

Matthew K. Bishop (Mont. Bar No. 9968)  
Western Environmental Law Center  
103 Reeder’s Alley  
Helena, Montana 59601  
(406) 324-8011  
[bishop@westernlaw.org](mailto:bishop@westernlaw.org)

Sarah McMillan (Mont. Bar No. 3634)  
Western Environmental Law Center  
103 Reeder’s Alley  
Helena, Montana 59601  
(406) 708-3062  
[mcmillan@westernlaw.org](mailto:mcmillan@westernlaw.org)

*Counsel for Plaintiffs*

Jennifer R. Schwartz (OR Bar #072978), *application for pro hac vice pending*  
WildEarth Guardians  
P.O. Box 13086  
Portland, OR 97213  
(503) 780-8281  
[jschwartz@wildearthguardians.org](mailto:jschwartz@wildearthguardians.org)

*Counsel for WildEarth Guardians*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

WILDEARTH GUARDIANS, a non-profit organization; WESTERN WATERSHEDS PROJECT, a non-profit organization; and TRAP FREE MONTANA, a non-profit organization,

Plaintiffs,

vs.

No.

COMPLAINT

JANET BUCKNALL, in her official capacity as Deputy Administrator, U.S. Department of Agriculture APHIS-Wildlife Services; DALIN TIDWELL, in his official capacity as State Director, Wildlife Services-Montana; UNITED STATES ANIMAL PLANT AND INSPECTION SERVICE, a federal agency; TOM VILSACK, in his official capacity as Secretary of Agriculture; UNITED STATES DEPARTMENT OF AGRICULTURE, a federal department; MARTHA WILLIAMS, in her official capacity as Director of the U.S. Fish and Wildlife Service; UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency; DEB HAALAND, in her official capacity as Secretary of the Interior; and the UNITED STATES DEPARTMENT OF THE INTERIOR, a federal department,

Federal-Defendants.

## INTRODUCTION

1. Plaintiffs bring this civil action against Federal-Defendants, the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services Montana (“Wildlife Services”), and the United States Fish and Wildlife Service (“Fish and Wildlife Service”), under Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), and Section 702 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 702, for violations of the ESA,

16 U.S.C. § 1536 *et seq.* and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*

2. This case challenges Wildlife Services’ May, 2021 decision to continue its predator damage management (“predator removal”) program in Montana, which involves the use of traps, snares, aerial shooting, chemicals, poisons and other methods to capture and kill native predators, including threatened grizzly bears. This case also challenges Wildlife Services’ related environmental assessment (“EA”) and Finding of No Significant Impact (“FONSI”) for predator removal in Montana and the Fish and Wildlife Service’s related biological opinion about how predator removal may adversely affect grizzly bears and grizzly bear recovery.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction under 28 U.S.C. § 1331, 16 U.S.C. § 1540(c), and 5 U.S.C. § 704.

4. This Court has the authority to review Wildlife Services’ and the Fish and Wildlife Service’s action(s) and/or inaction(s) complained of herein and grant the relief requested under 16 U.S.C. § 1540(g) and 5 U.S.C. § 706.

5. Plaintiffs exhausted all available administrative remedies.

6. All requirements for judicial review required by the ESA are satisfied.

Plaintiffs sent Wildlife Services and the Fish and Wildlife Service a valid 60-day

notice of intent to sue letter on July 6, 2022 in accordance with the ESA via email and U.S. Mail (delivery confirmation). Wildlife Services responded to this notice on September 1, 2022. Wildlife Services said it would reinitiate consultation on grizzly bears but did not provide a timeline for completion of new consultation. Wildlife Services did not withdraw its decision to continue predator removal in Montana or its previous consultation documents or otherwise modify its predator removal program in Montana, including removing grizzly bears in certain areas, pending completion of consultation. Wildlife Services' predator removal efforts and its previous consultation documents remain in effect. Plaintiffs filed this case only after the 60-day notice period had run.

7. The relief sought is authorized by 28 U.S.C. § 2201, 28 U.S.C. § 2202, 16 U.S.C. § 1540, and 5 U.S.C. § 706.

8. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e).

9. Plaintiffs have organizational standing. Plaintiffs satisfy the minimum requirements for Article III standing. Plaintiffs, including their members, supporters, and staff have suffered and continue to suffer injuries to their interests in native predators, including grizzly bears and grizzly bear conservation, as a result of Wildlife Services' predator removal program in Montana and the Fish and Wildlife Service's related biological opinion. This Court can redress these injuries by

granting the relief requested. There is a present and actual controversy between the Parties.

### **PARTIES**

10. Plaintiff WILDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians is specifically committed to ensuring the survival and recovery of predators, including grizzly bears in Montana and the lower 48 States. Guardians has approximately 235,000 active members and supporters across the American West, including many who reside in Montana. Guardians maintains an office in Missoula, Montana, where most of its work to conserve grizzly bears occurs. Guardians brings this action on behalf of itself, its members, and its supporters.

11. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit conservation organization with over 12,000 members and supporters dedicated to protecting and restoring the public lands, watersheds, and native wildlife across the American West, including grizzly bears and other predators. WWP’s Montana office is located in Missoula, Montana. WWP brings this action on behalf of itself, its members, and its supporters.

12. Plaintiff TRAP FREE MONTANA (“Trap Free”) is a non-profit organization dedicated to increasing public awareness and advocacy for wildlife

impacted by trapping. Trap Free advocates for trap free public lands and trapping reform in Montana. Trap Free is based in Hamilton, Montana and focuses its efforts on predator conservation, including gray wolves and grizzly bears.

13. Plaintiffs have members and supporters who have standing to pursue this civil action in their own right and their interests in predator and grizzly bear conservation (at stake in this case) are germane to their respective organization's purposes.

14. Plaintiffs' members, supporters, and staff are dedicated to ensuring the long-term survival and recovery of predators in Montana, including grizzly bears, and ensuring Wildlife Services and the Fish and Wildlife Service comply with the law. Plaintiffs' members, supporters, and staff understand the importance of taking a hard look at the environmental effects of agency actions like predator removal as required by NEPA and ensuring full compliance with Section 7 of the ESA's consultation provisions before agency action is taken.

15. Plaintiffs' members, supporters, and staff live in or near and/or routinely recreate in or near areas where Wildlife Services engages in, funds, authorizes, or coordinates predator removal in Montana. Plaintiffs' members, supporters, and/or staff have been personally affected by predator removal in Montana and have

witnessed such removal efforts and the harm it causes to predators (including family pets) first hand.

16. Plaintiffs' members, supporters, and staff live and recreate throughout Montana and in areas occupied by predators and grizzly bears. Plaintiffs' members, supporters, and staff enjoy observing - or attempting to observe - various predators, including grizzly bears, including signs of grizzly bear presence and/or photographing grizzly bears in areas where the species is known to den, travel, disperse and occur. The opportunity to view grizzly bears and grizzly bear signs in the wild and in the areas affected by Wildlife Services' predator removal work is of significant interest and value to Plaintiffs' members, supporters, and staff and increases their use and enjoyment of the action area.

17. Plaintiffs' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from predators and predator conservation, including grizzly bears and grizzly bear conservation, including by seeing (or trying to see) predators and grizzly bears in the wild in Montana.

18. Plaintiffs' members, supporters, and staff have a strong interest in working to conserve predators and grizzly bears in Montana. Ensuring Wildlife Services and the Fish and Wildlife Service comply with the law as alleged in this case when

authorizing predator removal work in Montana and making other important decisions affecting our wildlife in areas occupied by grizzly bears is a key component of Plaintiffs' interests.

19. Wildlife Services' predator removal work, which results in the intentional and unintentional killing and capturing and removal of native wildlife, including grizzly bears in Montana, has harmed, is likely to harm, and will continue to harm Plaintiffs' interests in native wildlife, predator conservation, grizzly bears, and grizzly bear conservation. Plaintiffs' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by Wildlife Services and the Fish and Wildlife Service. If this Court issues the relief requested, the harm to Plaintiffs' interests will be alleviated and/or lessened.

20. Federal Defendant JANET BUCKNALL is sued in her official capacity as Deputy Administrator, United States Department of Agriculture Animal and Plant Health Inspection Service-Wildlife Services. As Deputy Administrator, Ms. Bucknall is the federal official with responsibility for all Wildlife Services' actions and/or inactions challenged in this case.

21. Federal Defendant, DALIN TIDWELL, is sued in his official capacity as Montana State Director for Wildlife Services. As state director, Mr. Tidwell is the federal official with responsibility for all Wildlife Services' actions and/or inactions



challenged in this case.

22. Federal Defendant, the UNITED STATES ANIMAL and PLANT HEALTH INSPECTION SERVICE (“APHIS”), is a federal agency within the United States Department of Agriculture that is responsible for applying and implementing the federal laws and regulations challenged in this case.

23. Federal Defendant, TOM VILSACK, is sued in his official capacity as Secretary of the United States Department of Agriculture. As Secretary, Mr. Vilsack is the federal official with responsibility for all Wildlife Services’ actions and/or inactions challenged in this case.

24. Federal Defendant, the UNITED STATES DEPARTMENT OF AGRICULTURE, is a federal department responsible for applying and implementing federal laws and regulations challenged in this case.

25. Federal Defendant MARTHA WILLIAMS is sued in her official capacity as Director of the Fish and Wildlife Service. As Director, Ms. Williams is the federal official with responsibility for all Fish and Wildlife Service officials’ actions and/or inactions challenged in this case.

26. Federal Defendant, UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this

case.

27. Federal Defendant, DEB HAALAND, is sued in her official capacity as Secretary of the Interior. As Secretary, Ms. Haaland is the federal official with responsibility for all Fish and Wildlife Service officials' actions and/or inactions challenged in this case.

28. Federal Defendant, the UNITED STATES DEPARTMENT OF THE INTERIOR, is the federal department responsible for applying and implementing federal laws and regulations challenged in this case.

## BACKGROUND

### *Grizzly bears*

29. Grizzly bears (*Ursus arctos horribilis*) are a subspecies of brown bear (*Ursus arctos*) that occur in North America.

30. Adult grizzly bears are normally solitary except when breeding or when females have dependent young.

31. Home ranges for male grizzly bears are generally larger than female home ranges and vary among ecosystems (due to population densities and habitat productivity). Male grizzly bear dispersal distances of 42-109 miles have been documented in Montana. Female grizzly bears have been known to disperse long distances (up to 56 miles), typically on the periphery of expanding populations. Female grizzly bear dispersal is important for grizzly bear range expansion. Female grizzly bear dispersal is important for establishing demographic connectivity between

subpopulations. Reestablishing effective migration between subpopulations of grizzly bears in the lower 48 states is required for the long-term recovery of the species.

32. Grizzly bears den in winter. Denning is a life history strategy grizzly bears use to cope with seasons of low food abundance. In preparation for denning, bears increase their food intake dramatically during the two to four months before denning (a process called hyperphagia). Grizzly bears must consume foods rich in protein and carbohydrates in order to build up fat reserves to survive the denning and post-denning period. Grizzly bears typically enter dens between October and December and male grizzly bears exit dens from early March to late April. Female grizzly bears typically emerge from their dens later than males, usually from mid-March to mid-May.

