

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

February 11, 2021

U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA, 22041

Re: Proposed Revisions to ESA Regulations for Interagency Consultation

Dear Agency Officials:

Thank you for the opportunity to express my strong support for the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) proposed rule for interagency consultation regulations published on January 12, 2021. The proposed revision would amend the agencies' consultation regulations under the Endangered Species Act (ESA) pertaining to land management plans of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM). This is a necessary step towards correcting the long-standing flaw in the Ninth Circuit's ruling in *Cottonwood Environmental Law Center v. U.S. Forest Service*, which inhibits important forest restoration efforts and imposes unjustified delays in project implementation.

Here in Montana, our forests face unprecedented forest health issues and wildfire risks. When it comes to the state's forested landscape, over 70 percent of the land is federally owned. It is imperative that federal agencies are given the tools to manage their land adequately and in a timely manner so as to protect Montana's communities. The proposed amendment will ensure that shovel-ready projects that have undergone appropriate environmental review are not hampered. It clarifies that the re-initiation of consultation to address new information or critical habitat designations should be addressed at the project specific level, as opposed to the land management plan level. The *Cottonwood* decision's requirement to reinitiate consultation on the entire land planning process is inconsistent with the law and is not grounded in sound reasoning. The decision injects unnecessary ambiguity into the process, which is often exploited by litigation and diverts critical resources away from forest restoration work. The State of Montana supports the proposed amendment, as it would improve and accelerate interagency cooperation and important forest restoration projects.

The *Cottonwood* decision contradicts established law and regulation that protects endangered species and critical habitat when developing forest plans and considering forest management projects. Court rulings that require extensive ESA consultation apart from project level analysis only serve to block efforts intended to improve forest health and reduce wildfire risk. Those rulings create gratuitous procedural exercises that tie the hands of federal land management agencies and ensure that litigation, not best available science, drives decisions.

In addition to improving forest health and reducing wildfire risk, forest management projects strengthen local economies, improve wildlife habitat, increase recreational opportunities, protect watersheds, and support Montana's forest products industry. The proposed amendment keeps approved

projects on track and helps provide a consistent supply of timber to mills, contributing to the retention of this important and historic Montana industry. If we are to continue to grow our economy and provide for Montana's communities, we need a strong and sustainable forest products industry that can provide the workforce, expertise, and equipment needed to achieve our forest restoration goals.

With the proposed rule in place, we look forward to continued work with the USFS, the BLM, and other partners to increase the pace and scale of forest restoration and community protection across Montana's forested landscapes. By utilizing the framework created within our state's Forest Action Plan, we will coordinate with federal land management agencies to eliminate needless delays and expand the use of existing forest management tools, such as the Good Neighbor Authority. When it comes to caring for Montana's forests, we should be focused on increasing health and resilience—not baseless lawsuits that cost our state jobs and resources needed to invest in forest restoration.

Thank you for considering the comments of the State of Montana. I strongly urge you to finalize the current proposal to amend the agencies' consultation regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Gianforte". The signature is stylized with large, sweeping loops and a prominent "G".

Greg Gianforte
Governor