



# **Final Decision Memo**

## **Kootenai Forest Plan Amendment for Bears Outside the Recovery Zone**

**USDA Forest Service  
Kootenai National Forest  
Lincoln and Sanders County, Montana**

### **Background**

The Kootenai National Forest has identified a need to amend the 2015 revised Land Management Plan, as amended, hereafter referred to as the Forest Plan (USDA Forest Service 2015), to expand the area known as Bears Outside the Recovery Zone and apply the applicable Forest Plan direction to these new areas.

The Kootenai National Forest includes the Cabinet-Yaak grizzly bear recovery zone (USDI Fish and Wildlife Service 1993). The Forest Plan includes motorized access management direction designed to contribute to habitat conditions for recovery of this threatened species (standard FW-STD-WL-02<sup>1</sup>). As grizzly bears have expanded their use of habitat outside the recovery zone boundary identified in the 1993 Grizzly Bear Recovery Plan (USDI Fish and Wildlife Service 1993), biologists and resource managers developed criteria as part of the Motorized Access Management within the Selkirk and Cabinet Yaak Grizzly Bear Recovery Zone Management Direction and ROD (USDA Forest Service 2015, Appendix B) to identify where recurring use by grizzly bears is occurring (Allen 2011).

These areas of recurring use are referred to as Bears Outside Recovery Zone (BORZ) areas and the Forest Plan identifies the management direction that applies to BORZ areas to contribute to the recovery of this threatened species (standard FW-STD-WL-02).

### **Decision**

Per the National Forest Management Act and its implementing regulations at 36 CFR 219, also known as the 2012 Planning Rule, a plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for the change. I have the discretion to determine whether and how to amend the Forest Plan and to determine the scope and scale of any amendment.

I have decided to amend the Forest Plan to apply standard FW-STD-WL-02 to an additional 167,452 acres of NFS lands and to update the baseline of linear road miles in FW-STD-WL-02 to reflect these additional areas. This decision also clarifies the circumstances in which the “no net increase” standard does not apply. Figure 1, shows the acres of NFS lands where BORZ direction (FW-STD-WL-02) has been applied under the 2015 revised Forest Plan, which retained the 2011

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<sup>1</sup> FW-STD-WL-02. The Motorized Access Management within the Selkirk and Cabinet Yaak Grizzly Bear Recovery Zone Management Direction and ROD is included in appendix B, and shall be applied.



Access Amendment, and the additional acres where the direction will apply under this amendment.

This action is categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). The applicable category of actions is identified in agency procedures as 36 CFR 220.6(e)(16) for a plan amendment that is developed in accordance with 36 CFR part 219. This decision does not authorize any activities, commit the Forest Service to take action, or make changes on the ground. Effects of future site-specific project activities authorized consistent with this amended plan direction will be analyzed at the time when management activities are proposed.

I find that there are no extraordinary circumstances that would warrant further analysis and documentation in an EA or EIS. I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist:

- **Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat.** - The proposed amendment has the potential to affect multiple species listed under the endangered species act and I have determined that none of these effects are significant or warrant an extraordinary circumstance. Below I describe the potential effects to listed species that I considered.

## Effects of the forest plan amendment to grizzly bears

This section describes the effects to grizzly bears anticipated as a result of this forest plan amendment.

### Determining Recurring Use of Grizzly Bears

As described in Allen 2011, an interagency team of biologists met to determine what criteria would be used to identify recurring use by grizzly bears outside the recovery zone boundary. They determined that delineation of any areas as BORZ would be generally based on three or more credible observations within the last 15 years in 6th order watershed Hydrologic Unit Codes (HUCs). Adjacent HUCs with enough grizzly bear use to be considered recurring use areas were combined to create contiguous areas of recurring use, known as BORZ. As recurring use is documented in adjacent HUCs, these would be added to the existing BORZ areas or result in the creation of additional BORZ areas.

The Forest Plan identifies four BORZ on the Kootenai National Forest, totaling 564,166 acres of NFS lands (USDA Forest Service 2015, Appendix B, p. 151). As of 2023, the forest now has five BORZ areas, totaling 731,618 acres of NFS lands (Table 1 and Figure 1) and is proposing this forest plan amendment to apply standard FW-STD-WL-02 to these additional 167,452 acres on NFS lands. Table 1 shows the acres and linear miles included in each BORZ in the Forest Plan and the acres and linear miles included in the areas to be delineated under this 2023 proposed amendment.



**Table 1. Bears Outside the Recovery Zone areas and linear miles.**

<b>Bears Outside Recovery Zone Areas</b>	<b>Forest Plan BORZ Total Area (acres)</b>	<b>Forest Plan BORZ Total Area NFS lands (acres)</b>	<b>Forest Plan Total Linear Miles of Roads on NFS Lands (miles)</b>	<b>Forest Plan Total Linear Miles of Open Roads on NFS land (miles)</b>	<b>2023 BORZ Total Area (acres)</b>	<b>2023 BORZ Total Area NFS lands (acres)</b>	<b>2023 Total Linear Miles of Roads on NFS Lands (miles)</b>	<b>2023 Total Linear Miles of Open Roads on NFS Lands (miles)</b>
<b>Clark Fork</b>	101,899	100,421	256.1	176.9	102,018	100,219	267.3	185.8
<b>Cabinet Face</b>	28,052	27,093	164.1	128.0	54,448	35,532	206.6	159.8
<b>West Kootenai</b>	173,122	169,705	615.3	315.9	269,176	242,252	944.7	566.3
<b>Tobacco</b>	287,240	266,947	1,123.9	867.0	338,720	301,433	1,261.3	966.4
<b>Fisher <sup>1</sup></b>	-	-	-	-	143,904	52,182	217.3	128.6

1 – The Fisher BORZ did not have documented recurring use at the time of consultation for the 2015 Forest Plan (USDI Fish and Wildlife Service 2013).

## Management direction related to BORZ

The amendment proposes to modify standard FW-STD-WL-02 to delineate additional BORZ areas and update the baseline of linear miles within these areas. Areas identified as BORZ, are not to be confused with Bear Management Units (BMUs), identified in the Grizzly Bear Recovery Zone. While Bear Management Units represent the approximate size of a female grizzly bear's home range, the BORZ boundaries do not necessarily represent a similar area. They only represent areas with identified recurring use and may be of varying sizes and shapes.

The metrics for BORZ areas identified in the Forest Plan are linear miles of open and total motorized routes. Linear miles are calculated according to methodology outlined in FW-STD-WL-02. The Kootenai National Forest manages BORZ areas to remain at or less than the baseline amount of linear miles on NFS lands within the HUCs included in the BORZ area.

This amendment also clarifies when the baseline linear miles in standard FW-STD-WL-02 may be adjusted:

- Updated/improved road data without an actual change on the ground (i.e., database corrections).
- Exchanging, acquiring, buying, or selling lands by the agency.

Further, this amendment highlights allowances for temporarily increasing linear miles of motorized route within BORZ (see Design Element II B 1 in USDA Forest Service 2015, Appendix B, p. 150). This would include:

- Motorized use for emergency situations as defined by 36 CFR § 215.2
- Temporary roads, including temporarily using barriered or impassable roads to complete project activities.



Additionally, this amendment highlights that the limits on administrative use of gated roads described in Design Element I E 2 on p. 149 of USDA Forest Service 2015, Appendix B only applies to the Cabinet-Yaak Recovery Zone and not to BORZ:

- Motorized use by agency personnel or others authorized by the appropriate agency personnel (i.e., there is no limit on the administrative use on restricted roads within BORZ).

