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7  
8 IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
9 SEATTLE DIVISION

10 NORTH CASCADES  
11 CONSERVATION COUNCIL; and  
KATHY JOHNSON,

NO. \_\_\_\_\_

12 Plaintiffs,

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

13  
14 v.

15 UNITED STATES FOREST SERVICE;  
an administrative agency of the United  
16 States of America; VICKI  
CHRISTIANSEN, Chief of the Forest  
17 Service; JAMIE KINGSBURY, Former  
Forest Supervisor for Mount Baker-  
18 Snoqualmie National Forest; JODY  
WEIL, current Forest Supervisor for  
19 Mount Baker-Snoqualmie National  
20 Forest; PETER FORBES, Former District  
Ranger for Darrington Ranger District;  
21 ERIN ULOTH, Former Acting District  
Ranger for Darrington Ranger District;  
22 GRETCHEN SMITH, Current District  
Ranger for Darrington Ranger District;  
23 PHYLLIS REED, Project Lead for  
24 Darrington Ranger District,

25 Defendants.  
26

**I. NATURE OF ACTION**

1  
2 1. In May 2019, Defendant Jamie Kingsbury, the former Forest Supervisor for the  
3 Mount-Baker Snoqualmie National Forest, and her subordinates Peter Forbes, Erin Uloth, and  
4 Phyllis Reed of the Darrington Ranger District, approved the South Fork Stillaguamish Vegetation  
5 Project (“Vegetation Project”), which will allow, among other things, logging on between 6,960 and  
6 9,300 acres of land in the South Fork Stillaguamish area of the Mount-Baker Snoqualmie National  
7 Forest in Snohomish County, Washington and the construction of approximately 30 miles of  
8 temporary roads.

9  
10 2. This action seeks judicial relief with respect to that decision, ordering defendants  
11 U.S. Forest Service, *et al.* to comply with the requirements of the Endangered Species Act (ESA), 16  
12 U.S.C. § 1531 *et seq.*, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4331 *et seq.*, and  
13 the National Forest and Management Act (NFMA), 16 U.S.C. § 1600 *et seq.* The decision approving  
14 the project was arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance  
15 with law.

16  
17 3. Plaintiff requests that the Court hold unlawful and set aside the Vegetation Project  
18 decision and its accompanying Environmental Assessment, pursuant to the Administrative  
19 Procedures Act (APA), 5 U.S.C. § 706(2)(a).

20  
21 4. Plaintiff seeks a declaratory judgment, injunctive relief, an award of costs and  
22 expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice  
23 Act, 28 U.S.C. § 2412, and such other relief as this Court deems just and proper.

24 **II. JURISDICTION**

25 5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises  
26 under the laws of the United States and involves the United States as a defendant.



1 Stillaguamish area. NCCC brings this action on its own behalf and on behalf of its adversely affected  
2 members.

3 11. Plaintiff Kathy Johnson is a member of NCCC. For over three decades, she has spent  
4 substantial time in the South Fork Stillaguamish area, where she goes hiking, birdwatching,  
5 gathering mushrooms, berries and medicinal plants, and enjoying the serenity and beauty of the  
6 forest. She intends to continue those activities into the future. She submitted comments about the  
7 Vegetation Project on behalf of Pilchuck Audubon.

8  
9 12. Defendant United States Forest Service is an administrative agency of the United  
10 States within the U.S. Department of Agriculture and is responsible for the lawful management of  
11 our national forests, including the South Fork Stillaguamish area of the Mount-Baker Snoqualmie  
12 National Forest.

13  
14 13. Defendant Vicki Christiansen is named in her official capacity as Chief of the Forest  
15 Service.

16 14. Defendant Jamie Kingsbury is named in her official capacity as former Forest  
17 Supervisor of the Mount-Baker Snoqualmie National Forest. Defendant Kingsbury was the  
18 responsible official for the Final Environmental Analysis of the Vegetation Project, issued in  
19 September, 2017.

20  
21 15. Defendant Peter Forbes is named in his official capacity as former District Ranger for  
22 the Darrington Ranger District, a sub-unit of the Mount-Baker Snoqualmie National Forest.  
23 Defendant Forbes issued the notice of draft Environmental Assessment of the Vegetation Project and  
24 opportunity to object on September 22, 2017.

25  
26

1 16. Defendant Erin Uloth is named in her official capacity as former Acting District  
2 Ranger for the Darrington Ranger District. Defendant Uloth issued the final decision notice and  
3 finding of no significant impact for the Vegetation Project on May 31, 2019.

4 17. Defendant Phyllis Reed is named in her official capacity as Project Lead for the  
5 Vegetation Project. Defendant Reed, in conjunction with Defendant Kingsbury, issued the final  
6 Environmental Assessment for the Vegetation Project.

