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NEWSLETTER

Featuring updates on grizzly bear conservation activities,
and the latest *Grizzly Times* Blog and Podcast
from [Louisa Willcox and David Mattson, Ph.D.](#)
Co-Founders of *Grizzly Times*.

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December 27, 2023

Dear Friend of the Grizzly,

We hope your holidays so far have been enjoyable and bright!

Our winter weather in the US Northern Rockies has been uncannily mild, another sign of climate weirding subjecting us to a whipsaw of extremes. Last year our home was beset by one blizzard after another. This year, Louisa and I have been basking in above freezing temperatures and enjoying confinement of the snow to the mountains. The unambiguous silver lining for us has been the opportunity to take daily walks without slogging through snow or slipping on ice – a particular blessing given that Louisa is recovering from her third shoulder surgery, this one a “total reverse replacement”, something I had never heard of.



Louisa, David and Tashi in their Rocky Mountain Home in Montana

Our aging Australian shepherd, Tashi, is also relishing the clement temperatures and an opportunity to totter about in the yard, including excursions to the barn to eat deer poop, which, according to Tashi, is a good source of probiotics. Our flocks of winter resident birds are an additional blessing, notably the lesser goldfinches, siskins, house finches, chickadees, woodpeckers, and sapsuckers. It's easy to imagine spring, barring the lack of daylight hours.

As we near the end of the calendar and solar year, Louisa and I thought it would be worth updating you not only on more of what's been happening on the legal front with grizzly bears, but also where we see things heading in the coming year, notably with prospects for more aggressive moves by the US Fish & Wildlife Service (FWS) to not only remove Endangered Species Act (ESA) protection for Yellowstone region grizzlies, but also grizzlies in the Northern Continental Divide Ecosystem (NCDE).

We don't intend to increase anxiety for those who are watching world events. Nonetheless, we thought that many of you would appreciate an overview of what's happening with management of grizzly bears and their habitat – now and in the coming year.

Before we get into our summary and predictions related to bear management, we thought you might appreciate an article recently published in *The Intercept*: “The Grizzly Files: Grizzly Bear Poachers Flout the Endangered Species Act and Get Away With It.”

<https://theintercept.com/2023/12/20/grizzly-bears-endangered-species-act/>

This investigation by Ryan Devereaux and Jimmy Tobias of grizzly bear poaching in the Yellowstone ecosystem is journalism at its best – unfortunately a rarity these days. Louisa and David were interviewed for this article that exposes the dark truth about wildlife managers and law enforcement officials looking the other way as a shocking number of grizzlies are poached. Instead of tackling the problem, the government is rushing ahead with another delisting rule that will end up making the world even more hazardous for grizzlies in the Northern Rockies.

Now back to our overview...

A Deluge of Forest Service Plans and Projects

We are not inclined to subscribe to conspiracy theories, nor are we inclined to credit state and federal agency managers with too much sophisticated coordination. Nonetheless, it would be easy for us to become believers, primarily because there has been a deluge of seemingly coordinated government decisions eroding protections for grizzly bears and their habitat in the Northern Rockies, most issued by the US Forest Service (FS). Without being comprehensive:

- The Kootenai National Forest moved ahead with finalizing plans for the massive Black Ram project which would cut old growth timber, build roads, and erode security of habitat for the critically endangered grizzlies in the Cabinet-Yaak ecosystem. The Forest capped this off with measures that weakened protections for grizzly bears outside the Recovery Zone.
- The Nez Perce-Clearwater National Forest just issued a final draft forest plan revision (believe me, it is hard to keep up with these nuanced planning stages) that deliberately excludes protections for grizzly bears newly colonizing the Bitterroot Ecosystem – an area that David has called The Grizzly Bear Promised Land.
- The state of Montana issued new regulations that would have liberalized the killing of wolves, including an extended season using baits and neck-hold traps, all of which would have likely harmed grizzly bears.
- The Helena-Lewis & Clark National Forest stripped all big game standards in its revised forest plan, resulting in the loss of protections for grizzly bear habitat outside of the Primary Conservation Area in southern portions of the Northern Continental Divide Ecosystem (NCDE), many of which are critical to connectivity between the NCDE and Greater Yellowstone and Bitterroot Ecosystems.
- The Custer-Gallatin National Forest (NF) moved ahead with plans to build roads and harvest timber over a 15-year period in a 40,000-acre project area on the western border of Yellowstone National Park (the South Plateau Landscape Area Treatment [SPLAT] plan), with only passing reference to impacts on grizzly bears.
- This same National Forest is working to finalize plans to expand grazing of cattle on public lands in eastern portions of Paradise Valley south of Livingston, Montana, with almost complete disregard for impacts on grizzlies.
- The Forest Service and US Fish and Wildlife Service have been sitting on their hands – or worse – as threatened grizzlies find their own way back into the vast Selway Bitterroot ecosystem of central Idaho. Instead of protecting these entrepreneurial bears, the government has been quick to capture and transport colonizing grizzlies back to the areas they came from.
- Finally (although not exhaustively), the Bridger-Teton National Forest worked to defend itself in the Tenth Federal Court of Appeals against legal challenges to its plans to continue grazing in the Upper Green River area of Wyoming – a plan that the US Fish & Wildlife Service anticipated would lead to the deaths of 72 grizzly bears in the next ten years.