### Effects to grizzly bears of expanding BORZ and increasing the baseline of linear road miles

The Forest Plan is a programmatic decision and therefore has no direct effects on listed species or their habitats. Any direct effects would be disclosed at the project level when site-specific actions are proposed based on the direction in the amended Forest Plan. The effects of the amendment would be indirect effects in that they would occur later in time with management actions implementing the Forest Plan as amended, including the BORZ limitations on increases in linear miles of total and open motorized routes, except in cases where the Forest Service lacks discretion (USDA Forest Service 2015, appendix B, p. 150)

Public comment was received that expressed concern that the expansion of BORZ areas would also result in an overall increase in the net total road density within the BORZ areas. As is displayed in table 1, BORZ is not calculated in road density, but in linear miles of roads. With the addition of more areas as BORZ, the baseline miles have been adjusted to account for the already existing miles of motorized route within the newly added acres. For example, the new baseline (standard) for the Cabinet Face BORZ would be the old baseline for the existing HUCs combined with the existing linear miles of motorized route within the newly added HUCs. This gives the forest a new baseline that is the aggregate of the old baseline and the existing miles in the newly added HUCs.

Furthermore, because the limit on increases in linear miles of motorized route applies to an entire BORZ polygon and not to the individual HUCs within it, newly added HUCs may have an increase in miles of motorized route in the future. This is due to existing conditions within the overall BORZ being better than the baseline, fewer miles than the baseline because of past projects approving the decrease in linear miles within the existing BORZ, and that gives the forest the flexibility to add linear miles of motorized route within that BORZ if the total is less than the overall baseline established by this amendment. This would still be consistent with FW-STD-WL-02.

Temporary increases in motorized routes will also continue to be allowed within BORZ areas. This includes temporary roads, temporary removal of barriers on roads allowing for administrative use by agency personnel or others, authorized use by the appropriate agency personnel on gated roads, or motorized use for emergency situations (e.g., fire suppression). The effects of these activities are described in the Final EIS for the Forest Plan (USDA Forest Service 2013).

Public comment was received questioning the use of the term “no net increase” because the commenter claim’s that this is an invalid measure of road impacts on grizzly bears over time. The goal of this amendment is to provide a limit to the linear miles of roads in areas where documented recurring use by grizzly bears is occurring. When planning for management activities, this will require that if the agency proposes to construct a road within a BORZ area that



will contribute to the baseline, then an equivalent number of linear miles of road must be closed to stay at or below the amended baseline of road miles included in this amendment. The site-specific effects of these roads to natural resources will be analyzed at the time of the proposed activities. While the commenter may disagree with our interpretation of the term “no-net increase”, I have decided to allow the use of the term for this decision to establish consistency between my decision and the supporting research.

The no-net increase in miles of open or total routes would maintain the possibility of road-related impacts to grizzly bears to existing levels (e.g., mortality risk, displacement, security, connectivity). The fact that more bears are occurring in these areas indicates some level of tolerance of existing levels of motorized access within these HUCs, thus indicating those impacts are not significant. However, limiting the amount of motorized access to existing levels provides areas on the Forest where bears can utilize habitat outside of the recovery zones within that tolerance. The BORZ are still areas with more wheeled motorized access and more disturbance and mortality risk than management direction allows within the recovery zone.

Although the Forest Plan consultation (USDI Fish and Wildlife Service 2023) identifies that the effects of the revised Forest Plan management direction on grizzly bears is likely to adversely affect because of the potential effects of roads on bears, I have determined that this amendment will have an overall benefit to grizzly bears by placing a limit on the increase in linear miles of roads that can occur in areas where recurring use is documented. I have also determined that this effect from the forest plan is not significant under the National Environmental Policy Act, due to the net benefit to grizzly bears that this amendment will provide. I submitted a biological assessment to the U.S. Fish and Wildlife Service regarding the amendment of the forest plan to expand BORZ management direction. In their biological opinion dated November 28, 2023, they included the following response on p.16, “After reviewing the current status of grizzly bears, the environmental baseline for the action area, the effects of the action, and the cumulative effects, it is the Service’s biological opinion that the effects of the Forest Plan [as amended] on grizzly bears are not likely to jeopardize the continued existence of the listed entity of grizzly bear.”

### Consideration of unauthorized use behind closure devices

Public comments received expressed concern about potential unauthorized motorized use occurring behind closure devices and the consideration of this in the analysis of effects.

I acknowledge that unauthorized motorized use behind closure devices has occurred and can result in effects to grizzly bears similar to authorized motorized use on gated and year-long open roads (ie. disturbance). As with open roads, roads with closure devices that have been breached contribute to the risk of illegal shooting of grizzly bears. Monitoring of gates and barriers indicates that unauthorized use has occurred, but that 77 percent of the closure device surveys in Bear Year 2021 in the newly added HUCs found no evidence of unauthorized use. Breaches are repaired after they are discovered, preferably during the same Bear Year.

Even with 23 percent of motorized routes surveyed showing some unauthorized use, grizzly bear use has still increased in these HUCs and has triggered their inclusion as BORZ. Areas that are not BORZ receive the lowest emphasis for closure device monitoring and repairs compared to BMUs and BORZ, so the inclusion into BORZ for these HUCs will increase monitoring and repair efforts in these areas. Table 2 below shows the forest’s closure device monitoring efforts. The forest completed 348 closure device surveys in Bear Year 2021 in these HUCs. .



**Table 2. Closure device surveys in Bear Year 2021 in the new HUCs with recurring use being added to the BORZ.**

<b>New HUCs</b>	<b>Total Closure Device Surveys <sup>2</sup></b>	<b>Closure Device Not Functional <sup>3</sup></b>	<b>Closure Device Not Functional But is Not Breachable <sup>4</sup></b>	<b>Closure Device is Functional <sup>5</sup></b>	<b>Closure Device is Functional but Evidence of Breach <sup>6</sup></b>	<b>Closure Device is Functional/No Evidence of Breach but Needs Repair <sup>7</sup></b>	<b>User Created Route <sup>8</sup></b>	<b>Repair Completed</b>
<b>New HUCs in Cabinet Face BORZ</b>	36	2 (6%)	--	28 (78%)	1 (3%)	--	5 (14%)	--
<b>New HUCs in Fisher BORZ</b>	235	3 (1%)	1 (<1%)	157 (67%)	11 (5%)	18 (8%)	45 (19%)	3
<b>New HUCs in Tobacco BORZ</b>	29	4 (14%)	--	23 (79%)	1 (3%)	--	1 (3%)	1
<b>New HUCs in West Kootenai BORZ</b>	48	3 (6%)	1 (2%)	37 (77%)	2 (4%)	1 (2%)	4 (8%)	--
<b>TOTALS</b>	348	12 (3%)	2 (1%)	245 (70%)	15 (4%)	19 (5%)	55 (16%)	4

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<sup>2</sup> May include repeat visits to the same device.

<sup>3</sup> Closure device is not functional (e.g., berm height has been reduced over time) and there is evidence of breach (i.e., unauthorized use behind the device).

<sup>4</sup> Closure device is not functional, but there's no evidence of breaches occurring (e.g., berm height may be diminished, but the road is overgrown with vegetation and not drivable and there's no evidence of unauthorized use).

<sup>5</sup> Closure device is functional and no evidence of breaches.

<sup>6</sup> Closure device is intact and functional (e.g., the gate is in working order and locked), but breaches have occurred (e.g., the public is driving around an otherwise functional closure device).

<sup>7</sup> Closure device is functional and there's no evidence of breaches behind the device, but the device needs repair (e.g., signs need replacing, gate is hard to open).

<sup>8</sup> Route created by the public and does not currently have a closure device. Needs a closure device to deter the use.



As noted above, I have consulted with the U.S. Fish and Wildlife Service regarding the expansion of BORZ onto additional National Forest System lands and included information about forest monitoring for unauthorized motorized use, repair of barriers, and the potential effects of these activities to grizzly bear recovery. I received the following response from U.S. Fish and Wildlife Service related to the issue of unauthorized use (USDI Fish and Wildlife Service 2023).

