized prior to the completion of the road repair and closures, i.e., no later than 2023. The monitoring plan shall be used to evaluate whether these trails meet the definition of “high use” (i.e., an average of 20 or more parties per week during summer season [June 15 through September 15], or the current “high-use” definition), and will be used to determine future trail monitoring needs.

5 DECISION RATIONALE

The decisions related to this project are based on a fair examination of the scientific and environmental data, effects analysis, and public response in relation to the governmental and societal needs that the agencies need to address.

The development of the FEIS and final ROD has been based on consideration of the best available science. This has occurred by carefully reviewing available scientific research and other information relevant to the Bog Creek Road Project. Scientific conclusions are drawn from well-supported data sources, and data availability is disclosed. Scientific sources relied upon were cited, responsible opposing views were discussed, incomplete and unavailable information was acknowledged, and scientific uncertainty and risk were

addressed in relevant portions of the FEIS or administrative records. In addition, the specific modeling and analysis methods used were documented, as appropriate.

The Forest Service and CBP encouraged public participation from the beginning and maintained participation throughout the planning process, including issue identification and the analysis documentation process (FEIS, Chapter 1, Section 1.7). Project-specific public comments were used to refine alternative design and ensure a thorough analysis, helping the project interdisciplinary team, CBP, and the Forest Service in determining the best course of action for the project.

The factors CBP used to make the Decision on this project included the following:

- Effectiveness in meeting CBP’s underlying purpose and need (FEIS, Chapter 2)
- Comments from the public, Tribes, and interested parties, including Federal, state, and local organizations (FEIS, Chapter 1, Section 1.7; FEIS, Chapter 2; FEIS Appendix C, Response to Comments on the Draft Environmental Impact Statement; Errata Sheet, Bog Creek Road Project FEIS)
- Objections received consistent with Forest Service objection process regulations (36 CFR 218.25(a)(1) and (2))
- Relationship to environmental and social issues (FEIS, Chapter 3)
- Analysis completed and disclosed in the FEIS and project record documentation
- Consistency with findings required by other laws, regulations, and policy (FEIS, Chapter 3, by resource)

The analysis and decision processes for this project are based on the consideration of the best available science. The manner in which the best available science is addressed can be found throughout the EIS, in the Response to Comments on the Draft Environmental Impact Statement (see FEIS, Appendix C), and the project record.

5.1 Effectiveness in Meeting CBP’s Underlying Need

As stated in the purpose and need statement in the FEIS, CBP needs improved east–west access across the Selkirk Mountains on NFS lands to enable CBP to execute its statutory mission to protect the U.S. northern border and for the safety of CBP and other law enforcement officers while carrying out their duties.

This ROD (see Section 1, Background) and the FEIS also state that the Forest Service has the need to meet legally required IPNF Forest Plan standards for motorized access in grizzly bear habitat in the Blue-Grass BMU that is compatible with the needs of grizzly bear as defined in the Recovery Plan.

While CBP does not have a direct stake in the Forest Service’s meeting the IPNF Forest Plan standards, it does recognize that the Bog Creek Road repairs cannot be approved by the Forest Service unless it can otherwise also meet the legal mandates regarding motorized access. Therefore, CBP’s acceptance and approval of the Decision is based on that understanding.

Providing Improved East–West Access for Administrative Use

Reliable access to areas north of Continental Mountain is needed for CBP to meet its mission requirements. This requires improved east–west routes for east–west access to these areas of the IPNF. CBP agents must be able to access the U.S.–Canada border to prevent illegal activities before perpetrators can reach areas where they can blend into legitimate activities and elude apprehension. CBP requires unimpeded access and mobility for the purposes of response to emergency and exigent circumstances, patrol along the border, technology deployment, and maintenance of strategically placed roads and tactical infrastructure.

Alternative 1 does not respond to this element of the purpose and need. Under this alternative, CBP and Forest Service motorized administrative road access would be limited due to the mostly impassable road conditions of Bog Creek Road. CBP would not have the motorized access in this area needed to execute its statutory mission.

Under any of the action alternatives, repair and maintenance of Bog Creek Road and changes in road designations to allow for administrative open trips west–east across the Selkirk Mountains on NFS lands would provide CBP with reliable access to areas north of Continental Mountain. However, each provides tradeoffs in CBP’s capability to control the border effectively as described in the FEIS (Chapter 3, Section 3.8, Recreation and Access).

The Decision provides the most advantageous balance of tradeoffs by providing CBP agents unimpeded access to and along the border north of Continental Mountain from both directions in the event of emergency or exigent circumstances, providing reliable and as-needed access from the west for routine patrol and other purposes, and limiting the detrimental effects to situational awareness and threat identification from having the general public traversing the immediate border area.

Forest Service Requirement to Meet Access Amendment Standards for the Blue-Grass BMU and Recovery Plan for the Grizzly Bear

In accordance with the BO for the Bog Creek Road Project, the IPNF is required to meet the Access Amendment standards for the Blue-Grass BMU by 2023⁹ and to meet IPNF Forest Plan standards that address the needs of the grizzly bear as defined in the Recovery Plan.¹⁰ To meet these standards, the IPNF must identify roads for motorized road closure. Regardless of the access status of Bog Creek Road, additional road closures will still be required to meet the Access Amendment standards in the BMU. The IPNF must consider multiple uses of the forest road system, including access for border security functions, and balance the interests of a number of stakeholders, including public users. As identified in the Access Amendment ROD¹¹ and the 2015 Forest Plan,¹² proposed land management

⁹ USFWS, 2019.

