

Table of Contents

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Committee on Environment
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STATEMENT OF:	PAGE:
THE HONORABLE JOHN BARRASSO, A UNITED STATES SENATOR FROM THE STATE OF WYOMING	3
THE HONORABLE THOMAS R. CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE	7
THE HONORABLE MICHAEL B. ENZI, A UNITED STATES SENATOR FROM THE STATE OF WYOMING	14
THE HONORABLE STEVE DAINES, A UNITED STATES SENATOR FROM THE STATE OF MONTANA	19
THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA	24
CHUCK ROADY, VICE PRESIDENT AND GENERAL MANAGER, F.H. STOLTZE LAND AND LUMBER	27
PATRICK CRANK, VICE PRESIDENT, WYOMING GAME AND FISH COMMISSION, AND ATTORNEY, CRANK LEGAL GROUP, P.C.	34
JOHN LESHY, DISTINGUISHED PROFESSOR EMERITUS, UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW	40

SUCCESSFUL STATE STEWARDSHIP: A LEGISLATIVE HEARING TO EXAMINE
S. 614, THE GRIZZLY BEAR STATE MANAGEMENT ACT

Wednesday, September 9, 2020

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee, met, pursuant to notice, at 10:05 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Cardin, Gillibrand, Van Hollen, Inhofe, Cramer, Braun, Boozman, and Ernst.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

Today, we will consider S. 614, the Grizzly Bear State Management Act of 2019. Senator Enzi introduced this legislation at the beginning of the 116th Congress, and Senator Daines, and Risch, and Crapo and I are cosponsors.

The Grizzly Bear State Management Act delists the grizzly bear in the Greater Yellowstone Ecosystem from the list of threatened species under the Endangered Species Act. It directs the Secretary of the Interior to reissue the final rule delisting the grizzly bear that was published on June 30th, 2017. It protects the reissuance of the final rule from judicial review.

The grizzly bear in the Greater Yellowstone Ecosystem is fully recovered. End of story. It is one of the greatest recovery successes since the Endangered Species Act was enacted in 1973. It is a conservation triumph led by the people of Wyoming, Montana, and Idaho. It is a triumph that all Americans should celebrate.

President Bush, President Obama, and President Trump agree. Under each of their administrations, the U.S. Fish and Wildlife Service determined that the grizzly bear is fully recovered and

should be delisted. Wyoming, Montana, and Idaho first achieved all the grizzly bear's recovery objectives in 1997, 23 years ago. By 2003, they had met all of its recovery objectives for six consecutive years, the standard required by the 1993 Grizzly Bear Recovery Plan. The States have met or exceeded all of the bear's recovery objectives ever since.

In 2007, the Bush Administration recognized the grizzly bear's recovery when it published the final rule delisting the species. That rule was overturned by a liberal federal judge based on an environmental group's claim that a particular food source for the grizzly bear had not been adequately considered during the rulemaking. The importance of that food source was later debunked in a scientific review by the Interagency Grizzly Bear Committee.

In 2016, the Obama Administration recognized the grizzly bear's full recovery when it published a proposed rule delisting the grizzly bear. It concluded: "The Yellowstone grizzly bear population has rebounded from as few as 136 bears back in 1995 to an estimated 700 or more today. Grizzly bears have more than doubled their range since the mid-1970s and now occupy more than 22,500 square miles of the ecosystem." This is the Obama Administration saying this.

They went on to say: "Stable population numbers for grizzly bears for more than a decade also indicate that the Greater

Yellowstone Ecosystem is at or near its carrying capacity for the bears.” This from the Obama Administration, 2016.

In 2017, the Trump Administration agreed with the Obama Administration’s findings. It finalized President Obama’s proposed rule delisting the grizzly bear. It also credited the States of Wyoming, Montana, and Idaho with adopting necessary post-delisting plans and regulations that ensured that the species remained recovered under State management.

Yet again, a liberal federal judge overturned the delisting rule. This time, the judge agreed with a claim by environmental groups of other plaintiffs that even more studies were required.

The grizzly bear in the Greater Yellowstone Ecosystem is one of the most studied animals in the world. Since 1980, 40 years ago, the Wyoming Game and Fish Department has spent more than \$50 million in grizzly bear recovery. The States of Montana and Idaho and stakeholders throughout the Greater Yellowstone Ecosystem have invested millions more.

This decades-long commitment of time and resources cannot continue if the States’ good work is simply ignored by liberal courts. As the grizzly bear has rebounded, conflicts with humans have increased. Members of Wyoming’s Upper Green River Cattle Association have lost over 1,000 head of cattle since 1995. In 2018, the Wyoming Game and Fish Department had to capture 53 individual grizzly bears to prevent or resolve

conflicts. These bears not only mauled livestock, but tragically killed a Wyoming elk hunting guide and injured his client.

This year, grizzly bear attacks injuring humans are happening at a record rate. By July 1st, seven people were attacked and injured by grizzly bears in the Greater Yellowstone Ecosystem, more than the first six months of any other year since data began being collected in 1992. This is a higher total than six of the previous ten years, an unsettling trend, since over 80 percent of the conflicts generally occur in the second half of the year.

The Grizzly Bear State Management Act will help address this by giving back to States the authority they need and have earned to manage the grizzly bear. It will recognize the full recovery of the grizzly bear and delist it once and for all. It will honor the conservation investment of people throughout Wyoming, Montana, and Idaho, and improve the public safety of our communities.

I would now like to turn to Ranking Member Carper for his opening statement.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES
SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thanks, Mr. Chairman.

I want to welcome our witnesses here, our colleagues among them, and begin by saying that I share your concerns about this. There are a record number of human-grizzly interactions that have resulted in serious injury. First and foremost, let me just say that I hope and pray that everyone involved in these frightening encounters is either on the mend or fully recovered.

Over the course of the Coronavirus pandemic, more people have been seeking opportunities to enjoy the great outdoors and visit our national parks. My wife and I visited Delaware's national park over the weekend. It stretches from one end of our State to the other.

Yellowstone is no exception; in fact, nearly one million people visited Yellowstone Park just this past July alone. One million people this past July alone, a 2 percent rise in visitors compared to July of 2019. While this rise in visitors may have contributed to the increase in human-grizzly conflicts in Yellowstone Park, experts suggest that there is no straightforward explanation for the record number of encounters. Consequently, there is likely no straightforward solution.