A private entity's non-compliance with the Forest's access management direction<sup>9</sup> is an illegal, unauthorized activity. While illegal use of the Forest via motorized access in areas unauthorized for such use has occurred within the action area, such illegal use is not considered a Forest action. The term "action" for Section 7 consultation is defined in the Consultation Handbook (U.S. Fish and Wildlife Service, National Marine Fisheries Service 1998) as: all activities or programs of any kind authorized, funded, and/or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas (emphasis added). These and any other illegal activities are not the result of a federal action and therefore not analyzed under effects of the action, but their influence is considered for describing the environmental baseline.

The Forest restricts motorized access on many of the National Forest System roads on the Forest, and motorized use anywhere not designated by MVUM is illegal (including off-road or creating user-created routes). Illegal motorized access has occurred on the Forest in three ways: 1) unauthorized motorized use of gated roads; 2) unauthorized use of bermed, barriered, decommissioned, or impassible routes that are not authorized for any motorized use; 3) unauthorized motorized use of land that is not authorized for any motorized use (i.e., user-created routes). As part of our assessment of the environmental baseline, we have reviewed available data concerning all types of illegal motorized access on the Forest, acknowledged the uncertainties regarding illegal motorized use of the action area, and assessed the potential effects to grizzly bears. We also considered whether illegal motorized access should be included in the access metrics (OMRD, TMRD, and Core).

The Forest has provided substantial data regarding illegal access on the Forest (see U.S. Forest Service 2022, p. 38, 42, and annual monitoring reports, U.S. Forest Service 2012 through 2023, in our files). The Forest monitors at least 30 percent of devices intended to restrict public motorized access on roads within the CYE Recovery Zone annually (a commitment from the 2011 Access Amendment) and conducts ad hoc monitoring of motorized access restriction devices within BORZ. Results from the monitoring are detailed in the annual reports the Forest submits to the Service. The Service reviews the data annually as the reports are submitted from the Forest and has summarized that illegal motorized use occurs irregularly in space and time, meaning not every BMU has documented illegal motorized use every year. Most illegal motorized use occurs from breaches of devices intended to restrict such use, including unauthorized motorized use behind a gate or unauthorized motorized use of a road that is bermed or barriered with the

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<sup>9</sup> The Kootenai National Forest uses the Motor Vehicle Use Map to communicate its motorized access direction to the public. Breaching any closure devices or operating a motorized vehicle on any areas not indicated as authorized on the MVUM is an illegal activity, as clearly indicated on the MVUM where it states "It is prohibited to possess or operate a motor vehicle on National Forest System lands on the Kootenai National Forest other than in accordance with these designations (36 CFR 261.13)" and also warns that violators are subject to fines and/or imprisonment.



intention to restrict all motorized use. Some off-road illegal motorized use (also known as “user-created routes” has also been documented).

In our review of the monitoring data provided by the Forest, within the CYE Recovery Zone, most BMUs had at least one year in which breaches were detected; and some BMUs had breaches most years, although the location of those breaches within the BMU generally changed from year to year. In other words, while illegal motorized use happens regularly across the Forest, instances of chronic or persistent illegal use in any given location are relatively rare. Some of the documented breaches resulted in public use of a gated road that may or may not have exceeded the limits allowed for administrative use. A smaller subset resulted in public use of a restricted road that was not authorized for any motorized use, and thus may have affected Core areas, depending on the location of the route, the distance the motorized user traveled, and other factors.

Unauthorized use has been documented and is likely more extensive in BORZ and other landscapes than in BMUs. The Forest assumes BORZ may experience more extensive illegal use because these areas are generally more densely roaded and have more human use compared to BMUs (U.S. Forest Service 2020, p. 40, U.S. Forest Service 2022, p. 38-39). Many areas of BORZ are also closer to the public/private land interface, where private users may create unauthorized motorized trails from their land onto the Forest. Gentle topography and more open vegetation make it easier for motor vehicle operators to drive around closures or create their own unauthorized routes, and thus make it more challenging for the Forest to prevent the illegal access. The Forest provided data in the 2022 BA regarding the results of closure device surveys in the areas added to BORZ for Bear Year 2021 (U.S. Forest Service 2022, p. 38-39). Seventy percent of the surveys in the new BORZ areas found the closure device to be functioning and no evidence of breaches. Despite the evidence of illegal motorized use, grizzly bears have expanded into these areas with enough frequency to necessitate the Forest designating the area as BORZ. This may indicate some level of tolerance for the ongoing conditions, including the authorized and unauthorized motorized use that occurs in the BORZ areas. (p.32-33)

... To summarize the available data for the Forest indicates the illegal motorized access that has occurred in the past and may occur contemporaneously with the continued implementation of the Forest Plan, we characterize the use as spatially disparate and temporary in any given location, generally within areas already heavily influenced by legal open roads, generally outside of areas that provide secure habitat for grizzly bears. Therefore, the effects to grizzly bears from baseline illegal motorized access are likely low. When compared with the trends in grizzly bear demographics for the CYE as well as the NCDE, ongoing illegal motorized use has occurred to some unknown degree in all of these ecosystems during the same time that the grizzly bear populations in all of these ecosystems have been showing improvements in population size and distribution (previously summarized in the status of the species and the conclusion sections of this biological opinion). As a result, it is our opinion that the effects of any illegal motorized access on the grizzly bear population in the CYE and in the NCDE and are likely low as evidenced by the improved grizzly bear population status, including increased connectivity, an expansion of the distribution of grizzly bears, and an estimated positive population trend. Some unknown, unquantifiable level of ongoing illegal motorized use has occurred during the same time that the grizzly bear population has been showing improvements in population size and survival rates, which are summarized in this biological opinion in the status of the species section above and the conclusion section below, with the SSA incorporated by reference (U.S. Fish and Wildlife Service 2022a).(p.37)



## Summary of effects to grizzly bears

While the existing condition of the lands being added to BORZ through this amendment will have ongoing effects to grizzly bears, I find that my decision will provide a benefit to grizzly bear recovery by limiting the linear miles of roads within areas where recurring use has been documented. Grizzly bears have expanded into these new areas even though there have been less restrictions on motorized use, less emphasis on monitoring of closure devices, and lower priority for repair of closure devices. The inclusion of these new areas as BORZ will increase protections for grizzly bears by limiting the construction of new motorized routes, increasing emphasis for monitoring of closure devices, and increasing priority for repairing of closure devices. I recognize that unauthorized use has occurred within these areas and will likely continue to some extent, but the grizzly population is increasing, and bears have moved into these areas with the existing level of use. My decision will result in improved conditions and protection of grizzly bears within these areas.

## Effects of the forest plan amendment to other listed species

I have considered the potential effects of this forest plan amendment to other listed species on the Kootenai National Forest and have determined that the expansion of the BORZ areas is not anticipated to have additional effects to other listed species beyond the effects analyzed for the Forest Plan (USDA Forest Service 2013), except for the overall expansion of those effects to the new areas identified as moving to BORZ areas through this amendment. I have also considered the potential effects of this amendment to whitebark pine and wolverine. The limitation on potential future road building within these lands may have potential benefits to these species over time, but the direct effects to each species will be analyzed at the time project activities are proposed.

- **Flood plains, wetlands, or municipal watersheds** – I find that my decision will not result in direct effects to flood plains, wetlands, or municipal watersheds. This forest plan amendment does not change management direction related to these resources. The direct effect to these resources will be analyzed at the time that management activities are proposed.
- **Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas** – I find that my decision will not result in direct effects to wilderness or wilderness study areas on the Kootenai National Forest. The Cabinet Mountain Wilderness is located within areas designated within the Cabinet Yaak recovery zone for grizzly bears and already has management direction for grizzly bears outlined under the 2015 revised Forest Plan. The Ten Lakes Wilderness Study Area is also located outside the areas of BORZ expansion and already has management direction for grizzly bears covered under the Forest Plan (Figure 3).
- **Inventoried roadless areas or potential wilderness areas** – My decision does affect areas within inventoried roadless areas and areas of recommended wilderness, identified in the 2015 revised Forest Plan as management area 1b. The expanded BORZ areas includes approximately 6,819 acres within inventoried roadless areas and no acres within recommended wilderness<sup>10</sup>. This forest plan amendment does not modify the direction for

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<sup>10</sup> ArcGIS error shows less than an acre overlap with management area 1b.



inventoried roadless areas or recommended wilderness areas from the direction included in Forest Plan and the 2001 Roadless Area Conservation Rule (36 CFR 294 Subpart B, published at 66 Fed Reg. 3244-3273) shall apply (Figure 4).