¹⁰ USFWS, 1993.

¹¹ Forest Service, 2011.

¹² Forest Service, 2015.

uses—which include the transportation system—should be compatible with the needs of the grizzly bear as defined in the Recovery Plan.

Alternative 1 does not respond to this element of the purpose and need. Under this alternative, motorized road closures of seasonally restricted Forest Service roads would not occur, and the Forest Service would not meet the Access Amendment standards through the establishment of new grizzly bear core area habitat.

The action alternatives provide tradeoffs for meeting the Access Amendment standards for the Blue-Grass BMU and Recovery Plan for the grizzly bear. Motorized road closure under any of the action alternatives would allow the Forest Service to meet the Access Amendments standards for the Blue-Grass BMU. However, open motorized access under Alternative 4 and Alternative 4 Modified would not be in compliance with MS1 requirements as directed by the Access Amendment and the Forest Plan. The Decision minimizes human impacts on bears in the BMU, provides for quality core habitat at Grass Creek to offset the loss of habitat with the repair of Bog Creek Road and associated activities, and offsets the increased potential for grizzly–human conflict and related mortality risk without negatively affecting the access CBP requires to meet its mission requirements.

The Decision establishes grizzly bear core habitat, TMRD, and OMRD in accordance with the Access Amendment (Table 1). The Blue-Grass BMU will contain approximately 55.4 percent grizzly bear core habitat (in compliance with the 55 percent minimum). TMRD will be 19.3 percent (in compliance with the standard of 26 percent maximum). OMRD will be 31.1 percent (in compliance with the standard of 33 percent maximum).

Table 1. Decision Access Amendment Conditions

BMU	BMU Priorities (1, 2, or 3)	OMRD > 1 mile per square mile (%)		TMRD > 2 miles per square mile (%)		Core Area Habitat (%)		% NFS Land
		Decision	Selected Standard (maximum)	Decision	Selected Standard (maximum)	Decision	Selected Standard (minimum)	
Blue-Grass	1	31.3%	33%	19.3%	26%	55.4%	55%	96%

5.2 Environmentally Preferred Alternative

It is required by law that one or more environmentally preferred alternatives be disclosed. The environmentally preferred alternative must “encourage productive and enjoyable harmony between man and his environment,” “promote efforts which will prevent or eliminate damage to the environment and biosphere,” and “stimulate the health and welfare of man” (42 United States Code [U.S.C.] 4321). For this project, because CBP and the Forest Service are working together as joint lead agencies, the environmentally preferred alternative must also meet Forest Service standards and specifically cause the least harm to the biological and physical environment while best protecting and preserving historic, cultural, and natural resources (36 CFR 220.3). The environmentally preferred alternative is not necessarily the alternative that will be implemented, and it does not have to meet the underlying need of the project.

In the short term, Alternative 1 would seem to be the environmentally preferred alternative because it would not result in new disturbances to the biological and physical environment. However, Alternative 1 fails to address several existing environmental concerns present in the project area, including failure to meet the Access Amendment standards for core area habitat and TMRD in the Blue-Grass BMU, and continued sedimentation to area streams from erosion along Bog Creek Road and public and administrative use of motorized roads.

Alternative 3 is identified as the environmentally preferred alternative because it would achieve the Access Amendment standards for TMRD and core area habitat (see FEIS Chapter 2, Table 2.4.2) and is most compatible with the needs of the grizzly bear with regard to MS1. Although Alternative 3 would result in short- and long-term impacts, which are described in Chapter 3 of the FEIS, these impacts would be outweighed in the long term by the actions benefiting grizzly bear recovery in the Blue-Grass BMU.

5.3 Forest Plan Consistency

Proposed activities under the Decision are consistent with the IPNF Forest Plan because they help meet objectives of the Forest Service purpose and need for this area. All management activities will be consistent with Management Area direction, including goals and objectives, as described in the FEIS (Chapter 3, by resource) and summarized below.

Threatened, Endangered, and Proposed Species

Grizzly bear

The Decision includes motorized road closures so that the BMU will be in compliance with its TMRD, OMRD, and core area habitat Access Amendment standards. It also includes offsets for habitat and genetic connectivity loss and mortality risk increase at Bog Creek with habitat and genetic connectivity gain and mortality risk decrease at Grass Creek. Specific design features implemented to reduce effects on grizzly bears (Features Designed to Protect Special-Status Wildlife Species) are discussed in Appendix B of the FEIS.

Selkirk Mountain woodland caribou, Canada lynx, bull trout, and bull trout designated critical habitat

The Decision adheres to the threatened and endangered species requirements of the Forest Plan (see Table 3.2.10 of the FEIS) and complies with the ESA and the National Forest Management Act (NFMA) under the 2012 Forest Service planning rule.¹³ The Decision includes motorized road closures, so that the Blue-Grass BMU will be in compliance with its TMRD, OMRD, and core area habitat Access Amendment standards. Specific design features implemented to reduce effects on bull trout (Features Designed to Protect Fish Species and Habitat, Features Designed to Protect Waters of the U.S.) are discussed in Appendix B of the FEIS.

