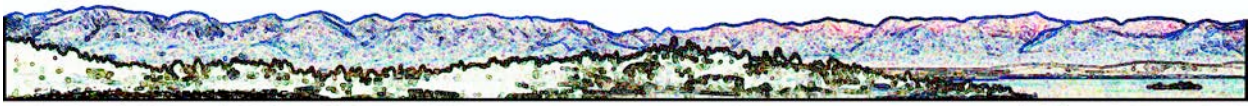
Swan View Coalition *Nature and Human Nature on the Same Path*



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May 1, 2013

Submitted electronically to U.S. Fish and Wildlife Service as an uploaded PDF at http://www.regulations.gov - Docket No. FWS-R6-ES-2012-0107

Re: Public comment on the U.S. Fish and Wildlife Service's proposed rule to list a distinct population segment of the North American wolverine occurring in the contiguous United States as a threatened species under the Endangered Species Act (Docket No. FWS-R6-ES-2012-0107).

Dear Folk at USFWS;

We welcome the above proposal and this opportunity to provide comments. Broader-reaching comments are being submitted on our behalf by the Western Environmental Law Center - including our request that the wolverine be listed as "endangered," rather than "threatened."

In this letter and its attachments, we will focus solely on our request that USFWS clearly identify winter recreation, especially snowmobiling, as a threat to the continued existence of wolverine. We will provide facts and photos of the northern Swan Range (including portions of Hornocker and Hash's 1970's wolverine study area) demonstrating that snowmobiles are competing with wolverine for late Spring and early Summer snow pack.

These facts and photos will also demonstrate that adequate regulatory mechanisms do not exist, given Flathead National Forest's refusal to adequately limit snowmobiling in grizzly bear and wolverine habitat and to instead promote late-season snowmobiling. When we focus on late-season snowmobiling, this should not be construed to condone wintertime snowmobiling in wolverine habitat, which also poses significant threats to wolverine and their ability to use their habitat.

Rather, this letter is intended to demonstrate that snowmobilers continue to use deep snow habitats in spring, "during April and May, the critical time period for wolverine reproductive denning," (Fed Reg Vol. 78, No. 23, page 7875) often running on bare ground and over unlawful bridges to reach the remaining snow pack. This letter will also drive home the point that, when such unlawful snowmobiling was reported to the Forest Service, it legalized such activity rather than enforce its existing prohibitions against snowmobiling after March 31. These original Forest Plan limits were put in place to protect grizzly bear emerging from winter dens, calving elk, soils, vegetation, and watersheds - though wolverine appear to have been overlooked, even though Hornocker and Hash cautioned about the impacts of snowmobiles and ATVs in their

1981 wolverine research paper in the Canadian Journal of Zoology (Vol. 59; hereafter Hornocker and Hash 1981).

Snowmobiling's Endless Winter

We've attached to this letter our 2002 paper "Snowmobiling's Endless Winter: Facilitating Physical Access Also Extends the Snowmobile Season, Resulting in Harm to Wildlife Security, Vegetation, Soils, and Water," which we submitted to the Flathead National Forest on numerous occasions. We repeat here the Executive Summary:

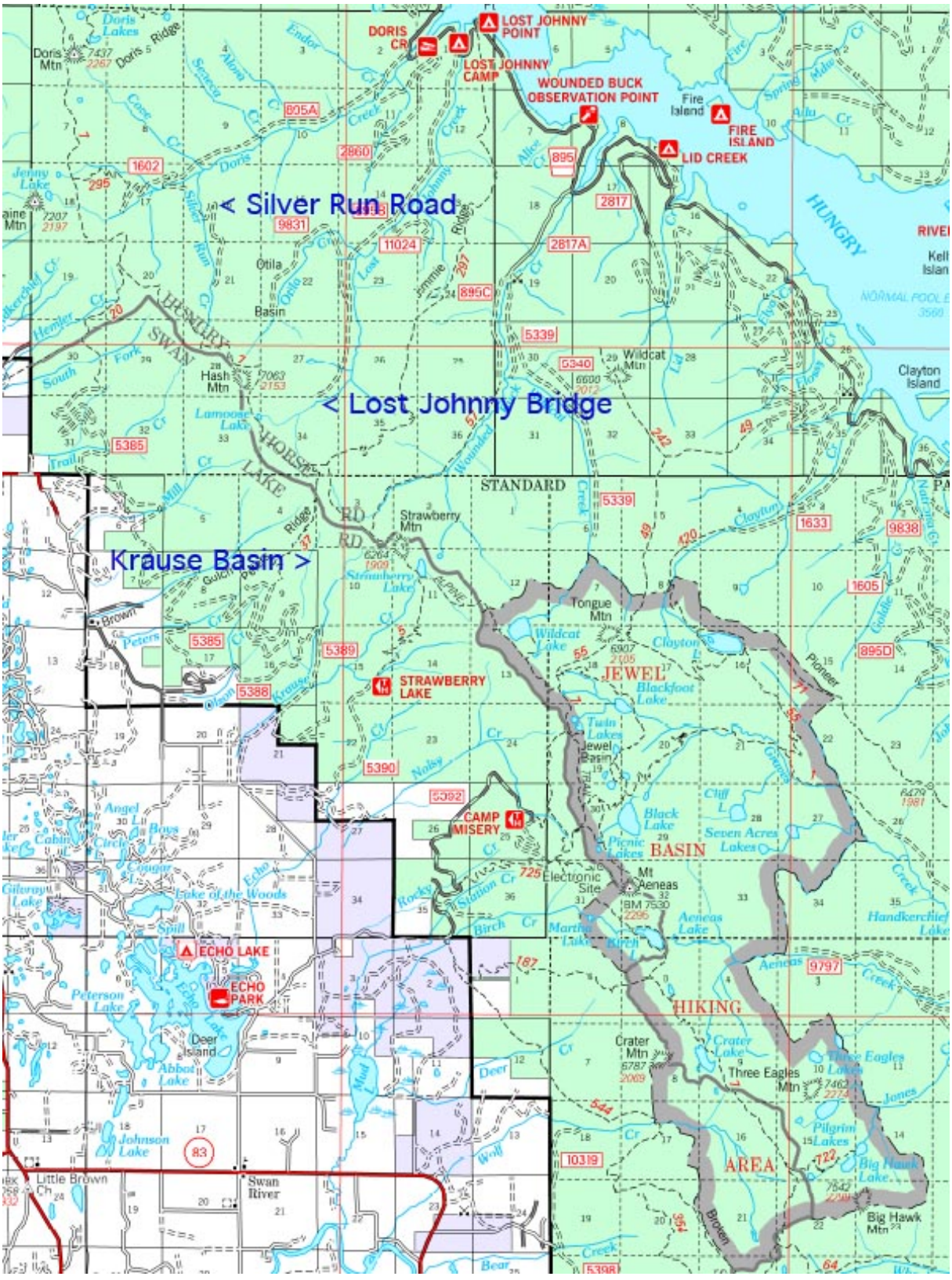
> "Citizen monitoring over the past decade has reported snowmobile use along the northern Swan Crest of the Flathead National Forest as late as July and as early as November. This use contradicts current Forest Plan standards intended to prohibit snowmobile travel April 1 - November 30 for protection of grizzly bear security, and April 1 - July 1 for protection of soils, watersheds, and spring wildlife needs including elk calving.
>
> The photos in this report demonstrate snowmobiles are operating on backcountry areas free of snow, causing disruption of wildlife security and significant damage to vegetation and soils, if not water quality and fish. Unauthorized trails and bridges are shown to contribute to an inappropriate extension of the snowmobile season and consequent damage to resources. The photos provide clear evidence efforts to facilitate snowmobile access by leaving culverts, bridges or benched areas in decommissioned roads will lead directly to increased difficulty in enforcing seasonal use restrictions and cause harm to wildlife security, soils, water quality, and fish."