- **Research natural areas** – There are approximately 280 acres of research natural areas included in the areas of additional BORZ. My decision to expand management direction for BORZ will not replace or affect the direction for research natural areas, identified as management area 4 in the Forest Plan (Figure 5).
- **American Indians and Alaska Native religious or cultural sites** – My decision on this forest plan amendment will not modify consideration of religious or cultural sites prior to the proposal of management direction or management activities. I have notified four tribes with ancestral ties and interest on these lands of this forest plan amendment. I will continue to engage in government-to-government relation prior to decisions that implement this management direction.
- **Archaeological sites, or historic properties or areas** – My decision on this amendment is programmatic in nature and will not result in any ground disturbing activities. When ground disturbing activities are proposed in a separate project, they will require consideration of archaeological sites and historic properties prior to the implementation of ground disturbing activities.

The Forest Plan also identifies special areas on the forest as management area 3. My decision includes approximately 668 acres of management area 3 and will not replace or affect the direction for areas designated as management area 3 in the Forest Plan (Figure 6).

## Consideration of effects of the Forest Plan Amendment to Other Resources

### Potential effects to Motorized Use and Timber Harvest

Wheeled motorized use is allowed in most of the management areas within BORZ. New motorized access routes are allowed to be constructed in several management areas, but this amendment would require a no-net increase in open and total linear miles of motorized routes above the baseline. Timber harvest is allowed in most of the BORZ areas, and this would continue as guided by the Forest Plan, but wheeled access to timber harvest sites would now be guided by the no-net increase in open and total linear miles of motorized routes in an expanded area of the Forest. Temporary use of roads would be allowed for project implementation but following project activities road management could not result in a net increase in motorized access. Future projects that propose changes in wheeled motorized access and timber harvest would be evaluated in a site-specific biological assessment and in consultation as specified by the Endangered Species Act with U.S. Fish and Wildlife Service that would examine detailed effects to grizzly bears for those individual projects.

I received public comment expressing concern about the forest plan amendments effects to forest management and timber harvest to address the concern related to wildfire forest health. I recognize that the no net increase in roads will limit the construction of roads that provide motorized access to the public and additional administrative access for management but believe that the provisions for temporary increases to linear miles and flexibility to close roads and open



others for management, will allow for vegetation management for fuels reduction and forest health purposes.

### **Potential effects to Recreation**

This amendment would have similar effects as outlined in the Forest Plan's analysis for motorized recreation use in BORZ areas. It is anticipated that indirect negative effects of this amendment could be felt by this expansion for users that are looking for increased levels of motorized access compared to existing conditions.

I received public comments expressing concern about management direction that will place additional limits on motorized access to the forest. The forest plan amendment does not propose the closure of motorized access routes but does set a limit to the increase of motorized access routes that can be created within BORZ areas in the future. Future projects will determine site-specific effects to motorized access changes as a result of this direction.

### **Providing Opportunities for Public Participation and Providing Public Notice**

I have provided opportunities for public participating in the preparation of this amendment in accordance with 36 CFR 219.4 and provided public notification in accordance with 36 CFR 219.16 and 219.13(b)(2). This amendment was scoped with the public by sending out a GovDelivery bulletin on August 9, 2023, including the scoping letter that detailed the purpose and need for the proposed amendment. The request for public comments provided a preliminary analysis of effects of the proposed forest plan amendment to grizzly bears and other resources to solicit public input on these anticipated effects. The scoping letter also identified that the likely directly related substantive requirements are the requirements to provide ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species at 36 CFR 219.9(b)(1). The forest received 16 comments in response to this request for participation. The public was notified of this amendment through a legal notice in the Missoulian on August 10, 2023.

I have also provided public notice of opportunities to file objections to this decision in accordance with 36 CFR 219.57(b) and notified the public of opportunities to participate in objection resolution meetings as an interested party in accordance with 36 CFR 219.56(f). The administrative review process conducted for this decision is further described below.

## **Findings Required by Other Laws and Regulations**

### **National Environmental Policy Act**

The effects of the plan amendment is documented in this decision memo and the accompanying project record, pursuant to FS NEPA regulations at § 220. Due to the beneficial nature of the effects of the forest plan amendment to grizzly bears and the lack of effects to other listed species and other natural resources, I have determined that this programmatic forest plan amendment will have no significant effects or and that the preparation of the analysis is appropriate under 36 CFR 220.6(e)(16) for a plan amendment that is developed in accordance with 36 CFR part 219.

This category of action is applicable because I am deciding to implement an amendment to a land management plan that provides broad guidance for decision making on the Kootenai National



Forest. This decision does not make changes on the ground and the anticipated effects of implementing this decision through project activities will be analyzed at the time when management activities are proposed.

## **National Forest Management Act**

### **Consistency with Forest Plan Desired Conditions and Objectives**

The National Forest Management Act (NFMA) requires the development, maintenance, amendment, and revision of land management plans (forest plans) for each unit of the National Forest System. These plans provide for multiple use and sustained yield of renewable resources in accordance with the Multiple Use Sustained Yield Act of 1960 and include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. The NFMA states land management plans “may be amended in any manner whatsoever after final adoption after public notice”. The NFMA’s implementing regulations at 36 CFR 219 describe the process and requirements of developing, revising, and amending land management plans. This amendment has been conducted consistent with those requirements.

### **Substantive Requirements**

Based my review of the effects of the amendment, I have determined the amendment will not substantially lessen protections for any resource or species, nor are there any substantial impacts. Based on the purpose and likely effects of the amendment, I determined the directly related requirements are the requirements to provide ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species at 36 CFR 219.9(b)(1).

This decision will modify the 2015 revised Land Management Plan for the Kootenai National Forest, as amended. When amending the Forest Plan, I am required to “determine which specific substantive requirement(s) within [§§ 219.8](#) through [219.11](#) are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment.” (36 CFR 219.13) The directly related requirements are identified based on the purpose for and the effects of the amendment.

I have the discretion to determine the scope and scale of any amendment and am not required to apply any substantive requirements that are not directly related to the amendment. The scope of the amendment is the Kootenai National Forest, and the purpose of this amendment is to modify the forest wide standard FW-STD-WL-02 to delineate 167,452 acres of NFS lands as BORZ, updated the baseline of linear miles included in these BORZ areas, and clarify when the baseline miles of linear motorized routes may be adjusted.

This amendment will expand management direction to support the recovery of grizzly bears within the Cabinet Yaak ecosystem. As bears expand onto additional National Forest System lands on the Kootenai National Forest, management direction on additional lands identified as Bears Outside the Recovery Zone, will provide limitations on road building to maintain habitat conditions conducive to recovery. Although this management direction will continue to allow for timber and road management, it is anticipated that it will result in beneficial effects to grizzly bears by establishing limits for linear miles of road. Therefore, I have applied the directly related substantive requirement at 36 CFR 219.9(b)(1) to contribute to the recovery of a federally listed threatened and endangered species.



### *How did the Responsible Official determine the scope and scale of the plan amendment*

The scope of the amendment was determined based on the purpose and need for action as described in this decision memo and supporting documentation. The scale of the amendment was influenced by the following considerations:

- The amendment to standard FW-STD-WL-02 applies forest wide on lands outside of the recovery zones where recurring grizzly bear use has been identified and NFS lands are designated as BORZ.
- This management direction applies to all motorized access management on lands within BORZ areas but does not affect the application of other management direction on affected lands.