7 18. Defendant Jody Weil is named in her official capacity as current Forest Supervisor of  
8 the Mount-Baker Snoqualmie National Forest. Defendant Weil took over the duties of Ms.  
9 Kingsbury following the final decision and will be responsible, in part, for implementing the  
10 decision.  
11

12 19. Defendant Gretchen Smith is named in her official capacity as current District  
13 Ranger for the Darrington Ranger District, a sub-unit of the Mount-Baker Snoqualmie National  
14 Forest. Ms. Smith took over the duties of Ms. Uloth following the final decision and will be  
15 responsible, in part, for implementing the decision.  
16

17 **V. STATEMENT OF STANDING**

18 20. The interests at stake in this matter are germane to plaintiff's organizational  
19 purposes. The agency's violations of law as set forth in the claims for relief herein threaten the  
20 preservation of wildlife and fish and their habitat and the native biodiversity of the Mount Baker-  
21 Snoqualmie National Forest and the Vegetation Project area and its naturally functioning  
22 ecosystems.  
23

24 21. Plaintiff Johnson and NCCC's members observe, enjoy, and appreciate  
25 Washington's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to  
26 do so in the future, including in the Vegetation Project area. Members use and enjoy the waters,

1 public lands, and natural resources throughout areas covered by the Vegetation Project for work,  
2 recreational, scientific, spiritual, educational, aesthetic, and other purposes. Plaintiff Johnson and  
3 NCCC's members enjoy fishing, hiking, camping, hunting, skiing, bird watching, rock-climbing,  
4 mushroom- and berry-gathering, study, contemplation, photography, and other activities in and  
5 around the waters and public lands throughout the Project area. Plaintiffs and NCCC's members  
6 also participate in information gathering and dissemination, education and public outreach,  
7 commenting upon proposed agency actions, and other activities relating to the Forest Service's  
8 management and administration of these public lands.

9  
10 22. Defendants' unlawful actions adversely affect NCCC's organizational interests, as  
11 well as its members' and plaintiff Johnson's use and enjoyment of the Mount Baker-Snoqualmie  
12 National Forest, including the Vegetation Project area. The Vegetation Project, if allowed to  
13 proceed, will result in irreparable damage to the integrity of the forest ecosystem, including loss of  
14 mature trees, loss of young trees that will one day become mature trees, degradation of wildlife  
15 habitat, including that of endangered and threatened species, and impacts from new roads, including  
16 increased sedimentation of streams, increased disturbance to sensitive species stemming from  
17 additional vehicle noise and pollution, and increased foot traffic into areas of forest that are currently  
18 inaccessible. The interests of plaintiffs and NCCC's members have been and will continue to be  
19 injured and harmed by the Forest Service's actions and/or inactions as complained of herein. Unless  
20 the relief prayed for herein is granted, plaintiffs and NCCC's members will suffer ongoing and  
21 irreparable harm and injury to their interests.

22  
23  
24 23. The injuries to plaintiffs are likely to be redressed by a favorable decision of this  
25 Court because an order granting the relief requested in this Complaint would ensure that the  
26

1 Vegetation Project will not result in the destruction or adverse modification of wildlife and fish and  
2 their habitat within the Vegetation Project area.

3  
4 **VI. FACTUAL ALLEGATIONS**

5 **A. The South Fork Stillaguamish Vegetation Project.**

6 24. The South Fork Stillaguamish Vegetation Project area encompasses approximately  
7 65,000 acres of National Forest land, all in the Mount Baker-Snoqualmie National Forest of  
8 Washington State. The project area lies within the South Fork Stillaguamish watershed, west of the  
9 Cascade crest in Snohomish County. The project area lies within the Darrington Ranger District of  
10 Mount Baker-Snoqualmie National Forest.

11 25. Within the 65,000 acres of the project area, the Vegetation Project proposes to allow  
12 logging on between 2,000 to 3,300 acres which the defendants characterize as “commercial  
13 thinning.”

14  
15 26. The Vegetation Project also proposes logging an additional 1,060 acres which the  
16 defendants characterize as “noncommercial thinning.”

17 27. The Vegetation Project also proposes the construction of approximately 30 miles of  
18 roads that will remain in place for an indefinite period. The roads are to be removed when the project  
19 is completed a decade or more from now.

20  
21 28. The Vegetation Project proposes a variety of logging methods aimed at promoting  
22 larger-tree forest structure over time. The Vegetation Project proposes to achieve larger-tree forest  
23 structure by “thinning” stands and reducing stand density, while leaving in place larger-diameter  
24 trees.

25 29. The Vegetation Project’s plan for commercial thinning includes the creation of  
26 “canopy gaps.” In these gaps, the Vegetation Project proposes removal of all conifers larger than the

1 minimum diameter for merchantability and less than 20 inches DBH (diameter at breast height).  
2 Each gap would be 1/4 to 1/2 acre in size. Gaps would account for approximately 3-10% of the total  
3 stand area targeted for commercial thinning.

4           30. In addition to “gaps,” the Vegetation Project also proposes “heavy thinning” across a  
5 further 3-10% of the area targeted for commercial thinning. In heavy thinning, tree density would be  
6 reduced to as little as 20 trees per acre. Heavy thinning areas would be approximately ½ acre to 3  
7 acres in size.