33. Grizzly bears have one of the lowest reproduction rates amongst mammals, mainly due to the late age of first reproduction, small litter size, and long birthing interval. Female grizzly bears typically do not start reproducing until they are at least four years old. Females give birth in their dens in late January or early February and generally nurse for 3-4 months inside the den. Cubs will remain with the female for about 2.5 years. The typical litter size is 2-4 cubs. Females typically only reproduce once every three years. It can take ten years or more for a single female to replace herself in the population.

34. Grizzly bears use a variety of habitats. A grizzly bear's individual habitat needs and daily movements are largely driven by the search for food.

35. Grizzly bears are opportunistic omnivores that historically ate a wide variety of foods, including plants, berries, roots, insects, fish, small mammals,

ungulates (elk, deer, and bison), and carrion (dead animals). Grizzly bears, like all bear species, have an exceptional sense of smell and often follow their nose for long distances to find food, especially prey animals and carrion.

36. In the Greater Yellowstone Ecosystem, grizzly bears rely heavily on four primary food sources: cutthroat trout, ungulates, army cutworm moths, and whitebark pine seeds. Grizzly bears rely more heavily on prey animals and carrion when other high-quality food sources (like whitebark pine seeds) are less abundant. Whitebark pine was listed as a threatened species under the ESA in December, 2022.

37. In the Northern Continental Divide Ecosystem, grizzly bear diets differ from the westside to the eastside of the Continental Divide. On the westside, prey animals and carrion comprise less than 25 percent of the grizzly bear's total diet. In some areas of the Northern Continental Divide Ecosystem, grizzly bears are almost entirely herbivorous (plant eating). On the eastside, prey and carrion comprise nearly 90 percent of the grizzly bears diet.

38. In the Cabinet-Yaak and Selkirk Ecosystems, grizzly bears feed on a wide variety of grasses, sedges, plants, berries, and meat.

39. Meat from ungulates and livestock are high-quality grizzly bear food. Male grizzly bears tend to eat more meat, though levels are similar with females when other high-quality foods are not available.

40. Food resources for grizzly bears are especially important during the period leading up to denning (August-October) when bears must consume energetically rich foods to build up fat reserves to survive the denning and post-denning period.

41. Grizzly bears opportunistically prey on domestic livestock, agricultural crops, and other human foods. Some level of predation by grizzly bears will predictably occur if livestock are available and made vulnerable from poor animal husbandry practices (e.g., allowing livestock to graze unattended in remote areas like federal grazing allotments, especially newly born lambs or calves, and failing to promptly remove sick, injured and dead stock from the range). Livestock, particularly those that die on the range of natural causes (poisoning, weather, illness, injury), can also attract grizzly bears to an area and lead to an increase in bear densities. Livestock predation rates are higher in areas with higher grizzly bear densities, and in the late summer and fall when grizzly bears are preparing for denning.

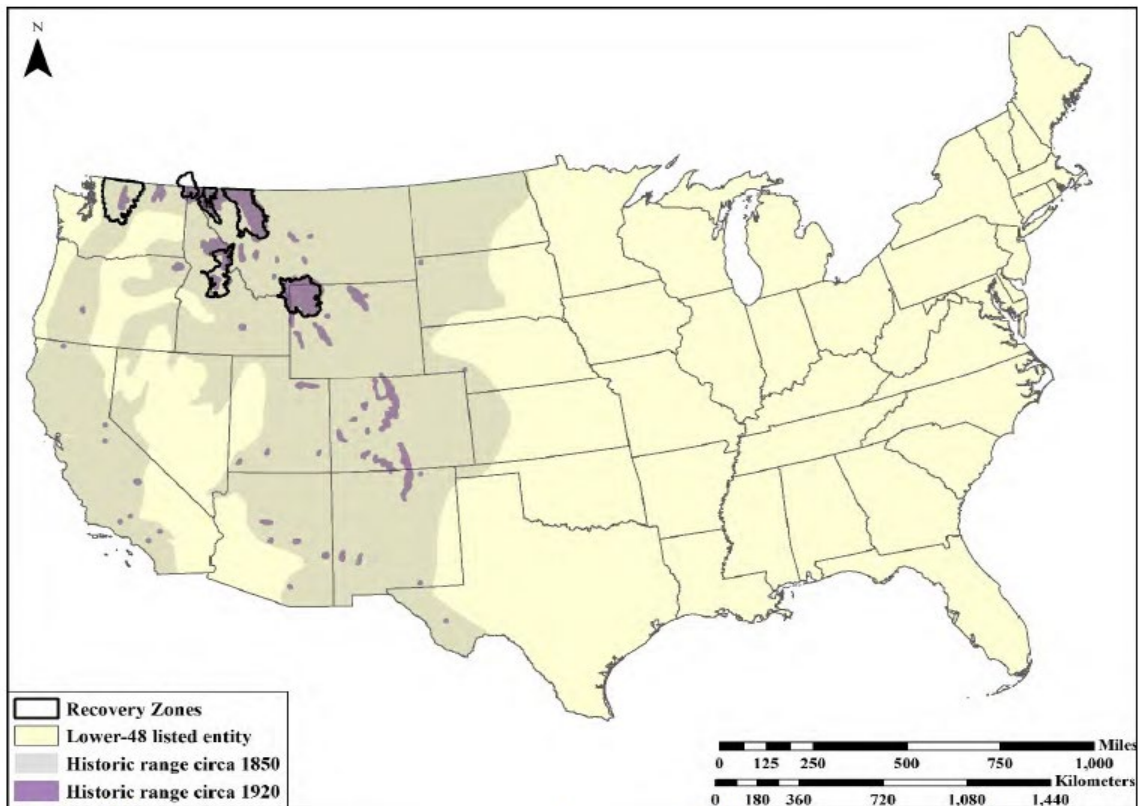
### *Threats to grizzly bears*

42. Prior to the arrival of Europeans, grizzly bears occurred throughout much of the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska. Historically, an estimated 50,000 grizzly bears were distributed in one large contiguous area throughout all or portions of 18 western states. With the arrival of Europeans to North America, grizzly bears were seen as a threat to livestock and human safety and an impediment to western expansion and settlement. In the 1800s, government-funded bounty programs focused on the eradication of grizzly bears, which were shot, poisoned, trapped, and killed wherever they were found.

43. By the 1930s, grizzly bears were reduced to roughly two percent of their historic range in the lower 48 States with a corresponding decrease in total population.

44. By 1975, the total grizzly bear population in the lower 48 States was estimated to be roughly 700-800 individuals and grizzly bears only remained in a few, isolated areas.

45. In 1975, the Fish and Wildlife Service listed all grizzly bears in the lower 48 States as a “threatened” species under the ESA. Grizzly bears in the lower 48 States are listed as a single distinct population segment (“DPS”) following the Fish and Wildlife Service’s 1996 adoption of a DPS policy and the Fish and Wildlife Service’s 2011 five-year status review of the species’ 1975 listing.



46. In the 1975 listing, the Fish and Wildlife Service committed to recovering grizzlies in the lower 48 States and prioritized recovery in six areas or “recovery zones,” including the Cabinet-Yaak, Selkirks, Northern Continental Divide, Selway-Bitterroot, North Cascades, and Yellowstone region. The Fish and Wildlife Service also committed to evaluating Colorado’s San Juan Mountains as an additional recovery area.

47. Grizzly bears are the subject of a special, Section 4(d) rule which directs how they are managed in the lower 48 States under the ESA. 50 C.F.R. § 17.40(b).

48. The special Section 4(d) rule for grizzly bears prohibits the “take” of grizzly bears in the lower 48 States unless done: (1) in self-defense or in defense of others; (2) for the removal of a “nuisance bear,” which requires a “demonstrable but non-immediate threat to human safety” or when a bear commits “significant depredations to lawfully present livestock, crops, or beehives” but only if it was not possible to eliminate the threat or depredation by live-capturing and releasing the bear and when the taking is done in a humane manner by authorized personnel; or (3) for scientific or research activities but only if such taking does not result in the death or permanent injury to the bears involved. 50 C.F.R. § 17.40(b)(1)(i). “Take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

49. The take of all grizzly bears in the lower 48 States must be reported to the Fish and Wildlife Service. The Fish and Wildlife Service tracks all take of grizzly bears in the lower 48 States. The Fish and Wildlife Service tracks all take of grizzly bears in Montana.

50. In 1982, the Fish and Wildlife Service prepared a recovery plan for grizzly bears in the lower 48 States. The Fish and Wildlife Service's 1982 recovery plan said the agency would commit itself to the "conservation and recovery of the grizzly bear in the selected areas of the conterminous 48 states" and establish "recovery of at least three populations in three distinct grizzly bear ecosystems" in order to delist the species. The Fish and Wildlife Service explained that no "one would recommend a single population in a single ecosystem" as being adequate for recovery. The Fish and Wildlife Service said "conservation and recovery of three populations, as opposed to only one or two populations, is believed to be necessary to assure perpetuation of the species to a point that no longer requires the protection of the ESA."

51. In 1993, the Fish and Wildlife Service updated and amended the 1982 recovery plan.

52. The 1993 recovery plan has been amended several times since 1993, most recently in 2018.

53. In the 1993 recovery plan, the Fish and Wildlife Service formally designated six recovery zones for grizzly bears in the lower 48 states. These six recovery zones include: the North Cascades, Selkirk, Cabinet-Yaak, Northern Continental Divide, Bitterroot, and Greater Yellowstone Ecosystem.





54. The Fish and Wildlife Service identified each of these six recovery zones as a core recovery area where conservation efforts for grizzly bears should be focused.

55. The Fish and Wildlife Service estimates that the current population of grizzly bears in the lower 48 States is roughly 1,923 individuals. This includes approximately 727 bears in the Greater Yellowstone Ecosystem, 1,092 bears in the Northern Continental Divide, 60 bears in the Cabinet-Yaak, 44 bears in the Selkirks, and no bears in the North Cascades or Bitterroot.

56. The Fish and Wildlife Service recognized that grizzly bears would eventually need to occupy areas outside the six recovery zones for full recovery.

57. The Fish and Wildlife Service recognized that connectivity and effective migration of grizzly bears between the recovery zones would be required for long-term recovery of grizzly bears in the lower 48 States. The best available science

reveals grizzly bear movement and connectivity between the various recovery zones in the lower 48 States is needed for long-term recovery.

58. Grizzly bear movement and connectivity between the various recovery zones in the lower 48 States has yet to be restored. Grizzly bears in the Greater Yellowstone Ecosystem remain isolated.

59. In January, 2021, the Fish and Wildlife Service published a species status assessment for grizzly bears in the lower 48 States (“Grizzly SSA”). The Grizzly SSA provides the best available current science on grizzly bears, threats to grizzly bears, and grizzly bear conservation in the lower 48 States.

