

1. At ¶5 of his declaration, Mr. Kluge states regulated trapping does not cause wildlife to become threatened or endangered and is managed through scientifically-based regulations that are strictly enforced. While this may be Mr. Kluge's opinion, he offers no factual basis for the opinion. Grizzly bears, wolves and other species were systematically shot, trapped and poisoned nearly out of existence in the Lower 48 states. One of the reasons for the listing of the lynx as a threatened species was due to the risk to the species from recreational trapping, and the most recent Species Status Assessment (U.S. Fish & Wildlife Service 2023) for wolverine cites state trapping regulations as an elevated threat to the species.

2. The trap placement regulations Mr. Kluge cites at ¶6 will do nothing to prevent grizzly bears from being attracted to the traps and caught. Grizzly bears have large home ranges and can move several miles in one day. As I stated in my previous declaration, grizzly bears have an acute sense of smell effective at long distances. Fifty to one hundred fifty feet is a trifle to a grizzly bear. The setbacks were established to protect people and their pets around picnic areas, campgrounds, trailheads and fishing access sites and within public rights-of-way adjacent to roads, not for the protection of grizzly bears.

3. The methods described in McDonald at ¶¶ 6, 8, 9, 10 are arbitrary and inappropriate as a basis for instituting a "floating" season opening date. The methods are not adequate for determining when "grizzly bears have entered their

dens.” The method described is dependent on radio telemetry. This is not a reliable method. The current population estimate for the NCDE is 1,136 (Costello and Roberts 2023). Of these, 85 were collared for research and management in 2022. This is just 7.3% of the NCDE population leaving approximately 1,051, or 92.7% of grizzly bears that are not monitored. Research trapping effort in the NCDE is concentrated in a couple of areas. Other areas including the South End NCDE and parts of the Rocky Mountain Front have no research trapping effort, thus there are gaps in the observation data. Without access to telemetry data, managers rely on reports from the public and their own observations. Trappers are unlikely to report grizzly activity if they believe it would shorten the trapping season. Moreover, each Fish, Wildlife & Parks Bear Manager covers thousands of km² and cannot site-specifically monitor all that area. Without telemetry data it comes down to an educated guess, which lacks the precision required to prevent illegal takings of pre and post-denning grizzly bears.

4. Grizzly bears in lower elevations den later and emerge earlier. For example, grizzly bears in the Yaak portion of the CYE spend an average of three weeks less per winter than grizzly bears in the Cabinet portion of the CYE (Kasworm et al. 2023). Many areas outside of the Recovery Areas are in lower elevations including the Garnet and Sapphire Mountains and the Ninemile Demographic Connectivity Area where grizzly bears are likely to have shorter denning periods. Depending on

the ecosystem, nearly 40% of grizzly bears in Montana have historically been active outside their dens either after November 27th or before March 15th, with seasonal duration of activity typically greater for male bears (*See, e.g.*, Haroldson et al. [2002], Kasworm et al. [2021]). 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. There have been numerous 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 (e.g., Zuckerman 2015, Kearse 2019, Heinz 2022, Sherer 2021, Murdock 2023). While it is important to delay the start of the trapping and snaring season until at least January 1 to avoid catching grizzly bears, it is equally important to end the season by early February in low elevations and mid-February in higher elevations.

5. The area described as Occupied in 2022 is already out of date. For example, in 2023 James Jonkel, Region 2 Bear Manager for Montana Fish, Wildlife & Parks, has provided multiple reports of several different grizzly bears in and around Potomac, Bonner, Missoula and the Sapphire Mountains and Bitterroot. He has also confirmed grizzly presence in the Ninemile Demographic Connectivity Area in 2023. The fact that Montana Fish, Wildlife & Parks had no reports of grizzly

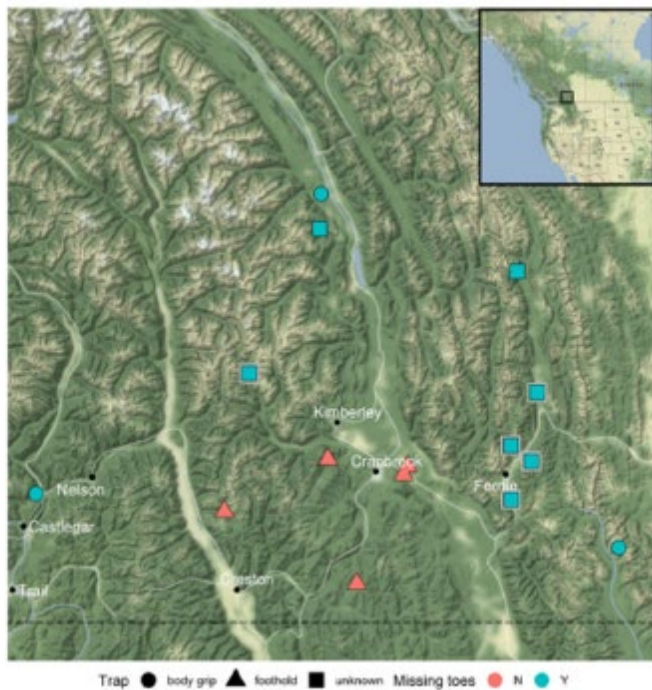
bears caught in traps in the NCDE area during 2022-2023 does not lessen the likelihood of future captures or related harm to affected bears.