8           31. In addition, the Vegetation Project also proposes “ordinary commercial thinning”  
9 across most of the remainder of the area targeted for commercial thinning. In ordinary commercial  
10 thinning, density would be reduced to a relative density of 35, calculated using the formula  $RD =$   
11  $BA/(QMD)^2$ .<sup>1</sup>

12           32. Defendants claim such thinning will result in habitat benefits for spotted owls and  
13 marbled murrelets, among other species.

14           33. Defendants deceptively characterize these commercial vegetation treatments  
15 (otherwise known as commercial logging) as thinning, when the end result will be a significant  
16 reduction in trees necessary to maintain healthy forest conditions.

17           34. The acreage targeted for non-commercial thinning would also include “heavy  
18 thinning.”

19           35. After the logging is complete, many stands in the project area would be left with  
20 isolated trees stripped of surrounding vegetation.

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<sup>1</sup> RD means Residual Density. BA means Basal Area. QMD means Quadratic Mean Diameter. Because  
it is a ratio, residual density is not expressed in units.



1           36. Defendants justify such drastic logging as “vegetation treatments” by leaving isolated  
2 larger trees in place. Defendants propose to achieve “large tree forest structure” by removing  
3 everything that is not a large tree, including vegetation which is a vital part of habitat for various  
4 species within the Mt. Baker-Snoqualmie National Forest.

5           37. The Vegetation Project area encompasses habitat for threatened species under the  
6 Endangered Species Act, Region 6 Sensitive species, “Survey and Manage” species identified by the  
7 1994 Northwest Forest Plan (updated January 2001), and Management Indicator Species identified  
8 by the 1994 Northwest Forest Plan (updated January 2001).<sup>2</sup>

9           38. Portions of the Project will occur in habitat designated as “critical” for bull trout,  
10 chinook salmon, marbled murrelet, and northern spotted owl, all of which are listed as threatened  
11 species under the Endangered Species Act.

12           39. Portions of the Project will also occur in habitat for Sensitive Species, Management  
13 Indicator Species, and Survey and Manage Species, including the harlequin duck, bald eagle,  
14 mountain goat, northern goshawk, California wolverine, Townsend’s big-eared bat, American  
15 marten, pileated woodpecker, Puget Oregonian, evening field slug, red tree vole, gray wolf, grizzly  
16 bear, and great gray owl.

17           40. The Project will cause significant adverse impacts to threatened species under the  
18 Endangered Species Act, to Region 6 Sensitive species, to Survey and Manage species, and to  
19 Management Indicator Species and will result in the destruction or adverse modification their habitat  
20 within the Project area.

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25           <sup>2</sup> “Survey and Manage” species and “Management Indicator Species” are species the Forest Service uses  
26 to measure the success or failure of its habitat management practices. The terms are defined by the Northwest Forest Plan  
and the NFMA regulations, respectively. “Sensitive Species” are those defined by Forest Service Region 6 as those  
whose continued population viability is in doubt.

1           41.     On or about September 22, 2017, the defendants issued a Final Environmental  
2 Assessment (“FEA”) for the Project.

3           42.     The FEA failed to provide an adequate analysis and disclosure of the probable  
4 significant adverse impacts to fish and wildlife, and fish and wildlife habitat, and it failed to identify,  
5 analyze or provide potential mitigation measures to address those impacts within the Vegetation  
6 Project area.

7           43.     The FEA does not analyze whether the extensive harvest proposed under the “gap”  
8 and “heavy thinning” regimens will have harmful effects on endangered, threatened, or Region 6  
9 Sensitive Species. Instead, the FEA assumes, without analysis, that there will be only beneficial  
10 effects.

11           44.     The FEA fails to analyze meaningful mitigation measures for threatened and  
12 endangered species and Region 6 Sensitive Species. No appropriate mitigation measures that occur  
13 before disturbing wildlife habitat are analyzed in the FEA.

14           45.     Plaintiffs commented on and objected to the FEA and the Vegetation Project.

15           46.     The Forest Service issued a Record of Decision approving the FEA and the  
16 Vegetation Project in May 2019.

17           **B.     The 1994 Northwest Forest Plan (updated January 2001), the 1990 Mt. Baker-**  
18 **Snoqualmie National Forest Plan, and the Region 6 Sensitive Species List.**

19           47.     On or about April 13, 1994, the Secretary of the U.S. Department of Agriculture and  
20 Secretary of the U.S. Department of the Interior issued a “Record of Decision for Amendments to  
21 Forest Service and Bureau of Land Management Planning Documents Within the Range of the  
22 Northern Spotted Owl,” as well as a second document, “Standards and Guidelines for Management  
23  
24  
25  
26

1 of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the  
2 Northern Spotted Owl.” These documents are collectively known as the 1994 Northwest Forest Plan.

3 48. The 1994 Northwest Forest Plan contained new standards and procedures for habitat  
4 protection in several national forests, among them the Mt. Baker-Snoqualmie National Forest. Thus,  
5 the 1994 Northwest Forest Plan partially superseded the pre-existing 1990 Mt. Baker-Snoqualmie  
6 National Forest Plan.