### **Project and Activity Consistency**

The amendment is effective immediately upon approval. Authorizations of occupancy and use made before this decision document is approved may proceed unchanged until time of reauthorization. At time of reauthorization, all permits, contracts, and other authorizing instruments must be made consistent with the plan as amended, subject to existing valid rights. Projects and activities authorized after approval of the plan amendment must be consistent with the plan as amended.

### **Using the Best Scientific Information to Inform the Amendment (§ 219.3)**

Public comment and objections received provided additional information and literature for me to consider. I considered the information provided and other publications found in Allen et al. 2023, related to the effects of motorized access on the effectiveness of habitat for grizzly bear survival and reproduction. Public comment questioned the use of linear miles of roads as the metric to use for habitat evaluation and effectiveness for grizzly bears. I recognize that while there are different metrics used within the recovery zone and the BORZ areas, the Region 1 Consultation Technical Team, continues to recommend that linear miles of motorized route be used as a recommended metric for analyzing grizzly bear habitat outside of a recovery zone. The report identifies from its key points (Allen et al. 2023, p. 2) that:

There is currently no single research-based benchmark that can identify adverse effects from motorized use on individual bears in all situations outside Recovery Zones.

When used in tandem with a spatial analysis of secure habitat, linear miles of motorized routes can help explain changes in the motorized access network during and after project implementations and the potential consequences to grizzly bear movement and habitat use.

The biological assessment prepared for this amendment analyzes the amount of secure habitat found within the BORZ areas, to evaluate habitat areas free of motorized access. I received the following response from U.S. Fish and Wildlife in their 2023 Biological Opinion

Secure habitat has been identified as one of the key issues related to effects of motorized access on grizzly bears and is important to the survival and reproductive success of grizzly bears. Secure habitat more adequately represents the potential effects related to motorized access as it provides a more accurate indication of the spatial mix of motorized routes and secure habitat. Thus, we have incorporated secure habitat into this analysis.



Secure habitat includes all areas within the BORZ greater than 500 meters from any route which allows wheeled motorized access, including open public roads as well as restricted roads that are only available for administrative use. This is a basic definition that captures the essence of secure habitat being areas outside the influence of motorized vehicles. For the same reasons discussed above, no minimum patch size was used. Larger patches of secure habitat likely provide areas where grizzly bears, particularly females with cubs, can avoid the effects of motorized access. We do not know the actual importance of patches of secure habitat, but can assume some level of importance, based on the numerous studies showing a correlation between secure habitat and grizzly bear survival and other metrics (see review in Proctor et al. 2020) (p. 60).

I have considered this analysis of secure habitat in addition to linear miles to determine the potential effects of this analysis on grizzly bears in the Cabinet Yaak Ecosystem. Following this review of the science related to the effects of motorize access on grizzly bears, I have determined the Best Available Scientific Information was applied in this decision to amend the 2015 revised Land Management Plan for the Kootenai National Forest, as amended.

## **Endangered Species Act**

Threatened, endangered, and proposed species are managed by the Forest Service in accordance with the Endangered Species Act (ESA) of 1973. ESA section 7(a)(1) directs all federal agencies to carry out programs for the conservation of endangered species and threatened species. ESA section 7(a)(2) requires federal agencies to ensure that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any threatened, endangered, or proposed species or to adversely modify critical habitat.

It is Forest Service policy that management direction in a forest plan will contribute to the recovery of federally listed species (Forest Service Manual 2622). The responsible official may consult on the plan as a “conservation program” for listed species to comply with ESA section 7(a)(1). If a plan, plan revision, or amendment may affect federally listed species or critical habitat, the responsible official will consult on the Forest Plan in accordance with the provisions of ESA section 7(a)(2) and accompanying regulations that guide interagency cooperation (50 CFR 402). If the action may result in the incidental take of a listed species, the consultation may include issuance of a permit for incidental take in accordance with ESA section 10.

The regulations guiding interagency cooperation under the ESA (50 CFR 402.02) define a framework programmatic action as a broad-scale plan that provides the framework for development of future action(s) that are authorized, funded or carried out at a later time. An incidental take statement may be provided, recognizing that actual take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to their own future section 7 consultation. The consultation on this Forest Plan Amendment fits the definition of a framework programmatic action and a biological assessment was prepared and submitted to the U.S. Fish and Wildlife Services. I received a biological opinion from the U.S. Fish and Wildlife Services on November 28, 2023, addressing the effects of the Forest Plan (as amended) to listed species and have considered that information in this decision.

## **Clean Water Act and Montana State Water Quality Standards**

The Amendment does not directly affect streams and water quality remains protected. There are no ground-disturbing treatments, such as road construction or vegetation harvest, associated with the decision. Water quality would remain unchanged from the existing condition.



## **Clean Air Act**

The components in the decision will have no effect on State or Federal air quality requirements.

## **National Historic Preservation Act, American Indian Religious Freedom Act, and Native American Graves Protection and Repatriation Act**

The amendment includes no ground-disturbing activities and will have no effect on historic properties.

## **Government to Government Relations**

Letters were sent to the Confederated Salish Kootenai Tribe, the Kootenai Tribe of Idaho, and the Coeur d'Alene Tribe on August 8, 2023, per regulatory requirement, Executive Order 13175 Consultation and Coordination with Indian Tribal Government. I also sent letters to the Confederated Salish Kootenai Tribe, the Kootenai Tribe of Idaho, the Coeur d'Alene Tribe, and the Kalispel Tribe on September 21, 2023, notifying them of the opportunity to object and again on November 9, 2023, to notify them of an opportunity to participate in the objection resolution process.

The proposed action would not infringe on the inherent rights invoked by the American Indian Religion Freedom Act of 1978, as amended. Further, there are no ground-disturbing activities associated with this planning document amendment. Potential impacts to sacred sites, places of cultural and religious significance, and other key considerations will be consulted upon with affected Tribes during the planning stages of separate future actions.

## **Administrative Review Opportunities**

The Draft Decision was subject to an administrative review (objection) opportunity under 36 CFR 219.57(b). According to the objection regulations at 36 CFR 219, subpart B, individuals and entities who submitted timely, specific written comments regarding this proposed amendment during the public scoping period had standing to file an objection, as stated under 36 CFR 219.53. I received five objections to the Draft Decision Memo from individuals who had submitted timely and specific written comments. These objections were posted to the project website in accordance with 36 CFR 219.56(f).

The individuals and organizations that objected raised issues related to: the level of analysis conducted for this decision; consideration of public comments; the accuracy of the baseline used in this analysis; consideration of the effects of unauthorized motorized use on grizzly bears; the use of monitoring to determine if management direction is benefiting grizzly bears; the use of linear miles of road as a metric in BORZ; the methodology used to determine “no net increase”; the effects of non-motorized uses on grizzly bears; the analysis of grizzly bear security areas; and the consideration of best available science. The objection reviewing officer, Deputy Regional Forester Dan McKeague, assembled a panel of subject matter experts to review the contentions raised by the objectors.

In accordance with 219.57(a) the objection reviewing officer offered an objection resolution opportunity on December 8, 2023, and those who had filed timely comments were notified of their opportunity to participate in this resolution meeting as interested parties. This resolution



meeting was attended by two objectors and three interested parties to discuss the potential remedies brought forth by the objectors. Although no resolution was reached, the participants were able to clarify the methodology being used for calculating linear miles of roads and how the “no net increase” standards is met in the BORZ.

During the objection reviewing process, the panel recommended that this decision memo clarify the term “unauthorized” for certain types of motorized use and clarify the use of the term “temporary” in relation to changes in motorized access. This Final Decision Memo reflects these clarifications.

The purpose of the objection process is to provide a pre-decisional administrative review that will result in an improved decision. The Decision and the project record have been updated to reflect these recommendations. The objection reviewing officer found that the other objection issues were adequately addressed in the Decision Memo and the project record.

