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BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON
WATER, WILDLIFE, AND FISHERIES ON
“GRIZZLY BEAR STATE MANAGEMENT ACT OF 2023 (H.R. 1245)”

A BILL TO DIRECT THE SECRETARY OF THE INTERIOR TO REISSUE A
FINAL RULE RELATING TO REMOVING THE GREATER YELLOWSTONE
ECOSYSTEM POPULATION OF GRIZZLY BEARS FROM THE FEDERAL
LIST OF ENDANGERED AND THREATENED WILDLIFE, AND FOR OTHER
PURPOSES.

THURSDAY, MARCH 23, 2023

Good morning Chairman Bentz and Ranking Member Huffman. Thank you for the opportunity to testify before you today as you consider the *Grizzly Bear State Management Act of 2023 (H.R. 1245)* to delist the Greater Yellowstone Ecosystem population of the grizzly bear under the Endangered Species Act. I am Brian Nesvik, and I have the privilege to serve as the Director of the Wyoming Game and Fish Department (Department). I have over 27 years of service to the citizens and wildlife of Wyoming in my role as a wildlife manager. My testimony is premised on my experiences serving in various positions within the Department, including Game Warden, Regional Wildlife Supervisor, and Chief Game Warden/Chief of the Wildlife Division. I have served as the Director for the past four years. Within my current role I serve as the chief administrative head of the Department with general leadership, supervision, and control of all activities, functions, and employees of the Department. I report to Governor Mark Gordon and work closely with the Governor appointed Wyoming Game and Fish Commission. I am honored to work with and lead an incredibly talented and dedicated team as we work together to manage Wyoming’s vast and diverse wildlife and the places they live for those who enjoy them today and will enjoy them tomorrow. I earned a Bachelor of Science in Fish and Wildlife Biology and Management from the University of Wyoming and a Master of Science in Strategic Studies from the U.S. Army War College. I serve on many state, regional, and national organizations and committees, including as the Vice President of the

Western Association of Fish and Wildlife Agencies, on the Executive Committee of the Association of Fish and Wildlife Agencies (AFWA), and the Board of Directors for the Intermountain West Joint Venture.

While grizzly bears are found in other populations in the lower 48 states and throughout the western Canadian provinces and Alaska, I will focus my efforts on the Greater Yellowstone Ecosystem (GYE) population. The GYE is an expansive landscape comprised of both Yellowstone National Park, Grand Teton National Park and large areas of designated wilderness area in portions of five National Forests. This population is managed and monitored in that part of the GYE where suitable habitat exists as designated by the US Fish and Wildlife Service (Service) informed by the Interagency Grizzly Bear Study Team. This area is termed the Demographic Monitoring Area (DMA). The DMA is 19,279 square miles, which is slightly larger than the geographic area of the states of Vermont and New Hampshire combined.

Most of the specific scientific information I will talk about today is directly related to the reality of a fully recovered grizzly bear population and the challenges associated with increased abundance and distribution outside suitable habitats, coupled with increased human use of grizzly bear habitat. My testimony reflects our Department's expert opinion as to why a delisted grizzly bear population managed with data collected by our personnel as part of decades of recovery and conservation efforts is the most efficient and effective path forward for grizzly bears and the people who live, work, and recreate in Wyoming and the GYE.

The recovery of the GYE grizzly bear population is one of the most remarkable conservation success stories in the history of wildlife conservation. This population is one of the world's most studied populations of wildlife. Despite all science-based information affirming the population's biological recovery and successful conservation, we continue to be hobbled by the species' status, listed as threatened under the Endangered Species Act (ESA). Wyoming is proud to have paid for and taken a leadership role in grizzly bear recovery and management for the past 45+ years. Wyoming people (primarily those who have purchased hunting or fishing licenses) have invested over \$59 million to recover this population from its low point when there were as few as 136 bears in the GYE. Wyoming people have changed how they work, live, and recreate in grizzly bear country to help with their recovery. The most recent and best available science estimates there are more than 1,000 grizzly bears within the suitable habitat of the GYE.

While the majority of GYE grizzly bears and suitable habitat are in Wyoming, there are also significant portions of this population in Montana and Idaho. These states have also demonstrated strong commitment by contributing significantly to the recovery of this population.

We firmly believe state and tribal wildlife management agencies are best suited to manage wildlife within the borders of their respective states. The localized experience and expertise provide the proper context to inform management decisions and to establish objectives directing how wildlife populations are managed using the most current techniques and best available science. In the case of the GYE, the states of Wyoming, Montana, and Idaho played a lead role in the population recovery. From a data collection, public education, conflict management, law enforcement, and research perspective, the states have conducted the overwhelming majority of the work despite the species' being under federal authority.

