



**Global  
Indigenous  
Council**

**Committee on Natural Resources  
Subcommittee on Water, Oceans, and Wildlife  
Legislative Hearing  
1324 Longworth House Office Building  
May 15, 2019  
2:00 pm**

**Legislative Hearing on  
*H.R. 2532, The Tribal Heritage and Grizzly Bear Protection Act***

**Questions from Rep. Neguse for Ms. Grey Bull:**

In June of 2017, then-Secretary Zinke testified in this committee. Our colleague, Mr. Lacy Clay, asked him to commit to consult with affected tribes prior to any delisting announcement. He firmly stated his commitment, even going so far as to say it's the law as well as the right thing to do. Less than three hours later, Zinke announced the delisting of the grizzly bear in the Greater Yellowstone Ecosystem. It seems doubtful that any kind of meaningful consultation would have happened in a matter of 3 hours.

**Ms. Grey Bull, was Zinke's delisting decision and lack of consultation part of a larger pattern or was it an isolated incident? Please elaborate if you wish.**

Thank you for the question, Acting Chairman Neguse. Sadly, former-Secretary Zinke's false and misleading statement to Congress on tribal consultation vis-à-vis the delisting of the grizzly bear in the Greater Yellowstone Ecosystem (GYE) was not an isolated incident, but very much part of a pattern in which first former-US Fish and Wildlife Service Director Dan Ashe and his subordinates, and then-Secretary Zinke for Interior as a whole, shredded the federal-Indian trust responsibility by flagrantly abusing long-established tribal consultation mandates that were formalized during the Clinton Administration in EO 13175, *Consultation and Coordination with Indian Tribal Governments*. Those requirements were subsequently reaffirmed and enhanced under the Obama Administration. At no juncture during the delisting process did the Northern Arapaho Tribe, or the Eastern Shoshone Tribe, receive "meaningful" and "thorough" government-to-government consultation. Quite the contrary. The June 2016 "Affidavit of the

Northern Arapaho Elders Society” submitted to the US Fish and Wildlife Service (USFWS) and the then-Secretary of the Interior, Sally Jewell, catalogs the misrepresentations, falsehoods, and failures in the federal government’s fiduciary obligations to both tribal sovereigns of the Wind River Indian Reservation. In a letter I submitted for the record dated 10/18/16, the Northern Arapaho Business Council (NABC) stated to the Secretary of the Interior: “We, the leadership of the Northern Arapaho, have not been invited to, nor engaged in, any meaningful consultation with USFWS on this matter, in common with tribal nations from Montana to Arizona.” The letter was signed by then-NABC Chairman, Dean Goggles.

At the May 15 hearing for *H.R. 2532, The Tribal Heritage and Grizzly Bear Protection Act*, evidence of this pattern of misrepresentation was on full display. Mr. Brian Nesvik of the Wyoming Game and Fish Department (WGFD) provided testimony that simply ignored all the documentation submitted in opposition to delisting and trophy hunting the grizzly bear in the GYE as if, in some alternative reality, it did not exist. Instead, Mr. Nesvik cited an outdated “Wind River Reservation Grizzly Bear Management Plan” subsequently repudiated by both the Northern Arapaho Tribe and the Eastern Shoshone Tribe, independently, in official resolutions and communications. In a letter dated 4/13/2017 to the Interagency Grizzly Bear Committee – Yellowstone Ecosystem Subcommittee (IGBC-YES), chaired by Mr. Nesvik, the Northern Arapaho affirmed: “The Northern Arapaho people will not adopt any grizzly bear management plan authored by the State of Wyoming, the USFWS, or a collaborative document influenced by both, as the Wyoming Game and Fish Department and USFWS attempted in 2007.” In an email to Mr. Nesvik, which I submit for the record, the Eastern Shoshone Tribe stated: “The Eastern Shoshone Tribe’s resolution of 10/28/14 not only renounces the federal government’s desire to delist the grizzly bear, but also is unambiguous in rejecting Wyoming Game and Fish’s proposed trophy hunts for the grizzly bear.”

