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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

FLATHEAD-LOLO-BITTERROOT CITIZEN TASK FORCE and WILDEARTH GUARDIANS,

Plaintiffs,

vs.

STATE OF MONTANA, LESLEY ROBINSON, and GREG GIANFORTE,

Defendants.

CV 23-101-M-DWM

PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

Plaintiffs hereby submit this Statement of Undisputed Facts in support of their motion for summary judgment.

List of Exhibits

1. Deposition of James Jonkel, February 26, 2024

2. Deposition of Erik Wenum, February 26, 2024

3. Deposition of Cecily Costello, February 26, 2024

4. Deposition of David Mattson, March 7, 2024

5. Deposition of Carter Niemeyer, March 6, 2024

6. Deposition of Brian Horejsi, February 27, 2024

7. 2022 Verified Outliers Report, Montana Fish, Wildlife & Parks Region 2 excerpt.

8. Declaration of Peter Metcalf, March 15, 2024

9. Grizzly Bear Mortality Reports excerpts

10. 11.20.2023 Grizzly Bear Activity Wolf Trapping Assessment

11. 11.27.2023 Grizzly Bear Activity Wolf Trapping Assessment

12. 12.04.2023 Grizzly Bear Activity Wolf Trapping Assessment

13. 12.11.2023 Grizzly Bear Activity Wolf Trapping Assessment

14. 12.18.2023 Grizzly Bear Activity Wolf Trapping Assessment

15. 12.22.2023 Grizzly Bear Activity Wolf Trapping Assessment

16. Third Declaration of David Mattson, April 12, 2024

17. Custer-Gallatin National Forest Facebook post, January 25, 2024.

18. "Wolf Trap nabs Grizzly on Front" Great Falls *Tribune,* December 13, 2013.

19. Defendants' Second (First Supplemental) Discovery Responses, March 12, 2024.

20. 2023 Region 4 Bear Management Report

21. Jim Pashby, *Coyotes*, Montana Outdoors November-December 2023 at 55

22. 2023 Montana Wolf and Furbearer Regulations

23. FWP responses to public comments on Statewide Grizzly Bear Management Plan excerpts

24. U.S. Fish & Wildlife Service Comments on Draft Montana Statewide Grizzly Bear Management Plan excerpt

25. Christopher Servheen et al., FWP misses the Mark on Grizzly Delisting, *Mountain Journal* (Feb. 28, 2024).

26. Wolf Dashboard data February 16, 2023 and March 27, 2023.

Statement of Undisputed Facts

1. Grizzly bears have been out of their dens and active in Montana Fish, Wildlife & Parks Region 2 through December and through January and some have been seen in February. Ex.1, Jonkel Depo 14:3-14.

2. Grizzly bears have been out of their dens in Region 2 in February. Ex.1 Jonkel Depo 16:2-8. Two grizzly bears were out of their dens in Region 2 in February 2023. Ex.1 Jonkel Depo 16:2-8.

3. There was a verified family group of grizzly bears in the Seeley Lake area on December 31, 2023. Ex. 1 Jonkel Depo 24:12-13.

4. Grizzly bears have been out of their dens in mid-winter in Glacier National Park. Ex.1 Jonkel Depo 15:1-12.

5. Grizzly bears have been out of their dens in Yellowstone National Park in February and early March. Ex.1 Jonkel Depo 14:15-25.

6. Grizzly bears have been out of their dens after Christmas in Yellowstone National Park. Ex. 4 Mattson Depo 131:6-17.

7. There were grizzly bears out of their dens on the Gallatin National Forest in Montana near West Yellowstone and Gardiner in mid-January, 2024. Ex. 17, Custer-Gallatin National Forest Facebook post, January 25, 2024.

8. The first grizzly bears verified out of the den each year in Yellowstone National Park from 2014-2023 ranged from February 9 to March 7. Ex. 16, Mattson Third Dec. ¶2.

9. A female grizzly bear was captured on March 13, 2023, on the Rocky Mountain Front and euthanized for livestock interactions and other complaints in

the area over the previous days. Ex. 20, 2023 Region 4 Bear Management Report at 23.

10. Grizzly bears have been out of their dens in Alberta in January and March. Ex. 6, Horejsi Depo 65:19-20; 78:23-24.

11. Grizzly and black bears enter their dens later and exit their dens earlier when snowpack is lacking and/or when high-quality vegetal foods are available (Fowler et al. 2019). On average, bears of both species enter dens later when and where high-quality foods are abundant late in the year or accumulations of snow ≥10 cm occur later. Likewise, bears exit dens earlier when and where high-quality foods are available earlier in the year or snow melt occurs early. Four grizzly bear studies have documented instances where at least one individual was active the entire winter. All these phenomena will become more common as regional and global climates continue to warm. Ex. 16, Mattson Third Dec. ¶4.

12. Snow Water Equivalent – which positively correlates with snow depth – is predicted to decline by around 12% in in mountainous areas of Montana >5900 feet in elevation. Ex. 16, Mattson Third Dec. ¶5.

13. Extended growing seasons and mild meteorological conditions result in shorter denning periods for grizzly bears. Ex. 16, Mattson Third Dec. ¶6.

14. In the week of November 20, 2023, there were more than 56 collared bears still out of their dens and more than 100 known to still be out of the den. Ex. 10,

Montana Fish, Wildlife & Parks Grizzly Activity Report for the Week of November 20th, 2023.

15. In the week of November 27, 2023, 73% of collared bears were still out in the GYE, and in the NCDE Region 2 South 83% of collared bears were still out. Most grizzly bears had not entered dens as of the week of December 4, 2023, and there was heavy grizzly bear activity, including non-collared bears. There were at least 48 collared bears still out and more than 80 total known to be outside the den. Ex. 11, Montana Fish, Wildlife & Parks Grizzly Activity Report for the Week of November 27th, 2023.

16. In the week of December 11, 2023, there were more than 50 known grizzly bears outside of their dens. Ex. 13, Montana Fish, Wildlife & Parks Grizzly Activity Report for the Week of December 11th, 2023.

17. The week of December 18-24, 2023, there were at least 25 grizzly bears known to be out of the den. Ex. 14, Montana Fish, Wildlife & Parks Grizzly Activity Report for the Week of December 18, 2023.

18. There was substantial grizzly bear activity in several areas of Montana the week of December 22, 2023, including near a den in Region 5, some movement in the Cabinet-Yaak including two sets of tracks near Bear Creek, multiple tracks on the Custer Gallatin National Forest, grizzly activity in the Clearwater drainage, a female with cubs east of Seeley Lake, adult female with 2 yearlings south of

Condon, adult female with 2 cubs of the year north of Condon, and a single adult near Ferndale. Bear specialists recommended the wolf trapping season remain closed until January 1 or when all the bears have denned. Ex. 15, Montana Fish, Wildlife & Parks Grizzly Activity Report for the Week of December 22, 2023.

19. A 473-pound grizzly bear was caught and held in a recreational wolf trap near Dupuyer on December 17, 2013. FWP bear specialist Mike Madel advised trappers to avoid areas until at least January 1 if they see bear tracks. "They put themselves at risk and the bear captured in a set at risk," said Madel. The bear pulled the pin holding the trap out of the ground and the drag chain got tangled in brush and a tree. The trap had a straight-line jaw with no teeth and caught all five of the bear's toes between the toes and the footpad. It may be time to review the December 15 wolf trapping opener in light of changing weather patterns and resulting changes in grizzly bear denning patterns, Madel said. When he began working on the Rocky Mountain Front in the early 1980s, Madel said grizzly bears used to be in their dens by December 1. That's slowly changing, probably the result of climate change, with bears denning a little later in the year and emerging a little earlier. "If in fact the weather is warming and winters are becoming shorter, that would make sense," Madel said. Ex. 18, Great Falls *Tribune* 12/18/2013.