As our Chairman knows, I believe, in the words of our mutual friend Rob Wallace, that bipartisan solutions are lasting

solutions, and that is why I always try to reach across the aisle in this committee and others to find common ground on issues like this one. For instance, I am proud of the bipartisan legislation to authorize a new Theodore Roosevelt Genius Prize for reducing human-predator conflict, which is included in America's Conservation Enhancement Act, which we call the ACE Act. The ACE Act also authorizes a new program to compensate farmers and ranchers for losses caused by federally protected predatory species, which would include grizzly bears.

Over the last several weeks, our staffs have collaborated with our House colleagues on the ACE Act. My hope is that we will be able to get that bill on the President's desk for his signature sometime this month, and if the ACE Act becomes law, it could help to spur innovation in preventing human-grizzly conflicts and address farmers' and ranchers' concerns regarding grizzly bears.

Having said that, unfortunately, I am not convinced yet that the legislation we are examining today, the Grizzly Bear State Management Act, is the right way or the best way to resolve the many years of debate over whether or not the Greater Yellowstone Ecosystem grizzly bear continues to warrant Endangered Species Act protections.

As the senior Senator for the State of Delaware, I am privileged to serve, and I recognize that grizzly bear

management presents unique challenges that much of our Country may not understand. I commend the States, the local governments, the Tribes, and the stakeholders that have faced those challenges and worked diligently over many years to help recover this iconic species.

I believe that many people across America would agree that the Greater Yellowstone Ecosystem grizzly bear is an Endangered Species Act success story in the making. Less than 140 bears were thought to be alive in the ecosystem when this specie was listed as endangered in 1975. Today, experts estimate that there are now hundreds living, I think the Chairman said as many as 700 or more in the Greater Yellowstone Ecosystem alone.

With that said, I do not believe that Congress should intervene in the final determination on the recovery of this specie, or any species, for that matter, at this time.

Judicial review of agency decisions is central to ensuring that the Endangered Species Act is guided by science and informed by public input. For example, in celebrating the recovery of a species, such as the bald eagle or the Delmarva fox squirrel in my own home State, we often look back and reflect on the work that was done to bring that species back from the brink of extinction.

We should also look ahead and take steps to ensure that these species will not require the Endangered Species Act

protections again in the future. A delisting rule should consider future threats against a species, like a lack of genetic diversity or climate change, which is already impacting habitats, migration patterns, and food supplies for some species. Judicial review can also help ensure the Federal Government takes future impacts to species into account, and it has done just that in the case of the grizzly bear.

It is also important to note here that the Endangered Species Act protections are only required when State management to protect and recover imperiled species has failed. I have heard from any number of stakeholders who have ongoing concerns about the Greater Yellowstone Ecosystem grizzly bear's ability to fully recover and thrive under some State management plans.

Before closing, I just want to take a moment to elevate the voices of the Tribes who oppose the Grizzly Bear State Management Act. These Tribes have a longstanding, treasured relationship with this particular resource, and their voices deserve to be heard.

While I cannot support the legislation we are considering today, again, I hope our committee will continue to work in a bipartisan way, as we have successfully done in the past, to address human-wildlife conflicts and support species conservation.

Mr. Chairman, those are my prepared remarks. I just want

to conclude by noting that the prime sponsor of the legislation before us is our colleague, Mike Enzi, and you have known him forever, former mayor of Gillette, and I have been privileged to serve with him now for almost 20 years.

I remember early in my tenure in the Senate, when we were in the majority, and I was actually presiding over the Senate at the time. I remember Mike Enzi on the Floor speaking one day, and he was talking about the 80/20 rule.

When he finished speaking, I gave a note to one of our pages, and I asked him to come up to the chair where I was sitting and explain to me what the 80/20 rule was, and he did. He used as an example his partnership with Ted Kennedy, very liberal, one of the most liberal Democrats in the Senate, and partnership with Mike Enzi on the committee, senior Democrat, senior Republican, Mike Enzi, one of the more conservative members of the Senate.

I said, what is the 80/20 rule, Mike? And he said, Ted and I agree on 80 percent of the stuff, and we disagree on about 20 percent. What we decided to do is focus on the 80 percent where we agree. I have never forgotten those words.

Today as we consider this legislation, he and Diana will be packing up and heading home for good in a couple of months. But I just want to say how much, as a colleague, I appreciate him, and the opportunity to serve with him on a number of committees.

I wish them well. In the meantime, and he has work to do, and part of that is today.

Thank you so much.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you, Senator Carper.

As you said, Senator Enzi did introduce S. 614, the Grizzly Bear State Management Act, and I now would like to give Senator Enzi an opportunity to make some remarks.

STATEMENT OF THE HONORABLE MICHAEL B. ENZI, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Enzi. Thank you, Mr. Chairman. Thank you for holding this hearing. Thank you for having me here today to discuss this issue that is incredibly important to Wyoming, should be important to this committee, and I know it is important to the West in general.

Wyoming is home to ranchers, stewards of the land, sportsmen, and many others who have worked hard to ensure that the grizzly bears in the Greater Yellowstone Ecosystem continue to thrive while also guaranteeing they are properly managed like any other species. Proper management of grizzly bears is critical to safeguard the species.

It is also critical to protect the species they disproportionately prey on, and people's livelihoods that can fall victim to grizzly bear attacks. Wildlife experts and federal officials agree that the grizzly bears in Greater Yellowstone Ecosystem have been fully recovered for years. Senseless litigation still continues to hinder the effective State management and protection of the species.

To fix this, I introduced the Grizzly Bear State Management Act. My bill would direct the Department of Interior to reissue its 2017 decision to delist the grizzly bear in the Greater Yellowstone Ecosystem and prohibit the further judicial review

of this decision.

As the grizzly bear population has increased in Wyoming, so has the danger these animals pose to livestock, property, and to humans. That is why I believe the authority to manage the species needs to be turned over to the States. I have often found that States are better suited to address these kinds of issues because they are more familiar with the unique needs of their own communities and ecosystem.

We cannot let this be another decision made by out-of-touch courts, carefully chosen courts, rather than science, common sense, and States that have the ability to effectively manage and protect the species, as well as everything that grizzly bears interact with. When these species are listed, the listing should have a recovery plan, complete with numbers or when recovery has been achieved. Had that been done on this, it would have been over a long time ago.

The bar keeps being lifted, and States have some expertise in managing wildlife. There are some court decisions that say that the wildlife actually belongs to the States, at least to Wyoming, that has been tested in the courts a number of times, and I am very proud of my State and our ability to manage animals.

Incidentally, we are the only State that has ever recovered an extinct species. There was a rancher who discovered black-

footed ferrets on his property. Now, why he ever reported that, I am sure he wondered, but he did report it. Those were trapped, put in a special facility that Wyoming built in the Seville Canyon, and they were used to get the best crossbreeding for the strongest species.