60. In the Grizzly SSA, the Fish and Wildlife Service determined that grizzly bears in the lower 48 States have certain individual, ecosystem, and species-levels needs. Individually, grizzly bears need sufficient habitat, including large and relatively undisturbed blocks of land for all life stages (breeding, feeding, shelter and dispersal). Grizzly bears need access to denning sites, cover, and access to high-caloric foods. At the ecosystem level, grizzly bears need sufficient abundance, positive population trends, adult female survival, genetic diversity and sufficient connectivity between various recovery zones. At the species level, grizzly bears in the lower 48 States need multiple resilient ecosystems (recovery zones) distributed across a wide geographic area and with sufficient connectivity between them to ensure genetic and ecological diversity.

61. In the Grizzly SSA, the Fish and Wildlife Service reported that the main threats or stressors to grizzly bears and grizzly bear recovery in the lower 48 States are: (1) human-caused mortality (due to management removals, accidental killings,

illegal killings, and mistaken identity kills); (2) motorized access; (3) livestock grazing allotments; (4) developed recreational sites and recreational activities; (5) timber, energy, and mineral development; (6) private land development; (7) climate change; (8) loss of connectivity and poor genetic health; and (9) the loss of important food sources.

62. In the Grizzly SSA, the Fish and Wildlife Service noted that from 2002-2020 there were 700 reported grizzly bear mortalities in the Greater Yellowstone Ecosystem. The vast majority of these grizzly bear mortalities were human-caused. Roughly 283 of the reported grizzly bear mortalities in the Greater Yellowstone Ecosystem from 2002-2020 were attributed to “management removals” allowed by the grizzly Section 4(d) rule.

63. In the Grizzly SSA, the Fish and Wildlife Service noted that from 2002-2020 there were 511 reported grizzly bear mortalities in the Northern Continental Divide Ecosystem. The vast majority of these grizzly bear mortalities were human-caused. Roughly 157 grizzly bear mortalities in the Northern Continental Divide Ecosystem from 2002-2020 were attributed to “management removals” allowed by the grizzly Section 4(d) rule.

64. In the Grizzly SSA, the Fish and Wildlife Service noted that from 2002-2020 there were 58 reported grizzly bear mortalities in the Cabinet-Yaak and Selkirk Ecosystems. The vast majority of these grizzly bear mortalities were human-caused. Roughly 4 grizzly bear mortalities in the Cabinet-Yaak and Selkirk Ecosystems from 2002-2020 were attributed to “management removals” allowed by the grizzly Section 4(d) rule. The best available science reveals the current levels of female grizzly bear

mortality in the Cabinet-Yaak ecosystem are at levels that undermine recovery. Additional grizzly bear mortalities in the Cabinet-Yaak ecosystem have the potential to compromise recovery efforts.

65. In the Grizzly SSA, the Fish and Wildlife Service recognized human-caused mortality, including management removals in response to conflicts with humans and livestock interests, as a threat to grizzly bears and an impediment to long-term viability and recovery.

66. The 1993 grizzly bear recovery plan describes “sustainable mortality” of grizzly bears as the level of annual human-caused mortality that individual grizzly bear populations can sustain without leading to a population decline. Sustainable mortality is directly related to the number of females with cubs. The 1993 recovery plan stated that the sustainable mortality of an individual grizzly bear subpopulation is six percent of the minimum population estimate. To allow room for growth and recovery, the 1993 recovery plans states that the sustainable mortality limit can be no more than four percent of the minimum population estimate and no more than 30 percent of this human-caused mortality can be females.

67. In the Grizzly SSA, the Fish and Wildlife Service recognized the lack of connectivity and genetic interchange between the grizzly bear recovery zones as a threat to bears and an impediment to long-term viability and recovery.

68. In the Grizzly SSA, the Fish and Wildlife Service determined that natural connectivity between the recovery zones is needed for long-term grizzly bear conservation to allow for genetic exchange and demographic augmentation of isolated populations. Genetic diversity of smaller and isolated populations is

influenced by connectivity. The best available science reveals that smaller and isolated populations are vulnerable to extinction due to low genetic diversity (resulting in genetic drift and inbreeding depression) and demographic fluctuations resulting from various environmental processes (e.g., poor food years, disease, human-caused mortality).

69. In the Grizzly SSA, the Fish and Wildlife Service stated that connectivity and dispersal and successful immigration of male or female grizzly bears enhances genetic diversity and reduces genetic fragmentation. The best available science reveals at least one to two effective migrants per generation is needed to maintain and enhance genetic diversity in isolated populations.

70. The Fish and Wildlife Service noted that while the Greater Yellowstone recovery zone remains isolated, all of the zones are currently within “dispersal distance of existing populations” and “connectivity” needed for long-term viability and recovery “is possible.”

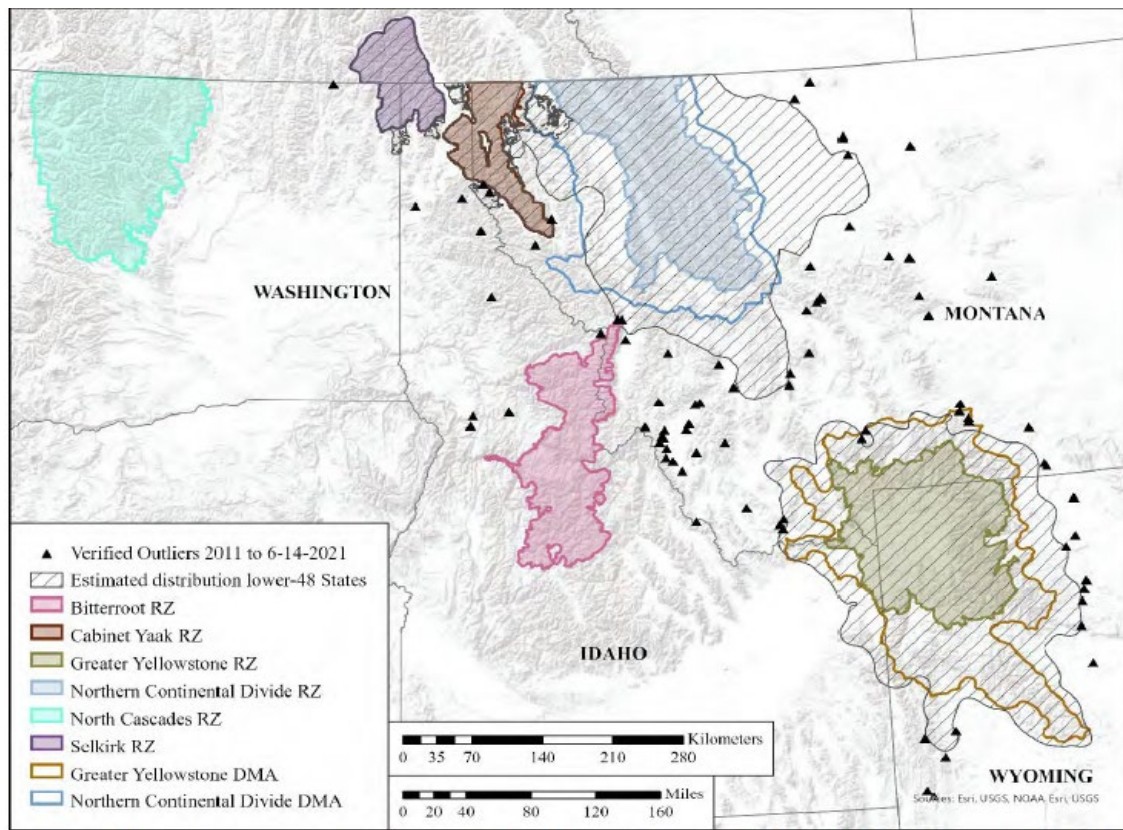
71. The Fish and Wildlife Service said the expanding grizzly bear population in the Northern Continental Divide is very close to reaching the Bitterroot and is “expected to be within female dispersal distance in the future.”

72. In October, 2022, the Fish and Wildlife Service authorized the management removal of two grizzly bears (one male and one female) in the Bitterroot Valley, near Stevensville, Montana. The two grizzly bears had been in the Bitterroot Valley for months. The two grizzly bears were relocated to the Sapphire Mountains, which are on the opposite side the valley from the Bitterroot Range and

recovery zone. The Fish and Wildlife Service chose not to relocate the two grizzly bears into the Bitterroot Range or Bitterroot recovery zone.

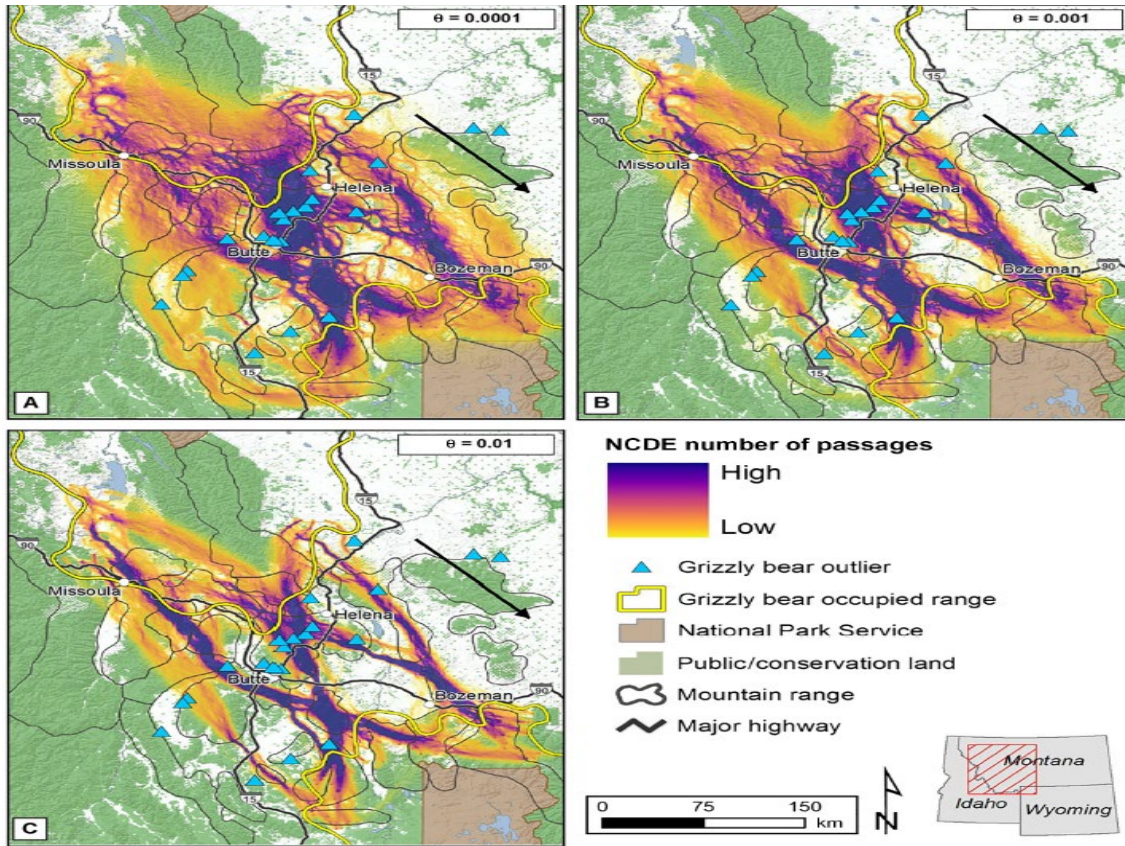
73. The Fish and Wildlife Service noted that the distance between grizzly bears dispersing from the Greater Yellowstone and Northern Continental Divide Ecosystems is very close (roughly 30 miles) with “multiple verified sightings in between.” The Fish and Wildlife Service said it is likely that natural connectivity needed for recovery “will occur in the near future.”