¹³ U.S. Department of Agriculture Forest Service (Forest Service). 2012a. 36 CFR Part 219 National Forest System Land Management Planning. Available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5362536.pdf. Accessed October 18, 2016.

North American wolverine

The analyses presented in Section 3.2 of the FEIS meet the requirements for a biological evaluation (BE) for the North American wolverine, as outlined in Forest Service Manual (FSM) 2672.42.¹⁴ The Decision is consistent with the Forest Plan and policy direction to “ensure that these species do not trend toward federal listing as a result of management actions.” The Decision does not result in a threat to the North American wolverine.¹⁵ Design features implemented to reduce effects on wolverine are discussed in Appendix B of the FEIS.

Wildlife

The Decision is consistent with the Forest Plan and policy direction to “ensure that these species do not trend toward Federal listing as a result of management actions.” The Decision does not affect more than 1 percent of potentially suitable sensitive species habitat in the project-scale wildlife analysis area; and the Decision affects a lower percentage of habitat available within the landscape-scale analysis area. Therefore, the Decision is also consistent with the NFMA requirements under the 2012 Forest Service planning rule to “support the diversity and persistence of native plant and animal species.”¹⁶ As a result, the project also complies with the Migratory Bird Treaty Act and Executive Order (EO) 13186.

The sensitive species analyses in the FEIS (Chapter 3) serve as a BE as outlined in FSM 2672.42¹⁷ and find for the species analyzed, that the Decision may impact individuals or habitat, but will not likely contribute to a trend toward Federal listing or cause a loss of viability to the population or species.

Fish

The Decision adheres to the aquatic resources requirements of the Forest Plan, as amended by the *Inland Native Fish Strategy: Interim Strategies for Managing Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana and Portions of Nevada* (INFISH),¹⁸ and in compliance with the State of Idaho’s implementation of the Clean Water Act (CWA). Vegetation clearing in the riparian habitat conservation areas (RHCAs) for road repair and maintenance will be consistent with the CWA and the Forest Plan, including INFISH. The loss of large woody debris input within the vicinity of the road–stream crossing removals and replacements will be a long-term minimal impact, with less than 1 percent of the RHCAs affected under the Decision.

¹⁴ U.S. Department of Agriculture Forest Service (Forest Service). 2005. Forest Service Manual 2600 – *Wildlife, Fish, and Sensitive Plant Habitat Management*, 2670. Washington, D.C.: U.S. Department of Agriculture Forest Service National Headquarters.

¹⁵ U.S. Department of Agriculture Forest Service. 2014. *Programmatic Biological Assessment for North American Wolverine*. Missoula, Montana: Northern Region.

¹⁶ Forest Service, 2012a, page 21216.

¹⁷ Forest Service, 2005.

¹⁸ U.S. Department of Agriculture Forest Service (Forest Service). 1995b. *Inland Native Fish Strategy: Interim Strategies for Managing Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana and Portions of Nevada*.

The diversity and persistence of native fish species in the fish-bearing streams in the analysis area will continue to be supported, as directed by the NFMA under the 2012 Forest Service planning rule.¹⁹

In accordance with FSM 2670,²⁰ the FEIS analysis serves as a BE for the westslope cutthroat trout and interior redband trout and finds for both species that the Decision may impact individuals or habitat, but will not likely contribute to a trend toward Federal listing or cause a loss of viability to the population or species.

Special Status Plants

The Decision is consistent with the Forest Plan and other applicable standards because project implementation will not exceed regional or forest standards for the protection of special status plants and associated rare plant habitats. Implemented design features (see FEIS, Appendix B) will ensure that project actions minimize soil disturbance, erosion, and downstream sedimentation from disturbed areas.

Water Resources

The Decision meets the standards of the Forest Plan and specific riparian management objectives identified by INFISH (see RF-2d, RF-2e, and RF-2f).²¹ Because design features (see FEIS, Appendix B) will be implemented to specifically minimize impacts to water resources, the effects on shade, temperature, or sediment yield will be minimal.

The estimated effects from the proposed activities will be consistent with watershed-scale efforts to improve water quality. As indicated by the analysis, after application of design features, the expected sediment impacts from culvert replacement/removal will be short term, both spatially and temporally, and quickly return to background levels. In addition, removal of vegetation will be limited to minimize impact to water temperature. With regard to wetlands and other waters of the U.S., the project will be in compliance with the CWA and consistent with the Forest Plan, with the inclusion of INFISH standards.^{22,23}

Soil Resources

The Decision is consistent with the Forest Plan standards because project implementation will not result in an exceedance of regional soil quality standards. Implemented design features (see FEIS, Appendix B) will ensure that project actions minimize soil disturbance and erosion from disturbed areas.

Recreation and Access

The Decision is consistent with the Forest Plan because it improves access for recreation uses and administrative activities in the Blue-Grass BMU while meeting the Access Amendment standards as required in the Forest Plan. Administrative activities include

¹⁹ Forest Service, 2012a.

²⁰ Forest Service, 2005.

²¹ Forest Service, 1995b.

²² Forest Service, 1995b.

²³ Forest Service, 2015.

Forest Service management activities, CBP border security activities, tribal access, private property owner access, and grazing permittee access.