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Chad W. Benson  
Forest Supervisor, Kootenai National Forest

Date

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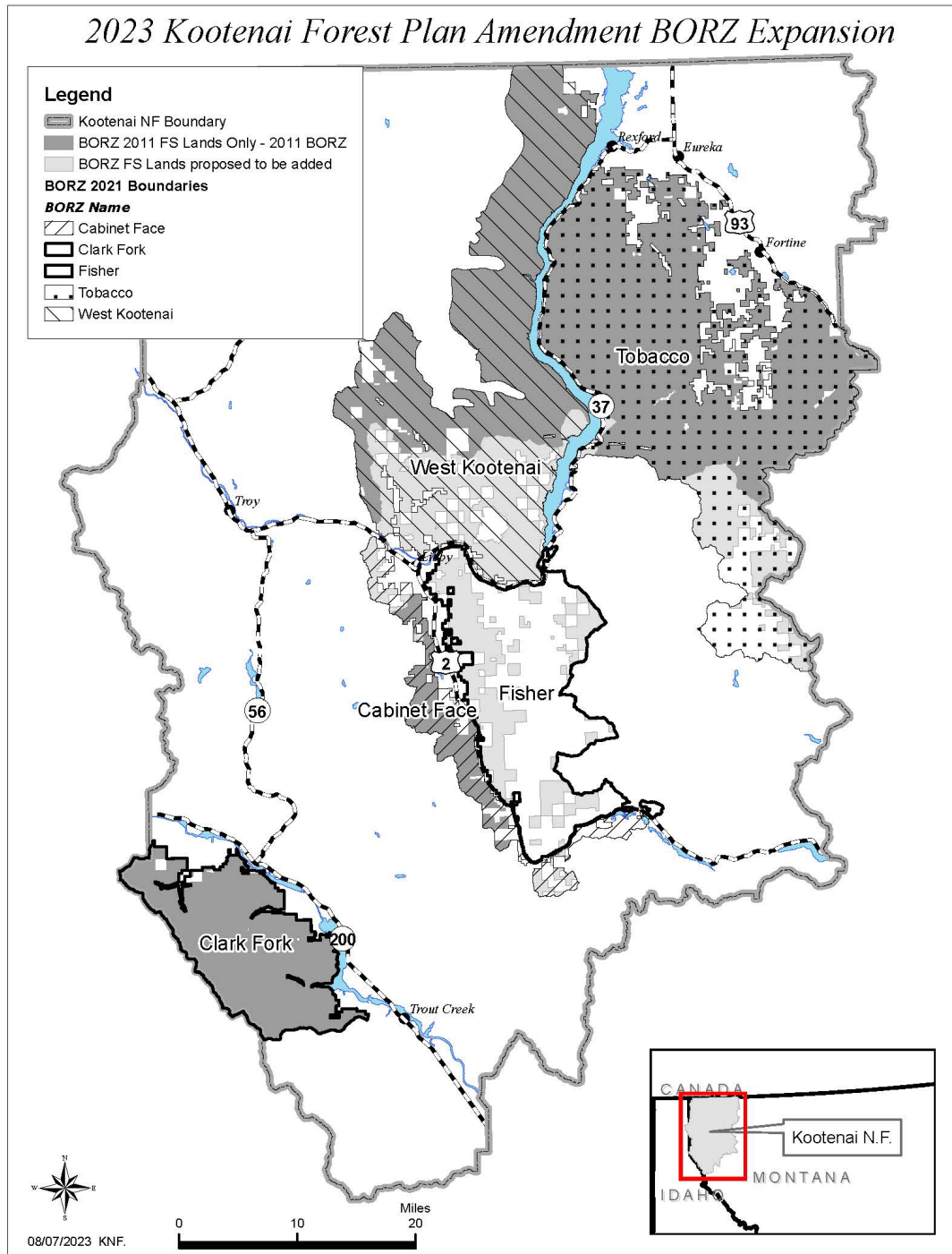
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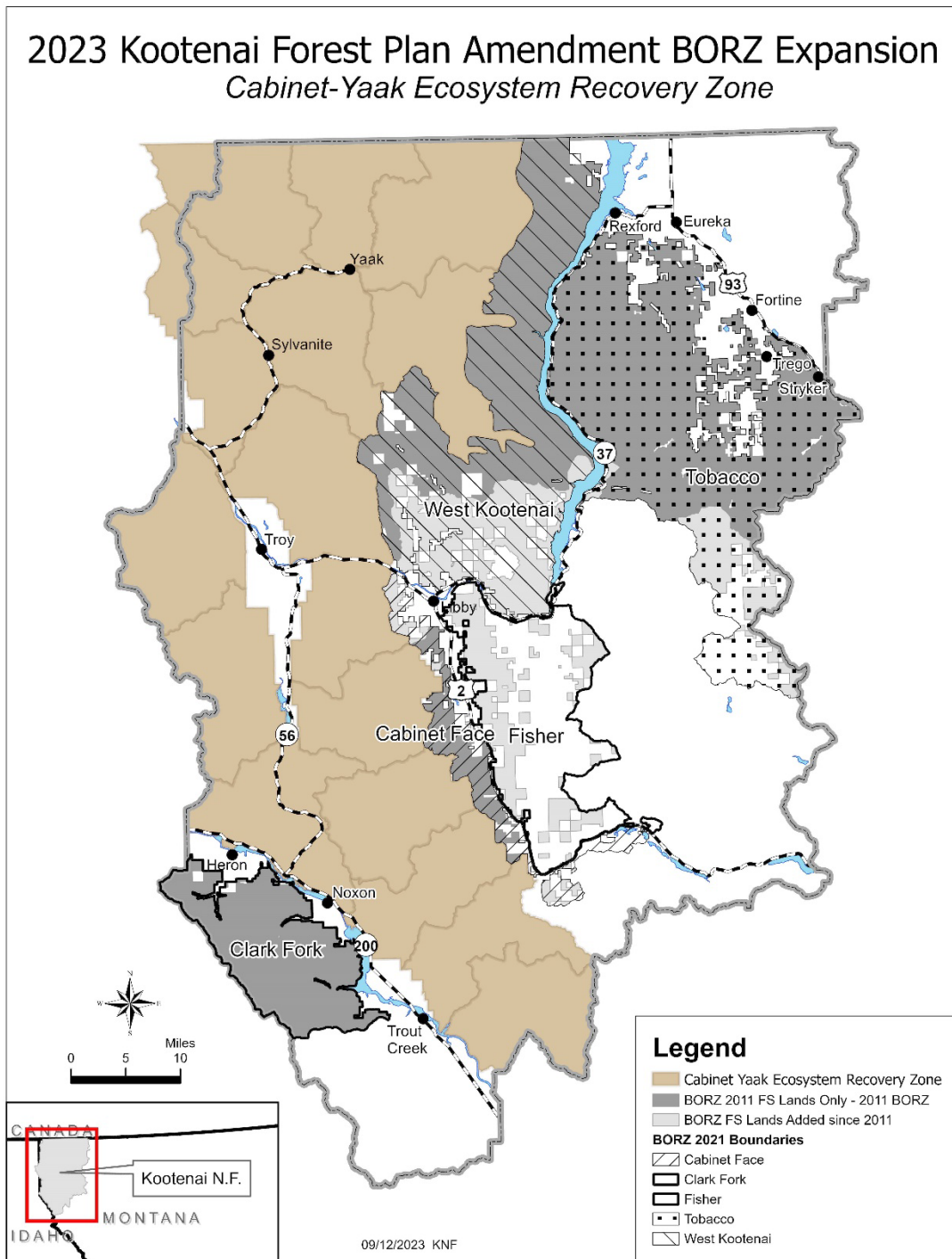
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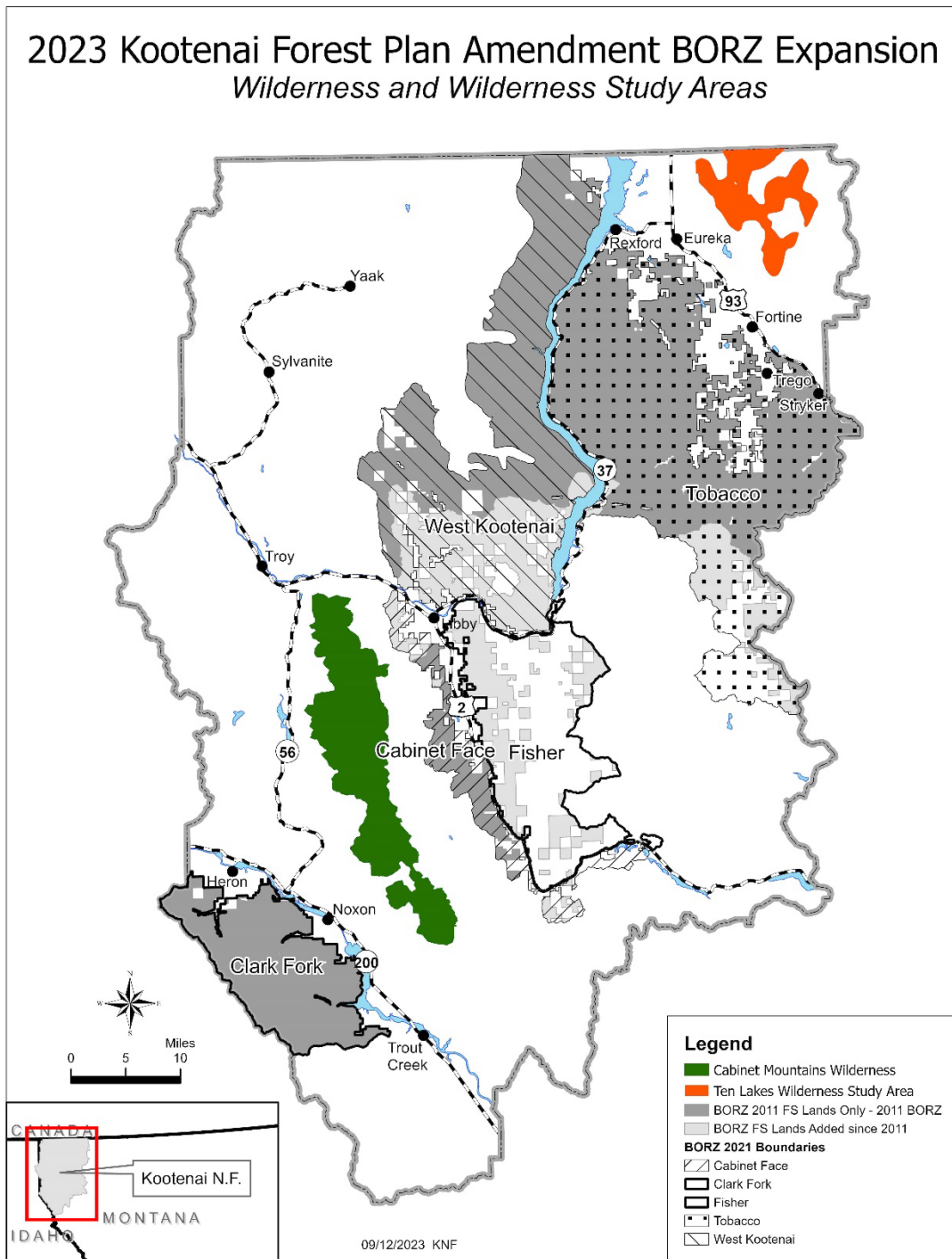
## Figures