Current Status of the GYE Population

The GYE grizzly bear population is fully recovered as measured by all federally developed recovery criteria. Quantifying and measuring recovery has been challenging to say the least. This challenge has not resulted from difficulty with the biology and science, but rather the ever-changing goal posts established by the Service and conclusions developed in court decisions by federal judges. Despite these challenges, I can state unequivocally that for two decades this population has been biologically recovered, and is healthy and viable. From the stated purposes of the ESA, a recovered population is one that: has the capability to offset human-caused mortality, is large enough to ensure a high probability of survival considering demographic and environmental stochasticity, and has reproductive females distributed throughout the recovery area. The robust dataset for this population affords long-term insight into its biological health. It has continually demonstrated a steady increase in abundance, density, and distribution (see upcoming figures). Recent updates in the science used to estimate abundance provide for more accurate information. Based on all available metrics, the population exceeds 1,000 grizzly bears in the DMA — a number that is double the original number needed to deem it a recovered population. Annual grizzly bear mortality has remained below established thresholds despite increasing human caused mortality due to a growing population. Reproductive females occupy the entire DMA and have for decades. These facts are relevant because they directly tie to the recovery criteria established by the Service, informed by recommendations from grizzly bear experts.

Based on all scientific information, biological data collected, and the analysis of the Interagency Grizzly Bear Study Team, within the area identified as suitable habitat (*see* Fig. 1), this population is exhibiting density dependent traits consistent with a population at or above carrying capacity. The DMA was identified as a large enough tract of contiguous habitat to maintain GYE grizzly bears in perpetuity. Grizzly bear populations have expanded their range beyond the habitat considered suitable by the Service. In 2020, nearly 8,000 square miles of grizzly bear range was outside the

DMA, leading to increased conflict potential between grizzly bears and humans. While ecologically fascinating, having grizzly bears in these areas are more prone to conflict. These conflicts (discussed in further detail later) impeded the success of grizzly bear conservation and erode social tolerance for grizzly bears for those directly impacted.

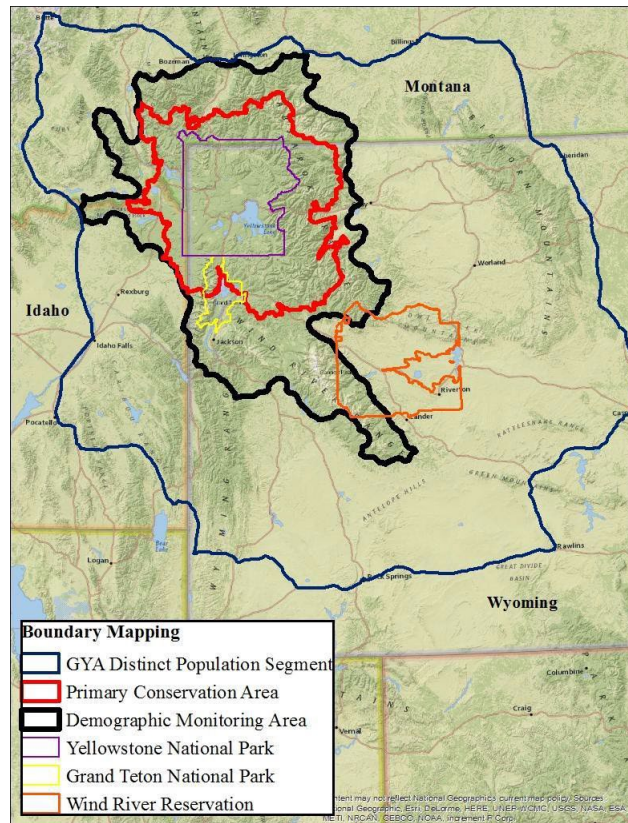


Figure 1. Relevant jurisdictional boundaries and areas of note for the GYE grizzly bear population.

Grizzly Bear Expansion and Human Conflict

Their expansion in range into unsuitable habitats has created significant challenges for all states and agencies involved due to the ever-increasing rise in human/bear conflict potential. Dangerous encounters with humans, destruction of private property (mostly livestock), and bear occupancy in human-dominated landscapes are all the reality of an expanding population. An expanding population was promoted and was the stated objective for decades, but once grizzly bears surpassed the suitable habitat of the GYE, the expansion continued. Now our people deal directly with grizzly bears expanding into areas that are primarily rural and agricultural communities, not pristine backcountry wilderness sanctuaries. People working, living, and recreating in these areas were assured grizzly bears would not be allowed to permanently occupy these

areas outside of suitable habitat by the state and federal entities involved in recovery. This promise inspired support for recovery by local citizens. Occupancy in these human-dominated areas, far from biologically suitable habitats, is not a realistic scenario for success from a human or bear perspective. Since GYE grizzly bears were initially delisted in 2007, the population has increased its distribution by nearly 800 mi² annually (see Figs. 2 and 3). From 1990 – 2007 the distribution increased at a slower rate (465 mi² annually). From 1990 through 2020, the area of occupied range has increased steadily at a rate of 4% per year from just over 880 mi² to over 27,000 mi² (see Fig. 4). Grizzly bear occupied range now includes 97.9% of the DMA, and has expanded 25 miles beyond the DMA boundary to the east and west and by as much as 37 miles in the Wyoming Range in the southwestern portion of the GYE. The 2020 data show that 30.6% of GYE grizzly bear range is now outside the DMA boundary. By 1990, just over 231 mi² of private lands were encompassed within grizzly bear occupied range, an area half the size of Grand Teton National Park. By 2020, over 4600 mi² of private lands occurred within occupied range (Figure 4), an area more than 77 mi² larger than Yellowstone and Grand Teton National Parks and the John D. Rockefeller Parkway combined.