We will let our attached report speak for itself. We will, however, provide further discussion and photos to demonstrate that snowmobiling continues to threaten wolverine and that the Forest Service has failed to remove these threats, even though "the majority (94 percent) of wolverine habitat currently occupied by wolverine populations in the lower contiguous United States is Federally owned and managed, mostly by the U.S. Forest Service." (Fed Reg Vol. 78, No. 23, page 7882).

Unlawful Snowmobile Bridges

We provided our attached 2002 report to the Flathead National Forest and complained that the pictured user-made log bridge over Lost Johnny Creek was encouraging both late-season snowmobile use and illegal snowmobile trespass into the nearby Jewel Basin Hiking Area. In response, the Flathead allowed the local snowmobile club to install a better steel bridge, a photo of which is shown below. Also below is a Flathead National Forest Visitor Map showing the location of the Lost Johnny bridge (and two other areas discussed later in this letter). We had to file a lawsuit and obtain a court-ordered stipulation to get the Lost Johnny bridge removed in 2004.

USFS photo of its bridge over Lost Johnny Creek (after closure by court order but prior to removal), which facilitated snowmobile access after natural snow bridging had melted in Spring.



Portion of Flathead Forest Visitor Map showing part of the northern Swan Range, with several areas of interest labeled in blue.

Snowmobile Use of Abandoned Roads, Even When Bare of Snow

We on June 2, 2004 took photos of fresh tracks of snowmobiles that had run over 1.5 miles on bare road to reach remaining snow pack at higher elevations! We flew over the area the following day and followed these tracks (likely made during the prior Memorial Day weekend) all the way into the Jewel Basin Hiking Area some six air miles to the south, where snowmobiles are legally prohibited. Some of the photos we provided the Flathead National Forest follow:

Snowmobile tracks on the bare Silver Run road, after a single remaining, shaded north slope snow bank blocked further pickup access.

Snowmobiles used an abandoned log bridge to continue up Silver Run road.

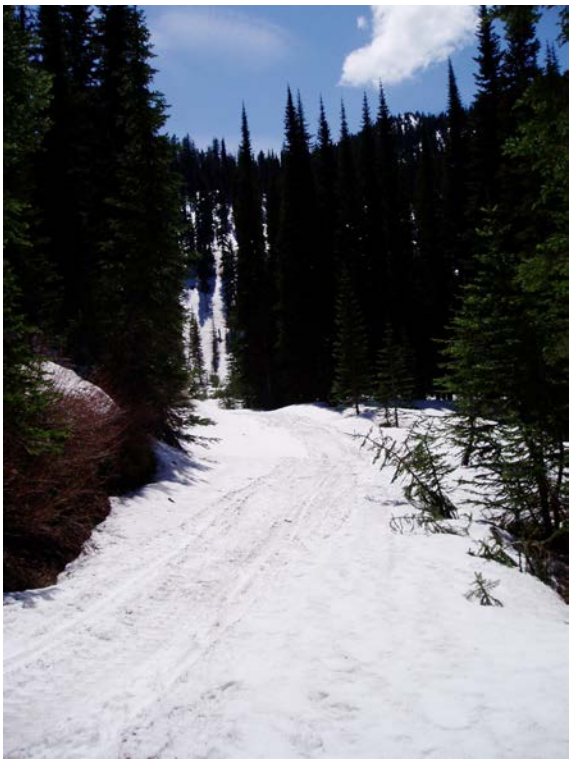
Crossing live water running down the abandoned road just above the old Silver Run bridge.

Fresh snowmobile tracks continue up the abandoned Silver Run road.