Heritage and Tribal Resources

The Decision is consistent with the Forest Plan standards for heritage and tribal resources. No adverse effects on heritage resources are anticipated. The Forest Service received State Historic Preservation Office concurrence that no adverse effects on historic properties will occur. However, there is no assurance that every heritage resource site has been located. Any discovery found during repair and maintenance activities or during motorized road closure activities will be subject to Forest Service discovery procedures. Additionally, the Forest Service consulted with the Kootenai Tribe of Idaho regarding tribal access in the Blue-Grass BMU and continues to provide for access to treaty areas in the BMU. Although some areas will no longer be accessible via motorized travel, the Forest Service is allowing access to the BMU by other means and therefore the Decision is consistent with Forest Plan standards.

5.4 Findings Required by Other Laws, Regulations, and Policy

National Forest Management Act

The NFMA requires that all projects must be consistent with the governing Forest Plan (or Plans) (16 U.S.C. 1604[i]). The FEIS (Chapter 3) addresses consistency of the alternatives with the IPNF Forest Plan standards and other legal requirements, as do Sections 5.3 and 5.4 of this ROD. Potential physical, biological, cultural, and engineering impacts of the Decision have been assessed and are disclosed in the FEIS (Chapter 3) with supporting information in the administrative record. Based on the conclusions presented in the FEIS and Section 5.3 that proposed activities are within Forest Plan standards, this Decision is consistent with Forest Plan direction. No IPNF Forest Plan amendment is required.

Clean Water Act

The Federal CWA governs forest management practices and development that have the potential to affect water quality, through control of point and non-point sources. The U.S. Environmental Protection Agency is charged with administration of the CWA, which has been delegated to the Idaho Department of Environmental Quality (IDEQ).

The IPNF upholds the Federal CWA through the application and enactment of appropriate Federal and state water quality protection permits; the application of design features and monitoring for effectiveness; and by participating with the State of Idaho in design feature forestry audits, water quality data collection, and implementation of total maximum daily loads (TMDLs) and water quality research programs. Project activities will need to be consistent with these strategies and the *National Best Management Practices for Water Quality Management on National Forest System Lands*.²⁴

²⁴ U.S. Department of Agriculture Forest Service. 2012b. *National Best Management Practices for Water Quality Management on National Forest System Lands*. Vol. 1: *National Core BMP Technical Guide*. FS-990a. Available at: http://www.fs.fed.us/biology/resources/pubs/watershed/FS_National_Core_BMPs_April2012.pdf. Accessed September 3, 2015.

With respect to specific project impacts, the Decision will be required to comply with Sections 402 and 404 of the CWA. Section 402 limits point source discharge of stormwater runoff and requires preparation of a Stormwater Pollution Prevention Plan. Section 404 limits “dredge and fill” within waters of the U.S. (including wetlands) and requires permitting by the U.S. Army Corps of Engineers (USACE).

The stream-crossing culvert removals and replacements will be permitted under the USACE Nationwide Permit 14 (Linear Transportation Projects), and providing the USACE with a preconstruction notification will not be necessary. It may be necessary, however, to coordinate with the IDEQ to obtain IDEQ’s 401 certifications for the culvert replacements and their associated fill material.

With regard to floodplains, the project will be consistent with EO 11988. Though there are no mapped Federal Emergency Management Agency floodplains within the analysis area, impacts to the streams’ floodplains will occur under the Decision. However, because floodplain hydrologic connectivity will still be maintained, and because the INFISH criteria and standards incorporate specific protections for these areas, implementation of the Decision will not increase or alter the risk of floods.

Endangered Species Act

Consultation with the USFWS pursuant to Section 7 of the ESA has been completed. The Forest Service and CBP submitted a biological assessment to the USFWS in July 2019. The Incidental Take Statement from the USFWS’s December 2019 BO is provided as Appendix B to this final ROD. The following threatened, endangered, and proposed species will be affected at a level that does not increase risk to the species, with effects adequately mitigated through project design (see Appendix B of the FEIS) and mitigation measures (see Sections 4.2 and 4.3 of this ROD).

- Grizzly bear: The Decision may affect, is likely to adversely affect, grizzly bear, but would not likely jeopardize the continued existence of the listed grizzly bear population in the conterminous United States. The Decision is compatible with the needs of the grizzly bear, as defined by the Recovery Plan, with regard to maintaining or improving habitat. The Decision would improve genetic connectivity in the center of the BMU at Grass Creek.
- Selkirk Mountain woodland caribou: Because of temporary human noise and activity during repair and motorized closures, the low likelihood a caribou would be present in the action area, and minor habitat impacts (less than 1 percent), impacts to Selkirk Mountain woodland caribou from the Decision would be insignificant or discountable.
- Canada lynx: Due to the fact that the project will affect less than 1 percent of suitable lynx habitat, will not displace lynx as a result of the increased human noise and activity, is unlikely to result in increased incidental trapping or poaching, will not increase public winter motorized access or significantly affect resource competition, and will not reduce movement or linkage, impacts to Canada lynx from the Decision would be insignificant.
- North American wolverine: Because of conservation measures protecting denning individuals, and concurrence from USFWS that human use and disturbance are not

a threat to the species,²⁵ the Decision will not jeopardize the continued existence of the North American wolverine.

- Bull trout: Based on the distance between sediment-producing project activities and bull trout or designated bull trout critical habitat (2,500 to 4,000 feet downstream), and project design features that will reduce sediment transport and minimize potential chemical contamination, the potential short-term, minor impacts to bull trout and designated bull trout critical habitat that may occur as a result of the project will be insignificant.