7  
8 49. In January 2001, the 1994 Northwest Forest Plan was partially amended to include  
9 new guidelines in a document titled, “Record of Decision and Standards and Guidelines for  
10 Amendments to the Survey and Manage Protection Buffer, and other Mitigation Measures Standards  
11 and Guidelines.”

12 50. The 1994 Northwest Forest Plan (updated January 2001) guides natural resource  
13 management activities on lands administered by the Mt. Baker-Snoqualmie National Forest. It  
14 provides forest-wide long-term management direction in the form of goals, objectives, standards,  
15 and guidelines designed to guide land and endangered species management activities in the Mt.  
16 Baker-Snoqualmie National Forest.

17  
18 51. Further guidance for the Mt. Baker-Snoqualmie National Forest is found in the 1990  
19 Mt. Baker-Snoqualmie National Forest Plan.

20 52. To the extent the 1994 Northwest Forest Plan (updated January 2001) provides  
21 greater protections to threatened and sensitive species, it controls over the 1990 Mt. Baker-  
22 Snoqualmie National Forest Plan. However, to the extent the 1994 plan is silent on an issue, the  
23 1990 Mt. Baker-Snoqualmie National Forest Plan continues to control.

24  
25 53. Region 6 of the Forest Service (which includes the Vegetation Project area) has  
26 published a list of sensitive species.

1           54.     According to Forest Service Manual Section 2670, the Forest Service is required to  
2 review its programs and activities as part of NEPA, and through a biological evaluation, determine  
3 the project or activities' potential effect on sensitive species, avoid or minimize impacts to species  
4 whose viability has been identified as a concern, and analyze, if impacts cannot be avoided, the  
5 significance of potential adverse effects on species and their habitat within the area of concern and  
6 on the species as a whole.  
7

8           **C.     Species Identified for Protection Under the Various Plans and Policies**

9           55.     The 1990 Mt. Baker-Snoqualmie National Forest Plan identifies as Management  
10 Indicator Species the American peregrine falcon, bald eagle, grizzly bear, northern spotted owl,  
11 pileated woodpecker, pine marten, mountain goat, and primary cavity excavators; as well as  
12 chinook, coho, pink, and chum salmon, and steelhead and sea-run cutthroat trout and bull trout.  
13

14           56.     The 1994 Northwest Forest Plan (updated January 2001) identifies as Survey and  
15 Manage species the great gray owl (Category C) and the Puget Oregonian (*cryptomastix devia*)  
16 (Category A), and evening field slug (*Deroceras hesperium*) (Category B).  
17

18           57.     The Region 6 list of sensitive species includes harlequin duck, bald eagle, mountain  
19 goat, northern goshawk, California wolverine, Townsend's big-eared bat, evening field slug, red tree  
20 vole, little brown myotis, Cascade red fox, peregrine falcon, and great gray owl.  
21

22           58.     Finally, the northern spotted owl, marbled murrelet, grizzly bear, gray wolf, bull  
23 trout, Stillaguamish fall chinook salmon, and Stillaguamish winter/summer steelhead have all been  
24 identified as threatened or endangered under the Endangered Species Act.  
25

26           59.     All of the above-named species and their habitat are present in the Vegetation Project  
area.

1           **D. Management Indicator Species**

2           60. According to the 1990 Mt. Baker-Snoqualmie National Forest Plan, protection of  
3 Management Indicator Species requires the Forest Service to, “at a minimum, provide sufficient  
4 numbers and sizes of live and dead trees throughout the Forest to maintain primary cavity excavators  
5 at the 40% population level using guides from Management of Wildlife and Fish Habitats in Forests  
6 of Western Oregon and Washington (Brown, 1985).” Nothing in the 1994 Northwest Forest Plan  
7 supersedes this requirement.  
8

9           61. The FEA states that, under the proposed action, there would be insufficient trees  
10 remaining to support the target 40% population of primary excavators.

11           62. The FEA states that under the no-action alternative, there would be sufficient trees  
12 remaining to support the target 40% population of primary excavators.

13           63. The FEA argues that those portions of the Vegetation Project area not slated for  
14 logging will provide sufficient habitat for cavity excavators. However, the FEA does not conclude  
15 that there will be sufficient habitat “throughout the Forest,” which is a requirement of the 1990 Mt.  
16 Baker-Snoqualmie National Forest Plan.  
17

18           64. The 1990 Mt. Baker-Snoqualmie National Forest Plan also requires that “All  
19 proposed management actions which have the potential to affect habitat of endangered, threatened,  
20 or sensitive species will be evaluated to determine if any of these species are present.”  
21

22           65. The FEA acknowledges that the northern spotted owl, marbled murrelet, grizzly  
23 bear, gray wolf, bull trout, Stillaguamish fall chinook salmon, and Stillaguamish winter/summer  
24 steelhead are all threatened or endangered species that may be present.

25           66. The FEA admits that harlequin duck, bald eagle, mountain goat, northern goshawk,  
26 California wolverine, Townsend’s big-eared bat, evening field slug, red tree vole, little brown

1 myotis, Cascade red fox, peregrine falcon, and great gray owl are all sensitive species that may be or  
2 have been confirmed to be present.

