

November 7, 2023

Submitted via U.S. Mail and/or electronically at <https://parkplanning.nps.gov>.

Superintendent
North Cascades National Park Service Complex
810 State Route 20
Sedro Woolley, WA 98284

Re: Friends of Animals' Comment on Draft Grizzly Bear Restoration Plan/Environmental Impact Statement North Cascades Ecosystem – September 2023

To Superintendent Striker:

Friends of Animals submits this comment in response to the National Park Service (NPS) and the U.S. Fish and Wildlife Service's (FWS) (collectively, "Federal Agencies") joint notice seeking comments on the Draft Restoration Plan and Environmental Impact Statement for the North Cascades Ecosystem in Washington State.

Friends of Animals is a non-profit, international animal advocacy organization incorporated in the state of New York since 1957. Friends of Animals has nearly 200,000 members worldwide. Friends of Animals and its members seek to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. Friends of Animals' activities include educating its members on current threats to many species' abilities to live in ecosystems free from human manipulation, exploitation, and abuse; and monitoring federal agency actions to ensure that laws enacted to protect the environment and wildlife are properly implemented and enforced.

FACTUAL BACKGROUND

For thousands of years, "[g]rizzly bears roamed across the North Cascades . . . as an essential part of the ecosystem, distributing native plant seeds and keeping other wildlife populations in balance."¹ At one point, there was an estimated 50,000 grizzly bears inhabiting a large contiguous portion of the United States, comprised primarily of eighteen western states, including the State of Washington.² As with many wildlife

¹ National Park Service, U.S. Fish & Wildlife Service to evaluate options for restoring grizzly bears to the North Cascades, <https://www.nps.gov/noca/learn/news/national-park-service-u-s-fish-wildlife-service-to-evaluate-options-for-restoring-grizzly-bears-to-the-north-cascades.htm> (Last updated: November 10, 2022; accessed October 24, 2023).

² National Park Service and U.S. Fish and Wildlife Service, *Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bear in the North Cascades Ecosystem, Washington State*, 88 Fed. Reg. 67193, 67195 (September 29, 2023).

species, the grizzly bears of the North Cascades suffered catastrophic depredation resulting from interactions with humans, hunted nearly to extinction during the 19th and 20th centuries, losing critical habitat to logging, development, indiscriminate hunting, the ranching industry, and bounty programs funded by the U.S. government. Despite thriving in the North Cascades for centuries, there have been no confirmed grizzly bear sightings in the U.S. portion of the North Cascades Ecosystem (NCE) since 1996.³ The last photographed grizzly bear in the U.S. portion of the NCE is depicted in a 1967 photograph in the Draft Restoration Plan, presumably killed by the armed man proudly posing next to his kill.⁴

Under the Federal Agencies' 2023 Candidate Notice of Review (CNOR), it was determined that the NCE no longer holds any population of grizzly bears, supported by a lack of evidence and an absence of detections of grizzly bears in the region.⁵ FWS, therefore, considers Grizzly Bears to be "functionally extirpated in the NCE."⁶ While grizzly bears are not known to presently inhabit the U.S. portion of the NCE, five studies have concluded that the U.S. portion of the NCE has sufficient habitat resources essential for the maintenance of grizzly bear populations and confirm that the U.S. portion of the NCE can support a viable population of 200 to 400 grizzly bear individuals.⁷

Due to the historically declining populations, grizzly bears were listed as "threatened" under the Endangered Species Act in 1975 (for the lower 48 states) and as "endangered" in Washington in 1980. In 2004, a grizzly bear recovery plan was completed for the British Columbia portion of the NCE to reestablish the population of grizzly bears in the region. However, the Washington State portion of the NCE is without a restoration plan, as the EIS process commenced in 2014 was terminated in 2020.⁸

On November 14, 2022, the Federal Agencies published notice in the Federal Register seeking scoping comments from the public to assist their joint preparation of a North Cascades Ecosystem Grizzly Bear Restoration Plan (the "Restoration Plan") and Environmental Impact Statement (EIS) in the North Cascades.⁹ The Federal Agencies' stated goal at that time was to restore the biodiversity of the NCE and support the recovery of grizzly bear populations to facilitate removal from the Federal List of Endangered and Threatened Wildlife.¹⁰ In drafting the proposed Restoration Plan, the Federal Agencies explored three preliminary alternatives to achieve restoration of

³ U.S. Department of the Interior, U.S. Fish and Wildlife Service, National Park Service, *Draft Grizzly Bear Restoration Plan/Environmental Impact Statement*, p. 5 (September 2023).