I am pleased to report that those have been planted out in the wild again, put in prairie dog towns, which is what their main food is. So an extinct species has been brought back.

Wyoming worked to make sure that these tourist attractions, these animals, the grizzly bear, are an ongoing species, and ongoing efforts to delist the grizzly bear have been continuously held hostage by litigation.

That isn't the way to manage wildlife. These decisions to keep the grizzly bear on the endangered species list are concerning, to say the least. They are based on everything but concrete scientific evidence, including healthy recovery numbers that show the grizzly bear is thriving in the Greater Yellowstone Ecosystem.

In reality, the States have been providing most of the management of the species at great cost to the sportsmen, landowners, and citizens during the non-stop litigation. However, without sustainable delisting, the State lacks the decision-making authority that is essential for effective management and protection of the species. The Grizzly Bear

State Management Act is a better way forward for management of these magnificent animals that makes sense for States, makes sense for local communities, and makes sense for the species itself.

I look forward to the day when grizzlies in the Greater Yellowstone Ecosystem are delisted and being effectively managed and protected by the efforts of States like Wyoming.

Thank you.

[The prepared statement of Senator Enzi follows:]

Senator Barrasso. Thank you so much, Senator Enzi.

Senator Daines, you are a cosponsor of the legislation, and I want to thank you for joining us in the hearing room today, and ask you for your comments.

STATEMENT OF THE HONORABLE STEVE DAINES, A UNITED STATES SENATOR
FROM THE STATE OF MONTANA

Senator Daines. Chairman Barrasso, thank you, and also thanks to Ranking Member Carper, and thank you for the opportunity to provide testimony on the Grizzly Bear State Management Act.

For decades, Montana and Wyoming collaborated on the conservation of the grizzly bear, which led to the successful recovery of the bear in the Greater Yellowstone Ecosystem. I am proud to continue that partnership today as we fight to restore State management of this species.

Let me begin by saying the recovery of the grizzly bear in the Greater Yellowstone Ecosystem is a monumental conservation success story. The grizzly bear population has rebounded from approximately 136 bears in 1975 to over 700 bears today. I remember the days, spending a lot of time in the back country as a kid growing up, you rarely ever saw a grizzly bear, back in the 1970s, because there weren't that many of them.

Today, they are everywhere. Just this spring, my son and I ran into a big boar as we were on horseback around Southwest Montana. Seven hundred bears today is well over the carrying capacity and the minimum population that experts believe are needed to preserve the species.

But instead of celebrating the success, the courts have

once again politicized the issue and moved the goalpost for species recovery, replacing wildlife biologist and grizzly bear specialist expertise with their own political and philosophical preferences. During this time, the grizzly bear range has more than doubled.

This means that bears are showing up in places that they haven't seen in decades, which is increasing the rate and risk of human and livestock conflict. Livestock loss to predators has skyrocketed, and the Montana Livestock Loss Compensation Fund is struggling to keep pace. Just last year, 51 livestock fatalities from grizzly bears occurred within the Greater Yellowstone Ecosystem, and human conflicts also are becoming commonplace.

Just this last weekend, a 69-year-old man was mauled by a grizzly bear while hunting near Flat Top Mountain near Big Sky. It appears increasingly unlikely that a high-visibility iconic species like the grizzly bear could ever be removed from the endangered species list due to this politicized, divisive rhetoric. Despite the extensive resources, time, and expertise Montana has devoted to the grizzly bear, the State is being stopped from assuming management responsibility.

We must ask ourselves how situations like this will dissuade future wildlife conservation efforts as States, landowners, and other partners know their efforts may be futile.

The constant litigation undermines the Endangered Species Act by eliminating this key incentive to conservation.

That is why I am a proud cosponsor of the Grizzly Bear State Management Act. This bill reissues the science-based decision to delist the grizzly bear in the Greater Yellowstone Ecosystem and prevents future obstruction and uncertainty for bear management.

Opponents of this bill will lead you to believe that the grizzly bear won't receive any protections when they are delisted. That is flat-out false. Nothing could be further from the truth. No one cares more about Montana wildlife than Montanans.

We have the expertise, the resources, and plans in place to assume management of a healthy grizzly bear population and stand ready to take on that responsibility, which is why later today, I intend on sending a letter to Director Skipwith, inviting her to Montana this fall to discuss grizzly bear management across our State.

Wildlife management should be determined by science, not a court order. The science has long proven that the grizzly bear population in the Greater Yellowstone Ecosystem has fully recovered. Both Montanans and bears suffer as we await action. Delisting the grizzly bear is in the best interest of our communities in terms of public safety, the ecosystem, wildlife,

and the grizzly bear itself. Montana has proven it can conserve and manage this species, and it is time to return that management back to the State.

Before I conclude, I would like to take a minute to welcome and introduce a fellow Montanan and a good friend, Mr. Chuck Roady. Chuck is the vice president and general manager of F.H. Stoltze Land and Lumber Company of Columbia Falls, and he is president of the Federal Forest Resource Coalition. He also serves on the Montana Grizzly Bear Advisory Council, and he has been working on this issue for 44 years.

I am most grateful for his work and for his willingness to leave beautiful Montana and come back to Washington, D.C. to testify today. Chuck, I look forward to hearing more of your expertise, collaborating on grizzly bear conservation, and how the unchecked population growth has affected your operations.

Chuck, the floor is yours.

[The prepared statement of Senator Daines follows:]

Senator Barrasso. Before we do that, if it is okay with you, Senator Daines, Senator Inhofe has a previous commitment he has to get to.

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR
FROM THE STATE OF OKLAHOMA

Senator Inhofe. I will make this very, very brief, but it will conclude with a question to Commissioner Crank, though it has equal application to the grizzly bear, because I am going to talk about another endangered species.

Back in 1989, at that time, I was in the House of Representatives, and at that time, the American burying beetle was listed as an endangered species. I was in the House at that time, and when this happened, you stop and think about the fact that it is not quite as big as a grizzly bear, you don't know where it is. Any home builder, any rancher, any farmer, anyone else who is out there trying or exploring for oil and gas, anything else, that was just devastating to them.

So today, they have made a resurgence, not that people really care about it, the American burying beetle, and so it no longer warrants listing. We have been trying to get it off the same as you guys that we just heard from, have been working on their endangered species problem.

So I was very gratified that President Trump's Fish and Wildlife recently took actions to downgrade it to threatened. It actually should be just reversed, but nonetheless, this is going to be very, very helpful.