20. The collared sample size of grizzly bears in Montana does not provide conclusive evidence that all grizzly bears den in winter at least for some time period. Ex. 3, Costello Depo 16:7-11.

21. There is documentation from Montana Fish, Wildlife & Parks personnel that bears have been active in all months of the year. Ex. 3, Costello Depo 16:12-23.

22. No more than 5% of grizzly bears are collared in Montana. Less than 10% of grizzly bears in the NCDE are collared. Ex. 3, Costello Depo 15:8-17.

23. The number of bears collared in the NCDE ranges between 3-8% of the population. Ex. 2 Wenum Depo 14:10-11.

24. Montana's wildlife managers do not know where 96% of the bears are located. Ex. 2, Wenum Depo 14:5.

25. Where uncollared bears have denned is not known. Ex. 2, Wenum Depo 17:6-17.

26. It is not possible to know with certainty whether grizzly bears are in or out of their dens or whether they have denned by a certain date. Ex. 2, Wenum Depo 14:16-23.

27. Montana Fish, Wildlife & Parks Region 1 bear specialist Erik Wenum testified at deposition he had not spoken with Peter Metcalf regarding a female with three cubs out in mid-winter 2024 in the Flathead Valley area. Ex. 2, Wenum Depo 23:9-25.

28. From January 30 to February 1, 2024, Peter Metcalf attended the IGBC Information, Education and Outreach summit in Coeur d'Alene, Idaho. where Erik Wenum told him and others mingling together during a break that FWP had verified reports of grizzly bears out of their dens in the Flathead valley the prior week (approximately January 23-January 29). Mr. Wenum told Mr. Metcalf this included a sow with three young seen on camera, and what is assumed (but not confirmed) to be an adult male. Mr. Wenum told Mr. Metcalf that he thought there may be at least one more bear out of its den based on collar activity. Mr. Wenum stated he suspected warmth and/or meltwater infiltrating the den may be what motivated the bears to leave their dens. Ex. 8, Metcalf Dec. ¶¶3-7.

29. Mr. Metcalf's testimony contradicts Mr. Wenum's testimony.

30. It is not possible to know with certainty whether all grizzly bears have entered their dens by a certain date. Ex. 3, Costello Depo 18:16-23. The State of Montana cannot be certain when all grizzly bears have denned. Ex. 3, Costello Depo 19:5-8.

31. Accurately determining the number of bears that are out of their dens in Montana at any given time poses a considerable challenge. Montana relies largely on a limited number of unverified sightings, such as those that involve pictures of tracks or anecdotal evidence from individuals who claim to have spotted a grizzly

bear. Specifically, Montana was aware of three grizzly bears out in January 2024. Ex. 19, Defendants' Answer to INTERROGATORY NO. 3.

32. Montana is attempting to obtain information regarding den emergence in the Greater Yellowstone Ecosystem from the IGBST. Ex. 19, Defendants' Response to REQUEST FOR PRODUCTION NO. 8.

33. Trapping seasons that extend until March 15th are problematic because of grizzly bears being out and about in areas where there would be traps set. Ex. 4, Mattson Depo 72:8-12.

34. The temporal overlap between when grizzly bears are active in the Northern Rockies and current seasons for trapping wolves and furbearers has already increased and will likely continue to increase because of the direct and indirect effects of climate change. Doc. 6-1 ¶13 (Mattson Dec).

35. There is substantial evidence that den entry emergence dates correlate strongly with climate. The farther south or in areas a bit warmer and with a shorter duration snowpack, there are later den-entry dates and earlier den-exit dates. Ex. 4, Mattson Depo 96:18-23.

36. Grizzly bears in the Northern Rockies will almost certainly enter dens later and exit dens earlier as annual temperatures continue to warm and vegetal foods become available earlier and later in the year. There is ample evidence worldwide that brown and grizzly bears at lower latitudes spend less time in dens compared to

bears in colder climates, with winter activity further promoted by year-round availability of anthropogenic foods and clement winter temperatures. Doc. 6-1 ¶15 (Mattson Dec).

37. In the GYE there are earlier den-exit dates and later den-entry dates compared to southeastern B.C. Ex. 4, Mattson Depo 97:7-10.

38. Grizzly bears will delay den entry if they have augmented food supplies. A significant number of bears specialize in following wolves and other predators and augmenting their food supplies by usurping kills; and this has been more evident in the winter. Ex. 4, Mattson Depo 98:6-100:22.

39. Depending on the ecosystem, nearly 40% of grizzly bears in Montana have historically been active outside their dens either after November 27 or before March 15. Doc. 6-1 ¶12 (Mattson dec).

40. There have been numerous anecdotal accounts of winter-active bears in the Northern Rockies, plausibly attributable to both a warming climate and winter availability of meat from wolf kills, late-season kills of ungulates by hunters, and mild winter temperatures. Doc 6-1 ¶14 (Mattson First Dec).

41. The considerable current as well as prospective future spatial and temporal overlap of trapping for furbearers and wolves in Montana with places and times that grizzly bears are also active results in widespread exposure of bears to risks

posed by non-target injuries from snares and body-hold traps set to capture other species. Doc 6-1 ¶16 (Mattson Dec).

42. The risks to grizzly bears from trapping are magnified by well-documented interactions between wolves and bears that increase the likelihood that grizzly bears will be active in areas frequented by wolves and thus inadvertently targeted by wolf trappers. Wherever ungulates such as elk, deer, and moose are available, wolves and grizzly bears gravitate towards this source of high-quality meat, with grizzly bears often appropriating fresh kills from wolf packs. Doc 6-1 ¶¶17, 18. (Mattson Dec).

43. Peak consumption of meat by grizzly bears occurs during spring and fall when other foods are scarce. Most consumption is by scavenging carcasses of animals that died from natural and anthropogenic causes, including unclaimed remains of animals killed by hunters during September-November and remains of kills made by wolves potentially year-around. These dietary patterns predictably lead grizzly bears to associate meat with wolves and humans, especially during periods that potentially overlap with deployment of bait at traps set to capture wolves and furbearers. Doc 6-1 ¶¶20, 21 (Mattson Dec).

44. The Montana Fish & Wildlife Commission significantly expanded the area where wolf trapping is allowed during the non-denning seasons for grizzly bears. Doc 6-3 ¶8 (Niemeyer Dec).

45. To play it safe, it would be best to keep the trapping season closed until the end of December. Ex.1 Jonkel Depo 16:11-17:4; Ex. 14.

46. The Montana trapping requirements are not specific, restrictive, or protective enough to prevent the capture of grizzly bears in traps and snare set for wolves. Doc 6-3 ¶9 (Niemeyer Dec).

47. There is nowhere you can put a trap in bear country that a bear won't find it. Ex. 6, Horejsi Depo 68:7-8. The presence of people with baits and snares or traps in grizzly bear habitat is going to produce conflicts with bears. Ex. 6, Horejsi Depo 70:1-3.

48. If bears get injured or get frightened badly there will be consequences for their well-being in terms of their nutrition, the stress levels they're dealing with, the ability to deal with security, their willingness or unwillingness to deal with other people and other bears and has consequences for reproduction and survival. Ex. 6, Horejsi Depo 70:20-25, 71:1-3.

49. If there is food out there and there are tools that could cause damage, there will be interaction and conflict and there is no way to avoid it. Ex. 6, Horejsi Depo 99:1-4.