New Forest Service Tricks?

These official plans are, indeed, quite the deluge, as if agency decision makers had deliberately counted on inundating grizzly bear advocates with reprehensible decisions. But fortunately, there are sufficient stalwart advocates and overworked skilled attorneys to stem the tide, at least for the time being.

The Black Ram project was forestalled in court, as were plans to liberalize wolf trapping. The new Nez Perce-Clearwater National Forest, SPLAT, and East Paradise grazing plans are all being litigated by good attorneys. Although the case against the Helena-Lewis & Clark NF plan did not prevail in federal district court, it is being appealed with good prospects. Last, but not least, although litigants lost their case in district court against plans to kill 72 grizzlies in the Upper Green River area, they prevailed on appeal in the highly conservative Tenth Circuit – something that rarely happens.

We offer kudos to the lawyers, including Matt Bishop, Tim Bechtold, Rebecca Smith, Andrea Zaccardi, and Kristine Aklund who worked hard to convince judges of the legal merits of litigation on behalf of grizzlies. Kudos also to the many

advocates for grizzly bears, too numerous to mention, including Mike Garrity, Adam Rissien, Mike Bader, Bonnie Rice, Jeff Juel, and Chris Bachman.

David has been burning the midnight oil as Matt Bishop and other attorneys and advocates have sought his help with comments, legal declarations, and expert advice to contest the Black Ram, SPLAT, Upper Green, and East Paradise Projects, revisions to the Custer-Gallatin, Helena-Lewis & Clark and Nez Perce-Clearwater NF plans, and regulations to liberalize state wolf trapping. Fortunately, science continues to matter, at least under auspices of the Endangered Species Act. We dread what might happen if ESA protections for grizzlies are removed.

Stepping back from the fray, the 30,000-foot level offers an interesting perspective, especially on decision-making by the US Forest Service. Although we are not privy to stratagems developed by FS leaders behind closed doors in Washington, D.C., on-the-ground evidence is hard to miss. There seem to be several key elements to larger scale planning ploys, including:

1. The agency is fielding a host of projects, each of which encompasses unprecedented acreage and time spans – typically 20,000 to 60,000 acres implemented over periods of 10-20 years. This aggregation minimizes opportunities for the public to provide input or legally challenge project particulars. It also precludes any meaningful evaluation of the cumulative impacts of multiple timber sales and road projects in a landscape. SPLAT, Black Ram, and the Upper Green River are noteworthy examples.
2. The Forest Service typically issues a draft decision that is rife with shoddy analysis and conclusions, as well as free of substantiating science. We environmentalists dutifully submit comments that flag our concerns as well as claims that could be part of litigation. The Forest Service then withdraws its decision and reissues another one a few months later that has essentially papered over everything flagged as issues by environmentalists – but without making any substantive changes.
3. The Forest Service is clearly putting lots of eggs in numerous baskets. Indeed, there are enough of these figurative project baskets to overwhelm those who want to critically scrutinize and contest them. And that seems to be the point: to spread conservationists too thin to be effective. The Forest Service is furthermore seemingly content to roll the dice numerous times, hoping to exhaust the limited resources of environmentalists and/or end up in front of a friendly judge who gives a project the green light – all without giving due regard to public concerns or engaging in credible analysis and planning.

These intentions are necessarily a matter of conjecture, although informed by ample substantiating evidence and years of experience. Regardless of intent, environmental activists are drowning in an unprecedented number of high-stakes projects and plans being churned out by the Forest Service, each of which poses a threat to grizzly bears in the Northern Rockies.

Portents of New Delisting Rules

However, there are signs and signifiers of something even more momentous afoot that dwarfs the consequences of individual Forest Service projects. The U.S. Fish & Wildlife Service, in close cooperation with the states of Montana, Wyoming, and Idaho, is clearly putting the finishing touches on new rules that would remove ESA protections not only for grizzlies in the Greater Yellowstone Ecosystem (GYE), but also, probably, grizzlies in the Northern Continental Divide. By all indications, these rules will be made available for public comment sometime early next year, after which people will have 90 days to provide input and articulate concerns.



There are numerous portents of a looming decision to delist grizzlies in our two largest populations. Managers are feverishly working to update Conservation Strategies for both the GYE and NCDE populations and plans by Montana and Wyoming for managing grizzlies in these respective states. These strategies are specifically designed to guide management *after* removal of ESA protections. The updated GYE Conservation Strategy includes a revised chapter describing new methods for monitoring population size, trend, and distribution as well as plans for trucking bears from the NCDE to GYE populations to alleviate concerns about genetic health.