3 67. However, there is no evidence in the Vegetation Project record of decision or FEA  
4 that the Forest Service evaluated the Vegetation Project area to determine if the species identified in  
5 the prior two paragraphs might be present. The Biological Opinions of the Fish and Wildlife Service  
6 and Fisheries Service (dated March 12, 2019 and May 29, 2019 respectively) do not indicate that on-  
7 the-ground evaluation of the Vegetation Project area occurred.  
8

9 68. The Fish and Wildlife’s March 12, 2019 Biological Opinion states, on page 38,  
10 “Within stands to be treated that have been surveyed for streams and fish occupancy, the no-cut  
11 buffers will total about 481 acres, compared to a total buffer area of 1,239 acres if all streams had  
12 100-foot buffers, including non-fish bearing perennial and intermittent streams.” The unmistakable  
13 inference from this statement is that not all streams have been surveyed for endangered, threatened,  
14 or sensitive species within all forest stands to be treated (meaning thinned) as part of the Vegetation  
15 Project. Up to 752 additional acres will be cut because of the failure to survey streams.  
16

17 69. The same lack of on-the-ground surveillance applies to each of the other endangered,  
18 threatened, and sensitive species identified in paragraphs 64 and 65 *supra*.

19 70. There is no baseline population data regarding any of the Management Indicator  
20 Species that would allow the defendants to assess the species’ current health or analyze the impacts  
21 of the Vegetation Project on those species.  
22

23 71. As one particularly egregious example of the absence of important information and  
24 the failure to conduct surveys, the 1990 Mt. Baker-Snoqualmie National Forest Plan requires the  
25 Forest Service to “Complete peregrine falcon nesting habitat survey and map potential habitat on the  
26 Forest. Determine whether there is any reproduction occurring on the Forest. Survey periodically for

1 any nesting use.” However, none of these peregrine falcon surveys were performed prior to the  
2 decision to approve the Vegetation Project.

3 72. As a result of the lack of surveying, the FEA says only that peregrine falcons within  
4 the Vegetation Project area are “suspected, but not documented.”  
5

6 73. As another example of the Forest Service’s failure to obtain important information  
7 and to conduct surveys, the 1990 Mt. Baker-Snoqualmie National Forest Plan requires the Forest  
8 Service to “Complete and update stream surveys for all fish bearing streams, to include an  
9 assessment for presence of fish migration barriers posed by natural and man-caused events” and also  
10 “Inventory all fish bearing streams for distribution and volume of large woody debris.” There is no  
11 evidence that these surveys have been performed in the Vegetation Project area.  
12

13 74. Neither the record of decision nor the FEA provide survey data or analysis required  
14 by the 1990 Mt. Baker-Snoqualmie National Forest Plan. The missing information was readily  
15 available without significant cost or effort and was important to making an informed decision.

16 **E. Survey and Manage Species**

17 75. The FEA acknowledges that the following Survey and Manage species are suspected  
18 to be present in the Vegetation Project area: Puget Oregonian (*cryptomastix devia*) (Category A),  
19 and evening field slug (*Deroceras hesperium*) (Category B).  
20

21 76. However, no pre-project survey was done to locate these species.

22 77. The FEA contains no analysis of these species’ current condition within the  
23 Vegetation Project area, nor of their existing habitat, nor of the Vegetation Project’s impacts upon  
24 them.  
25  
26

1           78.     The great gray owl, a Category C Survey and Manage species, is also present in the  
2 Vegetation Project area. However, no mention of this species appears anywhere in the record of  
3 decision or FEA, and no survey for this species was made.

4           79.     Neither the record of decision nor the FEA provide survey data or analysis required  
5 by the 1994 Northwest Forest Plan (updated January 2001).  
6

7           80.     The missing information was readily available without significant cost or effort and  
8 was important to making an informed decision.

9           **F.     Sensitive Species**

10          81.     The Vegetation Project area is home to numerous species designated as Sensitive  
11 Species by the Forest Plan, such as the harlequin duck, bald eagle, mountain goat, northern goshawk,  
12 California wolverine, Townsend’s big-eared bat, evening field slug, red tree vole, little brown  
13 myotis, Cascade red fox, peregrine falcon, and great gray owl.  
14

15          82.     The 1990 Mt. Baker-Snoqualmie National Forest Plan requires the Forest Service to  
16 “Develop more accurate baseline inventories for deer, elk, goats, cavity excavators, **and sensitive**  
17 **species**” and also “Identify Threatened, Endangered, and **Sensitive plant and animal species**  
18 **habitat**. Protect, maintain and/or enhance this habitat in accordance with Recovery Plans. The  
19 overall goal is to prevent the Federal listing of Sensitive Species” and “Develop complete  
20 inventories of threatened, endangered, **and sensitive species.**”  
21

22          83.     In addition, according to Forest Service Manual Section 2670, the Forest Service is  
23 required to review its programs and activities as part of NEPA, and through a biological evaluation,  
24 to determine the project or activities’ potential effect on Sensitive Species, avoid or minimize  
25 impacts to species whose viability has been identified as a concern, and analyze, if impacts cannot be  
26



1 avoided, the significance of potential adverse effects on species and their habitat within the area of  
2 concern and on the species as a whole.