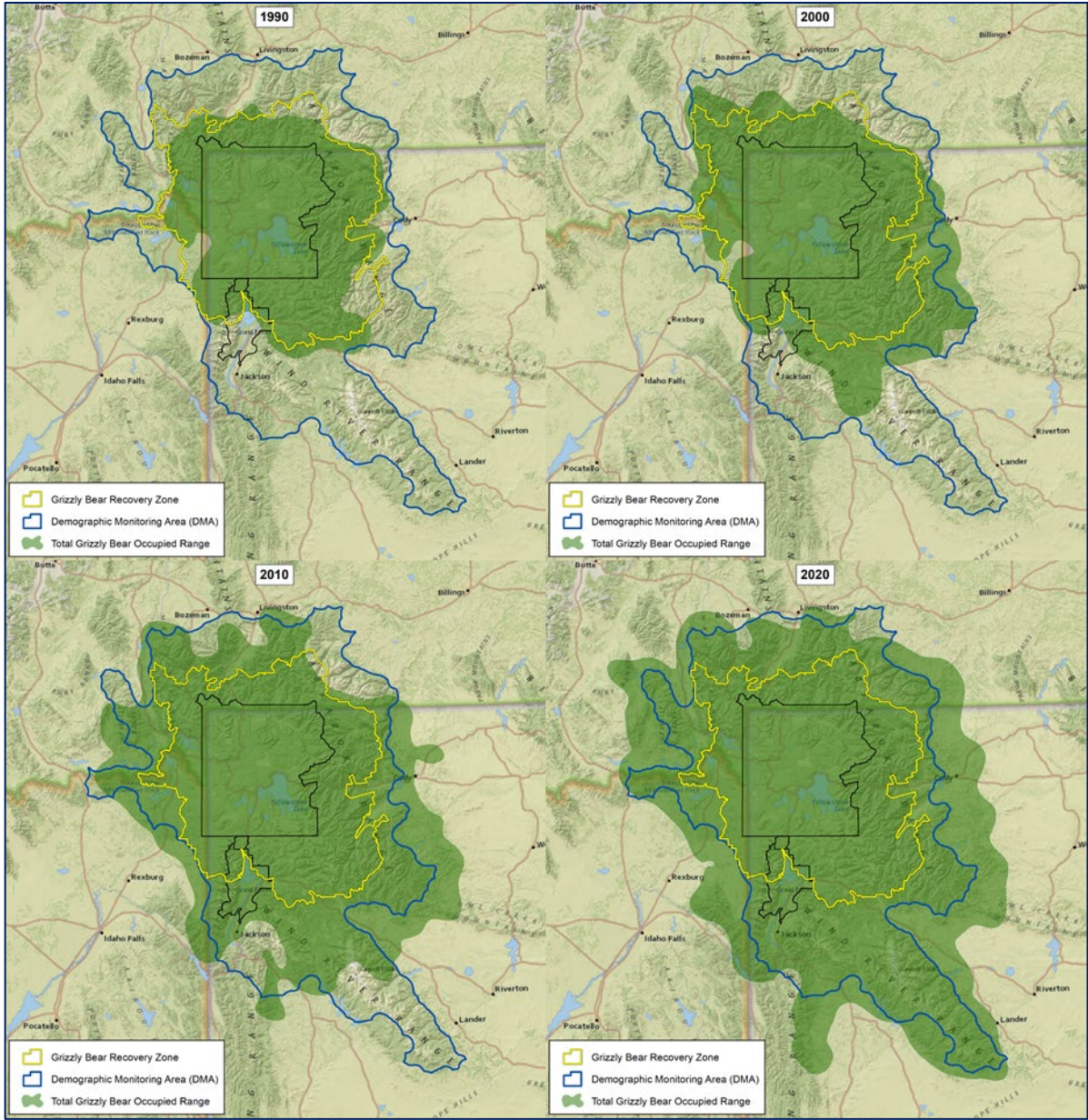


Figure 2. Grizzly bear occupied range (green shaded area) in the Greater Yellowstone Ecosystem, 1990, 2000, 2010, and 2020.

