



Michael  
Thabault/R6/FWS/DOI  
04/11/2012 07:19 AM

To: Chris Servheen/R6/FWS/DOI@FWS, Henry  
Maddux/R6/FWS/DOI, Bridget Fahey/R6/FWS/DOI, Julie  
Lyke/R6/FWS/DOI

cc

bcc

Subject: Fw: Yellowstone grizzly options for path forward

History:  This message has been replied to.

FYI

**From:** "Ashe, D M" [D\_M\_Ashe@fws.gov]  
**Sent:** 04/10/2012 06:40 PM CST  
**To:** Stephen Guertin  
**Cc:** Gary Frazer; Gregory Siekaniec; R Gould; Michael Bean; Paul Souza; Noreen Walsh; Michael Thabault; Rick Sayers; Gabriela Chavarria  
**Subject:** Re: Yellowstone grizzly options for path forward

Yes to a VTC.

Dan Ashe  
Director, U.S. Fish and Wildlife Service

On Apr 10, 2012, at 2:28 PM, "Guertin, Stephen" <[Stephen\\_Guertin@fws.gov](mailto:Stephen_Guertin@fws.gov)> wrote:

Now that Gary is back we would like to strategize with you some more about the potential paths forward to feed into your decision.

We were able to convince DoJ to appeal Judge Malloy's ruling and won on the point folks were most concerned about – the adequacy of the Yellowstone Conservation Strategy, the plan to oversee the population after delisting. The conundrum we face on the WBP issue is that the bear population has plateaued or reached carrying capacity right about the time the WBP decline became pronounced. Our best scientists think it will take this extra effort to tease the two issues apart, and our gut out here is that if we don't go back to Judge Malloy with evidence that we did some more work it's over. Without trying to do that our concern is the States will claim we have abandoned them and "moved the goal posts" etc.

At the same time we have growing expectations that the Service will move forward to evaluate the status of the NCDE population that is now estimated at over 1000 bears and going strong particularly with the huge FWS / USFS investment in the Crown of the Continent. We are also trying to stabilize the Cabinet – Yaak and Selkirk populations but the real brass ring is to build the public / political support to get back on track for the shelved reintroduction project in the Bitterroot ecosystem over in Idaho.

Chris is scheduled to brief the membership of the Interagency Grizzly Bear Committee during a teleconference on Friday to get feedback from them. I am scheduled to attend next week's Greater Yellowstone Coordinating Committee meeting up in Jackson and am sure to get

feedback from the three regional foresters, NPS leadership and now BLM.

Can we set up a VTC after these two events to share with you feedback from the field and regional levels and strategize on the way forward?

Thanks.

Steve

**From:** Ashe, D M

**Sent:** Tuesday, April 03, 2012 10:58 AM

**To:** Frazer, Gary D

**Cc:** Siekaniec, Gregory; Gould, R W; Bean, Michael; Guertin, Stephen; Souza, Paul; Walsh, Noreen; Thabault, Michael; Sayers, Rick; Chavarria, Gabriela D

**Subject:** RE: Yellowstone grizzly options for path forward

Aren't you supposed to be on a beach, and drinking something with lots of rum in it?

The fault we are trying to remedy is the court's holding that we had not adequately addressed the risk associated with the decline of whitebark pine. It seems strange to me that this would require us to do 18-24 months of further work to synthesize information, and only then, compile a new delisting rule.

Why can't we get Chris Servheen, Mike Runge, along with a team of other superlatives, to help us compile a new delisting rule which explicitly addresses the risk, and uncertainties, associated with WBP decline and the GYSE grizzly population. It seems to me, the judge wasn't saying that we didn't know enough; but rather, we didn't address the risk adequately. Let's address it. And if the answer is that the risk is too great, then so be it, and we leave the bear listed. If we believe the risk is acceptable, then we proceed with delisting.

That's my two cents.

Dan.

**From:** Frazer, Gary D

**Sent:** Monday, April 02, 2012 11:20 PM

**To:** Ashe, D M

**Cc:** Siekaniec, Gregory; Gould, R W; Bean, Michael; Guertin, Stephen; Souza, Paul; Walsh, Noreen; Thabault, Michael; Sayers, Rick

**Subject:** RE: Yellowstone grizzly options for path forward

Dan – I think the right course is the one Chris recommends – do a thorough synthesis of the best available information on the relationship between bears and whitebark pine and act

accordingly. I think this is consistent with the "best available" science standard of the Act, in that it is acting on what is currently available and not waiting for additional years of population data to tease out the factors influencing bear population dynamics.

I can't divorce this decision from the legal risks. As much as we may dislike the situation, we have a District Court that is not giving us deference and a 9<sup>th</sup> Circuit that was not persuaded by our presentation the first time around. If we just go back with the same material and again fail to clear the bar, we're done. And the facts are really tough here. So I think we're better to do more homework before moving again.