Now, the thing that Senator Enzi was talking about, I think

is very significant here, because with over 1,650 species have been listed, only 47 have been delisted. That is 2 two percent. There is something wrong with this, and it has not been working.

So the question I have for Commissioner Crank is, will you share why it is important for series to be taken, for a species to be taken off endangered species lists once it has made a recovery? Secondly, will you speak to the role of the States and the private partners, and what their role is that they play in conserving and recovering at-risk species?

Senator Barrasso. And since Commissioner Crank hasn't had a chance to testify yet --

Senator Inhofe. Why don't we do this: let's wait and have him address that during his testimony, and in questions afterwards.

Senator Barrasso. Okay, thank you, but I know you have a commitment as Chairman of the Armed Services Committee. But we appreciate your being here and sharing your thoughts, and asking the questions, which we will then allow Commissioner Crank to address. So thanks so much, Senator Inhofe.

We are now going to hear from our witnesses. We have Pat Crank, who is the senior partner at Crank Legal Group, who is joining us remotely from Thermopolis, Wyoming, and I will more formally introduce Mr. Crank in a minute. We have Chuck Roady, who is the vice president and general manager of F.H. Stoltze

Land and Lumber, who is here with us in the hearing room and has already been introduced by Senator Daines. And we have John Leshy, who is the distinguished professor emeritus at the University of California, Hastings College of Law, who is joining us remotely from San Francisco, California.

I want to remind the witnesses that your full testimony will be made part of the official hearing, so please keep your statements to five minutes, so that we may have time for questions. I look forward to hearing your testimony.

Since Senator Daines is still here, and, I know looking forward to hearing from Mr. Roady, perhaps we could just switch the order of the testimony and we could lead with our witness from Montana, and then go to Mr. Crank, and then to John Leshy.

So if I could ask you, Mr. Roady, to please share your thoughts with us at this time.

STATEMENT OF CHUCK ROADY, VICE PRESIDENT AND GENERAL MANAGER,
F.H. STOLTZE LAND AND LUMBER

Mr. Roady. Good morning. My name is Chuck Roady, and I am the Vice President and General Manager of F.H. Stoltze Land and Lumber Company. We are the oldest private, family-owned forest products manufacturer and timberland owner in Montana.

I am a natural resource manager by education; I have B.S. in forest management from the University of Idaho, and I have 44 years of experience working in the forest products industry in the Western U.S. During the course of my career, I have served as a leader on multiple boards all related to the management of natural resources and wildlife. Those boards include two terms on the Softwood Lumber Board, ten years on the board of the Rocky Mountain Elk Foundation, the last two as chairman.

I was appointed by Idaho Governor Batt in 1995 as the first private, individual, non-government member to the Interagency Grizzly Bear Committee, and I am currently Chairman of the Federal Forest Resource Coalition, and was appointed to the 2019 Montana Governor Bullock's Grizzly Bear Advisory Committee.

The subject of grizzly bear management is an emotionally charged issue, especially in the States of Idaho, Montana, and Wyoming that encompass the Greater Yellowstone Ecosystem. Everyone has their own opinion on how they believe grizzly bears should be managed. Much of that opinion is based on where you

live, if you are a rancher, if you are a farmer, a timberland owner, a sportsman, or an outfitter, or just a recreational user of our federal lands.

As a natural resource manager of private lands and purchaser of government contracts, I have to deal with the balance of managing grizzly bears and other wildlife species with the other uses on our lands and resources. That management balance is a difficult line to walk, and always controversial, but has taught me and convinced me beyond any doubt that grizzly bears must be managed, just like all other wildlife species.

There is absolutely no question in my mind that the grizzly bear in the Yellowstone Ecosystem deserves and needs to be delisted from the endangered species list, and the sooner the better. I adamantly disagree with the decisions of the Federal District Court, and more recently, that of the Ninth Circuit Court in keeping the bear listed under the ESA. This is another sad case of judicial review by philosophically biased judges not heeding the work of years of research and recommendations by our trained biologists.

We as a society and citizens of the U.S. and those respective States of the GYE need to recognize and celebrate the successful implementation of the ESA and the work of these hundreds of experts to achieve that success. The litigation halting the delisting process in the GYE is having a negative

implication on the Northern Continental Divide Ecosystem in central and northern Montana, as well. The NCDE also needs to be delisting the bears. It has an incredibly high number of grizzlies and an ever-expanding population far beyond the recovery areas.

We must enthusiastically illustrate to the American people that the efforts and the work of the agency biologists, our land managers, the ranchers, the wildlife groups, and the sportsmen have all culminated in a success story of recovering the grizzly bears in the GYE. Both for the benefits of humans and our society and the grizzly bear, it needs to be delisted and managed by the States and follow the North American Wildlife Model.

The delisting process and the handing over of the management of species to the States does not happen in a vacuum. The States have a significant number of experienced biologists and wildlife managers at their disposal to manage grizzly bears and the other large predator species. The success story of management following delisting is demonstrated as a classic example in the gray wolf. We have more wolves today in far more habitats than when it was delisted, all under now management of the State.

I have worked, hiked, camped, hunted for many years in Wyoming, Idaho, Montana, and Alaska, and I can tell you there

are very few experiences more intimidating than that of a confrontation with a grizzly bear when you are walking through the forest or thick brush.

I can also attest without question there is generally a very distinctive difference in the reaction of bears and other predators in an area where hunting is an integral part of the management of wildlife. I have been very fortunate over the years to have not had a bad experience with a grizzly bear that resulted in anything more than having the crap scared out of me and having my plans for the entire day altered.

In my experience, those bears that are regularly accustomed to being around humans without a hunting component, such as in Yellowstone and Glacier Parks, behave very differently than bears that are in areas where they are subjected to hunting. A closely regulated and continuously monitored hunting season for grizzly bears has proven to be a very manageable tool.

I worry every single day about the safety of our foresters and the contractors who work for my company on a regular basis while they are out in the forest, which is effectively now all grizzly bear habitat. I am equally concerned for the safety and the liability for the members of the general public who recreate on our lands: the hunters, the outfitters, the berry-pickers, the firewood, the list goes on.

I am not naive enough for a second to believe if we delist

the grizzly bear, that these interactions will be alleviated. But I do believe that if we delist the grizzly bear, that these interactions will be managed and should be greatly reduced in number. Implementing a more hands-on management by State predator managers will allow a regulated hunting season and most certainly would help mitigate and provide more opportunities to avoid many of these conflicts.