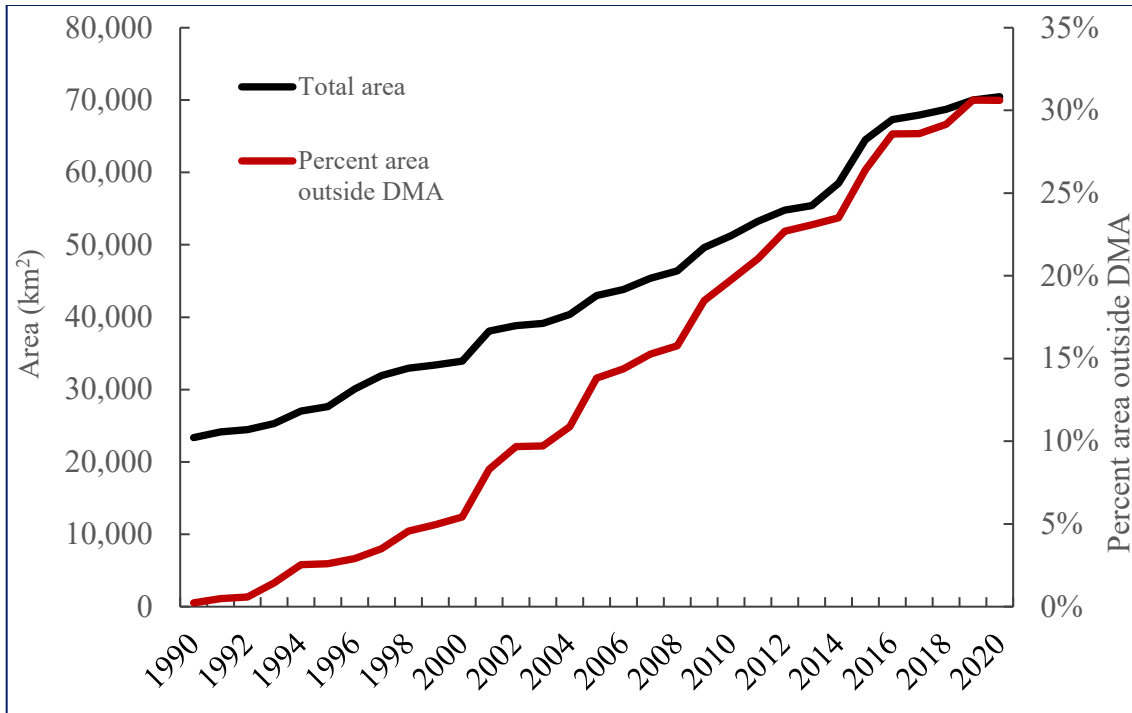


Figure 3. Total area of grizzly bear occupied range and percent of area of occupied range outside the Demographic Monitoring Area (DMA) in the Greater Yellowstone Ecosystem, 1990–2020.

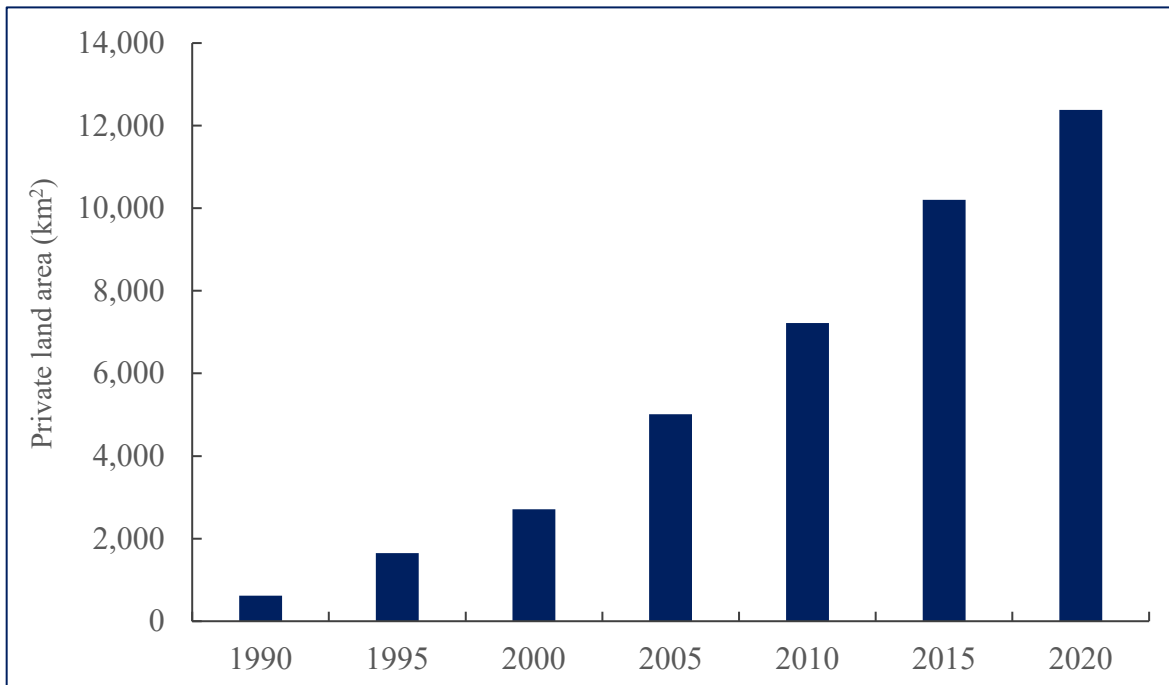


Figure 4. Area of private land within grizzly bear occupied range in the Greater Yellowstone Ecosystem in 5-year intervals, 1990–2020

