

TODD KIM, Assistant Attorney General  
LEEANN KIM, Trial Attorney (NY Bar No. 5539705)  
DAVIS A. BACKER, Trial Attorney (CO Bar No. 53502)  
United States Department of Justice  
Environment & Natural Resources Division  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044-7611  
Phone: (202) 305-0468  
Fax: (202) 305-0275  
Email: leeann.kim@usdoj.gov

*Attorneys for Federal Defendants*

[Additional contact information in signature block]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**ALLIANCE FOR THE WILD  
ROCKIES, et al.,**

*Plaintiffs,*

v.

**HILARY COOLEY, in her official  
capacity as U.S. Fish and Wildlife  
Service Grizzly Bear Recovery  
Coordinator, et al.,**

*Federal Defendants*

and

**STATE OF IDAHO,**

*Defendant-Intervenor.*

CV 21-136-M-DWM

**FEDERAL DEFENDANTS'  
RESPONSE TO THE COURT'S  
MARCH 15, 2023 ORDER**

Federal Defendants submit the following timeline in compliance with the Court’s March 15, 2023 Opinion and Order (ECF No. 42) on the parties’ cross-motions for summary judgment, which is set forth in the Declaration of Gary Frazer, Assistant Director for the Ecological Services Program of the U.S. Fish and Wildlife Service (“Service”), attached hereto as Exhibit 1. Ex. 1 ¶ 7.

The Court ordered the Service to prepare “a supplemental EIS and if warranted, a new ROD and final rule” and to “file a notice proposing a detailed timeline for the completion of that process.” ECF No. 42 at 34. The Service proposes to initiate a new NEPA process, including a draft and final EIS and a new ROD, rather than supplementing the outdated November 2000 EIS. Ex. 1 ¶ 5.

Because of the change in circumstances arising from individual bears dispersing within the Bitterroot Ecosystem with greater regularity, the Service plans to take a fresh look at its strategy for supporting restoration of grizzly bears to the Bitterroot Ecosystem. *Id.* ¶¶ 3–4. With the preparation of an EIS, the Service anticipates considering a range of alternatives, including options to facilitate natural recolonization through affirmative actions, such as identifying connectivity areas, addressing sanitation issues, future augmentation, and/or revising the recovery plan chapter for the Bitter Ecosystem. *Id.* ¶ 4. Because of the substantial public interest in the restoration of grizzly bears to the Bitterroot Ecosystem, the Service will conduct a public scoping process to invite input on the possible range of

alternatives for consideration in the draft EIS. *Id.* ¶ 5.

The Service's proposed timeline for completing the actions accounts for the agency's significant workload and limited resources. *Id.* ¶ 6; 40 C.F.R. § 1501.10(a); 43 C.F.R. § 46.240(b) ("Time limits should reflect the availability of Department and bureau personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble an interdisciplinary team and/or qualified staff appropriate to the type of project to be analyzed to ensure timely completion of NEPA documents."). The Service staff who will be responsible for this action will be working concurrently on three processes: a species status assessment and 12-month findings on petitions to delist the Northern Continental Divide Ecosystem and Greater Yellowstone Ecosystem grizzly populations; the Service's joint proposal with the National Park Service to restore grizzly bears to the North Cascades Ecosystem in Washington; and this EIS for restoring grizzly bears to the Bitterroot Ecosystem. Ex. 1 ¶ 6. These actions share the limited resources that are applied to the continual management of human/bear conflicts within the occupied range of the grizzly bear. *Id.*

The Service anticipates completing a pre-scoping process, which includes early planning meetings, within three months of a court order. Ex. 1 ¶ 7; 40 C.F.R. § 1501.9(a)–(c); 43 C.F.R. § 46.235(a). The Service plans to consult with

interested partners, such as the Nez Perce Tribe, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife, and Parks, and the U.S. Forest Service. 40 C.F.R. §§ 1501.7(h), 1501.8(a)–(b), 1501.9(b)–(c); 43 C.F.R. § 46.200(a)–(b).

The Service anticipates drafting a Notice of Intent for the Federal Register, which will include a notice for a public scoping process, in one month. Ex. 1 ¶ 7; 40 C.F.R. §§ 1501.9(d)(6), 1502.4(a). The Service anticipates it will take four months for processing the Notice of Intent. Ex. 1 ¶ 7. This includes the time needed for internal review and approval and for developing outreach materials for the public scoping process.