6. Mr. Kluge states at ¶12 that most cases of bears missing toes, feet, or limbs do not have definitive causation. I have observed countless grizzly and black bears in Yellowstone. Based on my professional experience, the types of injuries observed by Timothy Manley (Declaration) and Mike Madel (McDonald Dkt#19-3) 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 non-fatal 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.

7. At ¶14 Mr. Kluge states regarding breakaway devices that “Regardless, both breakaways stand to be broken free by the average-weight grizzly bear in Montana.” This is highly arbitrary as any grizzly below “average weight,” including females, subadults, yearlings and cubs, would not break free. Moreover, 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 (Hilderbrand et al. 1999).

8. Mr. Kluge states at ¶17 the results of Lamb et al. (2022) are not directly relevant to Montana. In my professional opinion the types of injuries to grizzly bears shown in Lamb, et al. (2022) are highly relevant to Montana. Some of the injuries incurred were the result of baited conibear body-gripping traps. In response to this risk, the Province of British Columbia tightened trapping regulations by limiting size of the opening on cubby boxes to 3.5". Montana has failed to limit this risk and allows openings on cubbies up to 52 square inches. Moreover, their study area is in an international population shared by Montana and British Columbia.

(A) Location of documented missing toes and by-catch



For example, Montana shares the same population of grizzly bears with Canada in both the NCDE and CYE and grizzly bears frequently move across the border as shown in the maps below.

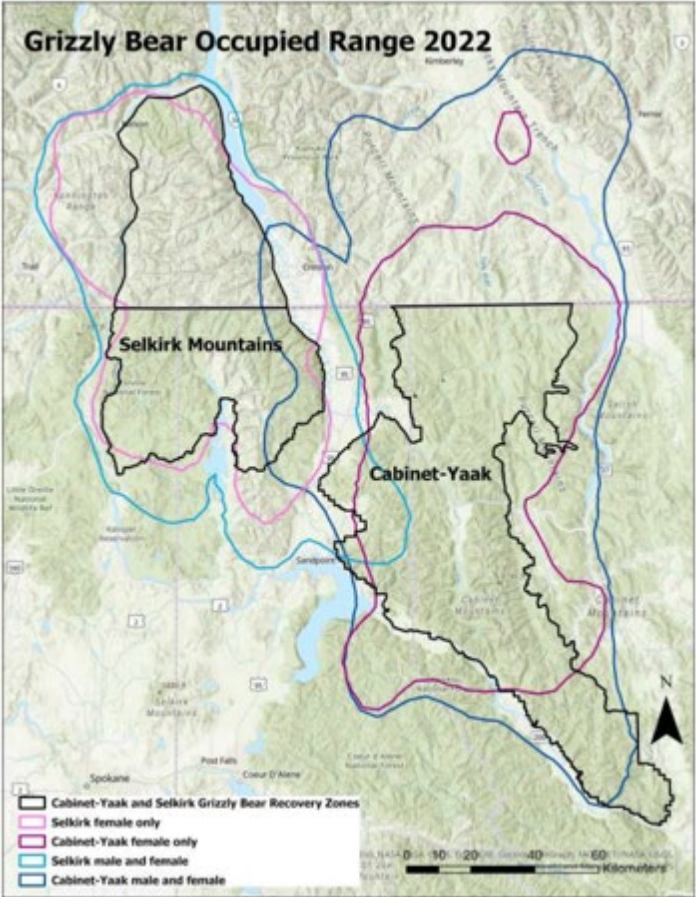


Figure 1. Occupied range of male and female grizzly bears and female grizzly bears only in the Cabinet-Yaak and Selkirk recovery areas, 2000-2022.



Figure 81. Radio locations and minimum convex (shaded) life range of male grizzly bear 722 in the Yaak River, 2011-12.

According to Wayne Kasworm, U.S. Fish & Wildlife Service, the grizzly bear killed by mistaken identity in the Moyie River drainage in Idaho that had a neck snare embedded in its neck had an ear tag that came from British Columbia. A grizzly involved in recent incidents in the North Fork of the Flathead was DNA identified to British Columbia. Moreover, all the other grizzly bear populations in Montana share the same populations with Idaho and Wyoming. Based on my own lengthy experience I know that many grizzly bears have home ranges that span the borders of Wyoming, Idaho and Montana. Some of the observed injuries of grizzly bears observed in adjacent states and provinces could have occurred in Montana, as many grizzly bears have home ranges that cross the borders.