50. The State of Montana permits recreational wolf trappers to use foothold traps with an inside jaw spread of up to 9 inches when targeting wolves. Foothold traps with a 9-inch jaw spread are large enough to capture grizzly bears and all

furbearers. Due to the massive size and weight of these they can cause toe fractures and toe amputations in bears. Additionally, traps with a jaw spread of 9 inches or less may clamp bears just by their toes, a situation that may result in toe amputations when grizzly bears fight to free themselves. Doc 6-3 ¶11 (Niemeyer Dec).

51. A steel leg-hold trap set for a wolf by a recreational trapper caught a 4-year-old male grizzly bear on a ranch west of Dupuyer in 2013. After it was caught, the bear pulled the pin holding the trap out of the ground, but the drag chain became tangled in a tree and brush as it tried escape the area. The grizzly lunged at one of the trappers. According to FWP bear management specialist Mike Madel, the bear was attracted to the site by a scent lure on the trap. "It's usually pretty powerful, and a bear's got a great nose and probably a better nose than wolves," Madel said. Madel said that it was lucky for the bear that it got hung up in the brush because it allowed bear managers to remove the trap from its foot. The grizzly, a subadult weighing 473 pounds and in good health, was not seriously injured other than swelling of the toe joints, Madel said. The trap, featuring a straight-line jaw with no teeth, caught all five of the bear's toes between the toes and the foot pad. When he began working on the Rocky Mountain Front in the early 1980s, Madel said grizzly bears used to be in their dens by Dec. 1. That's slowly changing, probably the result of climate change, with bears denning a little later in the year and

emerging a little earlier. "If in fact the weather is warming and winters are becoming shorter, that would make sense," Madel said. It may be time to review the Dec. 15 wolf trapping opener in light of changing weather patterns and resulting changes in grizzly bear denning patterns, Madel said. Ex. 18. Great Falls *Tribune* 12/18/13.

52. Black bears have also been caught in traps in Montana. Because of the substantial similarities between black bears and grizzly bears, these incidents further show that wolf foothold traps set in grizzly territory in Montana will also capture grizzly bears. Doc. 6-3 ¶11 (Niemeyer Dec).

53. There have been at least 10 confirmed accidental grizzly bear captures in foothold traps intended for wolves in Idaho, British Columbia, and Montana since 2007. There have been five confirmed accidental grizzly bear captures in foothold traps intended for wolves in Wyoming as of 2014; one unconfirmed report of a grizzly bear capture in a wolf foothold trap in Montana in 2014; five confirmed reports of grizzly bears captured in coyote traps in Montana since 2010; twelve confirmed reports of black bear captures in wolf foothold traps in Idaho since 2012; and three additional black bear captures in traps that Idaho presumes were wolf traps since 2012. Many of these bears suffered the loss of claws and toes. Doc 6-3 ¶16 (Niemeyer Dec).

54. Lamb et al. (2021) noted that the loss of digits may influence conflict behavior, which was common in these animals; three of four grizzly bears that were missing toes were involved in human-bear conflicts. Doc 6-3 ¶16 (Niemeyer Dec).

55. A wolf foothold trap is more likely than a coyote foothold trap to capture, hold, and injure a grizzly bear. Grizzlies caught in coyote traps is additional evidence that wolf traps will also capture grizzly bears. Doc 6-3 ¶18 (Niemeyer Dec).

56. Even the most experienced trappers risk capturing a grizzly bear when deploying wolf foothold traps in grizzly bear territory. Wildlife Services trappers, some of the most experienced trappers in the country have accidentally trapped five grizzly bears in Wyoming as of 2014 and two grizzly bears were caught in foothold traps in Montana since 2007. A Montana FWP trapper accidentally captured a grizzly bear in a wolf foothold trap in 2015. A Wildlife Services trapper accidentally trapped a grizzly bear in a #114 Newhouse wolf trap with a jaw spread of 6" in 1987. Doc 6-3 ¶19 (Niemeyer Dec).

57. Wolf foothold traps set in grizzly bear habitat risk capturing grizzly bears, and trapped bears pose dangers to trappers. Doc. 6-3 ¶21 (Niemeyer Dec).

58. The U.S. Fish & Wildlife Service examined the potential for grizzly bear capture from Wildlife Services trapping in Idaho and found that incidental take of grizzly bears was likely, including in foothold traps. Doc. 6-3 ¶21 (Niemeyer Dec).

59. Recreational wolf trappers are also likely to be less experienced than professional wolf trappers and are therefore likely to take fewer precautions., which leads to higher rates of non-target capture. Doc. 6-3 ¶21 (Niemeyer Dec).

60. Montana permits recreational wolf trappers to set foothold traps in grizzly bear territory during the grizzly bear non-denning season. Montana permits the use of wolf foothold traps with a 9-inch jaw spread, which are more than big enough to capture grizzly bears. The lawful use of baits and lures heightens the risk to grizzly bears by drawing grizzlies directly to wolf traps where they risk capture and injury. Doc. 6-3 ¶22 (Niemeyer Dec).

61. Montana allows wolf trappers to be paid bounties of $500. This provides an incentive to trappers to set more traps to enhance the chances of a payoff. Doc. 6-3 ¶22 (Niemeyer Dec).

62. Montana requires a mandatory wolf-trapper education course. Doc. 6-3 ¶24 (Niemeyer Dec).

63. The State of Montana regulations allow licensed trappers to use wolf snares on public lands beginning as early as November 27 and extending through March 15. Doc. 6-3 ¶25 (Niemeyer Dec).

64. Neck snares are cable devices designed to noose around an animal's neck or foot. When animals pass through a snare and gently tug on the snare loop, a cable equipped with a sliding lock mechanism gradually tightens and is designed to be unable to loosen. As the animal pulls or resists the snare, the locking mechanism will eventually tighten the snare until the animal is strangled, restrained by the foot, leg or body or dies. Doc. 6-3 ¶26 (Niemeyer Dec).

65. Trappers frequently use neck snares when wolf trapping because they are cheap and easy to carry in large numbers and a novice trapper can set dozens of snares in relatively little time. Doc. 6-3 ¶26 (Niemeyer Dec).

66. Neck snares can quickly kill a snared animal because as a snared animal struggles to get free, the snares become tighter and can either asphyxiate the animal or break its neck. Doc. 6-3 ¶27 (Niemeyer Dec).

67. Neck snares are non-selective and indiscriminate by design and will capture, hold, or kill non-target species. Doc. 6-3 ¶28 (Niemeyer Dec).

68. Grizzly bear size varies by age and sex. Smaller bears may not be able to break a neck snare set for wolves. Doc. 6-3 ¶28 (Niemeyer Dec).

69. In 2020, two grizzly bears were killed in northern Idaho in incidents involving wolf snares. One of these was directly killed by two snares, one around its neck and one around a leg. A second grizzly was shot by a black bear hunter and it had a snare embedded in its neck. Doc. 6-3 ¶31 (Niemeyer Dec).

70. The State of Montana has reports of 27 grizzly bears caught in traps and snares. Doc. 20 at 14-16 (McDonald Dec).

71. In addition to the 27 incidents listed in the McDonald declaration, Doc. 20 at 14-16, there were six additional recent incidental snare and trap events and trap-like injuries that resulted in grizzly bear mortalities in Montana. These include:

1. A yearling grizzly bear was caught by the right rear leg on 5/31/2015 in Sanderson Meadows, North Fork of the Flathead and suffered a severely broken leg. Bear euthanized. Specific cause of mortality capture. Ex. 9, Grizzly Bear Mortality Report. State of Montana, et al. 0001792.