The Service anticipates publishing the Notice of Intent by the eighth month of the timeline, at which time the formal public scoping process will begin. 40 C.F.R. §§ 1501.9(d)(6), (e), (f), 1502.4(a); 43 C.F.R. § 46.235. The Service plans on providing the public two months to comment on scoping. 40 C.F.R. § 1501.9(c), (d)(6).

The Service anticipates completing the review of the public scoping comments and preparation of a draft EIS in twelve months. Ex. 1 ¶ 7; 40 C.F.R. §§ 1501.9(e), 1502.4(a), 1502.9(b), 1502.17(a), 1502.19(d). *See generally* 40 C.F.R. §§ 1502.10–1502.24; 43 C.F.R. §§ 46.400–46.450. This includes the time needed for coordination with cooperating agencies, which can include a Federal,

State, Tribal, or local agency. 40 C.F.R. §§ 1501.7(g)–(h), 1501.8(a)–(b), 1502.9(b). The Service anticipates it will take four months to process the draft EIS for Federal Register publication, including internal review and approval, and for developing outreach materials for seeking public comment on the draft EIS. Ex. 1 ¶ 7. The Service plans on providing the public two months to comment on the draft EIS once it is published. Ex. 1 ¶ 7; 40 C.F.R. § 1503.1(a); 43 C.F.R. § 46.435(a)–(c).

The Service anticipates completing the review of the public comments on the draft EIS, preparation of responses to the comments, and preparation of a final EIS in nine months, which includes internal review and approval to select the alternative and prepare the Record of Decision. Ex. 1 ¶ 7; 40 C.F.R. §§ 1502.9(c), 1503.4. *See generally* 40 C.F.R. §§ 1502.10–1502.24; 43 C.F.R. §§ 46.400–46.450. The Service anticipates it will take four months to process the final EIS for publication in the Federal Register, which includes internal review and approval, and for developing outreach materials. Ex. 1 ¶ 7.

The Service anticipates issuing the Record of Decision two months after the publication of the notice of publication of the final EIS. Ex. 1 ¶ 7; 40 C.F.R. § 1506.11(a)–(b).

The Service anticipates completing the process in approximately forty-three months, in October 2026.

<b>Approximate timeline for completion (following Court order)</b>	<b>Milestone</b>
3 months	Pre-Scoping: Tribal Consultation, meetings with partners, internal FWS briefings
1 month	Draft Notice of Intent for Federal Register to initiate Public Scoping for the EIS
4 months	Process Notice of Intent to Initiate Public Scoping for Federal Register publication (internal review and briefings); develop outreach materials
2 months	Public Scoping and Comment Period
12 months	Review public scoping comments, prepare draft EIS including coordination with any cooperating agencies
4 months	Process draft EIS for Federal Register publication (internal review and briefings); develop outreach materials
2 months	Public comment period on the draft EIS
9 months	Review public comments and prepare responses; prepare the Final EIS; internal review and briefings to select alternative and prepare ROD
4 months	Process Final EIS for Federal Register publication (internal review and briefings); develop outreach materials
2 months	30-day waiting period per 40 CFR 1506.11, finalize and issue ROD.
<b>43 months</b>	<b>Total time to completion</b>

Dated: April 14, 2023

Respectfully submitted,

TODD KIM, Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

/s/ LeeAnn Kim

LEEANN KIM,  
Trial Attorney (NY Bar No. 5539705)  
DAVIS A. BACKER,  
Trial Attorney (CO Bar No. 53502)  
United States Department of Justice  
Environment & Natural Resources Division  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044-7611  
Tel: (202) 514-5243 (Backer)  
Tel: (202) 305-0468 (Kim)  
Fax: (202) 305-0275  
Email: davis.backer@usdoj.gov  
Email: leeann.kim@usdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on April 14, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

          /s/ LeeAnn Kim            
LEEANN KIM  
*Attorney for Federal Defendants*



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

ALLIANCE FOR THE WILD  
ROCKIES, et al.,

*Plaintiffs,*

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HILARY COOLEY, U.S. Fish &  
Wildlife Service Grizzly Bear Recovery  
Coordinator, et al.,

*Federal Defendants*

and

THE STATE OF IDAHO

*Defendant-Intervenor.*

9:21-CV-136-M-DWM

DECLARATION OF  
GARY D. FRAZER

I, Gary Frazer, declare as follows:

1. I am the Assistant Director for the Ecological Services Program of the U.S. Fish and Wildlife Service (“Service”), an agency of the U.S. Department of the Interior (“DOI”), located in Washington, D.C. In my capacity as Assistant Director, I am responsible to the Director of the Service and to the Secretary of the Interior for the administration of the Endangered Species Act (“ESA”).