Let's see what the full IGBC thinks and then decide how to proceed. -- GDF

**From:** Ashe, D M

**Sent:** Monday, March 19, 2012 1:15 PM

**To:** Frazer, Gary D

**Cc:** Siekaniec, Gregory; Gould, R W; Bean, Michael; Guertin, Stephen; Souza, Paul; Walsh, Noreen; Thabault, Michael; Sayers, Rick

**Subject:** Re: Yellowstone grizzly options for path forward

Gary, I'm not prepared to make a decision. Its fine to brief IGBC on the options and get broader input. I'd like the chance to hear from the other states involved.

And I'd appreciate your thoughts, absent the potential legal liabilities, about what the right course would be.

I may be missing something, but this recommendation seems at odds with the "best available" science standard of ESA. Why wouldn't we look at the available information, assess the uncertainties, and make a recommendation based on the strength of that information?

Dan Ashe

Director, U.S. Fish and Wildlife Service

On Mar 19, 2012, at 7:24 AM, "Frazer, Gary D" <[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)> wrote:

Chris Servheen briefed Steve, me, and others Friday afternoon regarding an updated assessment of options for moving forward with the Yellowstone grizzly delisting. Recall that the 9<sup>th</sup> Circuit remanded the delisting to us because they found that we had not adequately addressed the risk associated with the decline of whitebark pine. The challenge we face is that the Yellowstone grizzly population appears to be at or near its carrying capacity and stabilizing or even slightly declining due to density dependent factors, while at the same time the whitebark pine is declining rapidly due to a variety of factors. We lack the years of data to be able to definitively establish the relationship between whitebark pine and grizzlies.

Chris has been working with a science team to consider out options and has suggested the following three:

1) Move forward now to write a new proposed rule with the information we have declines in WBP and the stabilization of the grizzly population 2002-2011.

**Pros:** Positive partner response with lower probability for state push back due to continued delisting delays. We could maintain the Conservation Strategy commitment by the partner agencies while waiting for the process to proceed with hopes of legal success.

**Cons:** Low probability of legal success. Loosing again on delisting would doom the interagency partnership.

2) Wait 18-24 months to write a new proposed rule and in the interim time period develop a comprehensive synthesis of all the existing data on the relationship between Yellowstone grizzly bear dynamics and health and changes in WBP and other foods. Use this synthesis to inform the decision on a new rule and the quality and scientific depth of a new proposed rule.

**Pros:** This approach would improve the new proposed rule and the probability of legal success. We could maintain the Conservation Strategy commitment by the partner agencies while waiting for the process to proceed with hopes of legal success.

**Cons:** Increased fragility of the patience of the partner agencies with a delay. There is a possibility that the results would indicate grizzly population decline which would make a new proposed rule unlikely.

3) Abandon any hope of delisting due to the uncertainty of the legal system. Manage the population as listed with maximum management flexibility. There would be little concern about maintaining mortality limits since there was no chance of delisting anyway.

**Pros:** No investment in the process of a new proposed rule and the resulting legal complications. Emphasis would shift to the NCDE delisting process.

**Cons:** The interagency partnership implementing the Conservation Strategy would dissolve. States would likely all leave the partnership and perhaps (very likely) the IGBC. The Conservation Strategy would be abandoned by the USFS and NPS as it specifically says that its implementation is tiered to delisted status. The result of the

abandonment of the Conservation Strategy would be an erosion of grizzly habitat because there would no longer be limits on new road development, new site development, and new livestock allotments. Such actions would again be allowed on public lands and only subject to Section 7. Since no individual development would jeopardize the population, all such developments would be allowed and habitat quality would decline. Mortalities would increase since the reason mortalities are limited now is to adhere to the Conservation Strategy demographic criteria. The interagency partnership built to maintain a recovered population would dissolve. Many other cons too numerous to mention.

Chris has discussed with Harv Forsgren, chair of the IGBC and Scott Talbott, WY Game and Fish, and both agree that option 2 is the best path. Scott did express concern about this ability to sell this to his impatient legislators. Option 2 would have a new proposed delisting rule postponed until late 2013/early 2014 time frame.

Steve and I also concur with Chris's recommendation of option 2. He is confident in the USGS scientists who will be working on the comprehensive synthesis will produce a quality product on time.

DOJ is prepared to make another run at the defense of the delisting rule without this additional scientific analysis, but the likelihood of success would be significantly improved if this additional synthesis were part of our determination. And if we did not do this additional work and again failed to defend the delisting in the 9<sup>th</sup> Circuit, we would be in a very bad spot.

There is the chance that the updated population analysis would show the Yellowstone grizzly population not just stabilizing but declining, which would make a delisting decision even more difficult to defend in the absence of perfect knowledge. That's a risk we'll have to accept with option 2.

If we go with option 2, Chris would turn to the conservation strategy and other necessary steps for delisting the bears in the Northern Continental Divide Ecosystem. The Region has the horses to focus on only one grizzly delisting effort at a time.

The plan is to have a conference call with the full IGBC to discuss the options before mid-April. Pls advise if you have any concern with proceeding with option 2. -- GDF

Gary Frazer  
Assistant Director - Endangered Species  
U.S. Fish and Wildlife Service  
Ph (202) 208-4646