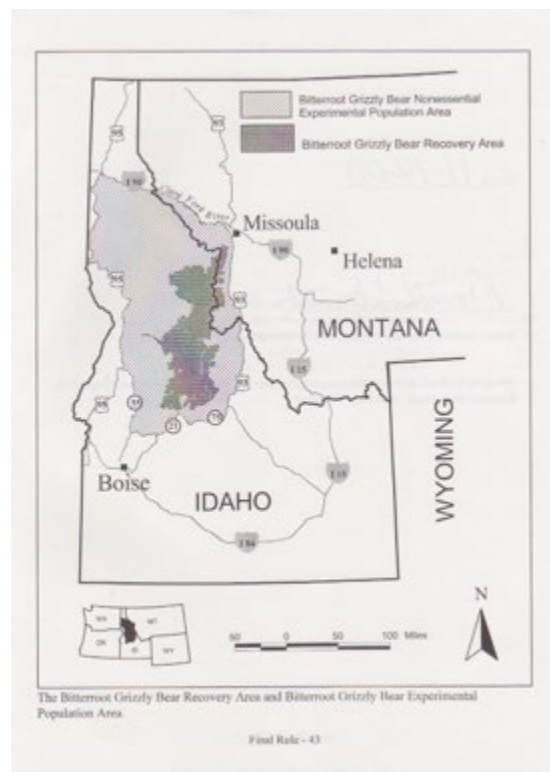
9. Mr. Kluge at ¶18 asserts that Plaintiff's statement that traps kill and maim animals indiscriminately is not true. In my professional opinion, any loss of function in paws or limbs caused by trapping injuries has potentially severe consequences for affected bears, including abbreviated lives and increased suffering. I have also personally documented instances where severe injuries such as spiral fractures to front limb bones resulting from attempts to escape snares have been fatal to the involved animals. In my professional opinion, trap-related stress and injury is guaranteed to be even greater for grizzly bears subject to non-target captures compared to those captured during research efforts. Under state regulations, trappers are only required to check wolf traps once every 48 hours (Montana Fish,

Wildlife & Parks 2023). Even when a trapper detects a captured grizzly bear, he or she is unlikely to be carrying much less trained in the use of immobilization drugs and equipment. Recreational trappers will consequently need to communicate with a government agent proficient in immobilizing grizzly bears, at which point additional time will predictably transpire before the agent arrives, immobilizes the bear, and releases it. As a practical matter, only 12% of unpermitted grizzly bear killings are actually reported (McLellan, et al. 2018). This data shows that trappers who find grizzly bears in their traps are highly unlikely to call a government agent. Rather than immobilization drugs, trappers are most likely carrying firearms to dispatch grizzly bears in their traps so they can safely remove the traps.

10. The declaration of Ms. Costello, Dkt#19-4 at ¶13 defines the Bitterroot Ecosystem as just the Selway-Bitterroot and Frank Church Wildernesses and states there have been just two verified grizzly bear observations in that area. I and many other scientists, including with the U.S. Fish and Wildlife Service and the Craighead Wildlife-Wildlands Institute, have defined a far broader area as the Bitterroot Ecosystem. Just as the Greater Yellowstone Ecosystem is far larger than the Recovery Area, the Bitterroot Ecosystem is far larger than the Bitterroot Recovery Area. Within this larger area several additional verified grizzly bear observations have occurred, *see Alliance for the Wild Rockies v. Cooley*, ___F.Supp.3d___, 2023 WL 2522945 (D. Mont. Mar. 14, 2023). Additional

verified observations include a grizzly bear photographed in the Whitebird area, grizzly tracks verified near the Gospel Hump Wilderness, a grizzly bear killed in the Kelly Creek drainage, a grizzly verified in the North Fork of the Salmon and grizzly bear DNA recovered from a den in the Mallard- Larkins Roadless Area.

This map from the 2000 Bitterroot Final Rule shows the ecosystem defined by the U.S. Fish & Wildlife Service that extends beyond the Bitterroot Recovery Area:



11. Ms. Costello at ¶14 inaccurately states that there is no evidence for a lack of grizzly bear denning in Montana. For example, James Jonkel, Region 2 Bear Manager for Montana Fish, Wildlife & Parks, has documented several instances of non-denning bears in Montana.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 3rd day of November, 2023.

A handwritten signature in black ink that reads "David J. Mattson". The signature is written in a cursive style with a large, circular initial "D" and a stylized "J" and "M".

David J. Mattson