When evaluating verified grizzly bear conflicts in Wyoming, we have documented a widespread increase in conflicts associated with the increased distribution of grizzly bears. The conflict potential has been exacerbated as bears have expanded beyond those habitats suitable for their long-term viability. From 1990-1999, we averaged 79 conflicts annually. From 2000-2009, that number jumped to 150 annual verified conflicts, and from 2010-2022 we averaged approximately 220 verified grizzly bear conflicts in Wyoming (*see* Fig. 5). Based on the combined efforts of our Bear Wise Wyoming program, community based education programs, increased bear resistant infrastructure in grizzly bear habitats and countless sacrifices and adaptations by the public, we have decreased the overall conflict potential within the DMA as much as can be expected. Conflicts associated with property damage, garbage and other types are <10% of all annually verified incidents. Conversely, the same cannot be said for conflicts between grizzly bears and livestock with more than 60% of annual incidents between grizzly bears and people being the result of livestock depredation, predominantly cattle.

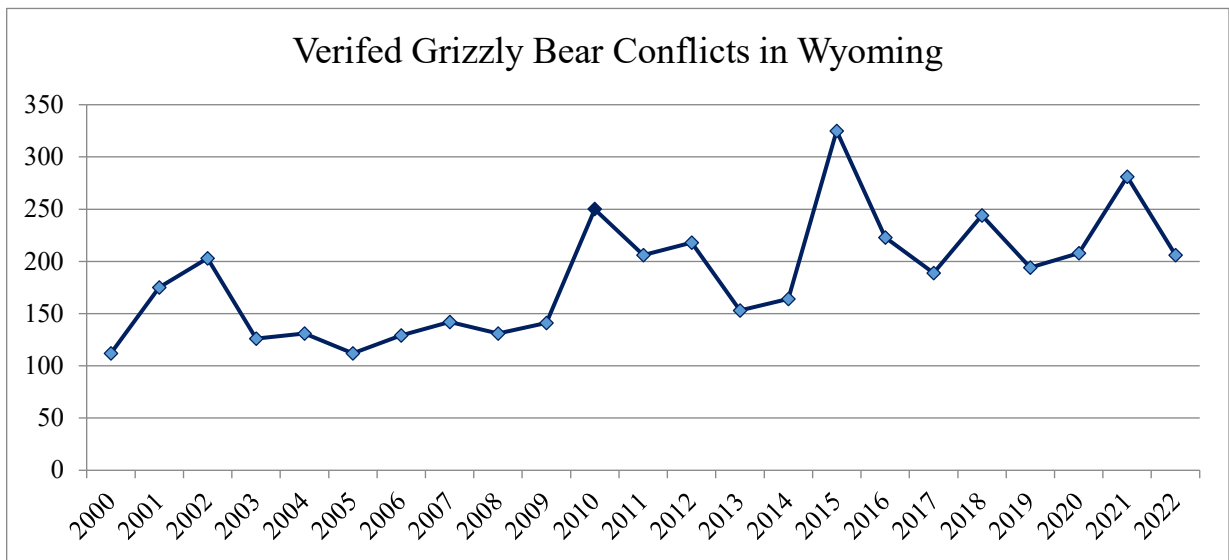


Figure 5. Annual grizzly bear conflicts verified by Wyoming Game and Fish personnel in Wyoming (this excludes conflicts that occur in the National Park Service lands and within the tribal lands of the Wind River Reservation).

These incidents result from an increase in bears and their expansion into new areas, as cattle grazing within the DMA has decreased over time.

Unfortunately, the increasing bear population has resulted in increased human attacks. These attacks have resulted in severe injuries and human deaths. Increased bear safety education and a willingness of people who use occupied habitats to exercise behavior that mitigates bear conflict have certainly prevented many injuries and deaths, but bear attacks illicit negative public attitudes and a fear by some to enter grizzly bear country.

As alluded to, the public and private sectors of people who live, work and recreate in grizzly bear occupied habitats have overwhelmingly changed their lifestyles and made sacrifices to reduce conflict potential. Landowners and residents have incurred additional costs to create bear resistant storage for trash, livestock feed, and other attractants. Working with the Department, many ranches and residences have erected bear proof infrastructure with electric fencing or other deterrents. Some have completely revamped landscapes on private lands to reduce conflict potential. At a time when the bear population has increased, conflicts have not increased proportionally, especially in the core of the ecosystem because people have changed behaviors. Without human behavior changes that mitigated conflicts, there would have been a much steeper increase in conflicts.