Whitebark pine (*Pinus albicaulis*), an ESA candidate species, has the potential to occur in the vicinity of the project, but it was not observed during the 2014 field survey and is not likely to occur within the area likely to incur effects. Thus, no impacts to whitebark pine from the Decision are anticipated.

National Historic Preservation Act

The CBP and Forest Service conducted heritage resources surveys of the analysis area to identify any historic properties that may be eligible for the National Register of Historic Places. No adverse effects on heritage resources are anticipated. The Forest Service received State Historic Preservation Office concurrence that no adverse effects on historic properties will occur. However, there is no assurance that every heritage resource site has been located. Terrain disturbance could expose previously undiscovered historic or prehistoric sites. Sites discovered in this manner will be immediately protected from further disturbances (see FEIS, Appendix B).

6 IMPLEMENTATION


CBP has determined that the Decision is consistent with all laws, regulations, and agency policy. CBP has considered reasonably foreseeable activities and potential cumulative effects. CBP believes that the Decision provides for the best management activities that respond to the purpose and need and issues identified in the development of the project.

²⁵ U.S. Fish and Wildlife Service. 2013. Endangered and threatened wildlife and plants; Threatened status for the distinct population segment of the North American wolverine occurring in the contiguous United States; Establishment of a nonessential experimental population of the North American wolverine in Colorado, Wyoming, and New Mexico; Proposed Rules. 50 CFR Part 17. Federal Register 78(23):7864–7890. February 4. Available at: <https://www.gpo.gov/fdsys/pkg/FR-2013-02-04/pdf/2013-01478.pdf>. Accessed August 22, 2016.

7 CONTACT INFORMATION

For more information concerning the Bog Creek Road Project, please contact Joseph Zidron at joseph.zidron@cbp.dhs.gov or (949) 643-6392.

Approved by:



Signature

1/31/20

Date

Robert Janson

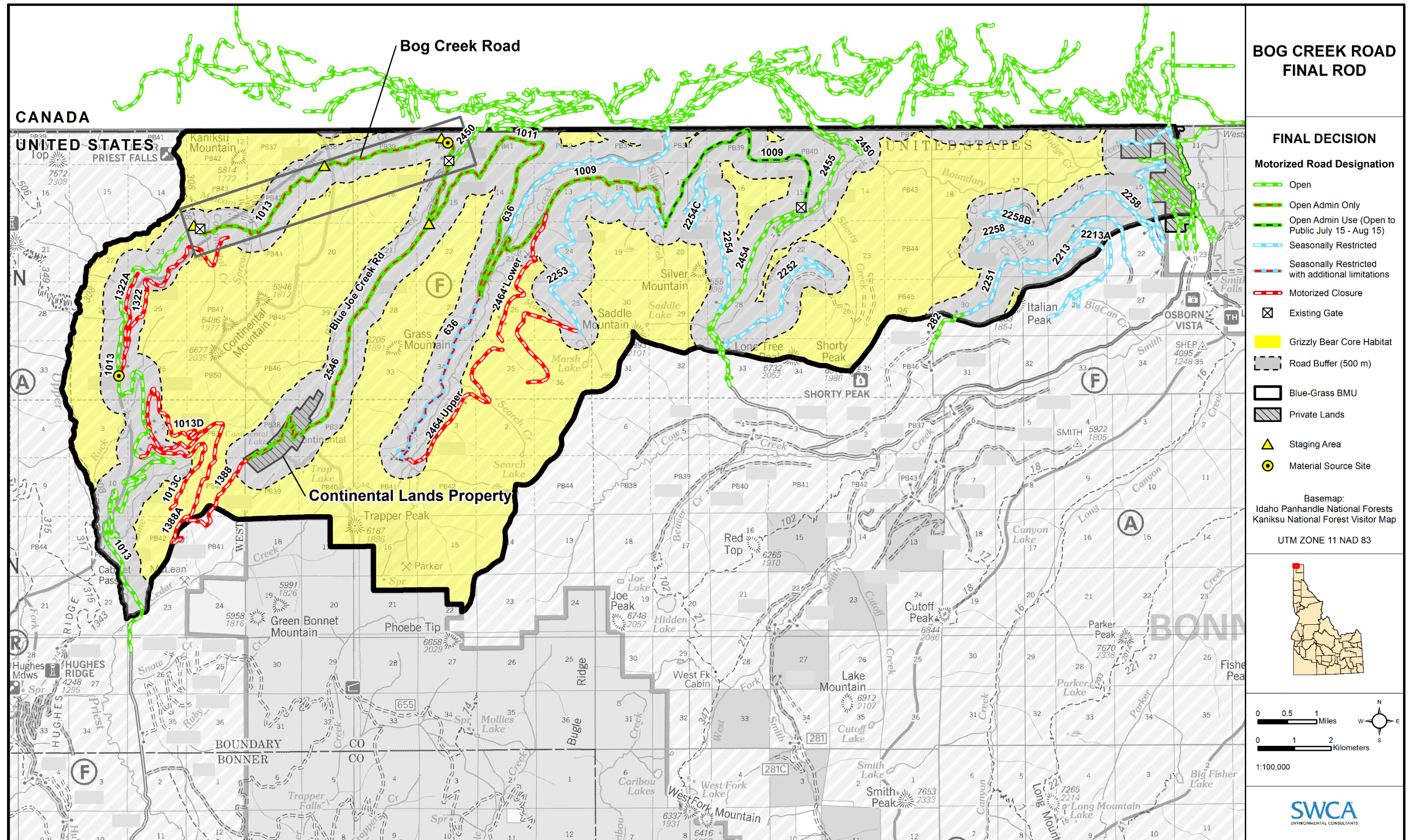
Name

Acting Assistant Commissioner

Title

APPENDIX A

FINAL RECORD OF DECISION MAP FIGURE _____



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APPENDIX B

INCIDENTAL TAKE STATEMENT FROM U.S. FISH AND WILDLIFE SERVICE BIOLOGICAL OPINION FOR THE BOG CREEK ROAD PROJECT

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Idaho Panhandle National Forest
Bog Creek Road Project

Robert Janson, Acting Assistant Commissioner
U.S. Customs and Border Protection

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3.6 Incidental Take Statement

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened fish and wildlife species, respectively, without a specific exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as an intentional or negligent act or omission which creates the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.

Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency actions addressed herein is not considered to be a prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement (ITS).

The measures described below are non-discretionary, and must be undertaken by the Forest and CBP and, as appropriate, must become binding conditions of any grant or permit issued by the Forest or CBP to an applicant for the exemption in section 7(o)(2) to apply. The Forest and CBP have a continuing duty to regulate the activity covered by this ITS. If the Forest or CBP (1) fail to assume and implement the terms and conditions or (2) fail to require an applicant, as appropriate, to adhere to the terms and conditions of this ITS through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Forest, CBP, and any applicant, as appropriate, must report the progress of the action and its impact on the grizzly bear to the Service as specified in the ITS in accordance with 50 CFR 402.14(i)(3).

3.6.1 Form and Amount or Extent of Take Anticipated

Currently, the Service is unaware of any scientific or commercial information to quantify the level of incidental take discussed above in terms of number of bears. Reduced reproductive success of female grizzly bears displaced by habitat loss or degradation may include grizzly bear cub injury or mortality, but it is more likely to occur through failure to breed or to complete gestation. However, this type of mortality usually cannot be documented because grizzly bear reproductive rates naturally vary as a result of environmental and physiological conditions and because grizzly bear offspring (cubs, sub-adults) have naturally high mortality rates.

In accordance with the regulations at 50 CFR 402.14(i)(1)(i), a surrogate may be used to express the amount or extent of incidental take provided that the biological opinion or the ITS describes: the causal link between the surrogate and take of the listed species; why it is not practical to express the amount or extent of take in terms of individuals of the listed species; and a clear

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standard for determining when the level of anticipated take has been exceeded. In this case, the Service is using OMRD, TMRD, and Core habitat within the BMU as surrogate measures for the anticipated amount or extent of take caused by the proposed action. The causal link between the OMRD, TMRD and Core habitat standards (and functional core habitat) and effects was described in this opinion (see, e.g., “Functional Core” at p.33, “Roads and Grizzly Bears” p.40 and “Access Management” (p.46). For the reasons noted immediately above, it is not possible to quantify the incidental take of individual bears.

Based on the results of the effects of the action analysis above, the Service finds that incidental take of some female grizzly bears is reasonably certain to occur in the form of harm or harass caused by: 1) lack of adequate TMRD and Core habitat conditions supportive of the average reproductively successful adult female grizzly bear during the three-year period of road work, and 2) the loss or degradation of a total of 2,793 acres of functional Core habitat associated with Bog Creek Road repair activities, subsequent motorized and non-motorized uses, and road closure activities; such take is likely to occur over a 13-year period during and following the road repair activities.

Based on the analysis above, the incidental take exempted by this Opinion will be exceeded if:

- The Blue-Grass BMU does not meet the OMRD/TMRD/Core habitat standards by the end of 2023; or
- More than 2,793 acres of functional core habitat are lost or degraded in the Blue-Grass BMU as a result of the Bog Creek Road Repair and other Road Closures.
- A summary of the incidental take exemption as a result of adverse effects to some female grizzly bears, due to habitat loss or degradation, is provided in the table below:

	Established Standard	Current BMU Condition	Incidental Take until 2023	Incidental Take Bog Creek Road Repair ^b	Incidental Take Road Closures ^b
OMRD, percent	Less than or equal to 33	32.0			
TMRD, percent	Less than or equal to 26	29.0	3.0		
<i>Reported</i> Core habitat, percent	Greater than or equal to 55	48.3	6.7 ^a		
Habitat Surrogate, acres				1,818	975

^a Equates to 1.9 percent *functional* Core habitat

^b Equates to loss of functional Core habitat

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This project-specific consultation serves to address the direction in the Forest Plan relating to this BMU, i.e., this consultation exempts take provided the Blue-Grass BMU meets the standards by 2023.

3.6.2 Effect of the Take

In the accompanying Opinion, the Service determined that this level of anticipated take is not likely to jeopardize the continued existence of the grizzly bear across its range.

3.6.3 Reasonable and Prudent Measures

The following reasonable and prudent measures are necessary and appropriate to minimize the impacts of incidental take of the grizzly bear caused by the proposed action.