⁴ *Id.*

⁵ 88 Fed. Reg. at 67195 (citing 88 FR 41560, June 27, 2023).

⁶ Draft Restoration Plan at pp. i-ii.

⁷ 88 Fed. Reg. at 67205.

⁸ National Park Service, FAQs/Background, <https://www.nps.gov/noca/upload/NCE-Grizzly-Bear-EIS-FAQs-20221115.pdf> (last updated November 15, 2022).

⁹ National Park Service and U.S. Fish and Wildlife Service, *Notice of Intent to Prepare North Cascades Ecosystem Grizzly Bear Restoration Plan/Environmental Impact Statement*, Washington, 87 Fed. Reg. 68190 (November 14, 2022).

¹⁰ 87 Fed. Reg. at 68191.

grizzly bear populations in the NCE.¹¹ Alternative A was the “no action” alternative; Alternative B would restore grizzly bears in the NCE with the existing protections under the ESA; and Alternative C, in which grizzly bear populations would be restored in the NCE through translocation from another GB population and designated as a Rule 10(j) Nonessential Population under the ESA.¹² Each “action alternative” has as a goal “to restore a self-sustaining population through the capture and release of grizzly bears into the NCE.”¹³ Each preliminary alternative promotes public education and outreach, establishing guidelines for managing conflict, sustainable habitat management, and improved sanitation on public lands.¹⁴ Ultimately, the Federal Agencies seek to release 3 to 7 bears per year for 5 to 10 years to establish an initial population of 25 bears to serve as a foundation to allow reproduction and an eventual population of 200 bears in 60 - 100 years.¹⁵

On September 28, 2023, the Federal Agencies, through the NPS, commenced a period for public comment on the Draft Restoration Plan and Environmental Impact Statement regarding the reintroduction of grizzly bears into the NCE.¹⁶ The goal is to restore grizzly bears to the NCE, contribute to the restoration of the NCE’s biodiversity, and enhance the long-term survival of grizzly bears for multiple populations to the point that the species can be removed from the Federal List of Endangered and Threatened Wildlife.¹⁷ As a result, the Federal Agencies hope to achieve the objective of restoring bears to their natural and cultural heritage in the NCE, support environmental and natural resource goals in the NCE, and provide a source of outreach to inform and educate the public on grizzly bears in their natural habitat.¹⁸

While the Restoration Plan addresses three alternatives, the Federal Agencies chose Alternative C as the preferred alternative. In Alternative C, a Nonessential Experimental Population (NEP) of grizzly bears would be established in the U.S. portion of the NCE under section 10(j) of the ESA. “Establishment of the NEP is intended to support reintroduction and recovery of grizzly bears within the NCE and proved the prohibitions and exceptions under the [ESA] necessary and appropriate to conserve the species within a defined NEP area.”¹⁹ FWS almost simultaneously published in the Federal Register the proposed rule under section 10(j), essentially seeking comment on Alternative C before issuing a final Restoration Plan and EIS.

Friends of Animals supports the restoration of grizzly bears in the NCE. As noted in the Draft Restoration Plan, a “habitat evaluation and a report by the Interagency Grizzly Bear Committee (IGBC) NCE Subcommittee, concluded that the U.S. portion of the

¹¹ 87 Fed. Reg. at 68191.

¹² Draft Restoration Plan at p. iv.

¹³ 87 Fed. Reg. at 68191.

¹⁴ 87 Fed. Reg. at 68191.

¹⁵ Draft Restoration Plan at p. iii. and p. 40, Table 2.

¹⁶ See generally, Draft Restoration Plan.

¹⁷ Draft Restoration Plan at p. ii.

¹⁸ Draft Restoration Plan at p. ii.

¹⁹ 88 Fed. Reg. at 67193.