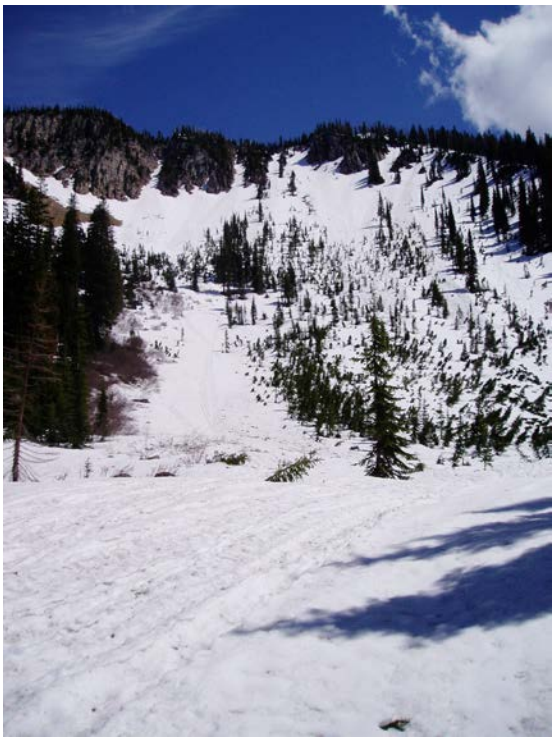
Deadfall and brush cut without authorization to allow snowmobile access on the abandoned road.

Brush cut without authorization to allow snowmobile access on the abandoned road.

Duff chewed up and spat onto snow patches by snowmobiles.



Snowmobiles finally reached snow pack after 1.5 miles on the bare abandoned Silver Run road.



Snow pack along the Swan Crest accessed by the abandoned Silver Run road template.

Snowmobile tracks continued south into Otila, Lost Johnny, Wounded Buck and, finally, the Wildcat and Graves Creek drainages in the distant and off-limits Jewel Basin Hiking Area - all prime occupied wolverine habitat retaining snow into June.

In response to our 2002 report and 2004 photos like those above, the Flathead National Forest in 2006 issued Amendment 24 to its Forest Plan, allowing snowmobiling to continue as late as May 31 on various areas of the Forest (including the area pictured and described immediately above) and "year-round" on a number of groomed snowmobile routes, "conditions permitting." In other words, its prior prohibition of snowmobiling after March 31 was relaxed, instead of enforced. We filed a lawsuit against this late-season snowmobiling plan, largely due to its potential to harm female grizzly bears and young emerging from their winter dens - but the court allowed it to stand and let its preliminary injunction expire. We could not bring legal ESA claims on behalf of wolverine because it is not a listed species.

Flathead National Forest's Amendment 24 Snowmobile Use Maps can be located and downloaded at http://www.fs.usda.gov/main/flathead/maps-pubs . One can see from these maps that considerable areas of wolverine habitat are now legally open to snowmobile use as late as May 31 of each year. Our 2002 report, 2004 photos and this letter make it quite clear the Flathead has neither the inclination nor manpower to monitor or enforce when "conditions [are] permitting." Indeed, as our 2002 report concludes "If a stationary [unauthorized] snowmobile bridge defies detection and remedy by the Forest Service, how does it expect to detect and ticket snowmobilers when they violate a seasonal backcountry closure order?"

Illegal Krause Basin Trail

Our attached 2002 report also summarizes our efforts to get an illegally cleared snowmobile trail closed in Krause Basin, which is home to grizzly bear, lynx and wolverine, among other wildlife. We monitored snowmobile use, cutting and other unauthorized maintenance of this trail for over five years, gathering the data and photos needed to secure a court order closing and obliterating this trail in 1999. During this pre-closure monitoring, we saw no evidence of wolverine use along the snowmobile trail, which was heavily used as a shortcut from the heavily populated Flathead Valley onto the Swan Crest.

Following closure of this trail to snowmobiles, we continue to monitor it each winter to insure it is not trespassed by snowmobiles. We have found snowmobile trespass only once, in the first "closed" winter of 1999. We have seen wolverine tracks and other wolverine sign nearly every winter during this post-closure monitoring, including the overnight bivouac den and carrion feeding site pictured below.

Wolverine overnight bivouac den located within five feet of the former snowmobile trail location in Krause Basin. (January 24, 2006).