The Department has created educational/outreach programs (i.e., Bear Wise Wyoming, Bear Wise Community Programs) to reduce conflict potential and incentivize actions to secure attractants and alter human behavior when recreating, living, and working in grizzly bear country. To reach the widest audience possible, we have created interactive materials on our website and use all venues and forums to disseminate information. We have documented decreased conflicts associated with property damage and bears acquiring anthropogenic foods. Unfortunately, we are witnessing increases in human injuries, site conflicts, and a wide scale shift toward livestock depredation as bears continue to expand outside of the core Recovery Zone and well beyond the DMA. Securing attractants and reducing conflict potential is much more difficult in the rural, exurban, and agricultural landscapes where grizzly bears have expanded.

In recent years, there has been a great deal of attention regarding increased mortality of grizzly bears in the GYE. Unfortunately, much of the information disseminated by those who oppose delisting is either abjectly wrong, contorted, or taken out of context. Very simply, increases in mortality are proportional (or perhaps less than proportional) to the increase in abundance and distribution of grizzly bears. Human-caused mortality has always been the leading cause of grizzly bear mortality, but mitigation measures have been adopted and adapted over multiple decades to reduce instances of human-caused mortality. These measures have proven effective in many instances. Rhetoric and hyperbole regarding “record levels of mortality” fail to include overall metrics of population ecology. During a time when human-caused mortality has increased, the grizzly bear population has increased at an average rate of 4% per year. With higher abundance, more offspring are being born and recruited into the population than the number that are dying, which is why we still have an increasing population. The unfortunate reality of being beyond recovery is an increased potential for dangerous encounters between grizzly bears and humans, with negative outcomes for both species. The novelty of an apex predator expanding its range wears off quickly when it directly impacts human safety and livelihood.

State Management Capacity and Capability

The states of Wyoming, Montana, and Idaho are fully capable of assuming management of the GYE population and, in fact, have done so when the population was previously delisted two times. Speaking specifically for Wyoming, we have demonstrated our abilities to manage and conserve all wildlife populations throughout the State since the inception of the Department in the early 1900s. Other species successfully managed by Wyoming include black bears, mountain lions and gray wolves. In regards to grizzly bears specifically, the State has been handling on the ground grizzly bear management activities throughout our jurisdiction under federal oversight for multiple decades and has successfully managed grizzly bears under state authority twice when bears were delisted. Wyoming has only been denied its right to manage a fully recovered population consequential to litigation. Of note, in neither relisting court decision was the population ruled to be below biological recovery standards. Additionally, courts found Wyoming to have adequate regulatory mechanisms in place to ensure continued viability of the population.

As a state and Department, we have developed multiple regulatory mechanisms to ensure GYE grizzly bears remain recovered into the future including a Wyoming Game and Fish Commission and U.S. Fish and Wildlife Service approved Grizzly Bear Management Plan. In addition, multiple state statutes and Wyoming Game and Fish Regulations codify regulatory mechanisms. For the most recent delisting process, the states of Wyoming, Montana, and Idaho entered into a three-state memorandum of agreement to provide assurances regarding the post-delisting allocation of discretionary mortality. Despite the conjecture that hunting was forced upon Wyoming's grizzly bears when previously delisted, the truth lies in the adaptive and collaborative public process that serves as the foundation of state wildlife management. Upon gaining management authority for grizzly bears most recently, Wyoming Game and Fish personnel traveled around the state to seek insight into how people wanted grizzly bears managed, specifically asking for input regarding: monitoring, research, conflict management, outreach/education, and hunting. The discussions and comments were used to update the aforementioned grizzly bear management plan and codified in Game and Fish Commission Regulations, This public outreach effort fostered transparency as to how grizzly bear management and conservation would occur into the future. These commitments are all above and beyond the requirements of the ESA. Suffice it to say, multiple statutes and Commission Regulations already in place serve as regulatory mechanisms and demonstrate the commitment to maintain a recovered population within our areas of jurisdiction in perpetuity. In December of 2021, the states of Wyoming, Montana, and Idaho updated their three-state memorandum of agreement to reflect updated science

and further committed their collaborative approach to address issues brought forth by the 9th circuit court so there were no barriers in moving toward the necessary means to delist the GYE grizzly bear population.

Finally, The Department's Large Carnivore Section was created to manage grizzly bears and other large carnivores in a science-based framework that considers public comment while also providing an immediate response to conflicts between carnivores and humans. The majority of work by this Section, in collaboration with regional Department personnel, is devoted to grizzly bear monitoring, outreach/education, and conflict management.

The fact that we are now dealing with more accurate representations of population size and the reality of a recovered population places further emphasis on the progression of listed entities within the endangered species act to move beyond listed status for grizzly bears and devote needed attention elsewhere. The sheer amount of money and effort being held hostage due to procedurally listed populations only serves as a detriment to those species and populations in need of assistance.