74. In the Grizzly SSA, the Fish and Wildlife Service provided this map illustrating grizzly bear dispersal and movement outside and between the various recovery zones:





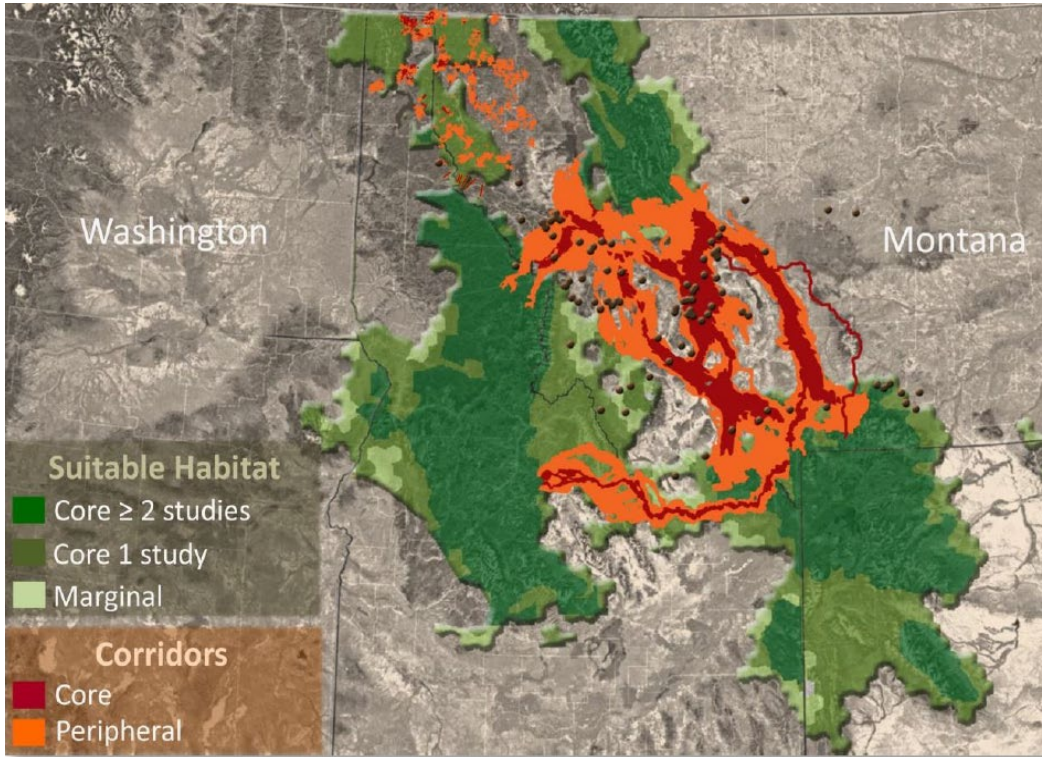
75. In the Grizzly SSA, the Fish and Wildlife Service explained that a recent paper (Peck (2017)) modeled potential dispersal paths for grizzly bears between the Greater Yellowstone and Northern Continental Divide recovery zones. The Fish and Wildlife Service said this is where conservation efforts designed to facilitate and foster connectivity should be focused:



76. In order to facilitate grizzly bear movement and restore connectivity, Peck (2017) recommended conservation efforts in these dispersal paths be implemented, including efforts to reduce human conflict situations that result in management removals or mortalities.

77. The best available science reveals grizzly bears are able to occupy more areas of the northern Rockies (including large portions of Montana) than they

currently do and more areas beyond the recovery zones. This includes areas of suitable habitat and corridors that help facilitate grizzly bear movement between subpopulations.



78. The best available science reveals grizzly bears will only occupy more areas of the northern Rockies (including large portions of Montana) and restore connectivity between subpopulation if grizzly bear dispersers and colonizers are not subject to management removals or human-caused mortality. Management removals and human-caused mortality inhibit grizzly bear movement and dispersal outside the recovery zones.

79. The Fish and Wildlife Service recognizes livestock grazing and the resulting management removals as a potential conflict situation that results in grizzly



bear mortalities. Management removals inhibit connectivity when they occur in areas important for grizzly bear dispersal and movement.

80. The Fish and Wildlife Service's Grizzly SSA identified management removals as an ongoing threat and stressor to grizzly bears and grizzly bear recovery. The best available science reveals the selection of livestock as prey animals by grizzly bears is normal and to be expected given the high quality of this food resource. When grizzly bears and livestock share the same space and landscape, some level of predation of livestock often occurs. Livestock can be an attractant and local driver of increased grizzly bear densities.

81. The Fish and Wildlife Service said the "main impact" to grizzly bears is human-caused mortality resulting from management removals in response to livestock depredations. Human-caused mortality of grizzly bears, including management removals and conflicts resulting from livestock grazing in areas occupied by grizzly bears (both inside and outside the recovery zones), is a threat to the species and results in significant grizzly bear mortality.

82. There has been an increase in the number of grizzly bear mortalities and management removals attributed to livestock grazing in Montana over the last two decades.

83. From 1980 to 2001, the Fish and Wildlife Service reported that nine grizzly bears were killed in the Greater Yellowstone Ecosystem due to management

removals from conflicts with livestock grazing. From 2002-2020, the Fish and Wildlife Service reported that 128 grizzly bears were killed due to management removals from conflicts with livestock grazing.

84. Since 2000, the range of the grizzly bear population in Montana has expanded but it still represents a small fraction of the species historic range in Montana.

85. Since 2000, the grizzly bear's range in the Greater Yellowstone Ecosystem has nearly tripled in size compared to the bear's range in the 1980s. Grizzly bears now permanently occupy areas outside the recovery zone and areas outside the demographic monitoring areas ("DMA"). The DMA is an artificial boundary where the grizzly bear population - including mortality - is monitored. Roughly thirty percent of the current grizzly bear distribution in the Greater Yellowstone Ecosystem is beyond the recovery zone and DMA. This area was historically occupied grizzly bear habitat. Since 2000, the grizzly bear population in the Greater Yellowstone Ecosystem has remained largely stable.

86. In the Grizzly SSA, the Fish and Wildlife Service recognized loss of important food sources for grizzly bears as an additional threat or stressor.

87. Over the last two decades, there have been significant changes to the amount of available food sources for grizzly bears in Montana. These changes have

resulted in the grizzly bears' greater reliance on a meat-based diet. Grizzly bears' reliance on a meat-based diet results in increased conflicts with big game hunters during the hunting season. Grizzly bears' increased reliance on a meat-based diet has resulted in an increase in management removals associated with livestock grazing. Dependence of grizzly bears on meat from livestock leads to higher mortality rates, reduced densities and local extirpation of grizzly bears on the landscape.

***Wildlife Services' predator removal in Montana***

88. Wildlife Services is a federal agency within the United States Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") that removes and kills native wildlife species in Montana.

89. Wildlife Services' predator removal program is largely intended to address "damage" to livestock and agricultural interests from wildlife and feral animals.

90. Wildlife Services defines "damage" as any situation when an individual or entity determines that losses caused by wildlife triggers their threshold for requesting assistance. "Damage" may be defined as economic losses to property or assets, or threats to human or pet safety, or as a loss in the aesthetic value of property and other situations where the behavior of wildlife is no longer tolerable to an individual person or entity.

91. In Montana, Wildlife Services' predator removal program targets a number of wildlife species, including coyotes, gray wolves, red foxes, bobcats, mountain lions, black bears, and grizzly bears (as allowed by the special Section 4(d) rule). Wildlife Services played a major role in extirpating large populations of predators, including gray wolves and grizzly bears in the western United States.

92. In 2021, Wildlife Services reported that it intentionally killed over 400,000 native species in the United States. In 2021, Wildlife Services reported that it killed 324 gray wolves, 64,131 coyotes, 433 black bears, 200 mountain lions, 605 bobcats, 3,014 foxes, 24,687 beavers, and 714 river otters. In 2021, Wildlife Services also killed and removed grizzly bears. Wildlife Services takes roughly ten grizzly bears a year in Montana (through removal and sometimes killing).

93. In 2021, Wildlife Services reported that it unintentionally killed at least 2,746 animals, including black bears, bobcats, songbirds, and even domestic pet dogs. Incidental or accidental killing and capture of non-target species by Wildlife Services is routine. Wildlife Services has incidentally captured and killed grizzly bears in Montana.

94. Wildlife Services contracts and cooperates with States, other federal agencies, local jurisdictions, tribes, and other private institutions and organizations and individuals to carry out predator removal in Montana.

95. Wildlife Services works with the Rocky Mountain Elk Foundation on predator removal in Montana. Wildlife Services gets funding from the Rocky Mountain Elk Foundation for predator removal in Montana.

96. Wildlife Services works with the Montana Sportsmen for Fish and Wildlife on predator removal in Montana. Wildlife Services gets funding from the Montana Sportsmen for Fish and Wildlife for predator removal in Montana.

97. Wildlife Services cooperates and coordinates its predator removal work in Montana with the Montana Department of Livestock (“MDOL”). MDOL conducts or authorizes the killing and removal of predators in Montana. MDOL defines a “predator” as a coyote, red fox, and any other animal causing livestock losses. Gray wolves qualify as an “other animal” causing livestock losses. Grizzly bears qualify as an “other animal” causing livestock losses. Predator removals authorized or conducted by MDOL are unregulated. There are no rules in Montana that restrict or limit predator removals conducted or authorized by the MDOL. Montana law directs MDOL to adopt rules and practices to ensure the “systematic destruction” of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. MDOL does not require a permit to snare or trap for coyotes or other predators. MDOL does not require a license to snare or trap for coyotes or other predators. MDOL does not track non-target or incidental take of predators. MDOL

does not track target or intentional take of predators. MDOL does not track any killing or removal of predators. MDOL does not require trapper education for individuals who trap, snare, and kill predators. MDOL does not conduct trapper surveys. Trapping or snaring conducted or authorized by MDOL can occur year round (there is no season).

98. Wildlife Services gets funding from MDOL. MDOL provides funding, as a cooperator, to Wildlife Services to help pay for aerial operations and other actions for predator removal. MDOL and Wildlife Services have signed a “cooperative service agreement” for predator removal in Montana. MDOL and Wildlife Services signed a cooperative service agreement to manage gray wolves in Montana. MDOL contracts with Wildlife Services for predator removal, including gray wolf removals, which include flight times, collaring, and lethal removal of wolves. MDOL and Wildlife Services have a joint work plan for predator removal in Montana.

99. Wildlife Services cooperates and coordinates its predator removal program with the Montana Department of Fish, Wildlife, and Parks (“MFWP”). Wildlife Services gets funding from MFWP. MFWP and Wildlife Services have a memorandum of understanding (“MOU”) to undertake investigations into livestock losses in Montana, including losses involving grizzly bears. MFWP’s website directs

the public to contact Wildlife Services if there is a report of a livestock conflict involving grizzly bears.