Notably, except for an updated method to estimate size of the GYE population, essentially all the science being invoked by the FWS to justify removal of ESA protections is the same as was invoked during the previous 2017 and 2007

delisting efforts – essentially a “damn the torpedoes” approach to addressing deficiencies flagged during litigation of the previous delisting rule. Little is new. Even the new method for estimating population size (the so-called Integrated Population Model [IPM]) is prey to the same fundamental biases as have plagued all previous methods. The IPM is little more than putting “lipstick on a pig,” without intending any disrespect to pigs.

Even more alarming, Ken McDonald, Wildlife Administrator for Montana Fish, Wildlife, & Parks, made clear [during a recent public meeting](#) that trucking bears from the NCDE to the GYE was little more than a ploy to bolster odds of successfully navigating legal challenges to delisting, not something born of genuine concern about genetic health of GYE grizzly bears.

Similarly, Dan Thompson, Wyoming’s Large Carnivore Supervisor, [likened crafting the new GYE delisting rule to building a “Death Star”](#). For those of you who have lived life unaware of the Star Wars movies, the Death Star was a spherical space station built by the Evil Empire to vaporize entire planets. The Death Star was destroyed on two successive occasions by clever rebels who found a single weak spot in its otherwise impenetrable defenses.

Thompson reckoned that the challenge for the FWS and allied state managers was much the same as that confronted by the Evil Empire: to build something invulnerable to devious legal ploys of the rebel alliance – i.e., environmentalists and their lawyers. I’m not sure whether Dan knew all of what he was communicating via the subtext of his metaphor, but one could construe from it that he saw himself and others in the government as agents of the Evil Empire and environmentalists concerned with protecting grizzly bears and their habitat as rancorous enemies. Possibly?



Where This Prospectively Leads

All of this aside, those of us interested in contesting the next delisting rule – or two – will clearly be facing a monumental challenge. Each successive rule has been buttressed by ever more elaborate edifices of misapplied or misinterpreted science of dubious quality. Even under the best of circumstances, the deference given by judges to the expertise of federal biologists and managers makes arguing issues of science a heavy lift. Even so, for over thirty years, *we have prevailed in federal district and appellate courts* – two times before on issues expressly related to interpretation and use of science by the FWS in its delisting rules, and once before that on issues related to inadequacies of the 1992 Grizzly Bear Recovery Plan.

We are always surprised by the claims that prevail in court. Judges are quirky creatures. However, litigation of a new GYE delisting rule will probably feature the raft of problematic legislation recently passed by Montana's state legislature targeting large carnivores. These laws seriously call into question whether the state will provide "adequate regulatory mechanisms" for managing grizzly bears post-delisting. There is also the thorny but highly technical question of whether the FWS can remove ESA protections on a population-by-population basis (the Distinct Population Segment issue). On the science side, identification of legally compelling issues is always uncertain, but we suspect that genetics will continue to be a major concern along with the unprecedented threat posed to grizzly bears by climate change.

We will both be in the fray. Lest he be caught on his hind heel, David is already putting the finishing touches on a 100-page critique of science being featured in previews of the next GYE delisting rule. Stay tuned for more details from us.

Together, we can create a powerful movement that ensures grizzlies will awake from winter hibernation to a kinder safer world. We appreciate all you are doing on behalf of wild nature and wish you the best in the holiday season.

We extend our heartfelt thanks to Phil Juliano who created the instructive and entertaining cartoons featured in this newsletter.

Please Consider a Gift to *Grizzly Times*...

We need your help! We have retired and are doing this full-time work pretty much gratis – despite the gradual dissolution of our physical bodies.

As we describe in this newsletter, the US Fish & Wildlife Service is, yet again, making a run at removing Endangered Species Act protections for grizzly bears – potentially throughout Montana, Wyoming, and Idaho.

This move has been catalyzed by petitions from the Republican Governors of Idaho, Montana, and Wyoming against a backdrop of legislation in all three states

designed to persecute carnivores, with wolves targeted for especially vindictive measures. Congressional delegations from the northern Rockies are simultaneously attempting to legislatively remove ESA protections, with judicial review explicitly exempted.

If grizzlies are delisted, whether legislatively or by the administration, they will almost certainly be subject to punitive management aimed at reducing the sizes and distributions of our two largest grizzly bear populations. As always, we will be in the trenches trying to protect grizzlies and the habitats they depend on in this region and elsewhere.

As we do not have our own nonprofit, Conservation Congress, a not-for-profit tax-deductible organization, has agreed to be our fiscal sponsor.
(Thank you, Denise!)

You can make a one-time contribution or sign up for a monthly donation through this link.

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Or, you can mail a donation to:

*Conservation Congress
c/o Denise Boggs
1604 1st Avenue South
Great Falls, Montana 59401*

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Thank you for your continued support – in any way – it is greatly appreciated!

***For the bears,
Louisa and David***