Financial Investments and Costs of Grizzly Bear Management

Since the GYE population was first listed under the ESA, the State of Wyoming has invested over \$59 million to recover and manage this population. In the last decade alone there has been more than \$20 million expended on grizzly bear recovery and management in Wyoming outside Park Service lands and the Wind River Reservation. Wyoming made these investments of nearly \$2 million annually despite the fact that the species is listed and we only receive \$100,000 annually of grizzly bear conservation funding from the federal government. In accordance with the pre-discussed expansion of grizzly bears, there is a direct increase in Department involvement and funds expended. The strong majority of management costs are paid for from Commission funds. Approximately 80% of the Commission's revenue is derived from contributions by sportspeople (*see* Fig. 9). Our financial contributions to grizzly bear conservation further demonstrates our commitment to grizzly bear conservation and management.

If GYE grizzly bears remain listed as a threatened population under the ESA, the cost of grizzly bear management has the potential to continue to rise with the expansion and increase of the population. As more bears occupy more human occupied areas, the potential for conflict and the associated costs stand to rise at a faster pace because bears are more likely to come into conflict in these areas than they are in biologically suitable habitats. Since 2012, approximately 1/3 of all conflicts verified and dealt with by the Department occurred outside the DMA's biologically and socially suitable habitat. While bears are tolerated outside the DMA, there is overwhelming evidence

and scientific data indicating that managing bear occupancy in these areas is not in the best interest of grizzly bears or people. Grizzly bear caused livestock depredation and subsequent damage payments in Wyoming have continued to increase due to a recovered and increasing population, from Fiscal Year 2013 through Fiscal Year 2022, a total of \$3,551,306 was paid in damage compensation for grizzly bear depredation (an annual average of \$355,130 with an overall increasing trend in payment and depredations, *see* Fig. 6).

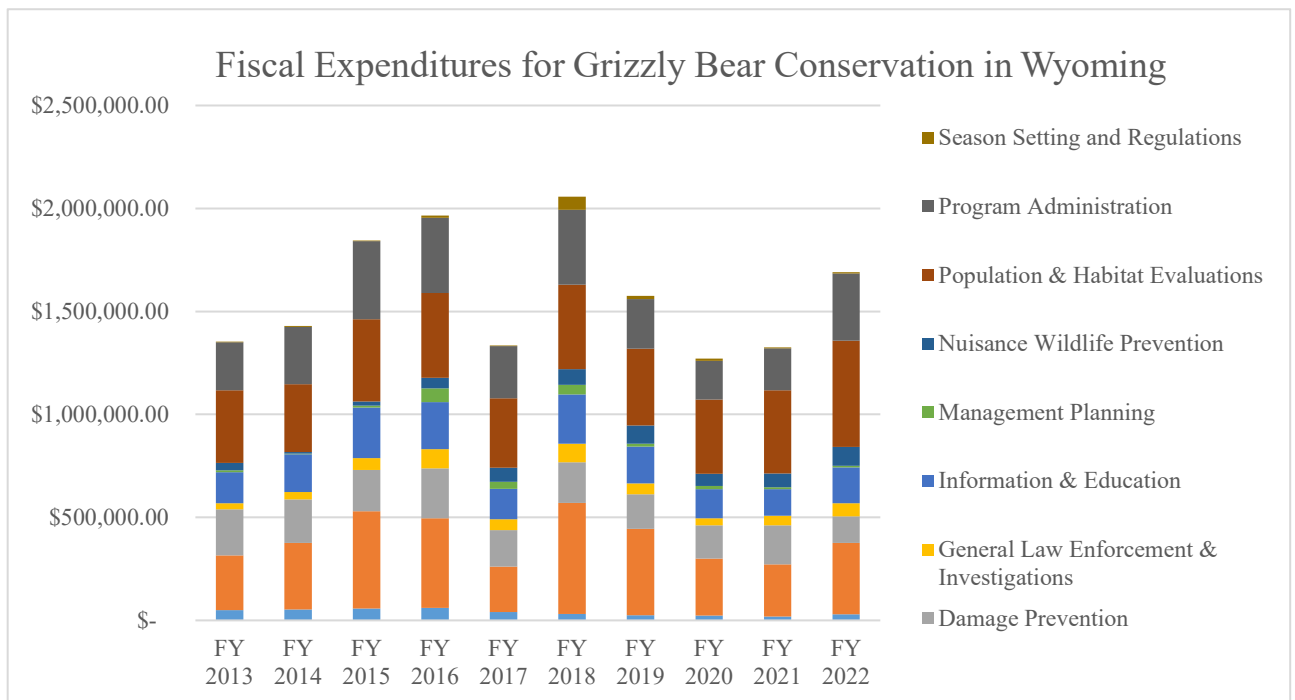


Figure 6. Fiscal expenditures for grizzly bear conservation broken down by primary categories of disbursement of funds.

Effects of Perpetual Listed Status of Grizzly Bears and Other Species/Populations

More important than direct monetary costs, keeping an animal such as the grizzly bear listed for sociopolitical reasons is disenfranchising to the public and to those that have dedicated so much of their lives and livelihoods toward recovery of the animal. The Endangered Species Act intends to provide the necessary protections for a species or population to recover on the landscape, with the ultimate goal of removing them from threatened or endangered status. The perpetual listing and litigation surrounding grizzly bears have not benefitted the grizzly bears in the GYE or elsewhere.