The farmers and ranchers who live and work in these livestock areas where grizzly bears roam and continue to expand their range suffer tremendous economic losses due to depredation from grizzly bears. Hearing the stories from the ranchers who participated with me on the Montana Grizzly Bear Advisory Council was quite real and definitely shocking.

The concerns of these landowners range from losing 25 percent of their current year of calf or lamb crop and having the grizzlies trample into their grain fields, eat out of their grain storage bins, and even several families that were afraid to let their kids play outside.

Senator Barrasso. Could I ask you to kind of summarize now, since you are well over the time?

Mr. Roady. Yes. The United States needs to delist the grizzly bear and recognize our success in recovering the species, while managing the other wildlife species. We will gain far greater support for the provisions of the Endangered

Species Act from those of us that reside there and make our living there and raise our families there, as well as the other areas in the West where the grizzly bears roam.

We, the residents, live, work, and play here because we like it here. Grizzly bears are part of that equation. They appeal to us, but they must be managed in a reasonable and prudent manner. The first step is delisting the species.

Thanks.

[The prepared statement of Mr. Roady follows:]

Senator Barrasso. Well, thanks so much for your very thoughtful and passionate testimony. We look forward to having a chance to ask questions in a few moments.

We would now like to hear from additional witnesses who are here today. I want to introduce Pat Crank. He is joining us from Thermopolis today. He is from Cheyenne, Wyoming, and spent a lot of time in Casper, as well. He is a senior partner with Crank Legal Group in Cheyenne.

He has been a commissioner on the Wyoming Game and Fish Commission since 2014. He has also served as Wyoming Attorney General from 2002 to 2007 under then Democrat governor, Dave Freudenthal. I am so happy to have him joining us today. He received both his undergraduate degree and his law degree from the University of Wyoming.

It is a privilege to welcome such a distinguished witness as Mr. Crank before the Environment and Public Works Committee today. Pat, thanks so much for joining us from Thermopolis, and I understand that a Game and Fish meeting is occurring there today, which you are attending and have stepped out of a meeting to join us at this hearing.

STATEMENT OF PATRICK CRANK, VICE PRESIDENT, WYOMING GAME AND FISH COMMISSION, AND ATTORNEY, CRANK LEGAL GROUP, P.C.

Mr. Crank. Thank you. Good morning, Chairman Barrasso, Ranking Member Carper, members of the Senate Environment and Public Works Committee, and Senator Enzi.

Thank you for the opportunity to offer my perspective today on the stunning and amazing recovery of the Yellowstone Grizzly Bears, the significant failures that have occurred with regard to judicial review of the delisting decisions made by the Fish and Wildlife Service, the significant erosion of public support that occurs when a species has been recovered and then the courts block the removal of that species from the endangered species list, and to offer my support for Senate Bill 614.

My testimony is based on having served on the Game and Fish Commission for approximately five and a half years. It is based on my experience as the Wyoming Attorney General for five-plus years. It is based on my experience as a lifetime sportsman and lifetime resident of Wyoming, and 35 years of legal practice.

The grizzly bears, in 1972, we had approximately 100 bears left in the Greater Yellowstone Ecosystem. By 2020, we have a very conservative estimate of at least 700 to 800 bears. I think you would be hard-pressed to find any scientist involved with grizzly bear recovery that would disagree with the statement that we likely have 1,000 to 1,200 bears in the

Greater Yellowstone Ecosystem.

We know more about this species than any other species of wildlife on the face of the Earth. They have been intimately and exquisitely studied since being placed on the endangered species list in the 1970s. The world's best large carnivore biologists have studied and managed and recovered this species, and it is an amazing success story under the ESA.

This year, in Wyoming, we surpassed the 1,000th bear that we have captured and fitted with radio-telemetry equipment. We are closely, well, in the very near future, we will have over one million GPS monitor coordinates from grizzly bears that are collared with GPS monitor collars. In one 2.5-hour flight in 2020, our personnel observed 82 grizzly bears.

As of 2019, grizzly bears occupy over 42,000 square miles. That is an area larger than the State of West Virginia. As of 2020, grizzly bears occupy virtually every square inch of suitable habitat in the Greater Yellowstone Ecosystem. Grizzly bears have exceeded all federally mandated and biologically determined recovery criteria since at least 2003, and in reality, clear back to 1997, as mentioned by Chairman Barrasso.

The ESA is an amazing piece of legislation, and it has resulted in this incredible success story where we recovered an iconic and amazing wildlife species to levels far surpassing recovery criteria.

The premise of the ESA is quite simple: if an animal is suffering, they are placed on the Endangered Species Act list, given federal protection, and then State and federal wildlife managers study that species, figure out what makes them tick, what they need to survive, and what recovery criteria should be set to ensure they remain in the environment for the foreseeable future.

Once that species reaches recovery, the federal and State wildlife experts, via the Fish and Wildlife Service, and the delisting process propose a rule delisting the species and setting forth what will occur, what State management will occur. Those are written plans. They are quite precise, and the species should then be removed from the list.

After that, State wildlife managers, who are truly the experts on managing these species, because they are the ones that day in and day out, do the work to recover the species, understand the species, and ensure they exist in perpetuity. Environmental groups, unfortunately, file endless lawsuits to prevent delisting at all costs.

The Yellowstone grizzly bears are a great example. No one can argue that we have met recovery criteria, that we have a robust population of grizzly bears, that this species will exist for the foreseeable future under State management. These lawsuits that they file generate millions of dollars in

contributions and membership contributions.

Everyone, environmentalists, hunters, fishermen, sportsmen, are passionate about wildlife. That passion combined with frequent misinformation regarding what will happen once a species is removed from the endangered species list generates millions of dollars of revenue for environmental groups. Then if they are successful in Endangered Species Act litigation, all their attorneys' fees get paid.

I have been informed that, with regard to the most recent action with regard to the 2017 delisting rule which was struck down by a judge in Montana, the environmental groups have already requested over \$1.4 million dollars in attorneys' fees with regard to that litigation.

The tragic thing is, under the Endangered Species Act, environmental groups can form shop and pick the judge that they believe will be most likely to strike down a delisting rule. I have been a litigator, and I spend the bulk of my time doing personal injury cases. I would love to be able to select the judge that will hear my client's case.

Under the Endangered Species Act, environmental groups get to form shop, pick the judge that they think will be most likely to be politically unbiased in their favor and strike down the rule. These judges and courts, unfortunately, who are, I believe, in direct violation of the Endangered Species Act,

ignore the findings of the experts.