100. MFWP conducts predator removal in Montana. MFWP defines a predator as a coyote, weasel, skunk, and civet cat. MFWP is authorized to regulate the requirement for a name tag to be placed on traps and snares, including for predatory animals in Montana. MFWP does not require a license or permit for predator removal in Montana. MFWP does not regulate predator removal in Montana. MFWP regulates the recreational killing of gray wolves in Montana. MFWP regulates the trapping and snaring of gray wolves in Montana. MFWP regulates the trapping and snaring of furbearers in Montana. MFWP regulates the hunting of black bears in Montana. MFWP allows the use of dogs (hounds) in black bear and mountain lion hunting.

101. Wildlife Services provides technical assistance to other federal, state, tribal, and local agencies and private individuals and associations on predator removal in Montana. This includes education, information, advice and funding.

102. Wildlife Services provides funding to other federal, state, tribal, and local agencies and private individuals and associations for predator removal in Montana.

103. Wildlife Services conducts predator removal on its own in Montana. Wildlife Services provides predator removal in response to requests from federal,

state, tribal, and local agencies and various private individuals and associations in Montana.

104. Wildlife Services cooperates and coordinates its predator removal efforts with the Fish and Wildlife Service. Wildlife Services has a permit with the Fish and Wildlife Service to investigate the causes of livestock losses.

105. Wildlife Services uses or authorizes the use of a wide variety of non-lethal methods for predator removal and hazing in Montana. These methods include fencing, animal husbandry (including use of range riders and herders, and pasture rotation), habitat management, reducing attractants, and tools to modify predator behavior. Modifying predator behavior can involve the use of electronic distress sounds and alarm calls, propane exploders and cannons, pyrotechnics, and various types of hazing and harassment techniques (including use of helicopters and fixed-wing aircraft).

106. Wildlife Services sometimes uses non-lethal methods proactively, before damage or harm occurs.

107. Wildlife Services uses or authorizes the use of live-capture and relocation as a form of non-lethal predator management. Wildlife Services only relocates animals, including grizzly bears, if permitted to do so by MFWP. Montana law restricts where MFWP can relocate some animals, including grizzly bears. In April,



2021, the Montana legislature passed a law that prohibits MFWP from relocating any grizzly bears involved in a conflict if it was captured outside a recovery zone.

Grizzly bears involved in a conflict and captured by MFWP outside of the recovery zone are now killed. Wildlife Services coordinates all captures, transportation, and selection of relocation sites for grizzly bears with MFWP. Grizzly bears often do not survive after being captured and relocated. Relocated grizzly bears are sometimes killed by other grizzly bears when released into occupied grizzly bear habitat.

108. Wildlife Services uses or authorizes the use of a variety of devices to capture predators, both for non-lethal removal and lethal removal, in Montana. MDOL does not limit or restrict the size, number, or type of devices used to capture predators, both for non-lethal removal and lethal removal, in Montana. MFWP uses or authorizes the use of a variety of devices to capture predators, including gray wolves and grizzly bears, both for non-lethal removal and lethal removal, in Montana.

109. Wildlife Services uses or authorizes the use of cage and box traps in Montana. Wildlife Services uses or authorizes the use of culvert traps in Montana.

110. Wildlife Services uses or authorizes the use of “quick kill” or body-gripping traps in Montana.

111. A body-gripping trap consists of a pair of wire frames that close quickly and tightly when triggered, killing the animal. This device is commonly used to trap raccoon, skunk, fisher, bobcat and similar-size furbearers. Body-gripping traps are indiscriminate. Body-gripping traps are typically lethal to both target and non-target species. Body-gripping traps sometimes capture and kill or injure non-target species, including domestic dogs. Body-gripping traps have captured and killed grizzly bears. In 2017, a grizzly bear was photographed in Wyoming with a body-gripping trap on its foot.



112. Wildlife Services uses or authorizes the use of foothold traps in Montana.

113. Foothold traps are made of steel with springs that close the jaws of the trap around the foot of the target species. Foothold traps are placed in the travel paths of target animals. Foothold traps are baited with attractants such as carrion or scent. Wildlife Services uses foothold traps to intentionally capture grizzly bears. MFWP uses foothold traps to intentionally capture predators, including grizzly bears. MDOL uses foothold traps to intentionally capture predators.

114. Foothold traps are indiscriminate. Domestic dogs are sometimes caught and killed in foothold traps. Foothold traps capture and sometimes kill non-target species, including grizzly bears. Wildlife Services has accidentally caught grizzly bears in foothold traps set for other species. MDOL has caught grizzly bears in foothold traps. MFWP has caught grizzly bears in foothold traps. Grizzly bears are sometimes caught in foothold traps set for gray wolves. Grizzly bears are sometimes caught in foothold traps set for coyotes. Below is a photo of a grizzly bear claw and toes in a foothold trap set for a coyote (the bear had broken off the anchor chain and was caught dragging the trap but when the trap got tangled in a fence, it ripped his claws and toes off):



115. Grizzly bears are susceptible to being caught in foothold traps set for other species. Below is a photo of a grizzly bear caught in a gray wolf trap near Invermere, BC (Canada):



116. Wildlife Services uses or authorizes the use of foot snares, neck snares, and body snares in Montana.

117. Snares are made of a strong, lightweight cable, wire, or monofilament line with a locking device, and are typically used to catch small and medium sized predators by the neck, body, or foot. Snares are baited with attractants such as carrion. Wildlife Services uses snares to intentionally capture grizzly bears. MFWP uses snares to intentionally capture predators, including grizzly bears. MDOL uses snares to intentionally capture predators.

119. Snares are indiscriminate. Snares capture and kill non-target species. Domestic dogs are sometimes caught and killed in snares. Snares have caught and killed dogs on public land in Montana. Grizzly bears are sometimes caught and killed in snares. Grizzly bears are sometimes caught and killed in snares set for gray wolves. Grizzly bears are sometimes caught and killed in snares set for coyotes. Two grizzly bears were caught in coyote snares in Montana in 2021. Grizzly bears are susceptible to being caught in snares set for other species. Below is a picture of a grizzly bear that was caught in a snare set for gray wolves in 2020 (but later killed by a black bear hunter with the snare still attached).





120. Wildlife Services uses or authorizes the use of trained dog pursuits in Montana. Trained dog pursuits have resulted in the take of grizzly bears in Montana. MFWP authorizes hunting of black bears with dogs.

121. Wildlife Services uses or authorizes the use of dart guns in Montana. Dart guns have resulted in the take of grizzly bears in Montana.

122. Wildlife Services uses or authorizes the use of baits, scents, and attractants to aid in capturing predators in Montana.

123. Wildlife Services uses or authorizes the use of a variety of lethal methods for predator removal in Montana. Wildlife Services sometimes uses lethal removal methods proactively, before damage or harm occurs.

124. Wildlife Services uses or authorizes the use of aerial shooting from fixed-wing aircraft and helicopters in Montana. Wildlife Services has regulations and internal policies or directives that oversee all aerial shooting activities. Wildlife Services provides technical assistance on aerial shooting to other agencies. Wildlife Services uses aerial shooting to kill grizzly bears.

125. Wildlife Services uses or authorizes the use of ground shooting in Montana. Wildlife Services provides technical assistance on ground shooting in Montana. Wildlife Services uses or authorizes the use of handguns, shotguns, air guns, or rifles for ground shooting in Montana. Wildlife Services uses spotlights, night vision, thermal imagery for night shooting, decoy dogs, predator calling, stalking and baiting to increase ground shooting efficiency in Montana. Wildlife Services uses ground shooting to take grizzly bears.

126. Wildlife Services uses or authorizes the use of chemical repellants (non-lethal and lethal) for predator removal in Montana. Use of chemical repellants requires prior authorization from the public land management agency or private property owner before use.

127. Wildlife Services uses or authorizes the use of chemical fumigants for predator removal in Montana. Wildlife Services engages in a practice called “denning” in Montana. Denning involves locating a predators’ den and killing the young and adults inside by using a registered gas fumigant cartridge. Sodium nitrate is the principal active chemical in the gas cartridges used for denning in Montana. When ignited, the sodium nitrate cartridge burns in the den, depleting the oxygen and producing large amounts of carbon monoxide – a poisonous gas. Gasoline and fire is also used for denning, which burns the den occupants alive.

128. Wildlife Services uses or authorizes the use of tranquilizer and immobilization chemicals when handling predators in Montana. Immobilizing agents are delivered to the target animal with a dart gun or syringe pole. The following chemicals are used to tranquilize or immobilize predators in Montana: Ketamine, Xylazine, Capture-All 5, and Telazol.

129. Wildlife Services uses or authorizes the use of a number of chemical and gas methods for lethal removal of captured animals. Wildlife Services uses or authorizes the use of sodium pentobarbital. Wildlife Services uses or authorizes the use of Beuthanasia-D. Wildlife Services uses or authorizes the use of Euthasol. Wildlife Services uses or authorizes the use of Fatal-Plus. Wildlife Services uses or



authorizes the use of Potassium chloride. Wildlife Services uses or authorizes the use of carbon dioxide gas.

130. Wildlife Services uses or authorizes the use of a number of chemical pesticides for its lethal removal activities in Montana.

131. Wildlife Services uses or authorizes the use of sodium cyanide M-44 devices in Montana. M-44s are a spring-activated ejector device developed for the lethal removal of predators. M-44s are indiscriminate. M-44s sometimes kill non-target species, including dogs. M-44s have poisoned humans. M-44s have killed humans. M-44s have killed grizzly bears. M-44s have killed grizzly bears in Montana. There have been at least two reported incidents of grizzly bears being killed by M-44s. In 2012, M-44-related deaths accounted for 11 percent of the non-target animals killed by Wildlife Services. Between 2018 and 2021, more than 950 animals were unintentionally killed by M-44s. This included gray foxes, red foxes, raccoons, Virginia opossums, black bears, dogs characterized as feral, free-ranging and hybrids, skunks, and ravens. Most states ban the use of M-44s on public land. Fifteen states, including Montana, allow the use of M-44s on public lands. M-44s are either partially or entirely banned on public lands in Idaho, Washington, California, Oregon, Colorado, and Wyoming.

132. Wildlife Services uses or authorizes the use of Compound 1080 collars in Montana. Wildlife Services uses or authorizes the use of DRC-1339, an avian pesticide.

