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When an individual pictures images of Americans, perhaps the mightiest of them all is the grizzly bear. The grizzly bear is a religious symbol within various Native American tribes, representing strength and medicine. In 2017, the Fish and Wild Life Service (FWS) removed the Yellow Stone population of grizzly bears from their endangered species list. Subsequent lawsuits were filed to challenge such removal. As of August 31, 2018, a federal judge in Montana temporarily blocked the first grizzly bear trophy hunts around Yellow Stone National Park in more than forty years. "Setting up a showdown over whether government wildlife regulators were wrong to remove the animal's endangered species protections." This blog post explores the Endangered Species Act and ultimately advocates why the grizzly bear population in the Yellow Stone Park area should remain an endangered species.

First, a look at the endangered species protections. Such protections stem from the Endangered Species Act of 1973 ("The Act"). The purpose of The Act is to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the related international treaties and conventions. The Act declares that:

[Various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and preservation.8] Interests of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction.9] [and that] "these species of fish, wildlife and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.10]
The Supreme Court of the United States has interpreted The Act and held the intent of Congress in enacting The Act was to “halt and reverse trends towards species extinction, whatever the cost.”[11] In *Tennessee Valley Authority v. Hill*, the Supreme Court barred the completion of a multi-million dollar dam located in Tennessee.[12] The dam would have led to the extinction of a local snail population.[13] The landmark case demonstrated the authority and weight of The Act, showcasing the extinction of something as minuscule as a mollusk could prevent the completion of a multi-million dollar project.

Returning to the bears, the Yellow Stone grizzlies were first placed on the endangered species list in 1975.[14] When the grizzlies were first placed on the endangered species list, their population was 136 in greater Yellowstone.[15] From this placement the grizzlies were afforded numerous protections. Such protections included: protection from importing/exporting,[16] protection from taking/hunting,[17] protection from possessing,[18] and protection from selling or buying.[19] After forty-three years under these protections, the Yellow Stone grizzly population has grown to about 700 bears.[20] All of those protections will be removed from the grizzlies if the Federal District Court in Montana determines the animal was properly removed from the endangered species list.

In order for wildlife to be removed from the endangered species list, the Secretary of the Interior must determine such protection is no longer necessary “solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species.”[21] The Secretary must also take into account any effort being made to protect such species, “whether by predator control, protection of habitat and food supply or other conservation practices within any area under its jurisdiction.”[22]

In this case, the Secretary of the Interior has failed to rely on the best scientific data available to him. Weighing the competing expert testimonies against each other, the evidence in the plaintiff’s complaint is persuasive. The plaintiff argued, *inter alia*, that the decline in whitebark pines, and therefore whitebark pine nuts, was not properly considered by the Secretary of the Interior.[23] A relationship can be inferred between the availability of whitebark pines and the survival rate of grizzly bears.[24] Additionally, the whitebark pine population is expected to dramatically decrease in the foreseeable future due to climate change and other factors.[25] A similar argument, involving similar facts has succeeded before in *Greater Yellowstone Coalition, Inc. v. Servheen*. In 2007, the FWS attempted to delist the Yellow Stone grizzly population.[27] Such an attempt was eventually barred via the Ninth Circuit. The Ninth Circuit held that because the FWS failed to rely on the best available science when concluding that the expected large decline in whitebark pine would not have a negative impact on the grizzly population.[28]

In what is perhaps an early indication of the outcome of the case, the Federal Court stated on August 31st: “[t]he threat of death to individual bears posed by the scheduled hunts is sufficient to grant a temporary injunction.”[29]


[5] Id.


[12] Id at 188.

[13] Id at 185.


[15] Id.


[17] Id.

[18] Id.

[19] Id.


[22] Id.

[23] Complaint, supra note iii at 25.


[27] Crosby, supra note iv.

[28] Greater Yellowstone Coal., Inc. v. Servheen, 665 F.3d 1015, 1024 (9th Cir. 2011).

[29] Crosby, supra note iv.