3 84. However, the record of decision and the FEA make no attempt to provide baseline  
4 inventories of the Sensitive Species known or suspect to be present, nor do they identify measure to  
5 maintain or enhance sensitive species' habitat.  
6

7 85. Instead, the FEA repeats, for each individual Sensitive Species, "The proposed  
8 activities may impact individuals, but are not likely to create a trend towards federal listing." But the  
9 FEA and the record of decision provide no data to support this finding, including no baseline  
10 population data, and the Forest Service had no such data when it made its decision.

11 86. The FEA also consistently assumes, without evidence, that the thinning proposed in  
12 the Vegetation Project will actually result in long-term *benefit* to each of the identified Sensitive  
13 Species. Again, however, there is no data or analysis to support this assumption.  
14

15 87. Defendants did not provide any analysis and/or data on current populations of  
16 affected Sensitive species to support its conclusion that the viability of these species is not likely to  
17 be threatened by Project logging. The missing information was readily available without significant  
18 cost or effort and was important to making an informed decision.

19 **G. Thinning and the 1994 Northwest Forest Plan**

20 88. The 1994 Northwest Forest Plan (updated 2001) provides that "Examples of  
21 silvicultural treatments that may be considered beneficial include thinnings **in existing even-age**  
22 **stands** and prescribed burning."  
23

24 89. The 1994 Northwest Forest Plan (updated 2001) also provides that there will be no  
25 thinning in stands 80 years old or older.  
26

1           90.     The thinning proposed in the Vegetation Project area will not occur exclusively in  
2 existing even-age stands.

3           91.     The thinning proposed in the Vegetation Project area will not occur primarily in  
4 existing even-age stands.

5           92.     Substantial evidence in the record of decision or FEA does not support a finding that  
6 the Vegetation Project area consists exclusively of even-age stands.

7           93.     The September 8, 2017 Silviculture Report states that, following logging in the 1970s  
8 and 1980s, “The use of poorly matched seed stock and species contributed to limited regeneration or  
9 the need to replant in some cases (USDA, 1995) and is evident in the predominance of western  
10 hemlock in the stands at present.” This is an indication that the stands are not all (or even mostly)  
11 even in age but rather uneven.

12           94.     Nor has the Forest Service conducted stand-specific surveys to determine all the  
13 stands’ ages (and whether all the stands are even-aged).

14           95.     Instead, the defendants relied on untested assumptions that are contrary to the  
15 available evidence.

16           96.     The September 8, 2017 Botany Report says, “It is assumed that stand exams would  
17 be completed in all stands prior to harvest layout and implementation. Stand exams would determine  
18 stand age, and any stand older than 80-years of age at the time of the Decision Notice would be  
19 dropped from harvest.” This is an indication that the Forest Service itself did not know, at the time  
20 the Vegetation Project was approved, the age of the stands.

21           97.     Notwithstanding the Forest Service’s lack of knowledge regarding the age of the  
22 stands, or whether the stands are even-aged, the FEA assumes, without further analysis, that thinning  
23 the stands will result in benefits to endangered, threatened, or sensitive species.  
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1 98. Nothing in the record or the FEA supports such an assumption.

2 99. The thinning of stands that are, at present, less than 80 years old will prevent the  
3 thinned stands from reaching an average age of 80 years, because new, younger trees will grow in  
4 the thinned area, lowering the age of the stand.

5 100. As a result, the Vegetation Project fails to promote the emergence of stands over 80  
6 years in age.

7  
8 **H. Roads**

9 101. The 1994 Northwest Forest Plan (updated 2001) states: “The amount of existing  
10 system and non-system roads within Key Watersheds should be reduced through decommissioning  
11 of roads. Road closures with gates or barriers do not qualify as decommissioning or a reduction in  
12 road mileage. If funding is insufficient to implement reductions, there will be no net increase in the  
13 amount of roads in Key Watersheds. That is, for each mile of new road constructed, at least one mile  
14 of road should be decommissioned, and priority given to roads that pose the greatest risks to riparian  
15 and aquatic ecosystems.”

16  
17 102. The 1994 Northwest Forest Plan (updated 2001) also requires the Forest Service to:  
18 “Reduce existing system and non-system road mileage outside roadless areas. If funding is  
19 insufficient to implement reductions, there will be no net increase in the miles of roads in Key  
20 Watersheds.”

21  
22 103. The Vegetation Project, however, proposes to construct or open at least 30 miles of  
23 additional roads, above the existing road mileage within the Vegetation Project area.

24 104. The Vegetation Project does not include any funding or concrete timeline for the  
25 removal of the roads.

26

1 105. The construction of the roads will result in an increase of total road miles within the  
2 project area.