1. Minimize the risk of human-caused mortality to grizzly bears.
2. Maximize the accuracy of the CBP-funded monitoring component.

3.6.4 Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Forest and CBP must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1. To minimize the risk of human-caused mortality of grizzly bears:
 - CBP or the Forest will inform the Service within 24 hours if a grizzly bear is injured or killed through email or a telephone call.
 - CBP shall inform the CBP-funded conservation officer immediately in the event of gate violations at either end of Bog Creek Road. The CBP-funded conservation officer shall report incidents (timing and nature of each) to the Service and the Forest in the annual report.
 - The Forest and CBP shall place interpretive signs or provide educational materials, at one or both ends of the 4.9-mile segment of FSR 1009 that will receive open motorized use between July 15 and August 15 each year to educate the public on grizzly bear awareness, identification, and safety precautions including being “bear aware,” carrying bear spray, and sanitation and attractant handling and storage. Educational materials shall be made available at the Priest Lake and Bonners Ferry Ranger Stations.
 - The 4.9-mile segment of FSR 1009 that will be designated as open to motorized use between July 15 and August 15 each year will not be opened unless: 1) Project activities in the Bog Creek and Upper Priest River Contract Areas (see Table 3 of this Opinion) are complete; 2) heavy-duty gates and signage are in place at both ends of the 4.9-mile road

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segment; and 3) the CBP-funded conservation officer has been hired, trained and is prepared to perform the duties as described in this Opinion.

- The Forest and CBP shall ensure the duties of the CBP-funded conservation officer are well defined to address grizzly bear issues related to increased public access in the Blue-Grass BMU. The following duties shall be implemented by the CBP-funded conservation officer:
 - The conservation officer shall be an appropriately qualified, full-time professional capable of meeting the needs of the position as identified below. The conservation officer shall serve as a grizzly bear management specialist, who will:
 - Maintain an active presence in the Blue-Grass BMU and nearby communities to educate the public, with a focus on recreationists and hunters, on how to live and recreate safely in grizzly bear habitat, proactive sanitation measures, grizzly bear awareness and safety strategies, and grizzly bear identification;
 - Respond to conflicts between people and both black and grizzly bears, and work with the appropriate response agencies to ensure timely resolution when human-bear conflicts arise;
 - Monitor and document black bear and grizzly bear-human encounters, response actions and outcomes, as well as any conflict resolution measures. Conflict resolution will adhere to the IGBC guidelines for grizzly bear conflict management in MS1 designated areas, or the most current IGBC-approved conflict management direction for grizzly bear conflict management in MS1 designated areas;
 - Perform compliance monitoring at the following gates: 1) the heavy duty gates at both ends of the 4.9-mile segment of FSR 1009 that will be designated as open to motorized use between July 15 and August 15 each year; 2) the heavy duty gates at both ends of the Bog Creek Road; and 3) the gate at the western terminus of FSR 1388.
 - Work with the appropriate land management agency to ensure a timely response to gate violations or motorized access violations (i.e., investigate illegal activities, repair or replace damaged property, or augment closure devices to prevent circumvention);
 - Develop a public outreach program that conveys support of grizzly bear conservation in the Selkirk Recovery Zone; and
 - Provide additional wildlife and conservation information to the public and other stakeholder organizations, as requested, and work as a deterrent to reduce the risk of illegal human-caused grizzly bear mortality.
 - The CBP-funded conservation officer shall be actively employed and ready to perform his/her duties as described in this Opinion before the Bog Creek Road is open for motorized travel and before the 4.9-mile segment of FSR 1009 receives open motorized use between July 15 and August 15 each year.
 - The CBP-funded conservation officer shall be provided adequate funding for public education programs and workshops.
 - The CBP-funded conservation officer position should be structured to provide funding so that the officer will remain paid and on-duty through furloughs and

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government shutdowns to maintain continuity in community relationships, respond to grizzly bear-human conflict situations, and perform compliance monitoring (i.e., gate monitoring). In the event the Agencies are unable to provide such an assurance, the Service and the Agencies will meet to discuss alternative options. A clearly defined funding mechanism must be identified prior to advertising the position.

- The CBP-funded conservation officer shall coordinate with the Forest and CBP to provide an annual report to the Service and the Forest and the CBP documenting any human-bear conflicts with response actions and outcomes, management removals involving grizzly bears, closure device (gates or barriers) violations and responses, any documented occurrences of unauthorized activities associated with access to private property, activities related to community outreach efforts and recommendations to maintain, reduce, or modify monitoring efforts, based on current and previous monitoring results.
- The Service, Forest and CBP shall meet within 30 days if any of the following incidents occur in association with the seasonal (i.e., between July 15 and August 15 of each year) open motorized use along the 4.9-mile segment of FSR 1009: 1) any grizzly bear removal conducted in response to a human-bear conflict or habituation situation; 2) any grizzly bear mortality resulting from self-defense; or 3) a malicious killing/poaching of a grizzly bear. The Service, Forest and the CBP shall discuss the circumstances surrounding the incident(s) and determine an appropriate response action to ensure that seasonal open motorized use of this 4.9-mile segment of FSR 1009 remains compatible with grizzly bear recovery. Response actions may include, but are not limited to: 1) modifying the timing or location of the seasonal open motorized use; 2) placing restrictions on permitted uses or activities (i.e., area closures or other restrictions) during the seasonal open motorized use period; 3) suspending seasonal open motorized use of FSR 1009; or 4) no change to current seasonal open periods.