2. I am submitting this declaration in response to the Court’s March 15, 2023, Opinion and Order requiring the Service to propose a detailed timeline for completion of a

supplemental environmental impact statement (“EIS”) under the National Environmental Policy Act (“NEPA”) to consider changed circumstances regarding grizzly bears in the Bitterroot Ecosystem and, if warranted, a new Record of Decision (“ROD”). ECF No. 42 at 34.

3. In November 2000, the Service published a Final EIS (“November 2000 EIS”) and ROD delineating “Grizzly Bear Recovery in the Bitterroot Ecosystem.” On November 17, 2000, the Service published a final rule stating its intent to restore grizzly bears to the Bitterroot Ecosystem as an experimental population under the ESA. FWS000951-971; regulation codified at 50 C.F.R. § 17.84(l). At the time of that final rule, the Service concluded that grizzly bears were unlikely to disperse from occupied areas to naturally recolonize the Bitterroot Ecosystem. The Service has not released or reintroduced grizzly bears into the experimental population area, and there is currently no evidence that a population of grizzly bears is present in the Bitterroot Ecosystem. However, dispersing individual bears have been observed within the ecosystem with greater regularity in the past several years, and the Service now anticipates that a population (two or more breeding females or one female with two consecutive litters) may become established through natural recolonization in the next 15-20 years.

4. Given this change in circumstances, and in response to the Court’s Order, the Service plans to take a fresh look at its strategy for supporting restoration of grizzly bears to the Bitterroot Ecosystem. The Service anticipates considering a range of alternatives, including options to facilitate natural recolonization through affirmative actions, such as identifying connectivity areas, addressing sanitation issues, future augmentation, and/or revising the recovery plan chapter for the Bitterroot Ecosystem.

5. Although the Court ordered the Service to prepare a supplemental EIS, the Service proposes to initiate a new NEPA process, including a draft and final EIS and a new ROD, rather than supplementing the outdated November 2000 EIS. Given the public interest in the restoration of grizzly bears to the Bitterroot Ecosystem and the recovery of the species generally, the Service will conduct a public scoping process to invite input on the possible range of alternatives for consideration in the draft EIS.

6. The Service’s proposed timeline for completing these actions takes into account the agency’s significant workload and limited resources. The Service staff who will be responsible for this action are also working on updating the species status assessment to inform two 12-month findings on petitions to delist the Northern Continental Divide Ecosystem and Greater Yellowstone Ecosystem grizzly populations pursuant to the ESA. The same Service staff are also providing necessary support for the Service’s joint proposal with the National Park Service to restore grizzly bears to the North Cascades Ecosystem in Washington, which is also presently underway.<sup>1</sup> The timeline below takes into account three concurrent processes (the status assessment and associated 12-month findings mentioned above, the North Cascades Ecosystem EIS and 10(j) regulation, and this Bitterroot EIS) and limited resources that must also be applied to management of human/bear conflicts within the occupied range of the grizzly bear.

7. Bitterroot Grizzly Bear Ecosystem Supplemental EIS Schedule

<b>Complete By (Approximate)</b>	<b>Milestone</b>
3 months	Pre-Scoping: Tribal Consultation, meetings with partners, internal FWS briefings
1 month	Draft Notice of Intent for Federal Register to initiate Public Scoping for the EIS
4 months	Process Notice of Intent to Initiate Public Scoping for Federal Register publication (internal review and briefings); develop outreach materials
2 months	Public Scoping and Comment Period
12 months	Review public scoping comments, prepare draft EIS including coordination with any cooperating agencies
4 months	Process draft EIS for Federal Register publication (internal review and briefings); develop outreach materials
2 months	Public comment period on the draft EIS

<sup>1</sup> See <https://parkplanning.nps.gov/projectHome.cfm?projectId=112008>.

Complete By (Approximate)	Milestone
9 months	Review public comments and prepare responses; prepare the Final EIS; internal review and briefings to select alternative and prepare ROD
4 months	Process Final EIS Federal Register publication (internal review and briefings); develop outreach materials
2 months	30-day waiting period per 40 CFR 1506.11, finalize and issue ROD
<b>43 months</b>	<b>Total Time to Completion</b>

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed in Washington,DC, on this 13 day of April 2023.

**GARY  
FRAZER**

Digitally signed by GARY  
FRAZER  
Date: 2023.04.13  
15:04:27 -04'00'

Gary D. Frazer  
Assistant Director  
Ecological Services Program