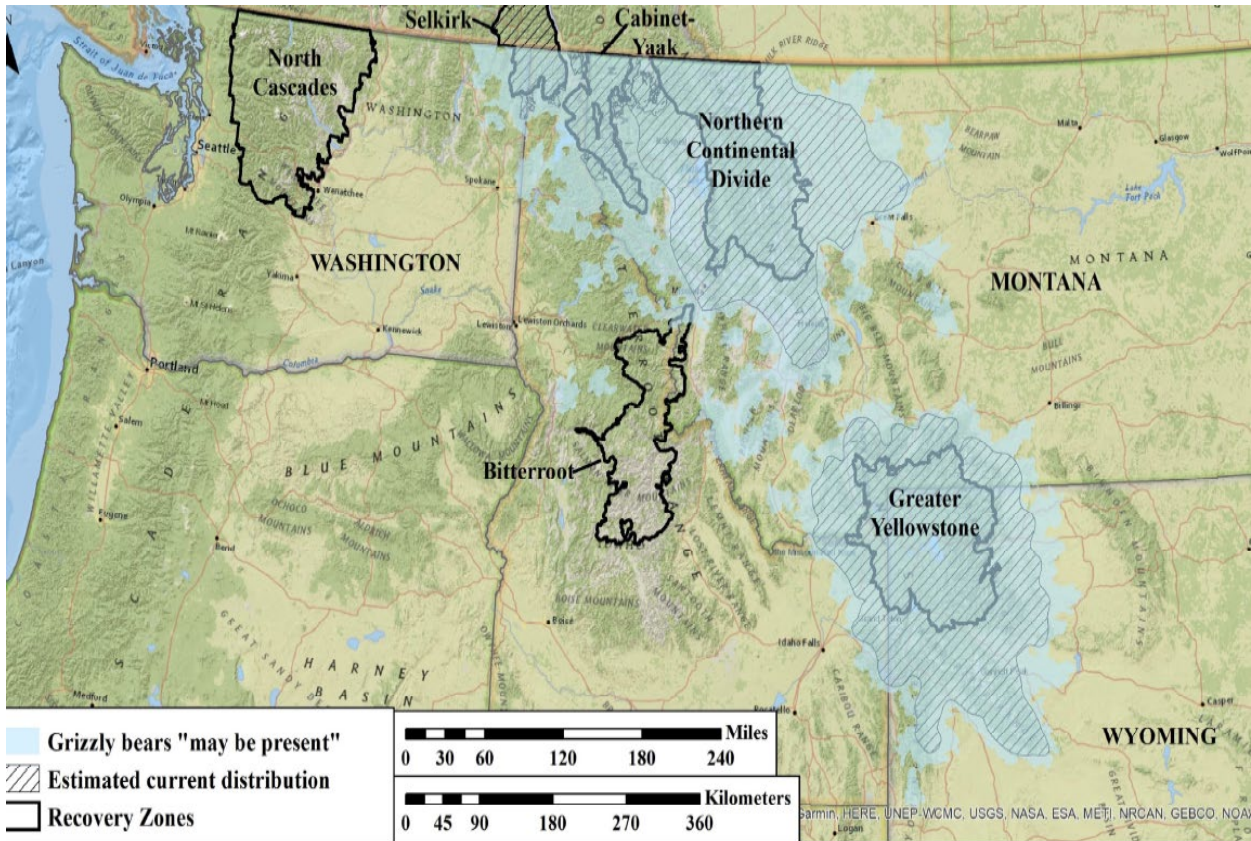
133. Wildlife Services conducts predator removal on private lands in Montana. Wildlife Services conducts predator removal on public lands in Montana. Wildlife Services conducts predator removal on state lands in Montana. Wildlife Services conducts predator removal on tribal lands in Montana.

134. Wildlife Services conducts predator removal inside special management areas in Montana. Wildlife Services conducts predator removal in National Wildlife Refuges in Montana. The Fish and Wildlife Service gives Wildlife Services permission to conduct predator removal on National Wildlife Refuges in Montana. Wildlife Services conducts predator removal in Montana State Parks. Wildlife Services conducts predator removal in Inventoried Roadless Areas in Montana. Wildlife Services conducts predator removal in designated Wilderness Areas in Montana. Wildlife Services conducts predator removal in Wilderness Study Areas in Montana. Wildlife Services conducts predator removal in recommended Wilderness areas in Montana. Wildlife Services conducts predator removal on National Forest System lands in Montana. The U.S. Forest Service authorizes Wildlife Services to conduct predator removal on National Forest System lands in Montana. Wildlife

Services conducts predator removal on Bureau of Land Management (“BLM”) lands in Montana. BLM authorizes Wildlife Services to conduct predator removal on BLM lands in Montana.

***Wildlife Services killing and removal of grizzly bears in Montana***

135. Wildlife Services’ predator removal program occurs in areas where the Fish and Wildlife Service has determined grizzly bears “may be present” in Montana.



136. Wildlife Services’ predator removal program occurs in areas occupied by grizzly bears in Montana. Wildlife Services’ predator removal program occurs in areas where MDOL and MFWP also conduct predator removal efforts.

137. Wildlife Services intentionally takes grizzly bears in Montana.

138. The Fish and Wildlife Service has authorized Wildlife Services to intentionally take grizzly bears in Montana. The Fish and Wildlife Service issued Wildlife Services a “subpermit” to take grizzly bears under certain conditions allowed by the special Section 4(d) rule.

139. The Fish and Wildlife Service authorizes MFWP to take grizzly bears in Montana. MFWP takes grizzly bears in Montana. MDOL takes grizzly bears in Montana. The Fish and Wildlife Service has authorized MDOL to take grizzly bears in Montana. Private individuals and organizations take grizzly bears in Montana. The Fish and Wildlife Service has authorized private individuals and organizations to take grizzly bears in Montana.

140. Wildlife Services takes grizzly bears in Montana as authorized by the special Section 4(d) rule, 50 C.F.R. § 17.40(b). Wildlife Services must complete a “Section 4(d) Take Report Form” for all grizzly bear takes. All grizzly bear take in Montana is reviewed and documented by the Fish and Wildlife Service.

141. In March, 2020 the Fish and Wildlife Service issued a memorandum authorizing Wildlife Services to take grizzly bears in Montana. The Fish and Wildlife Service’s memorandum outlines the specific activities authorized by Wildlife Services and the terms and conditions for taking grizzly bears.

142. The Fish and Wildlife Service's March, 2020 memorandum authorizes the uses of live-traps to take grizzly bears in Montana. The Fish and Wildlife Service's March, 2020 memorandum authorizes the use of traps and snares to take grizzly bears in Montana. The Fish and Wildlife Service authorizes the use of darting (including aerial darting) to take grizzly bears in Montana. The Fish and Wildlife Service's March, 2020 memorandum authorizes killing "conflict bears" in Montana.

143. The Fish and Wildlife Service's March, 2020 memorandum authorizes the preemptive movement of grizzly bears in areas where they "may come into conflict with human activities" in Montana. The Fish and Wildlife Service's allowance of preemptive movement or killing of grizzly bears is not authorized by the grizzly bear's special Section 4(d) rule.

144. Wildlife Services takes grizzly bears in response to damage reports. Wildlife Services takes grizzly bears preemptively, before damage to livestock or agricultural interests occurs.

145. Wildlife Services takes grizzly bears when requested to do so by MFWP. Wildlife Services takes grizzly bears in response to damage reports when requested to do so by MDOL. Wildlife Services sometimes releases captured grizzly bears to MFWP. Wildlife Services sometimes releases captured grizzly bears to MDOL. Wildlife Services sometimes releases captured grizzly bears to the Fish and Wildlife

Service. Wildlife Services is unaware of the fate of the captured grizzly bears after they are released to MFWP, MDOL, or the Fish and Wildlife Service. Wildlife Services sometimes kills captured grizzly bears.

146. Between 2013 and 2017, Wildlife Services reported that it captured and transferred custody of an average of seven grizzly bears annually to MFWP.

147. Wildlife Services reports that, on average, it intentionally takes 8.6 grizzly bears a year in Montana (in the form of intentional killing or capture and release to MFWP).

148. In 2015, Wildlife Services reported take of fifteen grizzly bears in Montana (all captured and transferred to MFWP or the Fish and Wildlife Service). Eleven of these grizzly bears were caught in snares; one caught in a foothold trap; and one darted.

149. In 2016, Wildlife Services reported take of nine grizzly bears in Montana (two killed, two captured and released, and five captures and transferred to MFWP or the Fish and Wildlife Service). Two of these grizzly bears were killed by aerial gunning; four were captured in snares; and three caught in foothold traps.

150. In 2017, Wildlife Services reported take of eleven grizzly bears in Montana (two killed, two captured and freed, and seven captured and transferred to

MFWP or the Fish and Wildlife Service). Two of these grizzly bears were killed by aerial gunning; seven were captured in snares; and two caught in foothold traps.

151. In 2018, Wildlife Services reported take of eleven grizzly bears in Montana. One was shot with a firearm; eight were caught in snares; and two were caught in foothold traps.

152. In 2019, Wildlife Services reported take of sixteen grizzly bears in Montana (one killed, one captured and freed, and fourteen captured and transferred to MFWP or the Fish and Wildlife Service). Eleven of these grizzly bears were caught in snares and five caught in foothold traps.

153. Wildlife Services has information on where it takes grizzly bears in Montana. Wildlife Services has information on when it takes grizzly bears in Montana. Wildlife Services has information on how it takes grizzly bears in Montana. Wildlife Services has information on the sex and age of grizzly bears taken in Montana.

154. MFWP typically takes (via capture and release) roughly thirty grizzly bears each year. Grizzly bears that are captured and released into other areas often do not survive and are killed by other grizzly bears. MFWP also takes (via killing) grizzly bears every year in Montana.



155. The Fish and Wildlife Service tracks grizzly bear take in Montana. The Fish and Wildlife Service tracks grizzly bear mortality in Montana. The Fish and Wildlife Service tracks grizzly bear take inside the DMAs. The Fish and Wildlife Service tracks grizzly bear take outside the DMAs. The Fish and Wildlife Service tracks grizzly bear mortality inside the recovery zones.

156. The Fish and Wildlife Service does not have a limit on the number of grizzly bear mortalities allowed inside Montana. The Fish and Wildlife Service does not have a limit on the number of grizzly bear mortalities allowed inside the DMAs. The Fish and Wildlife Service does not have a limit on the number of grizzly bear mortalities allowed inside the recovery zones.

157. Wildlife Services does not have information on grizzly bear numbers and population trends in Montana. The Fish and Wildlife Service does not have information on grizzly bear numbers and population trends in Montana outside the recovery zones.

158. Wildlife Services unintentionally takes grizzly bears in Montana. Grizzly bears are sometimes caught in foothold traps set for other species. Grizzly bears are sometimes caught in snares set for other species.

159. In April, 2012 Wildlife Services accidentally caught a 600-pound grizzly bear in a leghold trap set for gray wolves near the Jocko River drainage in Montana



(notice the blood and damage to the bear's mouth from chewing on the trap in an effort to escape):



160. In August, 2019, Wildlife Services unintentionally captured a grizzly bear in a trap set for a gray wolf. Wildlife Services is aware of other incidents of incidental grizzly bear take in Montana. Wildlife Services has documented other incidents of incidental grizzly bear take in Montana.

161. MFWP personnel sometimes unintentionally take grizzly bears. MFWP's authorization of private individuals to trap, snare, and hunt (for species other than coyotes and red foxes) sometimes results in the accidental or incidental take of grizzly bears. Recreational trappers sometimes accidentally capture grizzly bears in traps or snares set for other species. Grizzly bears have been caught in foothold traps set for gray wolves. Grizzly bears have been caught in snares set for gray wolves.