**Figure 1. Bears Outside the Recovery Zone on the Kootenai National Forest, including additional lands included in the proposed amendment.**

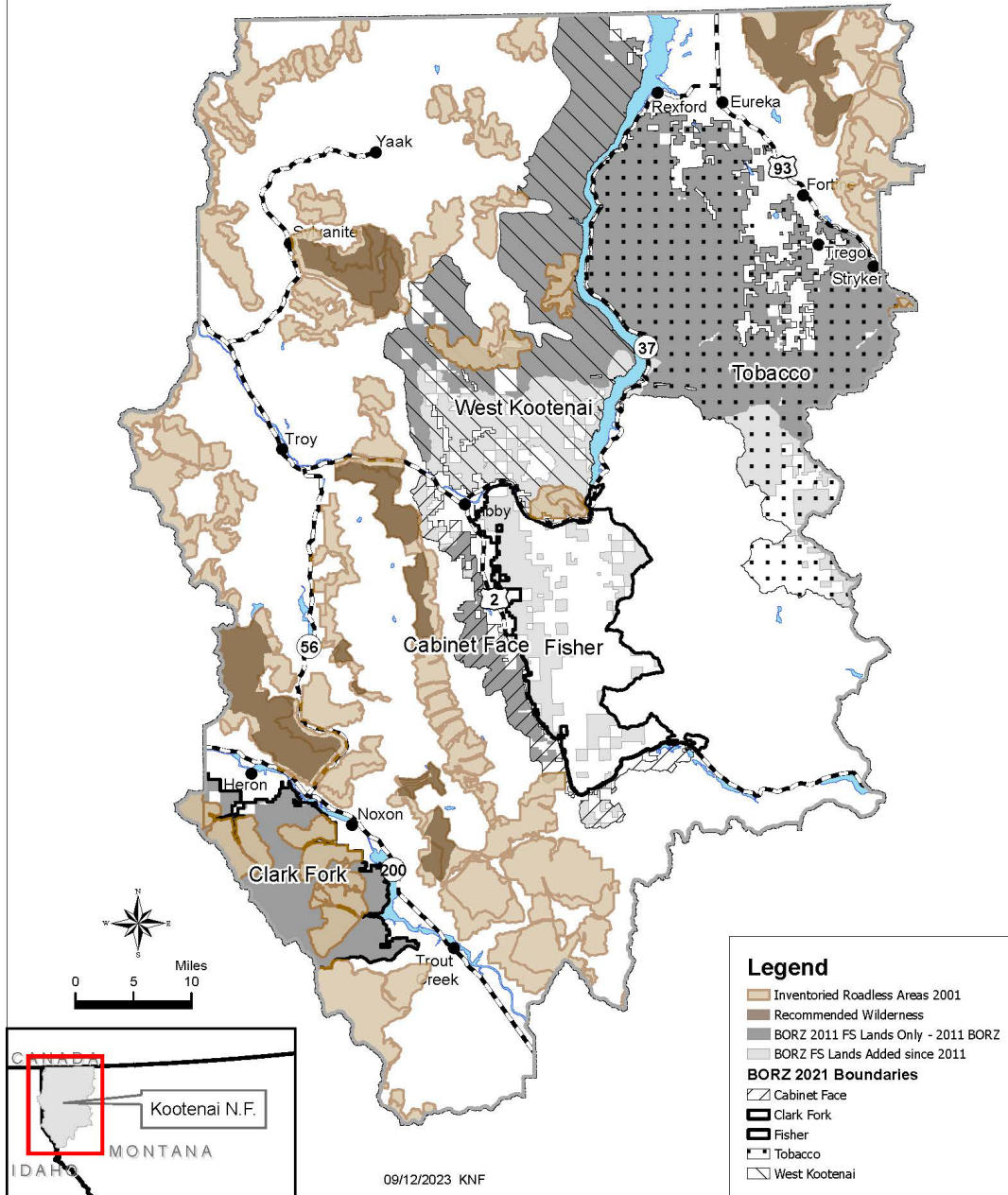


**Figure 2. Bears Outside the Recovery Zone areas and the Cabinet Yaak Recovery Zone**



**Figure 3. Bears Outside the Recovery Zone areas and congressionally designated Wilderness and Wilderness Study areas.**