The pattern continued when Mr. Nesvik took the same approach to *H.R. 2532* as a whole. While citing uncritical data which relied more on anecdotal recollection than scientific methodology, Mr. Nesvik was at pains to stress how the GYE had surpassed “carrying capacity” for the grizzly bear. His only answer for this, apparently, is to institute trophy hunts, a very unscientific 19<sup>th</sup> Century approach to a 21<sup>st</sup> Century question. Mr. Nesvik completely ignored the core of *H.R. 2532*, and the Grizzly Treaty upon which it is largely based, which addresses the very issue of “carrying capacity” by proposing reintroducing grizzly bears to sovereign tribal lands that retain biologically suitable habitat for the grizzly in the Great Bear’s historic range. Instead of trophy killing bears, the quota that Wyoming, Idaho and Montana want to “sport” kill would be relocated to those tribal lands, henceforth addressing whatever “carrying capacity” dilemma exists, while adhering to the spirit and intent of the Endangered Species Act in respect to actual recovery. Indeed, Mr. Nesvik evidently forgot that in a July 2016 article in *WyoFile* headlined *Wyoming mulls tribes’ call for grizzly transplants* (<https://www.wyofile.com/wyoming-mulls-tribes-call-grizzly-transplants/>) he was extensively quoted, and on the reintroduction program in the Grizzly Treaty (and now central to *H.R. 2532*), Nesvik said: “We haven’t given that a lot of consideration. I wouldn’t say it’s something we wouldn’t consider.” So, the reintroduction program is something that in 2016, Mr. Nesvik implied Wyoming would consider, but in his role as Chairman of the IGBC-YES, he never attempted to contact any impacted tribe to initiate a discussion on the proposal. On May 15, 2019, Mr. Nesvik completely ignored the central tenet of the bill he was testifying to.

It is curious that somebody with Mr. Nesvik’s apparent experience would choose to ignore such a viable solution to a problem he insists exists, given that the USFWS has proposed the same thing in the North Cascades, which was supported by former Interior Secretary Zinke. *The North Cascades Ecosystem Draft Grizzly Bear Restoration Plan / Environmental Impact Statement* (January 2017) states:

Pg. iii - Under alternative B, “Ecosystem Evaluation Restoration,” the NPS and FWS would implement an ecosystem evaluation approach to grizzly bear restoration, wherein a total of up to 10 grizzly bears would be captured from source populations in northwestern Montana and/or south-central British Columbia and released at a single remote site on NPS or U.S. Forest Service (USFS) lands in the NCE over two consecutive summers.

Pg. vi - Although the removal of grizzly bears from source populations in Montana and British Columbia would effectively count as mortality, the sustainability of these source populations would not be affected. Overall, alternative B would result in beneficial impacts on grizzly bears by initiating their restoration to areas of suitable habitat and furthering conservation of the species.

If grizzly bears in the GYE are at “carrying capacity” and supposedly impervious to any loss of food source or climate change due to their “dietary plasticity” according to delisting advocates (*Dietary breadth of grizzly bears in the Greater Yellowstone Ecosystem*. Gunther, et al. 2014), then why did the USFWS suggest relocating grizzlies to the North Cascades “from source populations in northwestern Montana and/or south-central British Columbia” instead of from the GYE? That does not appear to be a conclusion grounded in “the best available science.” The question needs to be asked why Mr. Nesvik and his colleagues in neighboring Game and Fish Departments are dismissive of reintroducing grizzly bears to sovereign tribal lands? It was remarkable to hear Mr. Nesvik testify that connectivity between isolated grizzly bear populations is now no longer considered a fundamental of grizzly recovery, and that genetic diversity in what is essentially an island population in the GYE is neither here-nor-there, when for over forty-years both have been the standard by which “the best available science” was to be applied. Left for Mr. Nesvik and his peers, GYE grizzly bears would be “managed” like a safari park or glorified zoo population, where Yellowstone National Park becomes little more than a nursery to satisfy trophy hunters with tags to kill outside the Park – precisely what Teddy Roosevelt and the founding fathers of the Boone and Crockett Club hoped Yellowstone would become after the passage of the *Yellowstone Game Protection Act* (1894) that outlawed hunting within the Park boundaries to preserve populations of the “big game” species they wanted to kill. *H.R. 2532* will save the grizzly from that fate.

**What would proper consultation look like to you? Does H.R. 2532 ensure this consultation?**

If passed and signed into law, *H.R. 2532* would become the standard by which tribal consultation would be held on a government-to-government basis. Tribal consultation is not a box for a federal agency to check by the path of least resistance; be that a phone call, a “Dear Tribal Leader” letter, a webinar, or an informal conversation with a tribal employee who isn’t even a tribal member. There must be a set standard and set criteria that each federal agency adheres to.

Ironically, former Secretary Zinke articulated that tribal consultation is “the law,” though he chose to break it. Tribal consultation must adhere to the criteria of “free, prior and informed consent” as defined by the United Nations Declaration on the Rights of Indigenous Peoples, Article 19: “States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”