2. A non-target female grizzly bear was killed by another grizzly bear at St. Goddard Ranch while caught in a trail set snare baited with calf meat within 5 minutes of being trapped on 4/22/2019. Belly ripped open. Bear Capture Form. Ex. 9, State of Montana, et al. 0002071.

3. A non-target female was captured in a snare on 6/9/2021 on the Blackfeet Indian Reservation. A larger, suspected male bear that was the target animal showed up to the site and attacked the smaller female while she was in the snare. She had numerous broken bones and lacerations on her body. Due to her condition we made the decision to euthanize her. Ex. 9, Grizzly Bear Mortality Report NCDE 8/24/21. State of Montana, et al. 0002433.

4. A grizzly bear traveling with sister was observed near Wisherd Creek; reported to be missing left front leg at that time; siblings were captured night of 29th and handled on 30th. Dr. Andy Cross observed the wound which was

infected and septic and the bear destroyed. Grizzly Bear Mortality Report NCDE 5/30/22. State of Montana, et al. State of Montana, et al. 0002616. The injury was to the LF leg just below the elbow. The lower limb was missing, and there was exposed bone (radius/ulna). The wound was infected with maggots, and there was purulent infected drainage all around the elbow. The injury was probably 30-45 days old (based on the extent of infection and the extreme muscle atrophy in the leg) and was likely traumatic in origin, with the exact cause being unknown. It is doubtful it was a gunshot or HBC (hit by car) as there was no other evidence of accompanying injuries. It seems likely the bear caught the leg in something, possibly a trap but can't say that conclusively. Ex. 9, State of Montana, et al. 0002618-22.

5. Grizzly bear observed with open wound on back of left front foot. Little Badger Creek. Bear Mortality Form. 5/14/2018. Ex. 9, State of Montana, et al. 0001923.

6. A grizzly bear was snared by the right front foot by USDA Wildlife Services, a high catch with swollen foot, Grizzly bear snared, swollen foot with snare laceration on foot, snare groove wear on canines and broken incisors. Euthanized by gunshot to heart at 1526. Bear Capture Form. Madel. 8/12/2019. Ex. 9, State of Montana, et al. 0002143-44.

72. Wildlife poaching is defined as *the intentional or unintentional act of non-compliance with wildlife laws and regulations* Ex. 16, Mattson Third Dec. ¶7.

73. The State of Montana estimates that there are roughly 1100 grizzly bears in the NCDE in 2024. Ex. 3, Costello Depo 28:17-18.

74. Mace, et al. estimated that in 2012 there were about 1000 grizzly bears in the NCDE. Ex. 3, Costello Depo 53:5-12.

75. The estimated "occupied" range of grizzly bears used by the State of Montana is an estimate of the roughly contiguous minimum area within which grizzly bears have established residency or have demonstrated habitat use. Ex. 3, Costello Depo 32: 10-14.

76. The grizzly bear population is expanding well beyond the bounds of the demographic monitoring area and the recovery zone. Ex. 3, Costello Depo 31:25-32:3; Ex. 4, Mattson Depo 78:3-6.

77. The "may be present" map is the larger area over which grizzly bears have been observed to occur. Ex. 3, Costello Depo 32:18-21.

78. The current distribution of grizzly bears in Montana overlaps almost entirely with areas covered by regulations that Montana's Fish and Wildlife Commission promulgated to govern trapping of furbearers and wolves. Doc 6-1 ¶9 (Mattson dec).

79. Much of this overlap corresponds with core distributions of grizzly bears where the beginning of wolf and furbearer trapping can vary from the first Monday after Thanksgiving to December 31st with nearly as much area encompassed by places where the U.S. Fish & Wildlife Service has determined that "grizzly bears may be present." Doc 6-1 ¶¶10-11 (Mattson dec).

80. There have been observations of grizzly bears within multiple years outside of "occupied" range. Ex. 3, Costello Depo 33:5-9.

81. The actual range of grizzly bears did not decline between 2020 and 2022, but the estimated "occupied" range was smaller in 2022 than in 2020 due to a different method of estimating "occupied" range. Ex. 3, Costello Depo 34:4-14.

82. Previously in the NCDE the State of Montana used a 7x7 kilometer grid size to estimate "occupied" range, which correlates roughly with the size of adult female home range, which is logical in terms of establishing occupancy or residency. In 2022 the State of Montana decreased the grid size to 3x3 kilometers. Ex. 4, Mattson Depo 133:5-136:2; Ex. 3, Costello Depo 35:9-23.

83. "Estimated distribution, or current range, represents areas in which grizzly bears are known to have established home ranges and continuously reside. In the GYE, this estimate does not capture the entire distribution of grizzly bears. In addition, grizzly bears have been verified in areas between ecosystems; Ecosystems are generally considered to be the larger area surrounding the recovery zones in which grizzly bears may be anticipated to occur as part of the same population. The Species List Area captures current range and additional areas of low-density peripheral occurrences and transitory individuals. Grizzly bears are expanding on the landscape, can disperse large distances and are not easily detectable. Developed through a standardized protocol, the Species List Area

includes additional areas of verified outlier locations gathered by our state, federal and Tribal partner agencies, such as verified sightings, mortalities, conflicts and radio-collared individuals outside of current range."

https://www.fws.gov/species/grizzly-bear-ursus-arctos-horribilis

84. "Occupied" is every place scientists have reliably documented that grizzly bears were present during a reasonable time frame, as well as most places in between these documented places, because bears have to traverse between places on their feet. Ex. 4, Mattson Depo 136:15-21.

85. Former USFWS Grizzly Bear Recovery Coordinator Chris Servheen has Stated that, "The map of "occupied range" of grizzly bears currently used by the state does not display the actual distribution of grizzly bears. There are likely hundreds of grizzly bears that live part or all their lives outside the "occupied range" maps used by the state. The state needs to use maps that accurately show the distribution of grizzly bears and carefully manage mortality in all these areas." Ex. 25, *Mountain Journal,* 2024 at 3. https://mountainjournal.org/wildlife-experts-say-montana-not-ready-to-delist-grizzly-bear.

86. Bjornlie, et al. (2014) did not intend that their method for estimating area "occupied" by grizzly bears be used for delineating a presence-absence boundary. They stated, "Clearly, not all grizzly bears in the Greater Yellowstone Ecosystem are radio collared or otherwise detected, and this is especially true of lone bears

inhabiting the edges of the main distribution. Consequently, our estimate should be considered a minimum known area of occupancy, not an extent of occurrence, because we have many outliers that are not included in the main grizzly bear distribution map. Thus, this map should not be used as a presence–absence boundary**,** because grizzly bears undoubtedly occur outside this line." Mattson Third Dec ¶8.

87. During 1983-2021, six Cabinet-Yaak Ecosystem grizzly bears were known to have home ranges completely within British Columbia whereas 45 bears were known to have home ranges that spanned the international boundary of Montana and British Columbia. In addition, some grizzly bears in the Cabinet-Yaak Ecosystem were known to have home ranges that spanned the borders of Montana, Idaho, and British Columbia (Kasworm et al. 2022). These numbers do not account for home ranges of numerous bears that were not radio-tracked. Mattson Third Dec ¶9

88. The Cabinet-Yaak Ecosystem grizzly bear population is composed of two totally separate populations, one population in the Cabinet Mountains and the other in the Yaak River watershed north of U.S. Highway 2. Mattson Third Dec ¶10.

89. Montana FWP biologists have stated publicly that interchange between the Northern Continental Divide Ecosystem population of grizzly bears and the Greater Yellowstone Ecosystem population of grizzly bears "isn't a matter of if but

when" and that it is "inevitable." Ex. 19, Defendants' Answer to INTERROGATORY NO. 7.