Site where wolverine rested while feeding on an elk that floundered in Krause Basin after falling through a natural snow bridge and into a small stream about twenty feet from the former snowmobile trail location. (March 2, 2006).

This letter, its photos and the attached 2002 report provide ample evidence that Forest Service management, especially on the Flathead National Forest, is not adequate to conserve wolverine. The Forest Service's practice of leaving road templates in place when it abandons or decommissions roads provides ready access for snowmobiles to access deep snow and otherwise remote habitat needed by wolverine. The agency's propensity to look the other way when snowmobilers cut unauthorized trails, construct unauthorized bridges and snowmobile off-snow is matched only by its propensity to condone and "legalize" such behavior once it is discovered by the public.

In short, the Forest Service has put snowmobiling in direct conflict with the needs of wolverine, most notably by allowing or providing road templates, groomed trails, bridges, and snowmobile plans/maps that allow snowmobiling in wolverine habitat, even "during April and May, the critical time period for wolverine reproductive denning," (Fed Reg Vol. 78, No. 23, page 7875). Simply put, snowmobilers have demonstrated the great lengths they will go to to get at their favorite play areas - and the Forest Service has demonstrated its unwillingness or inability to develop and enforce "adequate regulatory mechanisms" to conserve wolverine and protect them from inappropriate winter recreation.

We urge USFWS to list snowmobiling and the outlaw snowmobile culture as clear threats to wolverine and its critical deep snow habitats. Hornocker and Hash (1981) warned about the impacts of snowmobiles and ATVs on wolverine back when stock snowmobiles were limited in their ability to travel off-road in deep snow. It is high time that today's high-powered snowmobiles, capable of reaching mountaintops in most snow conditions, be ruled a clear threat to wolverine that need those very habitats for their survival.

Indeed, Hornocker and Hash's (1981) recommendations warrant repeating here:

> "Further, use of roads built in logging operations should be strictly regulated, particularly in winter. If higher inaccessible country is adjacent to clear-cut areas, wolverines will separate themselves naturally from human activity in summer. In winter and early spring, however, human access on snowmobiles or all-terrain vehicles could bring about disturbance and conflict, not to mention ease of access for fur trappers."

As we've demonstrated in this letter and our attached 2002 report, the Flathead National Forest does not adequately regulate snowmobile use of its roads and often facilitates snowmobile use of "decommissioned" and other roads during winter and spring. USFWS's conclusion that adequate regulatory mechanisms exist - and that winter recreation does not threaten wolverine - by virtue of the Forest Service and its Forest Plans simply does not square with the facts.

Lower Elevation Wolverine Habitats

We are concerned your listing proposal gives short shrift to lower elevation habitats used by wolverine:

> "Mean seasonal elevations used by wolverine in the northern Rocky Mountains and North Cascades vary between 1,400 and 2,600 m (4,592 and 8,528 ft) depending on location, but are always relatively high on mountain slopes. . .
>
> Wolverines rarely, or never, den in lower elevation forested habitats, although they may occupy these habitats occasionally . . ."

(Fed Reg Vol. 78, No. 23, page 7868).

We most winters see wolverine tracks in the Swan Range as low as 4,000 feet elevation, during times that usually coincide with the movement of mule deer and elk to lower elevations as snow accumulates. We urge you to place higher value on lower elevation wolverine habitats that appear to be key to feeding. Maternal denning is not the only behavior key to wolverine survival.

Thank you for this opportunity to comment on your listing proposal.

Sincerely,

Keith

Keith J. Hammer
Chair

Attached: Keith Hammer's 2002 paper "Snowmobiling's Endless Winter: Facilitating Physical Access Also Extends the Snowmobile Season, Resulting in Harm to Wildlife Security, Vegetation, Soils, and Water"

August 2002

prepared for
Swan View Coalition

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Snowmobiling's Endless Winter:

Facilitating Physical Access Also Extends The Snowmobile Season, Resulting In Harm To Wildlife Security, Vegetation, Soils, And Water

by
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Executive Summary

Citizen monitoring over the past decade has reported snowmobile use along the northern Swan Crest of the Flathead National Forest as late as July and as early as November. This use contradicts current Forest Plan standards intended to prohibit snowmobile travel April 1 - November 30 for protection of grizzly bear security, and April 1 - July 1 for protection of soils, watersheds, and spring wildlife needs including elk calving.