NCE contains sufficient habitat quality to maintain and recover a grizzly bear population.”²⁰ Restoring bears to an area they inhabited for centuries is necessary for the sustainability of the endangered grizzly bear species and critical for nurturing a healthy ecosystem in the U.S. portion of the NCE. Friends of Animals supports the reintroduction of grizzly bears to their native ecosystem with the most protections available under the ESA, not as a nonessential experimental population as outlined under Alternative C. While Alternative C is the Federal Agencies’ preferred alternative to establishing and protecting grizzly bear populations, this alternative allows for “taking” and “management” of grizzly bears outside the scope of the full protections of the ESA, including through lethal means. This type of lethal management would comprise the goals of restoration and inhibit the recovery of grizzly bear population.

Federal Agencies must implement “management” techniques that prioritize the preservation and protection of the grizzly bears reintroduced to the NCE. Friends of Animals is concerned that use of 10(j) rule for a nonexperimental population may give a louder voice not to the bears protected by the ESA, but to the ranchers and hunters who believe that management of bears should allow for unfettered removal of any bears reintroduced.

DISCUSSION

Friends of Animals supports restoring grizzly bears to their native habitat in the NCE as an initial step to establishing sustainable grizzly bear populations. Grizzly bears are an apex predator and a keystone species in the NCE, vital to a healthy and thriving ecosystem. In selecting a proposed alternative, Friends of Animals encourages the Federal Agencies to consider the positive effects reintroduction of grizzly bears will have on the NCE, as well as the positive socioeconomic benefits of a thriving population, such as a thriving recreation and tourism industry based on a thriving ecosystem. The Federal Agencies should prioritize minimizing management and human contact with bears, as each will lead to using lethal means justified as “management.” Friends of Animals encourages the Federal Agencies to select an alternative that will lead to the recovery of grizzly bears. Federal agencies should reject lethal “management” methods to resolve perceived conflicts with farmers and ranching industry because such methods are unethical and comprise the recovery of grizzly bears.

A. The Federal Agencies should follow the ESA in the way that offers the most protection for the Grizzly Bears in the NCE.

Congress enacted the ESA to protect and preserve endangered and threatened species, their respective habitats, and the ecosystems on which these species and habitats depend.²¹ The goal of the ESA is to recover listed species to the point where they no longer need legal protection.²² The grizzly bear is presently listed as a

²⁰ Draft Restoration Plan at p. i.

²¹ 16 U.S.C. § 1531(b).

²² 16 U.S.C. §§ 1531(b)-(c), 1532(3), 1533(f).

threatened species under the ESA, being first listed in 1975.²³ Section 7 of the ESA “provides . . . valuable and powerful tools to conserve listed species, assist with species recovery, and help protect critical habitat.”²⁴ Section 7 also requires federal agencies to consult with the U.S. Fish and Wildlife Service and proposed actions that may affect a listed species.²⁵ To facilitate reintroduction of a threatened or endangered species, ESA section 10(j) allows for the reintroduction of experimental populations of threatened or endangered species into historical ranges and habitats in which the species is no longer found. Section 10(j) was placed into the ESA to allow for the reintroduction of displaced species through experimental populations with management of the reintroduced species through regulatory measures. Section 10(j) was implemented to ease the concerns of private landowners, other federal agencies, Tribes, and state and local governments regarding management of the reintroduced species.²⁶ As the Federal Agencies note, “[a]n experimental population is a group of reintroduced [species] that is geographically isolated from other populations of the species and is typically considered nonessential to the survival of the species as a whole.”²⁷ In establishing an NEP under section 10(j), the agency must “treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations under section 4(d) of the Act with respect to that population.”²⁸

In the draft Restoration Plan, the Federal Agencies considered Alternatives B and C with reference to restoring grizzly bears to the NCE with existing protections under Section 7 of the ESA (Alternative B) and restoration with a 10(j) nonessential experimental population under the ESA (Alternative C).²⁹ Friends of Animals encourages the Federal Agencies to craft the final Restoration Plan so that grizzly bears receive the most protections available as listed species under the ESA.

B. The Final Restoration Plan should account for the positive effects grizzly bear reintroduction will have on wildlife in the NCE.