90. Grizzly bears can be found anywhere west of Billings. Montana Fish, Wildlife & Parks does not know where all of the bears are at all of the times. Ex. 2, Wenum Depo 13:5-9.

91. There are grizzly bears living south of I-90. Ex. 3, Costello Depo 36:7-11.

92. There are grizzly bears in Montana in the Bitterroot Ecosystem, including the Sapphire/John Long mountains and southern Bitterroot mountains. Ex. 19, Defendants' Response to REQUEST FOR ADMISSION NO. 11.

93. Montana cannot definitively conclude that grizzly bears outside the "occupied" area are not resident bears. Ex. 3, Costello Depo 36:22-37:1.

94. Montana knows of one bear that denned in the John Long Mountains. Ex. 3, Costello Depo 38:1-7.

95. An individual grizzly bear is currently denning near the Bitterroot Ecosystem. Ex. 19, Defendants' Answer to INTERROGATORY NO. 11.

96. Montana does not know when bears without radio collars have denned. Ex. 3, Costello Depo 39:15-20.

97. The "occupied" method used by the State of Montana draws a line. Ex. 3, Costello Depo 41:20-42:10.

98. The "occupied" method is only updated every two years and there is inherent lag time. Ex. 3, Costello Depo 43:8-16.

99. There have been verified grizzly bears in the Bears Paw Mountains in April of 2024 and the Missouri River Breaks near the Judith River in November of 2023.

https://helenair.com/outdoors/bears-paw-mountains-grizzly-and-fwp/article_e25dedf7-936e-5674-9fb8-ecf01d203d8f.html#tracking-source=home-top-story

100. Tracks of a female grizzly bear and cubs were verified in the Missouri River Breaks on 5/12/2021. Ex. 7, 2022 Verified Outliers Report. Montana Fish, Wildlife & Parks Region 2.

101. There have been verified grizzly bears in the Ninemile for several years in a row. Ex.1, Jonkel Depo 20:20-25. Grizzly bears have been verified in the Sapphire Mountains. Ex.1, Jonkel Depo 21:5-11. There are grizzly bears in the John Long Mountains on the east side of Rock Creek and on both sides of Rock Creek. Ex.1 Jonkel Depo 21:25-22:6. A grizzly bear has denned in the Flint Range and there are other verified reports of grizzly bears in the Flint Range. Ex.1, Jonkel Depo 22:8-9. There are grizzly bears in the Pintler Range on the Big Hole side. Ex.1, Jonkel Depo 22:11-12. There is verified grizzly bear activity in the West Big Hole, Bitterroot Mountains. Ex.1, Jonkel Depo 22:15-16.

102. In areas between the Bitterroot and the NCDE and GYE, there have been numerous verified, reliable reports of grizzly bears based on different signs and different evidence from Montana Fish, Wildlife & Parks. Ex. 4, Mattson Depo 78:16-25.

103. The grizzly bear population in Montana has not doubled in the last 11 years. Mace, et al. estimated there were about 1000 grizzly bears in the NCDE in 2012 and there are estimates of about 1100 in 2024. Ex. 3, Costello Depo 45:8-21; 71:8-12; 53:5-12.

104. The reported growth rate of 2.3% in the grizzly bear population is a rote projection going out from 2004, a central tendency projection, from when Kate Kendall estimated the NCDE population at 765. Ex. 4, Mattson Depo 80:10-14.

105. The 2.3% growth rate estimate is based on data between 15 and 16 years old and there has been no updating. Ex. 4, Mattson Depo 80:25-81:9.

106. The weight of evidence suggests grizzly bear population growth rate in Montana has been near zero percent. Ex. 4, Mattson Depo 83:1-2.

107. There has been a 43% increase in death rates of adult females since 2014, based on Dr. Costello's estimates. Ex. 4, Mattson Depo 82:7-9.

108. There are more than 765 bears but significantly less than 1,000 in the NCDE. Ex. 4, Mattson Depo 86:17-20, 113:12-13, 115:7-8.

109. The Costello, et al. estimate of a 90% chance of the NCDE population not falling below 800 has not been published in a scientific journal. Ex. 19, Defendants' Answer to INTERROGATORY NO. 18.

110. An isolated population of grizzly bears numbering between 600 and 800 individuals is not viable. Mattson Third Dec ¶11.

111. There has never been a single documented instance of natural genetic interchange between Cabinet-Yaak Ecosystem grizzly bears and Northern Continental Divide Ecosystem grizzly bears. Ex. 19, Defendants' Response to REQUEST FOR ADMISSION NO. 6.

112. There were no more than 135 grizzly bears collared in Montana on February 9, 2024. Ex. 19, Defendants' Response to REQUEST FOR ADMISSION NO. 7.

113. Researchers do not use leghold traps for capturing grizzly bears. Ex. 3, Costello Depo 51:24-25.

114. There was no scientific review process, nor was there an inclusion or consideration of published scientific papers when the commission members created the floating season date. Ex. 19, Defendants' Response to REQUEST FOR PRODUCTION NO. 3.

115. Costello et al. (2016) calculated that only 19% of poached or maliciously killed grizzly bears with radio-collars were independently reported by the public (i.e., a 19% reporting rate absent the use of radiotelemetry). Similarly, Ciarniello et

al. (2009) and McLellan et al. (2018) respectively estimated that, absent the aid of radiotelemetry, only 10-12% of unpermitted killings of grizzly bears were reported by the public. Lamb et al. (2023) estimated that, even with the aid of radiotelemetry, only 32% of total grizzly bear deaths were recorded. Mattson Third Dec ¶12.

116. Even with the aid of radiotelemetry, grizzly bears killed illegally or for suspect reasons are documented at only a low rate. In areas with few or no radiotelemetered bears, only around 10-20% of bears dying for suspect reasons in the backcountry are likely to be reported and tallied by managers. Mattson Third Dec ¶13.

117. Rather than report bycatch trappers are most likely to shoot grizzly bears caught in their traps. Doc. 22 ¶5 (Gilbert Dec).

118. Recreational wolf trappers are incapable of dealing with a trapped grizzly bear. They will either kill it and hide it or hike out and find agency people with Ketamine, Telazol, or some other sedative to immobilize the bear and release it. Ex. 5, Niemeyer Depo 91:4-10.

119. Traps should be checked within 24 hours or less. Doc 6-3 ¶51 (Niemeyer Dec).

120. Trapped grizzly bears must be released within 24 hours or sooner or there is a high risk of irreparable harm and injury from prolonged restraint, constriction,

stress and dehydration leading to death. Doc 6-3 ¶51 (Niemeyer Dec); Ex. 5, Niemeyer Depo 56:9-10; Ex. 4, Mattson Depo 71:1-6.

121. Some trappers go as long as a week between trap checks. Ex. 5, Niemeyer Depo 66:8-10.

122. One of the most important factors in determining the extent to which a trapped or snared animal is injured is the amount of time it spends in a trap or snare. Skin, blood and nerve tissue can be damaged the longer an animal is in a trap or snare. Another important factor is ambient temperature. When temperatures are below freezing, traps and snare more likely to cause severe and irreparable harm to skin, bone and vascular and nerve tissue at or below the constriction caused by a trap or snare. Upon release the loss of function in an animal's extremities will limit its ability to hunt, travel and escape predation. An animal could simply freeze to death. Doc 6-3 ¶52 (Niemeyer Dec).