Those experts within the Fish and Wildlife Service, within State wildlife management agencies, and the judges substitute their political decisions with regard to delisting proposals for the actual experts who understand and, in the case of Yellowstone grizzlies, have managed and recovered this species for over the last 50 years.

Senator Barrasso. Since we have another witness to testify, we want to have time for questions. Pat, if you can just very quickly make any final statement. We need to get to our third witness and then have time for questions.

Mr. Crank. Thank you, Mr. Chairman.

I would just sum up that, better to remove a species once it is been recovered seriously erodes public support for that species, and it is a tragedy with regard to this species that endless litigation and federal courts substituting their political and uneducated judgement for the scientists' have prevented statewide wildlife biologists and experts from managing grizzly bears in the States of Wyoming, Montana, and Idaho.

Thank you.

[The prepared statement of Mr. Crank follows:]

Senator Barrasso. Thank you, and we will be back with questions in a moment.

We are going to turn to Mr. John Leshy, who is the distinguished professor emeritus at the University of California, Hastings College of Law, and he is joining us remotely from San Francisco, California.

Professor Leshy, please proceed.

STATEMENT OF JOHN LESHY, DISTINGUISHED PROFESSOR EMERITUS,
UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW

Mr. Leshy. Thank you very much, Mr. Chairman, Ranking Member Carper, members of the committee, and Senator Enzi. I am Professor Emeritus at the University of California, Hastings College of the Law.

I appreciate your invitation to testify today. The ESA is a cornerstone of national policy protecting the web of life on Earth, our creation. Congress enacted it essentially in its current form nearly a half a century ago with broad bipartisan support; indeed, almost no dissenting votes.

President Nixon said when he signed it into law, that "Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our Country has been blessed. It forms a vital part of the heritage we all share as Americans."

One component Congress took pains to build into the act was that courts should review agency decisions implementing it. Indeed, Congress affirmatively encouraged this judicial review by authorizing what the act calls citizen suits, making it clear that the courts have an important role to play to ensure that Congress's intent is fairly carried out by the Executive Branch.

I have worked on ESA issues for more than four decades, including nearly a dozen years in the Interior Department, where

I had some responsibility for overseeing its implementation. I know firsthand that judicial review can be a pain in the neck to agencies who are usually trying their best to implement the act, often in challenging circumstances.

I know the frustration that comes when a court rules, in effect, you didn't follow the correct procedure, or, you considered something that you shouldn't have, or, you failed to consider something that you should have, and , therefore we are setting aside your action and sending the matter back to you. That frustration can be particularly acute where, as here, as many have noted, the ESA has been producing benefits. Indeed, the Greater Yellowstone grizzly is an ESA success story in progress.

Judicial review, let me emphasize, is a policy-neutral tool. It is available to all interests, those who are regulated under the act, as well as those who advocate for preserving the species. My considered judgement, based on my long experience in environmental regulation, is that courts generally have played a constructive role in the act's implementation, and that the benefits of judicial review clearly outweigh its costs. Court decisions have helped clarify ambiguities and reconcile disparate provisions in this complex statute, have promoted fair processes, including ensuring that all affected interests are heard, and have curbed agency excesses, all the while working to

enforce and fulfill the intent of Congress in enacting the statute in the first place.

Given the importance that Congress has attached to judicial review, it seems to me that rarely, if ever, is there justification for doing away with it, as S. 614 proposes to do. Short-circuiting judicial review can have real costs. I have given one example in my written statement involving the Trans-Alaska Pipeline. There are many others. As it shows, judicial review of agency action can and often does produce better long-run outcomes for all interests.

Finally, let me underscore that even assuming there is strong sentiment in the Congress that the Greater Yellowstone Ecosystem grizzly ought to be delisted, it is not at all clear that Congressional action is needed to achieve that result. Although I take no position on whether the grizzly should be delisted here, it appears to me that the Fish and Wildlife Service could readily, even easily, correct the three defects that the Ninth Circuit Court of Appeals identified in its decision in July. I have explained why in my written statement.

It also seems obvious that whether or not the grizzly is delisted, the need will remain for both the Fish and Wildlife Service and the pertinent States to carefully manage the bears for the sake of all humans and bears alike.

Again, I appreciate the opportunity to testify, and am

happy to answer any questions you might have.

[The prepared statement of Mr. Leshy follows:]

Senator Barrasso. Well, we appreciate your testimony, and thank you for your thoughts on this.

Let's proceed to a series of questions. I will start with a question for Commissioner Crank. If the Grizzly Bear State Management Act is enacted, and the grizzly bear population subsequently, say, fails to meet recovery criteria, what mechanisms would remain in place to provide potential remedies for the recovery of the species?

Mr. Crank. Chairman Barrasso, the biggest remedy is that any time a species is delisted, the Fish and Wildlife Service has at least a five-year monitoring period to ensure that the delisted species remains viable and that the plan to delist the species is working. So ultimately, if the grizzly bear was delisted and the population failed, the grizzly bear could go right back on the endangered species list.

I think most importantly is the fact that Wyoming, as you mentioned, has spent \$50 million of sportsmen-generated fees to understand, recover, and know what is important to a grizzly bear population. So you have the world's best wildlife managers in Wyoming, Montana, and Idaho that will continue to monitor, protect, and preserve this iconic species.

The idea that any State management, wildlife management agency would take steps that would allow a recovered species to go back on the list is just kind of preposterous to me. You

would not want to ask to have cancer twice, Chairman Barrasso, in the vernacular.

Senator Barrasso. So, following up with that answer, I think Wyoming has a very impressive track record when it comes to wildlife conservation, and not just with grizzly bears. Could you maybe discuss conservation status of other major carnivores in Wyoming? Because this is not just a one-species situation.

Mr. Crank. Chairman Barrasso, I can. The best example I can give you would be the management of gray wolves after they were removed from the endangered species list, after a tortuous path, consistent with what we have experienced with regard to attempts to delist the grizzly bear. We were ultimately given management authority.

We have been managing those for over five years, now. We have maintained the population objectives and our conservation strategies. Gray wolves, having been removed from the Endangered Species Act, are doing quite well under our management authority, and will continue to do quite well into the foreseeable future.

Senator Barrasso. Thank you.

Mr. Roady, I have a question for you, in terms of stakeholders whose operations bring them into frequent contact with wildlife are often those most heavily invested in

conservation, as you said in your opening statement. Your company was incorporated in 1912. Can you please outline what measures your company and industry have taken to contribute to the recovery of the grizzly bear populations, and why you feel a sense of responsibility to protect and conserve grizzly bear populations?