162. MDOL personnel or contractors sometimes unintentionally take grizzly bears. MDOL's authorization of private individuals to trap, snare, and hunt predatory animals in Montana sometimes results in the unintentional take of grizzly bears including in foothold traps set for coyotes and red foxes and snares set for coyotes and red foxes.

163. Wildlife Services anticipates that it will intentionally take no more than 21 grizzly bears inside the DMAs in Montana annually. This includes 10 in the Greater Yellowstone Ecosystem DMA, 10 in the Northern Continental Divide Ecosystem DMA, and 1 in the Cabinet-Yaak Ecosystem. Wildlife Services does not estimate the amount of intentional grizzly bear take that is likely to occur outside the DMAs or recovery zones.

164. Wildlife Services anticipates that it will unintentionally take no more than five grizzly bears in Montana over a twenty-year period.

165. Wildlife Services does not estimate how many grizzly bears are likely to be taken (intentionally or accidentally) outside the DMAs annually from all sources. Wildlife Services does not estimate how many female grizzly bears can be taken by all sources.

*Wildlife Services' May, 2021 decision to continue its predator removal program in Montana.*

166. In May, 2021, Wildlife Services signed a new, final decision for its predator removal program in Montana.

167. In 2021, Wildlife Services prepared an EA for predator removal in Montana. Wildlife Services decided not to prepare an environmental impact statement (“EIS”). Wildlife Services determined that the effects of its predator removal program in Montana were insignificant.

168. In comments on the draft EA, MDOL said Montana “cannot replace the knowledge and expertise provided by our Wildlife Services trappers and pilots stationed in Montana.” MDOL said it would not be able to “absorb the financial burden” of Wildlife Services’ predator removal program if the program was abandoned. MDOL said Wildlife Services is a “critical partner.”

169. In the 2021 EA, Wildlife Services did not consider and evaluate the best available science on grizzly bears, threats to grizzly bears, or grizzly bear recovery.

170. In the 2021 EA, Wildlife Services did not consider and evaluate the Grizzly SSA.

171. In the 2021 EA, Wildlife Services discusses grizzly bear “mortality limits” inside the recovery zone DMAs.

172. In the 2021 EA, Wildlife Services only evaluated and analyzed grizzly bear mortality inside DMAs and in relation to “mortality limits.” Wildlife Services

said it did not analyze the effects (including cumulative effects) of grizzly bear take outside the DMAs. Wildlife Services takes grizzly bears outside the DMAs. Wildlife Services said grizzly bear numbers and population trends are not estimated on a statewide level.

173. In the 2021 EA, Wildlife Services said its predator removal program only has a “negligible impact” on grizzly bears. Wildlife Services said it did not expect any “significant indirect impacts” to grizzly bears from predator removal in Montana. Wildlife Services said there were no significant cumulative impacts to grizzly bears inside the DMAs and individual recovery zones.

1744. In the 2021 EA, Wildlife Services concluded that the cumulative impact of all grizzly bear mortality in Montana, including both “intentional and unintentional take” by Wildlife Services is “not adversely impacting the size, suitability, or recovery of the Montana grizzly bear population.”

175. Wildlife Services issued a FONSI for its predator removal program in Montana.

176. In the FONSI, Wildlife Services stated that it continues to coordinate with the Fish and Wildlife Service and MDOL and MFWP to avoid take of threatened and endangered species, including grizzly bears. Wildlife Services said it

completed “Section 7 consultations with [the Fish and Wildlife Service] for listed species [including grizzly bears] in Montana.”

177. Wildlife Services prepared a biological assessment to analyze the effects of its predator removal program in Montana on grizzly bears. This biological assessment was prepared in 2010. Wildlife Services supplemented the 2010 biological assessment with additional information. The biological assessment determined that the proposed action (predator killing, removals, and hazing in Montana) was likely to adversely affect grizzly bears within the action area (Montana). The biological assessment only evaluated the effects of Wildlife Services unintentional take of grizzly bears. The biological assessment did not evaluate the effects of Wildlife Services intentional take of grizzly bears under the special Section 4(d) rule.

178. The Fish and Wildlife Service prepared a biological opinion on the effects of Wildlife Services’ predator removal program in Montana on grizzly bears in 2012. The Fish and Wildlife Service’s 2012 biological opinion only considered and evaluated the effects of Wildlife Services unintentional take of grizzly bears in Montana. The Fish and Wildlife Service’s 2012 biological opinion did not analyze the impacts of all aspects of Wildlife Services’ predator removal program, including its intentional take of grizzly bears in Montana.

179. The Fish and Wildlife Service’s 2012 biological opinion concluded that Wildlife Services’ predator removal program in Montana was “not likely to jeopardize the continued existence” of grizzly bears.

**FIRST CAUSE OF ACTION**  
**(Violation of the ESA – best available science)**

180. Plaintiffs incorporate all preceding paragraphs.

181. Section 7 of the ESA requires Wildlife Services to consult with the Fish and Wildlife Service on how its predator removal program in Montana may affect listed species, including threatened grizzly bears. 16 U.S.C. § 1536(a)(2).

182. Consultation under Section 7 of the ESA, including a biological assessment and resulting biological opinion, and all related findings and analyses, must be based solely on the best scientific and commercial data available (“best available science”). 16 U.S.C. § 1536(a)(2).

183. In 2010, Wildlife Services prepared a biological assessment for its predator removal program in Montana. In 2012, the Fish and Wildlife Service issued a biological opinion for Wildlife Services’ predator removal program in Montana.

184. Wildlife Services’ biological assessment and the Fish and Wildlife Service’s biological opinion on predator removal in Montana failed to use and apply the best available science on grizzly bears, threats to grizzly bears, and recovery of

grizzly bears in Montana and in the lower 48 States. Wildlife Services' and the Fish and Wildlife Service's evaluation of effects and findings with respect to grizzly bears are not based on the best available science.

185. Wildlife Services' and the Fish and Wildlife Service's failure to use and apply the best available science is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A) and 706(1).

## SECOND CAUSE OF ACTION

(Violation of the ESA – arbitrary consultation and "no jeopardy" finding)

186. Plaintiffs incorporate all preceding paragraphs.

187. Under Section 7 of the ESA, Wildlife Services must ensure that its predator removal program is not likely to jeopardize the continued existence of grizzly bears. 16 U.S.C. § 1536(a)(2). Section 7 of the ESA imposes a substantive duty on Wildlife Services to ensure its predator removal program does not jeopardize the continued existence of listed species, including grizzly bears. *Id.*

188. Under Section 7 of the ESA, if Wildlife Services' decision may adversely affect a listed species, then the Fish and Wildlife Service must prepare a biological opinion to determine whether the action is likely to jeopardize the continued existence of the listed species. 16 U.S.C. § 1536(b)(3); 50 C.F.R. § 402.14. If the Fish and Wildlife Service issues a "no jeopardy" finding in its biological opinion, it

must specify reasonable and prudent measures, and terms and conditions, to minimize the impact of any incidental take resulting from the action. 50 C.F.R. § 402.14. The Fish and Wildlife Service must also specify the amount or extent, and effects, of any incidental take that is anticipated by the proposed action. *Id.*

189. Under Section 7 of the ESA, a “no jeopardy” finding in a biological opinion and the biological assessment upon which is it based, must include an evaluation of the proposed action, the effects of the action, the environmental baseline, and the cumulative effects of the action in the action area. 50 C.F.R. § 402.14.

190. When consulting on the predator removal program in Montana and issuing a “no jeopardy” finding, the Fish and Wildlife Service and Wildlife Services failed to properly define the proposed action and the effects of the action. The “effects of the action” are “the direct and indirect effects of an action on the species . . . together with the effects of other activities that are interrelated or interdependent with that action. . .” 50 C.F.R. § 402.02. The Fish and Wildlife Service and Wildlife Services only included the unintentional take of grizzly bears and failed to include intentional take allowed by the Section 4(d) rule, including the killing, harming, harassing, and capturing of grizzly bears in its proposed action and analyze its effects. The Fish and Wildlife Service and Wildlife Services failed to include all aspects of



the action, including take of grizzly bears by management removal and take of grizzly bears outside the DMAs and/or recovery zones.

191. When consulting on the predator removal program in Montana and issuing a “no jeopardy” finding, the Fish and Wildlife Service and Wildlife Services failed to properly define and analyze the environmental baseline. The “environmental baseline” includes the “past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impact of all proposed Federal projects in the action area that have already undergone formal or early consultation, and the impact of State or private actions which are contemporaneous with the consultation process.” 50 C.F.R. § 402.02. Wildlife Services and the Fish and Wildlife Service failed to include and analyze in the environmental baseline other state (MDOL and MFWP) predator removal efforts, private individual or organizations’ predator removal actions, or other sources of grizzly bear mortality (targeted and non-targeted), including from recreational hunting and trapping for other species in Montana. Wildlife Services and the Fish and Wildlife Service also failed to take into account other threats to grizzly bears, including climate change and loss of important food sources (and increased reliance on a prey/meat-based diet).

192. When consulting on predator removal in Montana and issuing a “no jeopardy” finding, the Fish and Wildlife Service and Wildlife Services failed to properly define the “action area.” The “action area” means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02. The Fish and Wildlife Service and Wildlife Services never evaluated the effects to grizzly bears outside the DMAs or where the effects of its actions are felt on grizzly bears and grizzly bear recovery. Wildlife Services’ predator removal program has a direct and indirect effect on grizzly bears within the Greater Yellowstone Ecosystem, which includes the states of Montana, Idaho, and Wyoming. Wildlife Services and the Fish and Wildlife Service never consulted on how predator killing, removals, and harassment in Montana may directly or indirectly affect grizzly bears in the Greater Yellowstone Ecosystem.

193. When consulting on predator removal in Montana and issuing a “no jeopardy” finding, the Fish and Wildlife Service and Wildlife Services failed to properly define and analyze the “cumulative effects.” The “cumulative effects” are “those effects of future State or private activities . . . that are reasonably certain to occur within the action area.” 50 C.F.R. § 402.02. Wildlife Services and the Fish and Wildlife Service failed to take into account changes to Montana law, including changes to MFWP’s ability to relocate grizzly bears, and changes to trapping,

hunting, and snaring regulations (that increase the risk of grizzly take) and changes to when grizzly bears can be taken that increase the future chances of grizzly bear take occurring. Wildlife Services and the Fish and Wildlife Service failed to take into account MDOL's and MFWP's predator killing, injuring, and harassment on grizzly bears and other private actions that are also certain to occur and result (either intentionally or unintentionally) in future grizzly bear mortality.

194. When issuing a “no jeopardy” finding for Wildlife Services’ predator removal program in Montana, the Fish and Wildlife Service failed to properly define and analyze the term “jeopardize the continued existence of.” To “jeopardize the continued existence of” means to engage “in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of listed species in the wild by reducing the reproduction, number, or distribution of that species.” 50 C.F.R. § 402.02.