123. Grizzly bears with trap-type injuries suffer impaired foraging ability particularly when digging for food; they surely have great difficulty excavating a secure winter den. These bears are likely to experience decreased mobility which reduces biological and genetic fitness, including survival and breeding potential. Doc 6-5 ¶7 (Horejsi Dec).

124. Grizzly bears maimed by traps appear to have a higher incidence of management actions from seeking human-related foods. The risk of extreme

trauma and death to captured animals increases after 24 hours. Doc 6-3 ¶51 (Niemeyer Dec).

125. Traps with drag hooks are not anchored and the caught animal drags the chain and hook until they get entangled in brush or around a tree. Ex. 5, Niemeyer Depo 69:14-18.

126. Animals caught in freezing weather have cold transferred into the foot by metal traps. Constriction injuries cut blood flow into the foot and the feet will freeze very quickly. Freezing feet is an irreparable injury. Ex. 5, Niemeyer Depo 55:7-20.

127. The more traps that are set creates more of an environment to catch wolverines, lynx, bears, and any other non-targets when using large traps. Ex. 5, Niemeyer Depo 61:7-12.

128. When you have two or three toes missing at an angle like a clean knife cut it is almost certain it was caused by a trap that has been caught on a foot. Eventually the wound dries up and the trap falls off with the toes in it and you observe a nice, straight slice. Ex. 5, Niemeyer Depo 79:16-80:2.

129. Montana has a far larger trapping population than British Columbia or Alberta and bears interacting with trapping are going to be more frequent in Montana. Ex. 6, Horejsi Depo 52:19-25; 63:20-22.

130. Montana, Idaho, Wyoming, British Columbia, and Alberta are the same region with comparable circumstances and potential conflicts. Ex. 5, Niemeyer Depo 73:15-23.

131. There is no difference between grizzly bears in British Columbia and Montana. They have the same genome and are almost identical. Ex. 6, Horejsi Depo 46:11-47:17.

132. Grizzly bears vary by weight depending on their location in Montana. Grizzly bears with more of a meat influence in their diet are larger than grizzly bears with a berry influenced diet. Doc. 23 ¶7 (Mattson Dec).

133. There are no substantial inherent differences in behavior between bears in British Columbia and Montana. Bears are not confined by boundaries and from a genetic point of view they are very much alike. Ex. 6, Horejsi Depo 48:11-49:19; Ex. 4, Mattson Depo 92:22-94:3.

134. Grizzly bears can smell scents from over a mile away. https://fwp.mt.gov/conservation/wildlife-management/bear/all-about-bears. Due to the exceptional sense of smell in grizzly bears, state and federal agencies have food storage orders in place and warning signs at public campgrounds. https://igbconline.org/be-bear-aware/food-storage/.

135. Grizzly bears will be attracted to baited and scented traps. Grizzly bears have an acute sense of smell, comparable to that of canids such as wolves and

smaller carnivores targeted by bait-assisted trapping (Gittleman 1991; Green et al. 2012; Van Valkenburgh et al. 2011, 2014; Bird et al. 2014). Grizzly bears can consequently detect carrion from great distances, including meat used as bait, and can be readily attracted by lures such as fish oil, beaver castor, and rotted blood (Lamb et al. 2016). Doc. 6-1 ¶22 (Mattson Dec).

136. It has been said that bears "smell their way through life." Due to their large home ranges and their wide-ranging movements, scented and baited traps set for wolf, coyote and other furbearers will attract grizzly bears from long distances; they will investigate these attractants. In those situations, grizzly bears become vulnerable to being caught in traps and injured or even killed. Doc. 6-5 ¶6 (Horejsi Dec).

137. Because meat and other animal-related scents are so alluring to bears, researchers commonly use these attractants to bait bears into culvert traps and snares – much like those used by trappers to target wolves and furbearers. Black bear hunters also legally use non-game meat and animal scents to lure bears into situations where they can be more readily killed (e.g., Idaho Fish & Game 2022, Wyoming Game & Fish Commission 2023). Grizzly bears are occasionally unintended victims. Wherever baits are available, grizzly bears will predictably be attracted by and motivated to obtain them. This includes using their paws, snouts, and considerable height when erect to exploit lures and edible baits sequestered in

small enclosures (or "cubbies") or elevated in a tree (e.g., Lamb et al. 2022). Doc. 6-1 ¶¶23, 24 (Mattson Dec).

138. Grizzly bears can seasonally range over areas as large as 40-80 square miles and odds that bears will detect even low densities of bait are high, especially where they are shadowing targeted species such as wolves and oriented to consuming meat. Doc. 6-1 ¶24 (Mattson Dec).

139. These high odds are manifest in documented instances where grizzly bears have been accidentally captured and sometimes severely injured by baited traps that were set to target wolves and furbearers. These injuries predictably included severe damage to paws and amputation of toes. Doc. 6-1 ¶26 (Mattson Dec).

140. Any loss of function in paws or limbs caused by trapping injuries has potentially severe consequences for affected bears, including abbreviated lives and increased suffering. Doc 6-1 ¶28 (Mattson Dec).

141. Grizzly bears caught in foothold traps frequently sustain foot injuries and toe amputations. Doc. 6-3 ¶44 (Niemeyer Dec).

142. Injuries caused by foothold traps and snares can vary from rapid mortality to injuries that kill or impair the animal after release, as well as lacerations and blunt force trauma. Traps and snares by their very nature and function cause compression or constriction injuries that can damage tissue restrict vascular flow and can have harmful effects. The physiological effects of stress, trauma,

desperation and shock can also cause death after release. Toxins can be released into the blood system after traps and snares are removed, resulting in organ damage and death. Doc. 6-3 ¶45 (Niemeyer Dec).

143. Other injuries from traps and snares include bone fractures, sprains, dislocations, tooth and gum damage from biting the traps and snares, hypothermia or hyperthermia and dehydration. Bone fractures to the phalanges and legs can be debilitating and result in death. Oftentimes these injuries are discovered only if the bear is subsequently trapped for research or management. There are several reasons grizzly bear mortalities from traps would not be detected including scavengers or predators consume the carcasses, animals dying in concealed places, carcasses decomposing quickly, radio transmitters malfunction or animals fitted with radio transmitters emigrate from the study area. Doc. 6-3 ¶¶46, 47 (Niemeyer Dec).

144. Significant impacts on animals from trapping or snaring include the loss of digits in paws, neck snare injuries such as "waterhead" injuries meaning significant edema and neck snare injuries from snares cutting through flesh which causes bleeding and leads to eventual death of the animal. Doc. 6-3 ¶49 Niemeyer Dec).

145. Grizzly bears that have lost claws, toes, feet and lower limbs suffer from impaired foraging ability particularly when digging for food. They surely have great difficulty excavating a winter den. These bears are likely to experience

decreased mobility which reduces biological and genetic fitness, including survival and breeding potential and grizzly bears maimed by traps appear to have a higher incidence of management actions from seeking human-related foods. Doc. 6-5 ¶7 (Horejsi Dec).

146. Montana trapping regulations encourage trappers to use secure methods of attaching traps to hold the largest species occurring in the area in the case of an incidental capture. Animals that are trapped or snared and then released cannot be presumed to be unharmed. Doc. 6-3 ¶¶48, 49 (Niemeyer Dec).

147. The use of baits and attractants during wolf trapping activities further heightens the risks that grizzly bears will be drawn directly to wolf traps and snares. Scented lures can be placed directly next to traps and snares. Baits may be placed 30 feet or more from traps which will not prevent capture of grizzly bears. This illustrates the fundamental danger of trapping wolves in grizzly bear habitat. Trappers almost always use bait or scented lures (such as urine, anal glands or ground meat). Any bait or lure that will attract a wolf will also attract grizzly bears, which are omnivores and have an acute sense of smell. The only time a trap or snare is set without bait or a lure is a trail set on a game trail which is the most indiscriminate form of trapping because it is designed to catch anything that uses the game trail. Doc. 6-3 ¶¶38, 39 (Niemeyer Dec).