Grizzly bears were present in the NCE for thousands of years, an apex predator and vital species playing a critical role in a thriving ecosystem, before suffering near complete population loss in the 19th and 20th centuries. Development, logging, hunting, and other forms of human activity decimated the grizzly bear and its habitat as human populations spread into the natural ecosystems in which grizzly bears formerly thrived for millennia. As a result of hunting, logging and population and development expansion, grizzly bears were rendered extinct from the U.S. portion of the NCE.

As a keystone species in the historical boundaries of the NCE, grizzly bears provided a positive impact and played a critical role in a thriving NCE before removal

²³ Draft Restoration Plan at p. 19.

²⁴ Draft Restoration Plan at p. 19.

²⁵ Draft Restoration Plan at p. 19.

²⁶ Draft Restoration Plan at pp. 19-20.

²⁷ Draft Restoration Plan at pp. 19-20.

²⁸ 88 Fed. Reg. at 67200.

²⁹ Draft Restoration Plan at pp. 23-47.

from the ecosystem. Complete removal from the ecosystem damages the delicate and critical balance of the ecosystem. Reintroduction of grizzly bears will benefit the NCE by returning the ecosystem to a condition more like the thriving ecosystem that existed for thousands of years, before human intervention proved grave to yet another keystone species.

The Federal Agencies acknowledge the critical importance of grizzly bears in a thriving NCE and must explore alternatives that return grizzly bears to their natural place within the ecosystem. As a predator, grizzly bears play a role in managing the populations of the species upon which they prey, maintaining a healthy balance of wildlife within the NCE. However, 90% of a grizzly bear's diet consists of vegetable and insect matter, as opposed to livestock or other sources of meat.³⁰ The impact on existing wildlife populations, while positive for management of population levels, would not be detrimental or beyond what the ecosystem can tolerate. Affording grizzly bears the full protection of the ESA would allow grizzly bear populations, and the NCE, to thrive while minimizing the impact of humans and management methods that could be potentially lethal.

Grizzly bears further enhance the ecosystems they inhabit by spreading seeds through their eating and traveling patterns, and help aerate the soil while rooting for sustenance, thereby playing a critical role in the ecological health of the NCE plant life. Spreading seeds and assisting in health plant ecology assists not only the grizzly bear population, but also the wildlife that relies on that plant life. The Federal Agencies should ensure that the final Restoration Plan protects and encourages the conservation of grizzly bears, maximizing their beneficial role in improving the ecological diversity necessary for a thriving ecosystem, rather than placing as a primary emphasis the management of grizzly bears for the benefit of humans. Affording grizzly bears the full protections of the ESA will promote the Federal Agencies' stated goal of increasing the biodiversity of the NCE.

C. The Federal Agencies should craft the final Restoration Plan to account for the role humans play in minimizing human-grizzly bear interactions.

In the draft Restoration Plan, the Federal Agencies considered the "Visitor Use and Recreation Experience" in the NCE.³¹ Hiking, camping, wildlife viewing, and boating are just a few of the many recreational activities people pursue in the region.³² Grizzly bear reintroduction into the NCE should not limit the ability of people to engage in these activities, as the limited number of bears slowly introduced should not lead to significant encounters, as the NCE is comprised of roughly 10,000 square miles and includes vast areas in which the difficult terrain limits the ease with which humans may participate in recreational opportunities. However, recreational activities should be permitted only to the extent the activities do not adversely affect the wildlife in the NCE or will not

³⁰ National Park Service, FAQs/Background, at p. 4 and 5, <https://www.nps.gov/noca/upload/NCE-Grizzly-Bear-EIS-FAQs-20221115.pdf> (last updated November 15, 2022).

³¹ Restoration Plan at p. 11.

³² Restoration Plan at p. 11.

increase the possibility of human-wildlife conflict. The final Restoration Plan must include measures to educate the public on how to enjoy outdoor activities in areas where interaction with bears may occur and measures to enforce responsible human behavior. While grizzly bears generally seek to avoid interaction with humans, people should still be required to carry bear spray, and groups should be limited in size through a permit system. People should also be educated on minimizing interactions with grizzly bears and how to respond if encountering a grizzly bear. Importantly, while people are encouraged to enjoy recreational activities in and around the NCE, the Restoration Plan should also include severe restrictions on hunting and encourage people to use non-lethal means to respond to and to deescalate interactions. The best way to realize this vision is to select an alternative and craft the Restoration Plan in a way that gives grizzly bears the full protections of the ESA.