2. To maximize the effectiveness of Project-related monitoring:

- The Service's Grizzly Bear Recovery Office in Libby, Montana shall administer the CBP-funded monitoring program as an extension of the current SRZ monitoring effort. The Recovery Office has provided the Service, Forest and CBP a conceptual monitoring proposal, and the CBP is committed to fund the monitoring plan as proposed for approximately 8 years, or as adapted by mutual agreement to meet Project monitoring needs. To meet Project monitoring needs, the CBP funded monitoring program will include: (1) radio telemetry that will require periodic trapping and collaring of individual grizzly bears to ensure and maintain a sample size of collared grizzly bears of at least 4 to 5 females and 2 to 3 males; (2) genetic sampling at bear corrals and natural rub sites; and (3) remote camera monitoring. The Service's research office will provide radio collars, aerial monitoring, project supervision, data analysis, and reporting of results. Service monitoring crews will coordinate with the Forest to request access along Bog Creek Road for monitoring purposes. Additionally, the Service will maintain necessary communication with CBP to inform them of timing of access for monitoring.

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- CBP shall provide any documentation of grizzly bear sightings and location data to the both the Service and the Forest annually, provided such information does not violate CBP policy. The Forest shall supply the CBP field offices with an example of the grizzly bear sighting documentation form.
- Within 30 days of receipt of the final report, the Forest and the CBP shall meet with the Service to discuss the results of the CBP-funded monitoring effort, to ensure the assumptions of the analysis remain valid regarding grizzly bear responses to the Project, and to assess consistency with the effects analysis and take exempted in this Opinion.

3.6.5 Reporting and Monitoring Requirements

In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in this ITS in accordance with 50 CFR 402.14 (i)(3).

Monitoring requirements:

- The Forest shall continue to monitor changes in OMRD, TMRD, and Core habitat within the BMU and will document any changes associated with the Project activities as part of their annual reporting protocol associated with the Forest Plan Access Amendment direction.
- The Forest and CBP shall meet with the Service every two years following the completion of the road repair and implementation of the seasonal motorized use of the 4.9-mile segment of FSR 1009 to discuss the effectiveness of the CBP-funded conservation officer and monitoring programs. The CBP-funded conservation officer shall coordinate with the Forest, CBP and the Service to provide a report at least 30 days prior to the meeting. The report shall include:
 - Records of any gate or barrier violations and outcomes prior to, during, and following the one-month open motorized use period on FSR 1009 (including the number of illegal motorized intrusions as well as incidents of gate damage or removal), and records of any vandalism of gates, signage or educational materials. Relevant information includes gate number, location, dates and number of known or suspected violations, any response action taken, and potential impact of the violation to grizzly bear habitat loss or avoidance and human-caused mortality risk. The report shall include which, if any, known violations are or are suspected to be associated with the seasonal open motorized use of FSR 1009 and those that may be associated with access to private property, including any stopping or parking along the access routes, gate or key violations, and/or unauthorized use of public lands adjacent to access routes.
 - Records of any human-bear conflicts and human-caused grizzly bear mortalities near the open road segment or in the surrounding landscape that may suggest grizzly bears may be being displaced from key resources, and records of any human-bear encounters or conflicts observed by the CBP-funded conservation officer, by Forest or CBP staff or other management authorities (e.g., IDFG staff). The report shall describe how responses to grizzly bear-human conflict situations

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- or removals followed the IGBC Guidelines pertaining to human-bear conflict situations in MS-1 habitat (or current IGBC-approved conflict management direction).
- The Service, Forest, and CBP shall use this information to: (1) determine whether violations, vandalism, human-bear conflicts, or grizzly bear mortalities warrant any long-term Project-related actions be modified, relocated, or suspended; and (2) whether existing monitoring efforts need to be modified, suspended, or terminated.

In addition, the Forest and CBP shall work with the Service to develop a plan to monitor the American Falls Trail (Trail #28) and the Upper Priest River Trail (Trail #308); the monitoring plan shall include provisions to document the average number of trail users per week. The monitoring plan shall be finalized prior to the completion of the road repair and closures (i.e., no later than 2023). The monitoring plan shall be used to evaluate whether these trails meet the definition of “high use” (i.e., over 20 parties per week during summer season [June 15 through September 15], or the current “high-use” definition), and will be used to determine future trail monitoring needs.

Monitoring reports shall be submitted to the Service’s Idaho Fish and Wildlife Office for northern Idaho.

3.6.6 Conservation Recommendations

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery programs, or to develop new information on listed species.

- The Service recommends the Forest evaluate recent burns in SRZ for their potential to provide future foraging (e.g., huckleberry) resources.
- The Service recommends the Forest respond proactively through forest management to allow to potential huckleberry stands to develop in order to support the distribution of grizzly bears within the SRZ.

3.6.7 Reinitiation Notice

This concludes formal consultation on the effects of the Project on the grizzly bear and the Southern Selkirk Mountain woodland caribou. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if:

1. The amount or extent of incidental take specified in the ITS is exceeded.
2. New information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this Opinion.

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3. The agency action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this Opinion.
4. A new species is listed or critical habitat designated that may be affected by the action.

In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending the outcome of reinitiation.