The photos in this report demonstrate snowmobiles are operating on backcountry areas free of snow, causing disruption of wildlife security and significant damage to vegetation and soils, if not water quality and fish. Unauthorized trails and bridges are shown to contribute to an inappropriate extension of the snowmobile season and consequent damage to resources. The photos provide clear evidence efforts to facilitate snowmobile access by leaving culverts, bridges or benched areas in decommissioned roads will lead directly to increased difficulty in enforcing seasonal use restrictions and cause harm to wildlife security, soils, water quality, and fish.

Introduction

Over the past decade, citizens have reported to the Flathead National Forest unauthorized trails and bridges used by snowmobiles. They have also reported snowmobile use during the months of November, May, June and July, when, according to Flathead Forest Plan Appendix C, snowmobile use is supposed to be prohibited to protect wildlife security, soil, and watersheds. [1]

Such inappropriate use continues unabated, with the exception of the court-ordered closure and reclamation of a trail cut illegally through Krause Basin around 1992. There, physical barriers and tree deadfalls were necessary to make motorized access impossible following repeated violations of the closure order and vandalized closure signs.

In spite of its inability to control snowmobile use via law enforcement alone, the Flathead is now proposing in its Winter Motorized Recreation Plan and Moose Post-Fire Project to facilitate snowmobile use of decommissioned roads by leaving culverts in stream crossings and/or providing benched areas on slopes near streams. [2, 3] Broadly used definitions of road decommissioning and Flathead Forest Plan Amendment 19, however, require the culverts be removed and nearby slopes be recontoured to natural conditions in order to protect fish and wildlife habitat. Simply put, decommissioned roads are to be "treated in such a manner so as to no longer function as a road or trail." [4, 5]

This report uses photographs to illustrate how facilitating snowmobile access across streams and steep slopes negates natural barriers to snowmobile travel, allowing for snowmobile use during periods of inadequate snowpack. Results are increased and untimely impacts to wildlife security, vegetation, and soils, if not to water quality and fish as well.

The Unauthorized Lost Johnny Bridge

Over the years, reports of snowmobiling in May, June and July in the upper Lost Johnny and Strawberry Lake areas of the Swan Crest have left people scratching their heads, wondering how snowmobiles are getting there from the snow-free lower elevations and roads. After seeing snowmobiles above Strawberry Lake tearing up snow-free bear grass and a shrub field on June 13, 2002, I drove to the end of the Lost Johnny road on June 26 and found an unauthorized bridge across the creek.

The bridge showed recent use by snowmobiles, as did the abandoned road on either side of the bridge and upland areas with and without snowpack. It is apparent the bridge has been there for a number of years It is in fact collapsing on one side of the center pier.

Keith Hammer photo

This bridge over Lost Johnny Creek facilitates motorized vehicle access to an abandoned road network and upland areas.

It appears that, when the upland road network was abandoned, neither the stream banks nor the nearby road prism were returned to native contours, providing a narrower and more bridgeable gap. Portions of the road prism, and of course the stream banks, stand to be eroded should this bridge collapse and divert the stream to either side.

The following June 26 photo shows fresh snowmobile tracks on the bare, abandoned roadbed between the turnaround area at the end of the Lost Johnny road and the unauthorized bridge.

Keith Hammer photo

The following photo was taken June 16, 2002, above Strawberry Lake, where snowmobiles were seen on June 13 tearing bear grass and shrubs out and down into the soil while hill climbing between patches of snow.