3 106. The Vegetation Project would include logging immediately adjacent to Inventoried  
4 Roadless Areas within the Project area. The land immediately adjacent to the Inventoried Roadless  
5 Areas is “unroaded,” which the Forest Service has defined as “[a]ny area, without the presence of a  
6 classified road, of a size and configuration sufficient to protect the inherent characteristics associated  
7 with its roadless condition.” Roadless Area Conservation FEIS, G-12.  
8

9 107. NEPA requires the Forest Service to disclose the environmental impacts to roadless  
10 areas that could possibly be designated in the future as a wilderness area. The Forest Service must  
11 disclose these impacts even if the roadless areas are un-inventoried and less than 5,000 acres  
12

13 108. The FEA fails to analyze and disclose the impacts upon the unroaded areas adjacent  
14 to the Inventoried Roadless Areas. The FEA fails to disclose the Wilderness Classification potential  
15 for the unroaded lands contiguous with the Inventoried Roadless Area.

16 109. The FEA fails to analyze and disclose impacts that logging immediately adjacent to  
17 the Inventoried Roadless Area would have on its ability to be designated as a Wilderness Area in the  
18 future.

19 110. Defendants are irrevocably committing unroaded areas adjacent to Inventoried  
20 Roadless Areas to logging, preventing the unroaded areas from being considered for Wilderness  
21 designation in the future.  
22

## 23 **VII. CLAIMS FOR RELIEF**

### 24 **FIRST CLAIM FOR RELIEF:**

#### 25 **Failure to Adequately Disclose and Analyze Environmental Impacts as Required by NEPA**

26 111. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

1           112. The Vegetation Project FEA fails to adequately disclose and analyze the  
2 environmental impacts of the Project as required by NEPA. 40 C.F.R. § 1500.1(b). NEPA  
3 mandates that the disclosure of high-quality information in the form of an EIS, detailing the  
4 environmental impacts of a proposal be made to public officials and citizens before actions are  
5 taken. 40 C.F.R. § 1500.1(b).  
6

7           113. NEPA is a procedural statute that requires federal agencies to take a hard look at the  
8 environmental consequences of the proposed action using the best available scientific information.  
9 An agency complies with NEPA's hard look requirement if the procedure followed by the agency  
10 resulted in a reasoned analysis of the evidence before it.  
11

12           114. The Vegetation FEA failed to take a hard look at the environmental consequences of  
13 the Vegetation Project. The agency did not conduct a reasoned analysis of the best available  
14 scientific information regarding the impacts of the Vegetation Project on the endangered, threatened,  
15 sensitive, candidate, and indicator species and their habitat. The FEA fails to disclose the amount  
16 and distribution of habitat needed to ensure population viability of wildlife species. This includes  
17 northern spotted owl, marbled murrelet, grizzly bear, gray wolf, bull trout, Stillaguamish fall  
18 chinook salmon, and Stillaguamish winter/summer steelhead, peregrine falcon, harlequin duck, bald  
19 eagle, mountain goat, northern goshawk, California wolverine, Townsend's big-eared bat, red tree  
20 vole, little brown myotis, Cascade red fox, American marten, pileated woodpecker, primary cavity  
21 excavators, Puget Oregonian, evening field slug, red tree vole, gray wolf, grizzly bear, and great  
22 gray owl that live in the project area; and the chinook, coho, pink, and chum salmon, and steelhead  
23 and sea-run cutthroat trout and bull trout that are found in the waters within the project area.  
24  
25  
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1 115. In addition, the FEA fails to disclose or analyze the existing baseline population  
2 conditions of the above-listed species. In the absence of an environmental baseline, the FEA cannot  
3 reasonably assess the impacts of the Vegetation Project.

4 116. The FEA also fails to disclose and analyze cumulative impacts of the Project as  
5 required by NEPA. 40 C.F.R. § 1508. Cumulative effects are defined as “the impact on the  
6 environment which results from the incremental impact of the action when added to other past,  
7 present, and reasonably foreseeable future actions regardless of what agency or person undertakes  
8 such other actions. Cumulative impacts can result from individually minor but collectively  
9 significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

10 117. The FEA fails to analyze the direct, indirect, and cumulative impacts of Project  
11 activities upon roadless areas and unroaded lands contiguous to roadless areas.

12 118. The FEA fails to analyze the direct, indirect, and cumulative impacts of Project  
13 activities on coarse and fine woody debris within the Project areas.

14 119. The FEA fails to analyze the direct, indirect, and cumulative impacts that logging  
15 will have on existing old forest conditions within the Vegetation Project area.

16 120. Defendants’ actions as described above are arbitrary, capricious, not in accordance  
17 with law, and without observance of procedures required by law, within the meaning of the APA, 5  
18 U.S.C. § 706.

19 121. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
20 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

21  
22 **SECOND CLAIM FOR RELIEF:**  
23 **Unreasonably Narrow Statement of Purpose and Need in Violation of NEPA**

24 122. Plaintiffs reallege and incorporate by reference all preceding paragraphs.  
25  
26



1           131. Likewise, in preparing an FEA, the Forest Service is required by its own NEPA rules  
2 to analyze alternatives that meet the need for action, unless there are “no unresolved conflicts  
3 concerning alternative uses of available resources”. 36 C.F.R. § 220.7.