Notably, in the draft Restoration Plan, the Federal Agencies compare Alternatives B and C in the category of “Incidental Take and Section 7 Consultation.” In Alternative B, incidental takes must be pre-authorized through consultation with the FWS and “[p]ersons may not intentionally take a grizzly bear, unless . . . necessary for defense of life.”³³ On the contrary, Alternative C, in which a 10(j) NEP would be established, incidental takes would be allowed without pre-authorization or consultation with FWS.³⁴ Such a “kill first, ask permission later” approach will surely lead to incidents in which grizzly bears will be needlessly killed, but later permitted through justifications developed after the fact. The Federal Agencies should place as paramount the protection of grizzly bears and afford the species the full protections of ESA section 7.

The Federal Agencies should also consider the cultural and socioeconomic effects of reintroducing grizzly bears in the NCE. Grizzly bears thrived for thousands of years in the region and are of great significance to the culture and traditions of Indigenous communities in and around the NCE.³⁵ A thriving grizzly bear population will draw people from around the United States, as well as internationally, for the opportunity to see a thriving ecosystem in which grizzly bears play a critical role. An increase in people traveling to the region to view the wildlife and participate in other recreational activities will, inevitably, benefit the economy of the local communities in the region.

The Federal Agencies should consider these positive impacts when finalizing the Restoration Plan and select an alternative that best outlines measures to limit interactions with bears when engaging in recreational activities. The Federal Agencies must include limitations specifically requiring recreational users to be diligent in preventing human-bear incidents and to be prepared to deescalate or minimize effects when encountering a bear, whether the interaction is intentional or inadvertent.

³³ Restoration Plan at p. 45.

³⁴ Restoration Plan at p. 45.

³⁵ Restoration Plan at pp. 137-138.

D. The Federal Agencies should prioritize protections for grizzly bears over livestock grazing.

It is to be expected that ranching and farming interests in the region generally oppose the reintroduction of grizzly bears because of the belief that grizzly bears could kill livestock and reduce their profits. These industries often claim that grizzly bears harass livestock, threaten humans, and consume significant orchard products. But ranchers and farmers face these same concerns from other species wherever non-native livestock populations are raised for human consumption, including regions in which populations of grizzlies and other bears presently thrive.

Contrary to the “sky-is-falling” protests by ranchers and farmers, the Federal Agencies have previously noted that a U.S. Department of Interior formula indicates that there could be just three livestock deaths per year when the grizzly bear population reaches 200 bears in 60 to 100 years.³⁶ In the draft Restoration Plan, the Federal Agencies stated “the total number of cattle and sheep depredated within the NCE would result in minimal, adverse impacts on agriculture and the livestock grazing industry, contributing to less than 0.01% of the total number of cattle and sheep” in the region.³⁷ The extent of this projected depredation would be impacted by the size of the grazing operation, the extent to which there is overlap with grizzly bears, and the presence of rancher-based attractants, such as orchards, beehives, livestock boneyards, and cattle and sheep calving areas. Further, the impacts are “less likely to occur given that no staging or release areas would overlap active grazing allotments.”³⁸ And to the extent any ranching operation may suffer depredation of livestock “units,” such ranching operation would possibly enjoy compensation for any loss, either through insurance or as authorized under Washington State law.

The Federal Agencies should include in the Restoration Plan provisions to educate ranchers and farmers on methods to minimize interactions with grizzly bears, including electric fences, bear-proof trash receptacles, bear-proof food cannisters, and non-lethal methods of managing and deescalating interactions between humans and domestic animals (including livestock), and grizzly bears. Friends of Animals also urges the Federal Agencies to take a hard look at how ranchers and landowners will use an “experimental population” designation under section 10(j) of the ESA and ensure “more flexible” management methods will not lead to escalated deterrence methods or lethal means of “management.” The draft Restoration Plan allows for deterrence of grizzly bears “from the immediate vicinity 600 feet (200 yards) of a human-occupied residence or potential conflict area with humans, such as a barn, livestock corral, chicken coop, grain bin, or schoolyard.”³⁹ However, there should also be requirements regarding control of attractants to preemptively avoid a situation that may lead to use of

³⁶ National Park Service, FAQs/Background at p. 5, <https://www.nps.gov/noca/upload/NCE-Grizzly-Bear-EIS-FAQs-20221115.pdf> (last updated November 15, 2022).