Mr. Roady. Yes, Mr. Chairman. Like I said in my statement, we all live there because we like it. We love it there. We live and work there, we raise our families there, and the grizzly bear is part of that. Just like all the other species, not only is it part of the law to recover it, but we want it recovered, but even more reason to manage it.

What we do within our company and a lot of the other landowners is we work with the States and the Federal Government to, sometimes we manage the access; we manage the time of year that we do a lot of our work, and a lot of our timber harvest, we do in the winter when the grizzly bear is hibernated. We only work on roads at certain times.

We do all kinds of mitigating measures to help, and not just the grizzly bear, there is a whole litany of species that we work with. And our management, written right into our own management plans on our company lands as the Federal and the State school trust lands.

So we work constantly to mitigate any of those things. We

want it to succeed, and it is a success. That is why I say we need to be celebrating it.

Senator Barrasso. Senator Carper.

Senator Carper. Thanks, Mr. Chairman.

Again, we welcome all of our witnesses in person and remotely, as well, as far away as California. I want to start off, if I could, with a question for all witnesses, and this is drawn from Mr. Leshy, by something you said right at the end of your testimony. I would ask all three witnesses to respond to this, we will start off with Mr. Roady and Mr. Crank, and conclude with Mr. Leshy.

Here is the question: how difficult do you think it would be for the U.S. Fish and Wildlife Service to correct the deficiencies that the courts have identified in the 2017 delisting rule for the Greater Yellowstone Ecosystem grizzly bear?

As I said, Mr. Leshy, I think you included some information in your written statement, and you mentioned it briefly at the end of your statement. But if I could ask Mr. Roady and Mr. Crank just to start off and respond to that question. How difficult do you think it would be for the U.S. Fish and Wildlife Service to correct the deficiencies that the courts have identified in the 2017 delisting rule for the grizzly bear?

Mr. Roady, do you want to kick us off, please? Then we

will conclude with Mr. Leshy, please, and I ask you be fairly brief, please.

Mr. Roady. Okay. I can start. But they have already started, the Fish and Wildlife Service. They have been working on it since the day of the court decision, and most of those, they have been very aggressive at proceeding. There are a number of things, as you may be aware, that the courts listed, some in their counting procedure, some in their habitats, some in their connectivity to other ecosystems.

So I don't think it is be difficult at all, because most of those have already been met, and those of us that live there know that. And there are a lot of bears, especially in their genetics and their connectivity, that are already traveling between those areas. So they are working very aggressively, is the answer.

Senator Carper. Thank you. Same question, if I could, for Mr. Crank, how difficult do you think it would be for the U.S. Fish and Wildlife Service to correct the deficiencies that the courts have identified in the 2017 delisting rule?

Mr. Crank. Ranking Member Carper, I think two of the issues would be very easy to correct. One issue is a significant and major problem. So, the easy issues are the issue of genetic interchange. That is one or two sentences in the delisting rule saying that, basically, if we don't have the

genetic diversity we need within the Yellowstone population, we will truck some bears from Glacier National Park. The distinct population segment found to justify the striking down of the rule is further study by the Fish and Wildlife Service, and I think they can fix that problem fairly easily.

The issue of recalibration is, in my mind, a huge issue that will not be able to be solved by the Fish and Wildlife Service. They attempted to do it in the original 2017 rule, didn't do it appropriately. Recalibration is an issue that is not even consistent with the Endangered Species Act, in my mind. Recalibration is a misnomer; it is essentially, you can't go out and physically count grizzly bears, so you have to develop statistical and scientific models to estimate the number of bears on the landscape.

The judge in Montana ruled that those three States, Wyoming, Montana, and Idaho, had rejected recalibration for political reasons. That is absolutely wrong. We rejected the idea of recalibration, which is what happens if some new statistical model shows that there are a greater number of bears in the ecosystem than we currently estimate? Our model right now is --

Senator Carper. Mr. Crank, I have to leave some time for Mr. Leshy to answer this, as well. Can you just wrap up in one more sentence? I apologize, but they don't give me unlimited

time here.

Mr. Crank. Ranking Member Carper, the issue of recalibration cannot be solved quickly or easily, and it is a direct intrusion into State management authority, and it is inconsistent with the Endangered Species Act itself.

Senator Carper. Okay, thank you sir.

Mr. Leshy, I will give you the last word on this question, please, and I have one more short question. Go ahead, Mr. Leshy. Please be brief.

Mr. Leshy. Thank you, Senator Carper. I certainly agree with the other witnesses that the first two issues are easily solved.

I should point out that the Court of Appeals actually, here, sort of reined in the District Court a little bit, and said to the extent the District Court was requiring extensive analysis to make a new decision, it was wrong. So it sort of curbed the District Court decision.

On the third issue about recalibration, there are basically two basic formulas for estimating grizzly populations. They are kind of well-known, and the Fish and Wildlife Service basically said in its initial decision that if the second formula is used to estimate populations, then the conservation strategy needs to be recalibrated.

The Fish and Wildlife Service is actually moving to do that

in its 2017 listing decision, when it was asked to sort of hold off by the States. The Court of Appeals basically said, that was a mistake, and that you need to make a commitment to recalibrate if you use this second population estimate.

Since the Fish and Wildlife Service was already moving to do that, it seems to me that it is really not difficult on remand to simply make that commitment. They were about to make the commitment, and they held off. So I don't think there is a lot of magic here, and I think this is a problem that is easily solved, if you give the courts a chance to do it.

Senator Carper. All right, thank you. Thank you all for your response to that question.

I have several other questions that I will ask for the record. I do want to mention one of them right now to Mr. Crank and Mr. Roady. I won't ask you to respond right now, but the question which would be among the questions for the record that you will receive from us later, but you both have extensive experience working with your States on the development of grizzly bear management plans.

The question I will ask you to answer for the record is, would you elaborate on how your respective States consider the perspective of Tribes in the development of grizzly bear management plans?

Again, we appreciate your joining us today, and thank you

so much. Thank you.

Thanks, Mr. Chairman.

Senator Barrasso. Senator Cramer?

Senator Cramer. Thank you, Mr. Chairman, thank you Senator Carper. Thank you to all of the witnesses for sharing your expertise with us today, whether you be here in person or virtually, it is working very well.

Mr. Chairman, it seems to me there are a couple of constitutional principles that are at stake here, beyond even just the grizzly bear. It may not surprise anybody to know that there aren't any grizzly bears outside of zoos in North Dakota, however, our western friends have a real big issue on their hands.