Keith Hammer photo

The next photo, taken several hundred yards above the bridge, shows evidence there has been substantial snowmobile use of the bridge to facilitate post-April 1 up-country snowmobiling, with a clear trail torn down through the shrubs and into soil and rock.

Keith Hammer photo

The unauthorized Lost Johnny bridge serves as an example of how providing stream crossing access, rather than relying upon naturally occurring seasonal snow bridges, greatly and inappropriately extends the season of use for snowmobiles.

Hungry Horse Ranger District staff were unaware of the existence of the Lost Johnny bridge when I contacted them August 8, 2002. Furthermore, while the existence of a bridge or cleared trail in the area was suspected for a number of years, it apparently was not documented until I made the long drive up Lost Johnny road on June 26, 2002.

Promises of adequate enforcement of seasonal snowmobile closures in the backcountry ring hollow should off-season use be encouraged by leaving culverts and/or benched areas in decommissioned roads. If a stationary snowmobile bridge defies detection and remedy by the Forest Service, how does it expect to detect and ticket snowmobilers when they violate a seasonal backcountry closure order?

Leaving Culverts, Bridges And/Or Benched Areas Near Streams In Decommissioned Roads Is A Recipe For Disaster

In addition to extending the length of the snowmobile season, leaving culverts in streams, bridges across streams, or benched areas in decommissioned roads near streams invites disaster for soil, water quality and fish. There is good reason why Flathead Forest Plan Amendment 19 and other definitions of road decommissioning require all stream-bearing culverts be removed and the slopes near streams returned to native contours.

The following photo shows the 1999 washout of a 54" culvert in Nokio Creek on the Flathead National Forest, which washed some 1,000 cubic yards of Road #114 downstream.

Forest Service photo

It is precisely because culverts like this fail even on open roads, where the culverts are easily monitored and maintained, that culverts must be removed from decommissioned roads, where they are difficult to monitor and maintain. Indeed, the Forest Service's own manual on road decommissioning warns against leaving culverts and portions of road prisms in even low risk crossings by stating "it is realized that structures and embankments not removed may be inaccessible for maintenance or repair after road obliteration work is completed." [6] The potential for disaster is heightened by the fact stream crossing structures most in desire by snowmobilers are likely to be the higher risk culverts buried deeply in incised crossings with steep slopes.

Road decommissioning conducted in 1998 on the Flathead's Coal-Mathias Road #1687 serves as an example of how leaving benched areas near streams on decommissioned roads can result in damage to streams and fish. The following photo shows benched areas left in the "recontoured" slopes following culvert removal.

Keith Hammer photo

The next photo, of the same slope the following summer, shows how benches can help channel water and sediment directly to the stream channel.

Forest Service photo

While the Forest Service apparently helped channel water along the bench on the decommissioned Road #1687, doing so and leaving the bench in the first place runs contrary to Amendment 19 and the definition of "decommission" developed by the interagency Forest Ecosystem Management Assessment Team. The FEMAT defines decommission as "to remove those elements of a road that reroute hillslope drainage and present slope stability hazards." [7]

Add snowmobile use to these streamside benches and slopes and things promise to get even worse. As the photo to the right shows (as well as photos to follow) snowmobiles can dig significant ruts into the ground to channel water and sediment. This photo was taken near the end of the Lost Johnny road on June 26, 2002. The rut is of snowmobile width and shows significant use by snowmobiles.

Keith Hammer photo

Snowmobiles operating on benches or slopes near streams, especially when encouraged to do so during low or no snowpack by the existence of man-made stream crossing structures, may indeed cause substantial impacts to vegetation, soils, water quality and fish.

Clearing Of Brush And Deadfall Also Extends The Snowmobile Season

The clearing of brush and tree deadfall can also inappropriately extend the period of snowmobile use, causing increased and untimely impacts to wildlife security, vegetation, soils, water quality, and fish. Once natural impediments to motorized travel are removed, significant numbers of snowmobilers pay little heed to seasonal restrictions for wildlife security or to ensuring there is adequate snowpack to protect the land. [8]

On the following page is a series of photos of a portion of an unauthorized snowmobile trail cleared and maintained in the Flathead's Krause Basin from about 1992 until 1999. This trail also came to be used by wheeled motorized vehicles. Removal of brush and deadfall resulted in snowmobile use including November and April, in spite of a longstanding area closure for wildlife security April 1 - July 1 and September 1 to November 30.

