

BOZEMAN DAILY CHRONICLE

Ninth Circuit rules to restore protections for Yellowstone grizzlies

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In a win for conservation interests and tribal nations, a panel of federal judges Wednesday upheld a decision to restore grizzly bear protections in the Yellowstone region.

The Ninth Circuit Court of Appeals Wednesday affirmed a 2018 Montana District Court decision that struck down federal efforts to remove Yellowstone grizzlies' "threatened" status under the Endangered Species Act. The delisting in 2017 turned over management of the species to the states surrounding Yellowstone National Park, allowing the states to plan bear hunts.

"The court rightfully rejected the misguided proposal to subject Yellowstone grizzlies to trophy hunting for the first time in 40 years," said Tim Preso, attorney for Earthjustice, in a news release.



In this Sept. 25, 2013 file photo, a grizzly bear cub searches for fallen fruit beneath an apple tree a few miles from the north entrance to Yellowstone National Park in Gardiner. ALAN ROGERS/CASPER STAR-TRIBUNE, VIA AP

"The grizzly is an icon of our remaining wildness at a time when our wilderness is shrinking and our wildlife is under assault."

Earthjustice was the law firm representing several conservation groups that sued the U.S. Fish and Wildlife Service in 2018 for removing Yellowstone-area grizzly protections. Several tribal nations, including the Northern Cheyenne Tribe, were also plaintiffs in the suit.

The U.S. Fish and Wildlife Service did not respond by phone or email to a request for comment.

Opponents of the lawsuit included the states of Montana, Wyoming and Idaho, agricultural and livestock interests, hunting groups and the National Rifle Association.

In 2017, the U.S. Fish and Wildlife Service and the Department of the Interior determined grizzly bear populations within the Yellowstone ecosystem had recovered and could no longer be considered threatened under the Endangered Species Act. The agencies handed over management of the species to the states of Montana, Wyoming and Idaho.

Shortly after the delisting, several tribal nations and conservation groups sued.

In their Wednesday ruling, the three appeals court judges determined Fish and Wildlife didn't thoroughly consider how removing ESA protections for one population of grizzlies might affect populations in other areas within the Lower 48.

The court argued the Fish and Wildlife Service needed to determine whether delisting the species in the Yellowstone region would further threaten the existence of other "remnant" populations in the Lower 48.

The judges also determined that Fish and Wildlife didn't add mechanisms to protect the long-term genetic diversity of grizzly bears, considering the bears in the Yellowstone region are isolated.

In its 2017 decision to delist grizzlies, Fish and Wildlife referenced two studies that suggested the move wouldn't harm the species' short-term genetic diversity. The agency concluded genetic concerns were therefore not a threat.

However, the appeals court judges wrote in Wednesday's opinion this conclusion was "arbitrary and capricious" and "without scientific basis," as the same studies suggest genetic consequences of inbreeding would still occur over longer periods of time.

Judges who wrote Wednesday's opinion also determined that Fish and Wildlife's decision not to require recalibration if states were to change methods for counting Yellowstone grizzly bear populations "could result in an illusory increase in population."

While states haven't changed the methods for counting Yellowstone grizzlies, the Fish and Wildlife Service didn't include in its 2017 Conservation Strategy "a commitment to recalibration." That means that if states switched to a new method for calculating grizzly populations, they wouldn't be required to recalibrate numbers to account for past counting methods, potentially inflating bear numbers.

Judges sided with the district court's decision "in all respects" except one. The appeals court ruled the Fish and Wildlife Service no longer has to conduct a comprehensive review of grizzly bear populations within the entire Lower 48 states.

“The courts have repeatedly slammed the Fish and Wildlife Service for prematurely removing federal protections from grizzly bears,” said Andrea Zaccardi, a senior attorney at the Center for Biological Diversity, in a news release. “I hope the agency will now concentrate on fully recovering these magnificent animals, not stripping them of needed safeguards.”

“The Ninth Circuit’s ruling is very important because the Yellowstone grizzly bear population is expanding but not growing,” said Mike Garrity, executive director for Alliance for the Wild Rockies, in a news release.

“The current situation of isolated populations will lead to inbreeding. Once a population is inbred, it is finished,” Garrity said. “We are thrilled that the Ninth Circuit ruled that the Endangered Species Act requires that species be managed based on science, not politics.”