148. Reported incidents of accidental grizzly bear captures in traps and snares set for wolves do not show the full scope of the danger to grizzly bears. Grizzly bears are fully capable of tearing wolf foothold traps and snares from their anchors and walking away with the trap or snare still attached. Doc. 6-3 ¶40 (Niemeyer Dec).

149. Many trappers will not report incidental captures out of fear these reports will result in increased regulation of trapping activities. Neither of the 2020 grizzly bear snaring incidents in north Idaho were reported by the trapper who set the snares. Many incidental captures go unreported and many more grizzly bears are captured in Montana than are reported to Montana Fish, Wildlife & Parks. Doc. 6-3 ¶¶41,42 (Niemeyer Dec).

150. In addition to physical injury, trapped bears also predictably experience additional harm in the form of stress and exertion associated with attempts to escape. This kind of harm has been well-documented, with occasionally fatal consequences. Stress and exertion predictably mount the longer a bear is restrained, which has resulted in common use of radio-transmitters by bear researchers to signal when a snare has been sprung, as well as recommendations that trapped bears be chemically immobilized and released within 1-2 hours of capture. Doc. 6-1 ¶29 (Mattson Dec).

151. In addition to the harm caused to inadvertently trapped grizzly bears, effects of non-target captures, demographically and to recovery of this species in the

contiguous United States, will be proportionately greater in areas outside of the NCDE and GYE Recovery Zones, with repercussions for natural recovery of grizzly bears in the Bitterroot Ecosystem (BE). Currently, grizzly bears outside of established Recovery Zones can only be sustained with immigration of bears from areas where females survive long enough to produce a figurative surplus of emigrants. This source-sink population dynamic has likely produced many of the gains in population distribution that promise connectivity among the NCDE, GYE, and CYE, as well as natural colonization of the BE. It is highly likely that grizzly bears naturally migrating into the BE and between the NCDE, GYE, and CYE will be attracted to and caught in traps and snares set by recreational trappers. Doc. 6-1 ¶¶32-35 (Mattson Dec).

152. A key goal of grizzly bear recovery is genetic and habitat connectivity that unifies the isolated Recovery Areas into a larger, viable population. Grizzly bears naturally re-occupying the Bitterroot Ecosystem and grizzly bears in areas between the Yellowstone, Northern Continental Divide and Cabinet-Yaak Grizzly bear Recovery Areas will be subjected to elevated risk of being attracted to and caught in traps set by recreational trappers. Doc. 6-7 ¶12 (Gilbert Dec).

153. Montana Fish, Wildlife & Parks records the locations of wolf harvests by deer and elk hunting districts.

https://experience.arcgis.com/experience/34fbb4c9509e45959f6291965388c345

154. During the fall pre-denning period, grizzly bears enter hyperphagia, a period of intense feeding to accumulate fat reserves to survive hibernation. Grizzly bears in hyperphagia are very vulnerable to being attracted to and caught in baited and scented traps. Grizzly bears exceptional sense of smell contributes to hyperphagia but makes them highly vulnerable to attractants like baits and to being attracted to and caught in baited and scented traps. Doc. 6-2 ¶9 (Kendall Dec); Doc. 6-5 ¶8 (Horejsi Dec).

155. Coyotes are classified as a "varmint" in Montana and can be killed by anyone, without a license, at any time of year. Ex. 21, Jim Pashby, *Coyotes*, Montana Outdoors November-December 2023 at 55.

156. Coyotes are classified as predators in Montana and are unprotected by federal and/or state law or regulation and can be hunted and trapped in Montana year-round without a license. Ex. 22, Montana 2023 Wolf/Furbearer Regulations at 2, 7; MCA §87-7-101 ("For the purpose of this part, the term 'predatory animal' includes coyote, red fox, and any other individual animal causing depredations upon livestock").

157. The only requirements for a coyote trapper in Montana are to attach a name tag to the trap or snare, not unduly endanger livestock, and obtain permission to trap on private land. Ex. 22, Montana 2023 Wolf and Furbearer Regulations at 7; MCA §87-6-601.

158. Nonresidents are required to purchase a Nonresident Trapping License to take nongame or predatory species using traps and/or snares.

https://fwp.mt.gov/hunt/regulations/predator-shooting

159. Traps and snares set for coyotes and other predators and non-game wildlife must be set in a manner and at a time so that it will not unduly endanger livestock. A person who injures livestock in a trap or snare is liable for damages to the owner of the livestock. There are no comparable restrictions on practices that would unduly endanger wildlife including grizzly bears. Ex. 22, Montana 2023 Wolf/Furbearer Regulations at 2, 7; MCA §87-6-601.

160. A person may not remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare. Ex. 22, Montana 2023 Wolf/Furbearer Regulations at 2, 7; MCA §87-6-601.

161. There is total overlap between coyotes and grizzly bears within grizzly bear habitat in Montana.

https://fieldguide.mt.gov/speciesDetail.aspx?elcode=AMAJA01010.

https://fieldguide.mt.gov/speciesDetail.aspx?elcode=AMAJB01020

162. At least 11 grizzly bears have been caught in coyote traps in Montana. There are six verified instances of grizzly bears caught in coyote traps in Montana since 2010. Doc. 6-3 ¶15 (Niemeyer Dec); Doc. 20 at 14-16 (McDonald Dec).

163. Montana FWP has been aware of unpermitted takings of grizzly bears in coyote traps and snares since at least 2010 and as recently as October 2021. Doc. 20 at 14-16 (McDonald Dec).

164. A grizzly bear was caught in a coyote trap baited with dead foxes and was likely caught in the trap for 24 hours. A second trap may have been removed (stuck on foot) of the other yearling grizzly bear. Ex. 1, Jonkel Depo 26:3-27-8; Doc. 20 at 14-16 (McDonald Dec).

165. A 130-pound grizzly bear was caught by a single toe and held by a coyote trap. Ex. 2, Wenum Depo 21:2-4.

166. When bears are missing toes it is assumed it was from a coyote trap because a certain make of coyote trap, a Sterling, is very strong for its size and if a bear gets two or three toes caught, the trap will not come off until those toes fall off. Ex. 5, Niemeyer Depo 80:10-16.

167. Bears observed with missing digits or entire foot were killed by other causes, but there is no doubt the injuries were from foot-snares where the cables came undone and the bear ran off with the foot snare on it until its entire foot came off. Very often injuries had scarred over and the bear had lived that way for a long time. Ex. 5, Niemeyer Depo 126:12-13.

168. Two grizzly bears caught in coyote traps in Montana were set by recreational trappers and had to be released by Mike Madel. Ex. 5, Niemeyer Depo 126:12-15.

169. Trapping coyotes on the east side of Montana on the prairie is very different than the west side where there are large carnivores. Ex. 5, Niemeyer Depo 100:14-20.

170. In Montana between 2012-2017 bycatch in snares set for coyotes died 73% of the time. Doc. 6-3 ¶35 (Niemeyer Dec).

171. Montana allows trapping for marten from December 1-February 15 in Regions 1-5 with a limit of ten per person in Region 1 and no limit in Regions 2-5. Ex. 22, Montana 2023 Wolf/Furbearer Regulations at 16. These regions overlap with grizzly bear habitat in Montana.