4           132. Here, the FEA does not analyze any alternative besides the Vegetation Project and no  
5 action at all. Yet, there is unresolved conflict concerning alternative uses of the South Fork  
6 Stillaguamish Forest, in that the Forest Service is seeking to conduct commercial thinning and road-  
7 building despite evidence that commercial thinning and road-building are harmful to the  
8 environment, including threatened, endangered and other vulnerable species.

9           133. The Forest Service’s failure to analyze other alternatives besides the Vegetation  
10 Project and no action alternatives represents an insufficiently narrow analysis of the available  
11 alternatives for protecting threatened and endangered species habitat—the supposed purpose of the  
12 Vegetation Project. There are other, reasonable alternatives to accomplish this purpose that were not  
13 analyzed.

14           134. Defendants’ actions as described above are arbitrary, capricious, not in accordance  
15 with law, and without observance of procedures required by law, within the meaning of the APA, 5  
16 U.S.C. § 706.

17           135. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
18 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

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22                                   **FOURTH CLAIM FOR RELIEF:**  
23                                   **Failure to prepare an environmental impact statement in Violation of NEPA.**

24           136. Plaintiffs reallege and incorporate by reference all preceding paragraphs.  
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1 137. Under NEPA, a federal agency must prepare an environmental impact statement, as  
2 opposed to an environmental assessment, if its proposed action will significantly affect the quality of  
3 the human environment. 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.3

4 138. In preparing an EIS, NEPA requires the agency to fully analyze the environmental  
5 impacts of each identified alternative, including appropriate mitigation measures. The agency must  
6 fully discuss the environmental consequences of the alternatives identified in an EIS, including the  
7 means to mitigate the adverse impacts of each alternative. 40 C.F.R. § 1502.12, -.16.

8 139. Here, defendants have not prepared an EIS but rather an FEA.

9 140. The Vegetation Project will have significant adverse effects on the quality of the  
10 human and natural environment. Therefore, an EIS should have been prepared.

11 141. Defendants' actions as described above are arbitrary, capricious, not in accordance  
12 with law, and without observance of procedures required by law, within the meaning of the APA, 5  
13 U.S.C. § 706.

14 142. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
15 litigation pursuant to the EAJA, 28 U.S.C. § 2412.

16 **FIFTH CLAIM FOR RELIEF:**

17 **Failure to Comply with the 1990 Mt. Baker-Snoqualmie National Forest Plan and**  
18 **1994 Northwest Forest Management Plan (updated January 2001) in Violation of NFMA**

19 143. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

20 144. NFMA mandates that defendants' activities carried out on National Forests "must be  
21 consistent with the [land management] plan components." 16 U.S.C. § 1604(i); 36 C.F.R. §  
22 219.15(e).

23 145. The 1990 Mt. Baker-Snoqualmie National Forest Plan and 1994 Northwest Forest  
24 Management Plan (updated January 2001) are both "land management plans."  
25  
26

1           146. The decision and accompanying documents for the Vegetation Project violate  
2 NFMA and its implementing regulations by failing to ensure compliance with the 1990 and 1994  
3 plans, in the following ways:

4                   a. Failure to provide monitoring information or analysis of the effects of the sale  
5 on the species comprising the three assemblages of Management Indicator Species;

6                   b. Improper reliance on habitat quality rather than the population trends of  
7 Management Indicator Species and sensitive species;

8                   c. Failure to conduct project-level surveys for Sensitive Species or provide  
9 reasons why project-level surveys cannot be done;

10                   d. Failure to conduct project-level surveys for Survey and Manage Species;

11                   e. Failure to properly account for the overall impact of the project on species  
12 that live in the project area in a manner that violates the requirements of the 1990 and 1994 plans.  
13

14                   f. Failure to consider whether the specific treatment proposed in the Vegetation  
15 Project will result in habitat improvements for endangered and threatened species, or whether some  
16 other treatment would have been more effective and less harmful.  
17

18                   g. Construction of additional roads within the project area without a  
19 corresponding decrease in existing roads.  
20

21           147. Defendants' actions as described above are arbitrary, capricious, not in accordance  
22 with law, and without observance of procedures required by law, within the meaning of the APA, 5  
23 U.S.C. § 706.

24           148. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this  
25 litigation pursuant to the EAJA, 28 U.S.C. § 2412.  
26

**VIII. PRAYER FOR RELIEF**

Plaintiffs respectfully request that the Court grant the following relief:

A. Order, declare, and adjudge that the defendants have violated the National Environmental Policy Act and its implementing regulations as set forth above;

B. Order, declare, and adjudge that the defendants have violated the National Forest Management Act and its implementing regulations as set forth above;

C. An order enjoining the defendants from implementation of the Vegetation Project, including enjoining the defendants from awarding or consummating any timber sales in the Vegetation Project area;

D. An order requiring preparation of an EIS;

E. An order requiring the defendants to withdraw its Record of Decision approving the Vegetation Project until such time as the agency demonstrates to this court that it has adequately complied with the law;

F. An award to the plaintiffs of their costs, litigation expenses, expert witness fees, and reasonable attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, and all other applicable authorities; and

G. Any such further relief as may be just, proper, and equitable.

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Dated this 2nd day of September, 2020.

Respectfully submitted,

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