Grizzlies Have Their Day In Court

Judge Paul L. Friedman, U.S. District Court Judge for the District of Columbia, ruled on three cases in late September regarding U.S. Fish and Wildlife Service (FWS) management of the threatened grizzly bear.

In response to lawsuits filed by a score of environmental groups at the local, regional and national levels, Judge Friedman ruled that the FWS violated the Endangered Species Act (ESA) and issued a Grizzly Bear Recovery Plan that "fails to establish objective, measurable criteria" for monitoring grizzly populations and recovery. In essence, the ruling overturned a major portion of the FWS criteria for establishing when the grizzly bear should be considered as recovered and appropriate for delisting. The ruling will impede efforts by the Clinton Administration to delist the species in the Yellowstone Ecosystem, and it will add weight to efforts to protect and restore the bear throughout its range.

Representing plaintiffs in court were Doug Honnold of the Sierra Club Legal Defense Fund, and Eric Glitzenstein of Meyer and Glitzenstein.

"This is the first time a species recovery plan has been successfully challenged in court," said Eric Glitzenstein. "Our victory sets precedent that the FWS is required by law to base its recovery plans on scientific data and objective evidence of real recovery," he added. Doug Honnold noted that "There will have to be a revision or amendment to the recovery plan, with opportunity for the public to comment. They must change the recovery plan. It is illegal."

Even with the protections of the Endangered Species Act, grizzly bears face a long road to recovery. Simon Leventhal photo.

The FWS's recovery targets required monitoring of the number and distribution of female bears with cubs of the year seen annually over a six-year period, and also considered the annual number of human caused mortalities. These numeric goals were to be used to signify that the grizzly bear had recovered. However, Judge Friedman found that these criteria do not adequately measure the bear's recovery and struck them down because the FWS failed to show that meeting its targets would demonstrate that threats to the grizzly bear had been alleviated. The judge also ruled that the FWS recovery criteria failed to measure adequately the effect of grizzly bear habitat quality and quantity on grizzly recovery.

Fortunately, finding that important parts of the current grizzly bear recovery plan violate the Endangered Species Act, Judge Friedman has helped to half premature efforts to delist the Yellowstone grizzly bear population. Those efforts have been tied to agency allegations that the Yellowstone grizzly population has recovered because the recovery targets set forth in the recovery plan were being met. Judge Friedman rejected the use of only these surrogate measures for evaluating the biological health of grizzly populations.

The FWS Recovery Plan, a few state wildlife agencies, and large economic interests that have been pushing for the premature delisting of the grizzly under the Endangered Species Act have attempted to cover up the fact that habitat quality and conditions for the Great Bear have continued to deteriorate over the past decade.

Judge Friedman remanded this matter to the FWS and gave it "90 days from the date of this Order to reconsider those portions of the 1993 Grizzly Bear Recovery Plan that have been found to be contrary to the dictates of the Endangered Species Act."

Selkirk Status Upgrade

Another lawsuit dealt with the failure of the FWS to rule appropriately on a petition filed by the Biodiversity Legal Foundation to reclassify the grizzly bear populations of the Selkirk ecosystem and the Cabinet/Yaak ecosystem from a threatened status to an endangered status. Judge Friedman ruled in favor of the plaintiffs in this case, finding that the FWS's decision was illegal and that refusal to elevate these isolated populations of grizzly bears from threatened to endangered status was unsupported by the factual record, the scientific record, and the law.

The Selkirk Mountains are located in northern Idaho and eastern Washington and are home to a small, and isolated, grizzly bear population numbering only 22 - 36 bears. The BLF argued in its formal petition and in this case that this population is critically endangered and requires improved protection.

Judge Friedman was unpersuaded by the agency's argument that existing "regulatory mechanisms," which include the Grizzly Bear Recovery Plan, are adequately addressing the major threats to the Selkirk grizzlies. Judge Friedman noted that the management programs have failed to result in the stabilization of the population or decreased human-caused mortalities; therefore, the FWS's reliance upon the adequacy of its regulatory program was unfounded.

It's a wonder grizzly bears can survive at all on the Kootenai National Forest. Angela L. Coffin photo.

Plaintiffs in the Selkirk lawsuit included the BLF, Selkirk-Priest Basin Association, Alliance for the Wild Rockies, Inland Empire Public Lands Council, Idaho Conservation League, Greater Ecosystem Alliance, American Wildlands, Predator Project, Great Bear Foundation, National Audubon Society, Sierra Club, Montana Ecosystems Defense Council, and several individuals.

Cabinet-Yaak Status Upgrade

The court also ruled on the legality of the FWS's "warranted but precluded" decision on the BLF's formal petition to reclassify the grizzly bear in the Cabinet/Yaak ecosystem from threatened to endangered.

The grizzly bear population in the Cabinet/Yaak ecosystem in Northwestern Montana contains only about 15 bears and in 1992, in response to the BLF's petition, the FWS determined that the population was below viability levels and warranted reclassification from threatened to endangered. The agency did not pursue the reclassification, however, on the grounds that this proposed listing decision was precluded by work on other species.

Judge Friedman determined that a decision to delay action on a listing petition must be justified by evidence of other priorities and diligent work on other pending listing proposals. He went on to rule that the FWS's "warranted but precluded" decision was illegal because the FWS failed to demonstrate that it was, in fact, "actively working on other pending proposals to list, reclassify or delist other species and that it is making expeditious progress on such other proposals."

The Fish and Wildlife Service has failed to provide adequate protection of the grizzly, even though its status continues to decline. As a result, the FWS has inadvertently allowed the Forest Service to continue its degradation and fragmentation of grizzly bear habitat.

Recently proposed huge salvage logging sales in the Kootenai National Forest and in other grizzly habitat will further threaten the vulnerable grizzly bear population.

Plaintiffs in the Cabinet-Yaak lawsuit included the Predator Project, Montana Wilderness Association, Native Ecosystem Council, Great Bear Foundation, Alliance for the Wild Rockies, Biodiversity Legal Foundation, Montana Ecosystems Defense Council, National Audubon Society, Cabinet Resources Group, Sierra Club, and several individuals.

Special Thanks to the Biodiversity Legal Foundation and Barbara Borst for this article.