172. Montana allows body-gripping traps with a greater than 5" jaw spread in Lynx Protection Zones within cubbies with openings up to 52 square inches. These can be baited with tainted meats. Body-gripping traps are also allowed in leaning pole sets at least 48 inches above the surface. Conibear traps are allowed as part of a water set or an elevated ground set with jaw spread 5 inches or less. Ex. 22, Montana 2023 Wolf/Furbearer Regulations at 13.

173. Numerous grizzly bears have lost claws, toes and feet after being caught in baited body-gripping conibear traps set for marten in cubby boxes. In response to

this risk, British Columbia requires the opening size on the front of cubbies be limited to no more than 8.9cm (3.5 inches). This is narrower than most bear paws other than those of cubs, yearlings, and small adolescents. Mattson Third Dec ¶15.

174. Montana recommends the opening size of cubbies be limited to 2.5 x 2.5 inches to prevent incidental capture of fishers but allows an opening of 52 square inches. There are no recommendations for preventing bycatch of grizzly bears. Ex. 22, Montana 2023 Wolf/Furbearer Regulations at 13, 16.

175. Current trapping regulations in British Columbia restrict wolf take to 3 per person while the Montana trapping regulations allow each person to take 20 wolves, 10 by trap. Montana trapping regulations allow openings on the front of cubby boxes up to 52 square inches while regulations in British Columbia restrict cubby opening size to 3.5 inches to prevent grizzly bears from having their feet caught in body-gripping traps which often are broken free from the anchor and remain attached to the feet, causing necrosis and loss of claws, toes, and feet. Doc. 25 ¶20 (Niemeyer Dec).

176. Montana FWP has opened the trapping season for wolves by Wolf Management Unit. In 2021-22, the season opened on December 15th in Wolf Management Unit 121; December 21 in Wolf Management Units 100, 101, 110, 130 and 150 in Region 1, WMUs 313, 316 and 390 in Regions 3 and 5; and WMU 400 in Region 4. Doc. 20 ¶31.

177. FWP has the ability to close trapping seasons by Wolf Management Unit or by deer and elk hunting districts.

178. Montana has admitted that the use of snares for wolf trapping may result in incidental grizzly bear captures, injuries, and mortalities. Ex. 23, FWP responses to public comments, State of Montana et al. 0001708 ("Trapping or hunting of other species in certain areas may cause a limitation. For example, the use of snares for wolf trapping and the use of hounds for hunting black bears within connectivity areas may result in incidental grizzly bear captures and or mortality."); State of Montana, et al. 0001724 ("Trapping or hunting of other species in certain areas may be direct sources of human-bear conflicts that could result in human injury or death or death and/or injury to bears. The use of snares for wolf trapping may result in incidental grizzly bear captures.")

179. The 2021 Montana Legislature passed HB 224 allowing the use of snares, for wolf trapping, in addition to the already Commission-approved use of footholds, for wolf trapping, from 2012. The Commission later determined the districts and management units where snaring is valid. The Commission has the authority to close areas in anticipation of conflicts between hunters and grizzly bears. Ex. 23, State of Montana, et al. 0001736.

180. Montana has acknowledged that grizzly bears are potentially active at any time, including during the winter. Ex. 23, State of Montana, et al. 0001736

("Trappers are urged to exercise caution throughout the trapping season as bears can potentially be active at any time, including grizzly bears that leave dens during winter. Additionally, trappers are encouraged to avoid trapping in areas where grizzly bear sign is detected.")

181. The only thing prohibited in Lynx Protection Zones is the use of snares for wolf trapping. Snares targeting coyotes are allowed, as is wolf trapping with scents and meat baits and all other forms of traps. Doc. 25 ¶4 (Niemeyer Dec).

182. A trap with a 9" jaw spread can easily trap even large grizzly bears and will not mitigate capture of animals larger than wolves. The 5 3/8" jaw spread for traps targeting bobcats within LPZs will not prevent capture of grizzly bears, particularly subadults, yearlings, and cubs, which have smaller feet. Doc. 25 ¶5 (Niemeyer Dec).

183. The pan tension requirements on traps will not prevent capture of grizzly bears, since grizzly bears weigh more than wolves and coyotes. Doc. 25 ¶6 (Niemeyer Dec).

184. The types of injuries observed by Timothy Manley and Mike Madel and as shown in Lamb et al. (2023) (clean breaks of bone and tissue, slicing type wounds from cables or trap jaws, amputations of toes, feet and arms) are inconsistent with the types of injuries that bears suffer in the wild. The most common source of nonfatal injuries to bears in the wild occur during fights with other bears, injuries

suffered when attacking prey and from accidental falls. Fight injuries are most often scars on the nose and face, puncture wounds, torn ears and missing patches of fur. Doc. 23 ¶6 (Mattson Dec).

185. The types of injuries observed and documented by Manley, Madel, Jonkel, et al., see Doc. 20 at 14-16, are likely to be trap-caused and unlikely to occur in the wild. These include clean breaks of bones and tissue, and slicing type wounds from cable snares and trap anchors. Irregular shaped amputations may be from trap-caused necrosis of tissue. Doc. 25 ¶15 (Niemeyer Dec).

186. Once a trap is set, wolf size traps will grip and hold the toes or feet of bears and mountain lions. Wolf size coil-spring traps can grip most wild ungulate hooves and some livestock hooves up to the size of a horse's hoof. Montana Fish, Wildlife & Parks records show that two moose were caught in wolf traps in 2022 and six deer were caught in foothold traps set for wolves in 2021 and 2022. Doc. 25 ¶9 (Niemeyer Dec).

187. "In grizzly bears, demographic connectivity is best achieved by maintaining residency of females and males in the areas between sub-populations. This is because female bears most often set up their home range in proximity to their mother's range, and only rarely disperse long distances (although it has been observed). If subpopulations are too distant from one another, they are unlikely to exchange females. By default, demographic connectivity also achieves genetic

connectivity." Ex. 24, U.S. Fish & Wildlife Service Comments on Draft Montana Statewide Grizzly Bear Management Plan at 1 (*quoting* Costello, et al., 2020).

188. From September 15 through December 31, 2023, hunters legally shot and killed 111 wolves. From January 1, 2024, through February 15, 2024, 38 wolves were legally killed by hunters, 109 wolves were legally trapped, and 8 wolves were legally snared. Ex. 26, Wolf Dashboard data; https://experience.arcgis.com/experience/34fbb4c9509e45959f6291965388c345/page/Harvest-Data/

189. A total of 286 wolves were legally shot, trapped, or snared in the 2023-2024 season. By February 15, 2024, 272 wolves had been legally killed, and Regions 4, 5, 6, 7, and WMU 313 had met the quotas set by the Fish and Wildlife Commission. Region 1 had 114 legal kills with a quota of 131; Region 2 had 81 legal kills with a quota of 104; Region 3 had 51 legal kills with a quota of 52. By the end of the season on March 15, 2024, Region 1 had seven additional kills for a total of 121; Region 2 had five additional kills for a total of 86; and Region 3 had two additional kills for a total of 53. The state quota for the 2023-2024 season was 313. By February 15, approximately 87% of the quota had been reached statewide. The 14 additional wolves killed in the last month of season resulted in about 91% of the statewide quota for the season. Regions 4, 5, 6, 7, and WMU 313 reached their quotas; Region 3 exceeded its quota by one; Region 2 reached 83% of its

quota; and Region 1 reached 92% of its quota. Ex. 26, Wolf Dashboard https://experience.arcgis.com/experience/34fbb4c9509e45959f6291965388c345/page/Harvest-Data/

Dated April 15, 2024

/s/Timothy Bechtold

Attorney for Plaintiffs