195. The Fish and Wildlife Service never evaluated if and how Wildlife Services’ predator removal program may affect grizzly bear recovery in the lower 48 States, including grizzly movement, dispersal, and connectivity between subpopulations in Montana. The Fish and Wildlife Service’s “no jeopardy” finding in the biological opinion was focused solely on grizzly bear numbers and “mortality limits” in the various recovery zones. The Fish and Wildlife Service’s biological

opinion never addressed or evaluated effects to the listed entity – grizzly bears in the lower 48 states. The Fish and Wildlife Service’s biological opinion never addressed and evaluated how predator removal may affect grizzly bear movement and connectivity between recovery zones and dispersal outside the DMAs, which is needed for long-term recovery.

196. Wildlife Services never addressed and evaluated how predator killing, injury, removal, and harassment may affect grizzly bear movement and connectivity between recovery zones and dispersal in Montana (outside the recovery zones or DMAs) which is needed for long-term recovery of the species. In failing to address and analyze how predator removal may affect grizzly bear movement and connectivity between recovery zones and dispersal outside the DMAs, Wildlife Services violated its substantive duty to ensure its predator removal program in Montana does not jeopardize the continued existence and recovery of grizzly bears in violation of Section 7 of the ESA.

197. Wildlife Services’ and the Fish and Wildlife Service’s Section 7 consultation on grizzly bears and related failure to properly define and analyze the proposed action, effects of the action, the environmental baseline, the action area, cumulative effects, or jeopardy is “arbitrary, capricious, an abuse of discretion, or

otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A) and 706(1).

### **THIRD CAUSE OF ACTION**

#### **(Violation of the ESA – irreversible and irretrievable commitment of resources)**

198. Plaintiffs incorporate all preceding paragraphs.

199. Section 7(d) of the ESA prohibits Wildlife Services from making “any irreversible or irretrievable commitment of resources” with respect to an agency action “which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.” 16 U.S.C. § 1536(d).

200. In response to Plaintiffs’ July, 2022 notice letter, Wildlife Services said it was requesting new consultation with the Fish and Wildlife Service on its predator removal program in Montana and how it may affect grizzly bears and grizzly bear recovery. Wildlife Services said it would prepare a new biological assessment. Wildlife Services and the Fish and Wildlife Service did not say if and when a new biological opinion would be issued. Wildlife Services said it would continue implementing its predator removal program in Montana, including its take of grizzly bears, during the new consultation period.

201. Wildlife Services’ decision to continue implementing its predator removal program in Montana – including the on-going take of grizzly bears –

pending new consultation on grizzly bears qualifies as an irreversible and irretrievable commitment of resources that has the effect for foreclosing the formulation or implementation of reasonable and prudent alternative measures which would not violate Section 7(a)(2). Wildlife Services taken grizzly bears in Montana since July, 2022.

202. Wildlife Services' decision to continue its predator removal efforts, including the take of grizzly bears in Montana pending completion of new consultation and/or failure to suspend its predator removal program in Montana, including the take of grizzly bears, pending completion of consultation is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A) and 706(1).

**FOURTH CAUSE OF ACTION  
(Violation of NEPA – effects)**

203. Plaintiffs incorporate all preceding paragraphs.

204. NEPA requires Wildlife Services adequately disclose, consider, and analyze the direct, indirect, and cumulative effects of its proposed actions. 42 U.S.C. § 4332 (C); 40 C.F.R. § 1502.16.

205. Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action and occur later in time or farther

removed in distance, but are reasonably foreseeable. Cumulative effects are the impacts on the environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

206. Wildlife Services' EA for its predator removal program in Montana fails to adequately analyze the direct, indirect, and/or cumulative effects on grizzly bears and grizzly bear recovery.

207. Wildlife Services' EA fails to account for escalating grizzly bear mortalities due to the loss of important food sources. Wildlife Services' EA fails to adequately analyze the direct, indirect, and/or cumulative effects of taking grizzly bears on the species or the species' dispersal, movement and recovery in the lower 48 States. Wildlife Services' EA includes no site-specific information on where, when, why, how many, or what sex and age of grizzly bear was taken (killed or captured or harassed). Wildlife Service's EA does not track the age or sex of grizzly bears taken. Wildlife Services' EA does not analyze the effects (direct, indirect, and cumulative) of grizzly bear take outside the DMAs. Wildlife Services' EA does not analyze how many female grizzly bears are taken outside the DMAs. Wildlife Services' EA uses



the wrong metric to evaluate how human-caused mortality affects subpopulations (Wildlife Services uses overall population size, not the minimum population size).

208. Wildlife Services' EA fails to analyze the cumulative effects on grizzly bear and grizzly bear recovery from other sources of mortality (both intentional and accidental) in Montana. The cumulative effects of grizzly bear take exceed the sustainable mortality limits for individual subpopulations in the 1993 grizzly recovery plan. Wildlife Services' EA fails to analyze the cumulative effects on grizzly bear and grizzly bear recovery from MDOL's agency-level predator removal efforts or the unknown number and unknown take (intentional and non-target) by MDOL authorized private individuals trapping and snaring for coyotes and red fox, in Montana. Wildlife Services' EA fails to analyze the cumulative effects on grizzly bear and grizzly bear recovery from MFWP's agency-level predator removal efforts or MFWP authorized private individuals trapping, snaring, and hunting for species other than coyote and red fox, in Montana. Wildlife Service's EA fails to analyze the cumulative effects to grizzly bear recovery, including grizzly bear dispersal, movement, and connectivity between subpopulations from all of these sources and other sources of grizzly bear mortality. Wildlife Services' EA fails to analyze the cumulative effects to grizzly bears and grizzly bear recovery from changes to MFWP's trapping regulations (including for gray wolves), and changes to Montana's laws

regarding grizzly bear take and relocation. Grizzly bears are more vulnerable to take in Montana due to recent changes to wolf trapping regulations.

209. The Wildlife Services' failure to analyze the direct, indirect, and cumulative effects to grizzly bears and grizzly bear recovery is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A) and 706(1).

**FIFTH CAUSE OF ACTION  
(Violation of NEPA – EIS required)**

210. Plaintiffs incorporate all preceding paragraphs.

2111. NEPA requires Wildlife Services to prepare an EIS for all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

212. In deciding whether or not to prepare an EIS, Wildlife Services must consider both the context and intensity of the proposed action. 40 C.F.R. § 1508.27. In deciding whether or not to prepare an EIS for predator removal in Montana, Wildlife Services used and relied on the pre-2020 NEPA regulations.

213. Context refers to the scope of the proposed action, including the interests affected. 40 C.F.R. § 1508.27(a). Assessing context requires that an action be analyzed in several contexts such as society as a whole (human, national), the

affected region, the affected interests, and the locality, with both short- and long-term effects being relevant.

214. Intensity refers to the severity of the impact, and requires consideration of a number of factors, including: beneficial and adverse impacts; the degree to which the proposal affects public health and safety; unique characteristics of the geographic area, such as proximity to ecologically critical areas and cultural resources; the degree to which effects are likely to be controversial, highly uncertain, or involve unique or unknown risks; the precedential nature of the action; whether the action is related to other actions with cumulatively significant impacts; and the degree of adverse effects on species listed as endangered or threatened under the ESA. 40 C.F.R. § 1508.27(b).

215. Wildlife Services' predator removal program in Montana, including its use of snares, traps, chemicals and toxic gases, and sodium cyanide M-44s has the potential to significantly affect public health or safety.

216. Wildlife Services' predator removal program in Montana occurs in ecologically critical areas, including areas critical for grizzly bear movement, dispersal, and recovery.

217. Wildlife Services' predator removal program in Montana occurs in special management areas important for wildlife, including grizzly bears.

218. The effects of Wildlife Services' predator removal program in Montana on grizzly bear dispersal, movement, and recovery are highly controversial, highly uncertain and involve unique and unknown risks (given the lack of data presented in the EA or obtained by Wildlife Services or provided by MFWP and MDOL). Dispersing grizzly bears (including females and pregnant females) that are needed for long-term viability and recovery of the species are being killed or captured and removed before being allowed into new, unoccupied territory, including large portions of the species' historic range in Montana. Wildlife Services includes no site-specific information on where, when, why, how many, or the sex of the grizzly bear taken (killed or captured or harassed). Wildlife Services provides no information on the fate of grizzly bears transferred to MFWP or the Fish and Wildlife Service. Wildlife Services includes no site-specific information on grizzly bear movement and dispersal outside the DMAs. Wildlife Services bases its analysis of impacts to grizzly bears on the wrong metrics.

219. Wildlife Services' conclusions regarding the effectiveness of lethal removal for preventing future livestock depredations from grizzly bears and other native predators in Montana are highly controversial and uncertain. There is significant disagreement among experts on the effectiveness of Wildlife Services'

predator removal program. Wildlife Services' EA failed to adequately consider opposing science.

220. Wildlife Services' predator removal program in Montana will have cumulatively significant impacts on grizzly bears, grizzly bear connectivity, and grizzly bear recovery, especially when evaluated in conjunction with: MDOL's agency-level predator removal efforts and MDOL authorized private individuals trapping and snaring for coyote and red fox in Montana, MFWP's agency-level predator removal efforts and grizzly bear take (intentional and non-target) and MFWP's authorization of private individuals trapping, snaring, and hunting for species other than coyote and red fox in Montana; and other sources of grizzly bear mortality (illegal, natural, human-caused). Predator removal, coupled with other sources of authorized trapping and snaring and other sources of mortality, has had and will have adverse effects on grizzly bears and grizzly bear recovery in Montana. Taking dispersing grizzly bears without any analysis of these impacts on the recovery of this species sets a dangerous precedent.

221. In deciding not to prepare an EIS, Wildlife Services failed to adequately consider and evaluate these significance factors.

222. Wildlife Services' failure and/or decision not to prepare an EIS is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with

law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A) and 706(1).

### REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare Wildlife Services violated and continues to violate the ESA and NEPA as alleged above;
- B. Declare the Fish and Wildlife Service violated and continues to violate the ESA as alleged above;
- C. Vacate the portion of Wildlife Services’ predator removal decision, related EA, and any decisions or permits authorizing, funding, providing technical support for, or engaging in, the lethal take of grizzly bears in Montana pending compliance with the law.
- D. Vacate the Fish and Wildlife Service’s biological opinion for Wildlife Services’ predator removal program in Montana;
- E. Remand this matter back to Wildlife Services and the Fish and Wildlife Service with instructions to comply with NEPA and the ESA, as outlined herein and by this Court, including completion of new NEPA analysis of effects, preparation of an EIS, and completion of new Section 7 consultation, including the issuance of a new biological opinion for grizzly bears in Montana.

F. Absent a demonstrable threat to human safety, temporarily enjoin the portion of Wildlife Services' predator removal work allowing, authorizing, funding, providing assistance for, or engaging in the lethal take of grizzly bears in Montana pending compliance with NEPA and the ESA (including issuance of a new biological opinion) as alleged above;

G. Award Plaintiffs their reasonable attorneys' fees, costs and expenses of litigation pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g) and/or the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412;

H. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request.

I. Issue any other relief this Court deems necessary, just, or proper.

Respectfully submitted this 18th day of January, 2023

/s/ Matthew K. Bishop  
Matthew K. Bishop

/s/ Sarah McMillan  
Sarah McMillan

*Counsel for Plaintiffs*

/s/ Jennifer Schwartz, application for PHV pending  
Jennifer Schwartz

*Counsel for WildEarth Guardians*