³⁷ Draft Restoration Plan at p. 144.; 88 Fed. Reg. at 67213

³⁸ Draft Restoration Plan at p. 144; 88 Fed. Reg. at 67214.

³⁹ Draft Restoration Plan at p. 43.

deterrence methods.⁴⁰ Requiring ranchers and landowners to minimize attractants would also potentially negate the need for the lethal control authorization or permits contemplated by Alternative C with a 10(j) designation, making it easier to implement Alternative B and afford grizzly bears the full protections of the ESA.

Alternative C, with a 10(j) NEP, allows for hazing and other deterrence methods based only on the reported location of the grizzly bear, not taking into consideration the actual level of threat, if any, presented by the bear and the presence of attractants placed by the human landowner. Further, when specifically addressing livestock, the draft Restoration Plan and proposed 10(j) rule allow for lethal taking of a grizzly bear within 100 yards of livestock, subject to various conditions.⁴¹ But, there is little to indicate that farmers and ranchers are required to minimize attractants or better defines when lethal methods may be employed, beyond stating “when necessary for public safety or to protect public property.”⁴² The best way to avoid potential “management” issues is to restore grizzly bears to their native ecosystem as fully protected species under the ESA and require that ranchers and landowners minimize attractants on their property.

At the end of the day, provisions to accommodate “management” of grizzly bears for the benefit of the livestock industry are not necessary, considering the insignificant depredation rate of 0.01%. Additionally, 2.6 million acres of the NCE is considered wilderness, identified as “untrammelled, natural, undeveloped, providing opportunities for solitude or primitive and unconfined recreation, and other features of value.”⁴³ Wilderness is not characterized by residential communities or livestock grazing, and the amount of interaction humans will have with bears in 2.6 million acres with 200-400 bears in 60 years will likely be minimal.

The better approach, rather than allowing for unmonitored hazing and the use of lethal measures to prevent insignificant levels of livestock depredation, is to restore grizzly bear populations with the existing protections of the ESA. To minimize any negative effects grizzly bear restoration may have on livestock in the tiny portion of the NCE in which livestock and bears populations may overlap, Friends of Animals urges the Federal Agencies to evaluate what measures have been taken in similar situations in similar environments to minimize and avoid conflict. Efforts such as electric fences, minimizing attractants, and non-lethal methods of responding to interactions must be considered in the final Restoration Plan, rather than allowing for immediate action to be taken against grizzly bears with permission being sought after the fact.

⁴⁰ Draft Restoration Plan at p. 43.

⁴¹ Draft Restoration plan at p. 44; 88 Fed. Reg. at 67216.

⁴² Draft Restoration Plan at p. 44; 88 Fed. Reg. at 67216.

⁴³ Draft Restoration Plan at p. vi.

CONCLUSION

Friends of Animals supports the Federal Agencies' efforts to facilitate the reintroduction of grizzly bears into the U.S. portion of the NCE. Friends of Animals encourages the Federal Agencies to select the alternative that provides grizzly bears with the greatest amount of protection under the ESA to allow for a successful reintroduction and a viable population for the future. While the Federal Agencies appear to believe the reintroduced populations must be managed to achieve success for the future, Friends of Animals requests the Federal Agencies select the alternative that minimizes the amount of human interaction with the grizzly bear populations, negating the need for "management" under section 10(j). Friends of Animals encourages the Federal Agencies to select a path forward that promotes the positive impacts and effects of grizzly bear reintroduction and considers the minimal threat to farming and ranching interests that may result, requiring the public to be educated on how to coexist with grizzly bears as protected species under the ESA and without short-sighted, lethal methods of "management."

Thank you for the opportunity to comment, and please contact me if you have any questions or concerns.

Sincerely,

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