So, the issue isn't just grizzly bears to me. It is not even just the Endangered Species Act, which by the way, I think requires a review in and of itself. I happen to chair the subcommittee that has jurisdiction. We need to look at how is it possible there could be 1,600 plants and species listed on the ESA, and only just a little more than 1 percent of them have been delisted. That is not a success story to me, that is a failure.

Now, the greater principles in my mind are these: one is, of course, the role of cooperative federalism. That is to say, the role of the States to manage their States, not in

competition with, but rather in concert with, in collaboration and cooperation with, our federal friends, our partners.

The second one is even greater, and that is what exactly is the role of, what I consider the superior of the three supposedly co-equal branches of government. I don't think that the three branches are co-equal. It is the Legislative Branch, the Congress of the United States, that passed the law that created the Endangered Species Act.

As we do with many authorities, too often, we look back, and we think, hmm, there is some lazy legislating going on that turned this much power over to a bureaucracy and a judiciary that is not prepared to do it or doesn't reflect the will of the people that elected the Congress of the United States. I think we need to restore some of that.

I think this hearing today illustrates that as well or better than any. The idea that somehow, the federal bureaucracy could come up with all of these rules that seem to be more than adequate, and the oversight that seems to be more than adequate, is confounding enough.

But the idea that activist judges, in cooperation with friendly litigants, could come up with things like recalibration as a means of counting when the experts on the ground know better, is just completely, it is an abuse of power, is what it is. It is an abuse of one of the other branches of government.

But the bureaucracy is the bureaucracy. It is our job, as the Congress of the United States, to set policy, Mr. Chairman, we need to do it more proscriptively, and then to correct bad behavior by the enforcers of policy, especially over the course of decades, when a lot of things have changed.

With that, I have one question, really, for all three of you to take a shot at. Going back to my first point, if there are 1,600 plants and species listed under the Endangered Species Act, why is it that fewer than 2 percent have been successfully delisted? What is the problem?

We will start with our friend Mr. Roady, who is actually in the room.

Mr. Roady. Thank you, Senator Cramer. I might tell you, just have a little bit of patience, and you might get grizzly bears in North Dakota. They are coming across the prairie in Montana faster than you can imagine.

Senator Cramer. We didn't have mountain lions not that long ago, and we have lots of them now.

Mr. Roady. They are coming. So, would you repeat your question?

Senator Cramer. The question is, why has the Endangered Species Act been so unsuccessful in getting critters delisted?

Mr. Roady. I think a lot of attention is paid to iconic species, i.e., the grizzly bear, and the wolf, and the black-

footed ferret. I think a lot of attention goes to those iconic species, and some of the others don't happen. But that doesn't mean people aren't out there trying all the time. I certainly agree with your big-picture view of the whole concept of the three branches of government.

It is a pet peeve of mine that the Judiciary Branch is making biological decisions, and that is just not right. That is part of the equation of trying to get these delisted. There is a lot of stuff we are trying to do out there on the ground that isn't getting done because they are half-paranoid about the judicial branch being litigated.

Senator Cramer. Mr. Crank, do you have a different answer?

Mr. Crank. Senator Cramer, I have a consistent answer. I think the answer to your question is threefold. Environmental groups can generate incredible funds by challenging any delisting decision, no matter what the facts are, and Yellowstone grizzly bears are a great example. They are recovered; they should be delisted.

You reward those efforts to challenge delisting decisions with the award of attorney's fees under the Endangered Species Act. That might be something you want to look at possibly changing.

Thirdly, the environmental groups have the ability to essentially hand-pick the judge that will handle their appeal,

so that leads to very few delisting decisions being upheld by the court, and the judge substitutes his political judgement for those of the scientists who have studied and recovered the species, and that is wrong.

Senator Cramer. Yes. I realize I am a little over. I would still like to hear from Mr. Leshy if the Chairman would oblige.

Mr. Leshy. Thank you. I will be very brief. I think any of the scientists that look at this problem would say one thing in particular about delisting: most species do not make it on the list unless they are very close to blinking out after a long decline. In other words, species are really, really in peril already before they ever make the list, and then once they make the list, they are protected.

Actually, the Endangered Species Act has been quite successful in that almost no species that ever makes it on the list actually goes extinct. But by the time they get there, they are so much in peril that it takes an enormous amount of effort. There has been an enormous amount of effort to keep them alive and to make them flourish to come off the list is a challenge, and it takes time, and that is the basic reason why so few species have been delisted.

Senator Cramer. I thank you all, and I assure you, if we get grizzly bears in North Dakota, you will be able to count

them face-to-face because they are rather easy to see on the prairies.

Thank you, Mr. Chairman.

[Laughter.]

Senator Barrasso. Thank you, Senator Cramer.

Senator Carper?

Senator Carper. Mr. Chairman, I ask unanimous consent to enter into the record letters and materials from stakeholders who oppose the Grizzly Bear State Management Act, including letters from Montana Wildlife Federation, Defenders of Wildlife, National Parks Conservation Associations, and several Tribes.

In addition to that, Mr. Chairman, I asked my staff to give me just a quick timeline, a rundown of the timeline of the litigation. I am not a lawyer, as you know, but in August of 2017, environmental groups and Tribes filed suit in district court in Montana to retain ESA protection for Yellowstone grizzlies with a single judge making that decision. In May 2019, the Trump Administration appealed to the Montana District Court decision to the Ninth Circuit Court in California. And on July the 8th of this year, the Ninth Circuit Court of Appeals unanimously upheld the Montana decision, three to nothing. But I understand that the Trump Administration still may appeal its decision to the full Ninth Circuit Court if they choose to do, but I am told that they have not chosen to do that yet.

I regret that I did not get to ask a question about bear spray, and that was an issue we spent a lot of time talking about, and it seems a shame to let this hearing end without at least mentioning those words. Thank you.

[The referenced information follows:]

[Laughter.]

Senator Barrasso. Thank you.

Well, going back to the Senator Enzi who is the original cosponsor and author of this, and then the 80/20 rule that my colleague, Senator Carper, mentioned at the beginning of this, you would think that if there was something that President Bush and then President Obama and Vice President Biden from Delaware, as well as President Trump all agree on, that would be that the grizzly bear is fully recovered and should be delisted entirely. That ought to fit into that 80 percent category of things that we agree on, on both sides of the aisle, and could get to a solution to.

So I want to thank all of the witnesses for being here today. Thank you so much for your thoughts.

I know Senator Inhofe had a question for Mr. Crank that I think, Pat, you will be able to respond to in writing. So the hearing record will remain open for two weeks.

I really do want to thank you for your time and your testimony, and with that, the hearing is adjourned.

[Whereupon, at 11:17 a.m., the hearing was adjourned.]