In spite of the fact the trail had been cleared and maintained without a permit, the Forest Service refused to close the trail until a lawsuit was brought and a court order issued. Pursuant to the court order, the trail was physically blocked and reclaimed after motorized vehicles repeatedly ignored the posting of a legal closure order and signs. [9]

Bob Muth photo

Prior removal of brush and deadfall allows snowmobile access on little to no snow.

Keith Hammer photo

Already nicknamed "mud hill" by snowmobilers, dirt bikes and 4-wheelers also take advantage of the cleared hillside.

Keith Hammer photo

Following a court order, volunteers physically block, water bar, and plant native shrubs and trees on mud hill.

Conclusion

The photos and discussion provided in this report demonstrate efforts to facilitate snowmobile access inevitibly lead to an inappropriate extension of the snowmobile season and untimely impacts to wildlife security that cannot be rectified by the posting of closure orders. Damage to vegetation and soils can be expected to extend to water quality and fisheries if culverts, bridges, and benched areas on hillsides are retained near streams on decommissioned roads.

Further impacts to water quality and fish can be expected if slash and other sediment-trapping material is removed from decommissioned roads near streams in order to facilitate snowmobile access or if such material is scuffed off by snowmobile use. All of the above measures are also certain to facilitate undesired wheeled motorized vehicle use.

While the Lolo National Forest is perhaps ill-advised in proposing to leave informal, unmaintained foot paths in its decommisioned roads, it is making it absolutely clear no such slash-free paths will be allowed within 300 feet of streams and they will be legally closed to motorized vehicles. [10]

The Flathead National Forest, on the other hand, is proposing to not only allow snowmobile use on decommissioned roads, but to facilitate it by leaving culverts and/or bridges and/or benched areas near streams. [11, 12] Replacing natural impediments to motorized vehicle travel with paper closure orders greatly increases the reliance on chronically scarce law enforcement to ensure protection of wildlife security and other resources.

In the years 1999 and 2000, the Flathead issued only four citations for the 365 cases of vandalism and road closure violations it discovered. [13] As neighboring forests like the Kootenai move toward more physical deterrents to motorized use for this very reason [14], the Flathead instead appears intent on heading directly toward disaster.

Sources

1. Flathead National Forest Plan Appendix C - Travel Planning Direction. December 1985.

2. Flathead National Forest. Scoping letter for the Winter Motorized Recreation Forest Plan Amendment. July 18, 2002.

3. Flathead National Forest. Moose Post-Fire Project Draft Environmental Impact Statement. June 2002.

4. Forest Ecosystem Management: An Ecological, Economic, and Social Assessment. Interagency report of the Forest Ecosystem Management Assessment Team (FEMAT). July 1993.

5. Flathead National Forest Plan Amendment #19 Decision Notice and Environmental Assessment. March 1, 1995.

6. U. S. Forest Service. A Guide for Road Closure and Obliteration in the Forest Service. June 1996.

7. Source #4.

8. Unpublished monitoring and reports by Keith Hammer, Swan View Coalition, and others.

9. Court order issued by U. S. District Judge Donald Molloy in the matter of *Swan View Coalition and Montana Ecosystems Defense Council v. United States Forest Service.* May 19, 1999.

10. Lolo National Forest Post-Burn Record of Decision and Final Environmental Impact Statement. July 17, 2002.

11. Source #2.

12. Source #3.

13. Flathead National Forest law enforcement records summary. Provided Swan View Coalition under cover of letter by Terry Chute. February 12, 2001.

14. Kootenai National Forest. Letter from Bob Castaneda to Swan View Coalition. February 5, 2001.