

June 8, 2016

Wayne Kasworm
Acting Grizzly Bear Recovery Coordinator - USFWS
University Hall, Room 309
Missoula, MT 59812

Certified Mail Return Receipt #7004 0750 0000 3872 9327

Re: Request for Draft NCDE Habitat-Based Recovery Criteria and Postponement of HBRC Workshop

Dear Mr. Kasworm;

We have read the May 11, 2016, Federal Register notice about the July 7 Habitat-Based Recovery Criteria (HBRC) Workshop for the Northern Continental Divide Ecosystem (NCDE). The Federal Register notice, however, does not provide draft NCDE HBRC for public review prior to commenting on them at the workshop or during the HBRC public comment period. The two documents referenced and linked to in the notice do not contain draft HBRC either, so the public is essentially left with no clearly defined draft HBRC to review and comment on - as required in the attached March 31, 1997, Settlement Agreement for lawsuits involving the 1993 Grizzly Bear Recovery Plan.

The settlement agreement, in paragraph #1, clearly states USFWS will release draft HBRC and that all interested persons will be provided the opportunity to comment on the draft HBRC at a required public workshop and otherwise during the comment period. While paragraph #1 specifically references HBRC and a workshop for the Greater Yellowstone Ecosystem as "the initial area for which the habitat-based recovery criteria are being developed," paragraph #3 states that this same process must be completed in other ecosystems prior to "publishing any proposed rule to delist any grizzly bear population."

The May 11 Federal Register notice provides no list of draft HBRC. It does reference two draft documents and provides links to them, implying that they contain HBRC.

The Draft NCDE Grizzly Bear Conservation Strategy does not include the term "habitat-based recovery criteria" anywhere. Nor do any of its appendices.

The Draft EIS for the NCDE National Forests was not made available at the linked Flathead National Forest web page until May 27, 2016, and its Notice of Availability was not published in the Federal Register until June 3, 2016. Regardless, the referenced DEIS and its appendices mention "habitat-based recovery criteria" only three times in three consecutive paragraphs - on page 11 of the DEIS. These paragraphs appear in the section "Issues not addressed in this analysis." Rather than provide draft HBRC, these paragraphs provide the "rationale for not first establishing habitat-based recovery criteria" and subsequently conclude "The decision whether to delist the grizzly bear is the responsibility of the USFWS."

In short, the May 11 Federal Register notice and the documents it references fail to provide draft HBRC as required in the attached Settlement Agreement. Accordingly, we ask that FWS provide the public with a clear list of draft HBRC for the NCDE along

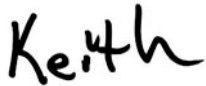
with the rationale for the draft HBRC. We further ask that FWS provide at least the two-month public review and comment period intended in the May 11 Federal Register notice once the draft HBRC and the rationale for them have been properly provided and noticed to the public via the Federal Register.

We wish to be fully involved in reviewing and commenting on FWS's draft HBRC for the NCDE. We are providing you this notice at the earliest possible time, given we were only recently provided the opportunity to look for and not find draft HBRC in the Forest Service documents the May 11 Federal Register notice referenced.

Therefore, we ask that the July 7 workshop be postponed until draft HBRC for the NCDE have been provided the public for review and comment as described above.

Thank you for your attention to this matter and please respond in writing as soon as possible, indicating how you intend to proceed in this matter.

Sincerely,



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and for:

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Enclosure: 3/31/97 Settlement Agreement for lawsuits involving the 1993 Grizzly Bear Recovery Plan.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE FUND FOR ANIMALS,
et al.,

Plaintiffs,

v.

Civil Act. No. 94-1021 (PLF)

BRUCE BABBITT, SECRETARY OF
THE INTERIOR, et al.,

Defendants.

NATIONAL AUDUBON SOCIETY,
et al.,

Plaintiffs,

v.

Civil Act. No. 94-1106 (PLF)
(Consolidated)

BRUCE BABBITT, SECRETARY OF
THE INTERIOR, et al.,

Defendants.