Both the Service and the courts have moved the requirements for delisting multiple times. These changing requirements have not been based in science. Below is a chronological summary of delisting efforts and changing requirements. It is important to note that this population has been delisted two times with support from three presidential administrations including Presidents Bush, Obama and Trump.

In 2007 the GYE population was delisted based on a full recovery measure, with 2003 and 2004 biological metrics of approximately 550 grizzly bears. Litigation ensued and the population was relisted in 2009. At multiple levels in the court system, they concluded adequate regulatory mechanisms existed, but that the Service hadn't adequately described the potential effects of Whitebark Pine declines on the grizzly bear population. The Interagency Grizzly Bear Study Team made up of Federal and State scientists completed a food synthesis report over several years concluding that: Grizzly Bears are opportunistic omnivores and when a specific food source is limited, they utilize other foods to meet their needs. The bear population increased at a time when Whitebark Pine availability as a food source decreased. The GYE population was approaching density dependence or carrying capacity. This report and the Study Team's conclusions sufficiently addressed the court decision requirements.

Based on this work and the Study Team Report, the Service began the process to draft a new delisting rule in 2015. However, they decided to go further than anything identified by the courts and to modify the recovery criteria to require the state to manage for at least 674 grizzly bears post-delisting. This wasn't based on any biological findings or data. The overly conservatively biased population estimate had reached over 700 bears when this delisting rule was drafted. The population was delisted again in 2017 and management was returned to the State and Tribal governments.

Litigation ensued immediately and in 2018, a federal court relisted the population. The courts asserted that the Service hadn't adequately considered the effects of the delisting on remnant populations. Additionally, they concluded that the rule had not adequately addressed genetic connectivity. Lastly, they found that the states needed to go above their existing commitments to "recalibrate" future population estimation techniques. This was a biological opinion with no basis in science rather than a legal interpretation of requirement of the ESA.

In 2021, the three states adopted specific language to address the assertions by the court. While we disagreed with the notion that recalibration commitments were biologically required to ensure recovery, we adopted language in our Tri-State Agreement to specifically address the courts finding. We committed to ensuring genetic connectivity if the science ever indicated it wasn't sufficient. In summary, the states again acquiesced to moving goal posts in order to delist this population.

We have noted a waning tolerance for grizzly bears, especially along the expanding front of grizzly bear range throughout Northwest Wyoming. If tolerance and acceptance of this iconic animal decreases, support for maintaining grizzly bears throughout the GYE becomes more difficult. In the case of the GYE grizzly bear, the

ESA is no longer serving its purpose to recover and delist the species and turn management over to the respective states, federal, and tribal agencies. While the ESA is regarded widely as an effective and needed Federal Act, support is waning due to the Federal Government's inability to provide a durable delisting rule for a fully recovered species that has been the benefactor of the Act. The prescribed protections of the ESA are ineffective and cumbersome when a population has moved beyond recovery. Furthermore, it is critical to note that upon delisting, recovery criteria must be achieved to demonstrate recovery and maintain state management authority. Removal of ESA listed status does not strip protections, but rather it places the management authority in the hands of the proper jurisdiction for those that have been managing grizzly bears for decades and are responsible for their current status. A state managed population would allow professional wildlife managers to employ all the tools necessary to maintain grizzly bears in perpetuity, resolve conflicts, conduct valuable research and properly serve the people of Wyoming and visitors to our state. Coexistence means sacrifice and compromise, it also means conservation and management.

Unfortunately, the misuse of the ESA for charismatic megafauna such as the grizzly bear threatens the future of the Act. It is clearly time to recognize and celebrate this success story, just as was done following the recovery of the bald eagle and gray wolf. The ability to move forward with the delisting of grizzly bears in the GYE will give credence to the Act, credibility to the constituents who have adapted and sacrificed their daily lives in grizzly bear country, and further demonstrate the ability for multiple agencies to maintain and properly manage this iconic symbol of the wild in North America.

We haven't sat on our hands in the face of adversity and challenge. Under the leadership of Governor Mark Gordon, in January of 2022, Wyoming filed a petition imploring the federal government to delist this population again. Highlighted in the petition is that, once again, Wyoming has addressed the issues cited by the federal court in its decision to relist the bear. While we disagreed with their conclusions, we honored the decision and made changes to alleviate their issues. While the Fish and Wildlife Service has not met legally required timelines, we are encouraged that the Service issued a 90-day decision in February of this year indicating they were initiating a status review that could result in a positive finding on our petition. That said, we have no assurance of a timeline or if the Service will move forward with delisting.

The Greater Yellowstone Ecosystem grizzly bear success must be recognized and celebrated. Delisting this population now, by whatever means, is clearly in the best interest of the grizzly bear, the people of our state, and the ESA's credibility.

Thank you for the opportunity to provide this testimony and to share some perspective regarding grizzly bear conservation in Wyoming.