## 2023 Kootenai Forest Plan Amendment BORZ Expansion *Inventoried Roadless Areas and Recommended Wilderness*



**Figure 4. Bears Outside the Recovery Zone areas, inventoried roadless areas, and recommended wilderness.**

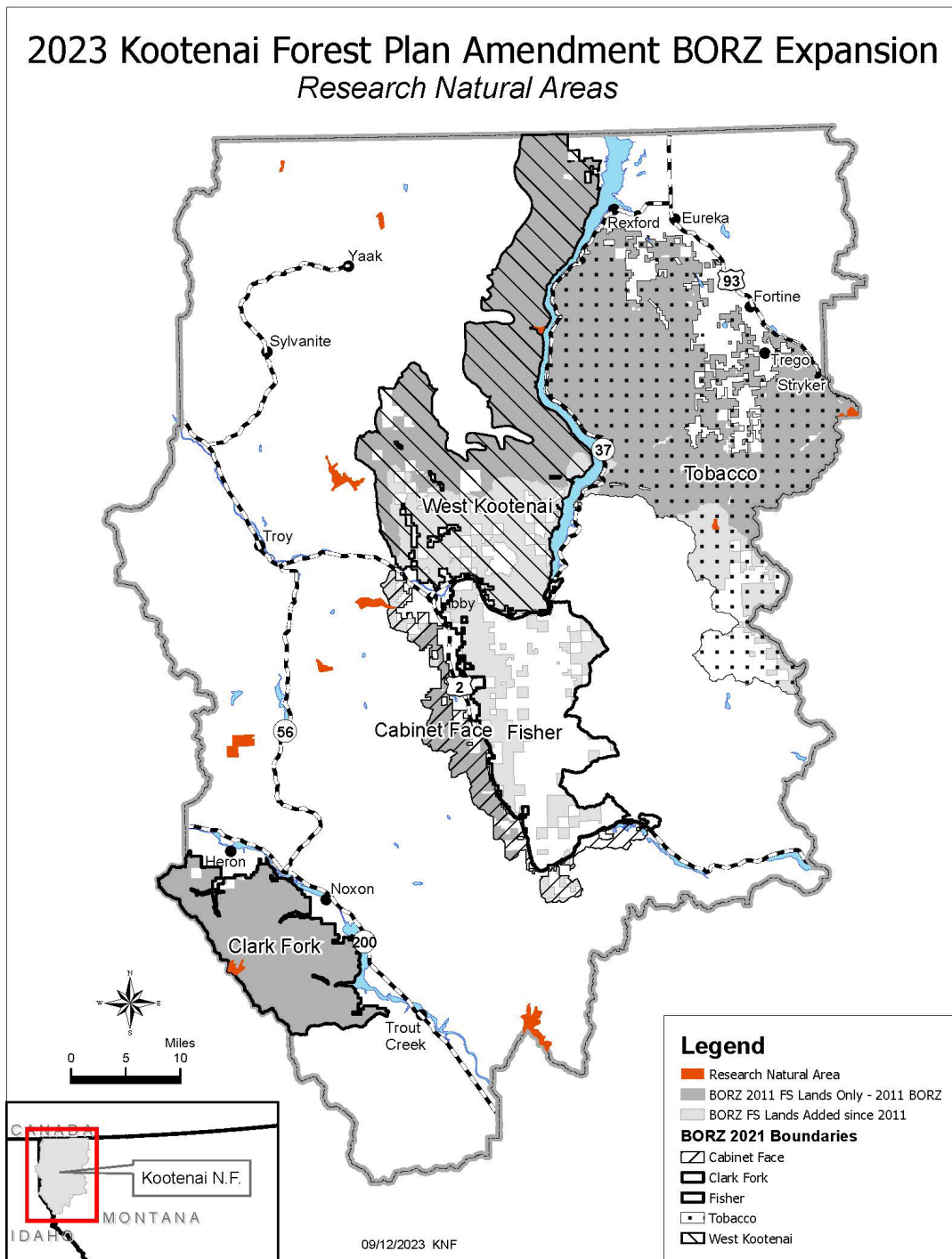
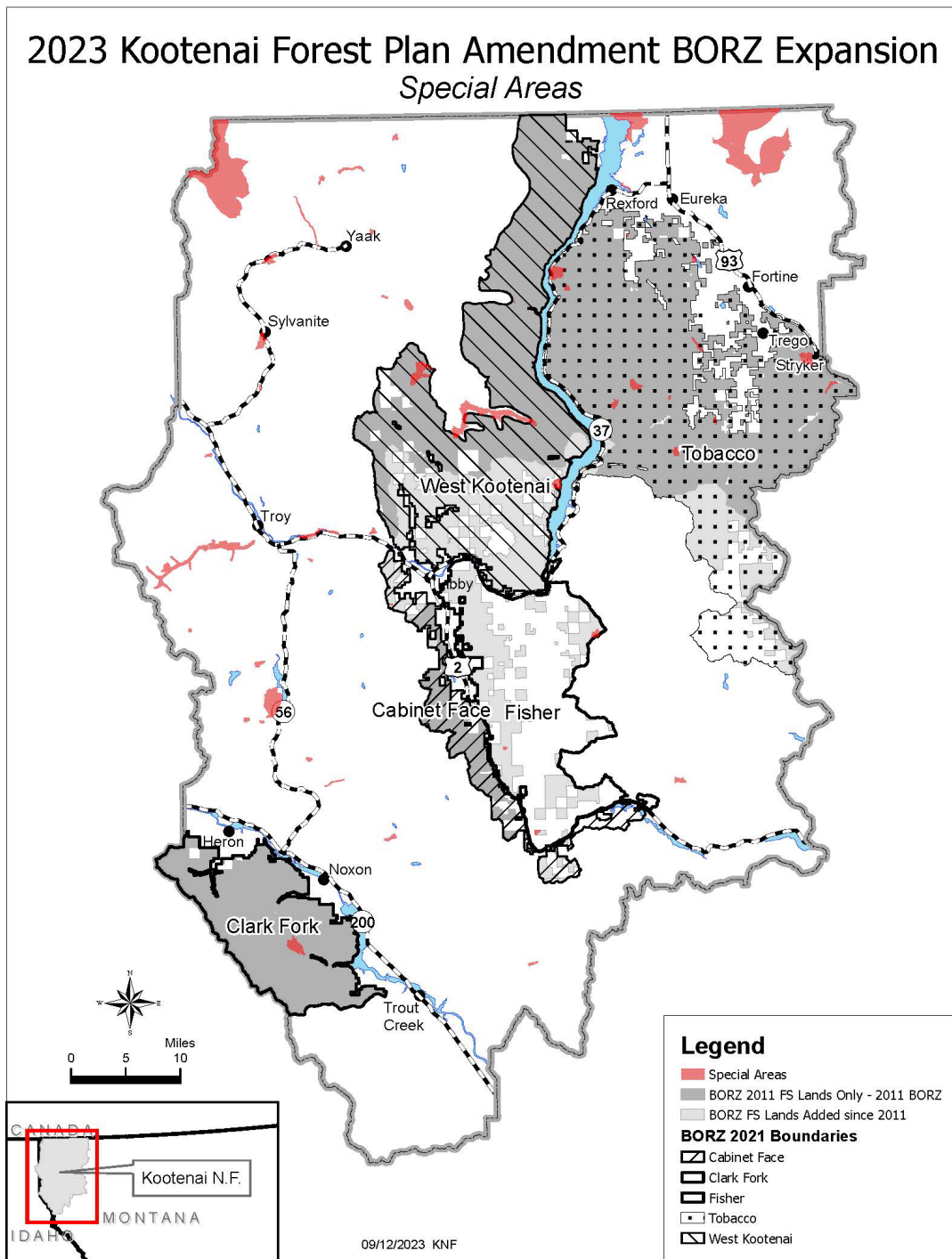


Figure 5. Bears Outside the Recovery Zone areas and Research Natural Areas



**Figure 6. Bears Outside the Recovery Zone areas and Special Areas**