SETTLEMENT AGREEMENT

WHEREAS, plaintiffs filed this suit against the United States Secretary of the Interior, and the Director of the United States Fish and Wildlife Service (Service) challenging the Service's recovery plan for the grizzly bear;

WHEREAS, the Service is developing objective, measurable habitat-based recovery criteria for grizzly bears in the Greater

Yellowstone Ecosystem and once the Service has developed draft habitat-based recovery criteria, the Service intends to make the draft criteria available to the public for review and comment;

WHEREAS, any action by the Service to delist any grizzly bear population must comply with the standards and public participation requirements of section 4 of the Endangered Species Act (ESA) and the Service's listing regulations at 50 C.F.R. Part 424, including, in particular, 50 C.F.R. §§ 424.11(d), 424.16, and 424.18;

WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve this action without protracted litigation;

THEREFORE, the parties agree as follows:

1. Prior to the Service's release of its draft habitat-based recovery criteria for the grizzly bear, plaintiffs may submit comments to the Service and such comments will be considered part of the administrative record. The Service will convene a workshop during the public comment period on the draft habitat-based recovery criteria where all interested persons can present their ideas on the habitat needs for grizzly bear recovery and discuss proposals for habitat-based recovery criteria. The workshop will be convened in cooperation with the

members of the Interagency Grizzly Bear Committee (IGBC). The workshop will primarily address habitat-based recovery criteria for the Greater Yellowstone Ecosystem, since that is the initial area for which the habitat-based recovery criteria are being developed. A principal purpose of the workshop will be to allow non-IGBC scientists to present their views and ideas on the grizzly bear's habitat-based recovery needs.

2. The information and views presented at the workshop, together with all other information submitted to the Service during the public comment period on the draft recovery criteria will be considered by the Service before the habitat-based recovery criteria are finalized. When the Service finalizes the habitat-based recovery criteria it shall address in writing significant public comments, including those significant public comments offered at the workshop discussed in paragraph 1.

3. Prior to publishing any proposed rule to delist any grizzly bear population, the Service will establish habitat-based recovery criteria for that population's ecosystem in accordance with the process set forth in paragraphs 1 and 2 and applicable laws and regulations. In any such rulemaking to delist a grizzly bear population, the Service will utilize the habitat-based recovery criteria, as well as all other pertinent recovery

criteria that have been established, when addressing the five factors set forth in section 4(a)(1) of ESA. In addition, prior to publishing any proposed rule to delist any grizzly bear population, the Service will assess whether a threat is posed to that population by any of the five factors set forth in Section 4(a)(1) of the ESA.

4. The parties agree that, notwithstanding the Court's findings regarding the grizzly bear recovery plan, the parties do not read the Court's September 29, 1995, opinion as holding that the Service is required to incorporate into a recovery plan objective, measurable delisting criteria for a factor set forth in section 4(a)(1) of the ESA if that factor was not cited as a basis for the listing of the species and if information available at the time of the plan's drafting or amendment indicates the factor does not present a threat to the species.

5. The parties agree that, notwithstanding the Court's findings regarding the grizzly bear recovery plan, the parties do not read the Court's September 29, 1995 opinion as holding that the Service is required to incorporate into a recovery plan objective, measurable delisting criteria for a factor or part of a factor set forth in section 4(a)(1) of the ESA when the best scientific information available to the Service when the recovery

plan is prepared is not sufficient to enable the Service to establish objective, measurable recovery criteria for the factor and the Service explicitly commits in the recovery plan to develop such sufficient information and criteria within a reasonable period of time and to incorporate those criteria into a supplement to the recovery plan prior to delisting the species.

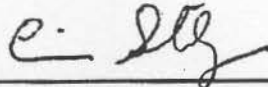
6. The parties will jointly move the district court to clarify that, notwithstanding the Court's specific findings regarding the grizzly bear recovery plan, its September 29, 1995, opinion does not hold that the Service is required in every recovery plan to analyze or evaluate all former habitat in establishing objective, measurable habitat-related recovery criteria.

7. The parties will dismiss their appeals of the District Court's September 29, 1995, decision in the D.C. Circuit and submit their settlement agreement to the district court along with a joint Rule 60(b) motion in order to modify the Court's September 29, 1995, ruling as detailed in the district court's January 29, 1997, opinion.

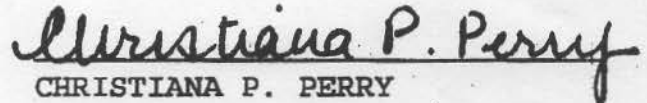
9. The parties will bear their own fees and costs with respect to activities undertaken following the filing of the notices of appeal. With regard to fees and costs incurred

litigating this case before the District Court, the parties shall attempt to negotiate a resolution of fees and costs for work performed in connection therewith. In the event the parties are unable to come to an agreement on these fees and costs, any party seeking fees and costs will file its application to the District Court for such fees within sixty days after the court's order amending the judgment and dismissing the action.

Dated: March 31, 1997.



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