July 13, 2015

I hereby submit these comments on behalf of the following groups: Atchafalaya Basinkeeper (ABK), Delta Chapter Sierra Club, Earthjustice, Gulf Restoration Network, Louisiana Bayoukeeper, Louisiana Crawfish Promotion Association-West, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper, Restore Explicit Symmetry To Our Ravaged Earth (Restore) and Waterkeeper Alliance.

When the Louisiana black bear (Ursus americanus luteolus) was listed as “threatened” under the guidelines of the Endangered Species Act in January of 1992 there were only between 300 and 400 Louisiana black bears left in the state and up until 1988 there was a hunting season for bears in the Atchafalaya Basin. Today, after 23 years of “protection,” we have an estimated population of 500 to 750 bears in three main areas: There are about 300 bears in the Tensas area, about 60 bears in the Upper Atchafalaya Basin area, and about 140 bears in the coastal parishes south of New Iberia.

Let’s compare how well Louisiana is doing with another state with a very similar bear history. Maryland is a small state with an area of only 12,407 mi² compared with Louisiana’s 51,843 mi². The population density is also much greater in Maryland with 5,976,407 people or 596 people per mi² compared with Louisiana’s 4,649,676 and a population density of only 106 people per mi². By the 1950s Maryland had an estimated bear population of only about 12 bears; the population of bears in Louisiana in the 1950s was estimated to be between 80 to 120 bears (Nowak 1986). Despite the situation being way more dire for bears in Maryland than in Louisiana, today Maryland’s population is over 1000 bears and the population is expanding on its own. Maryland has a bear damage compensation plan and a robust black bear education program; Louisiana does not. Maryland oak and hickory forests are maturing, producing big crops of acorns and hickory nuts, but Louisiana’s forests are being degraded by clear-cuts that eliminate most hard mast trees and allow the proliferation of fast growing tree species like tallow, boxelder, sycamore and cottonwood. The Black Bear Conservation Coalition (BBCC) had a very successful nuisance bear program and they never had to relocate or kill a bear. In 2008 politics kicked in and the program was transferred to the Louisiana Department of Wildlife and Fisheries (LDWF), which is when the killing began. In some cases, females were even relocated, with the knowledge that relocation does not work and most of the time...
results in the death of the bear or far worse, creating a nuisance bear, fomenting anti-bear sentiments in local communities.

Here are the numbers:

- Maryland bear population increased 8,300% between the 1950s and today. Today Maryland has over 1,000 bears, with an expanding population. There was a 127.5% increase in the density of black bears from 1991 to 2000 in western Maryland.
- Louisiana’s bear population increased somewhere between 233% and 275% between the 1950s and 1992 and only 66% to 90% since the Louisiana black bear was listed as threatened. Today Louisiana’s has as few as 500 bears, with a population that, for the most part, is not expanding.
- Louisiana does not even know for sure how many bears are in the state. A variation of 250 bears in the estimate between a possible low of 500 and a possible high of 750, is not acceptable for a civilized state that is supposed to be basing the management of its children’s natural resources on facts and science.
- Louisiana does not even know how many bears are in the Three Rivers area, claimed as the new population mandated to be established before the delisting takes places. Again this is not acceptable for a civilized state that supposed to be basing the management of our children’s natural resources on facts and science.
- Louisiana’s coastal bear population is in trouble and, because of expected sea level rises due to global warming, it will not survive another 100 years. Despite the mandate to create corridors between existing populations, there is no corridor for the coastal population females to expand their territory north into the Atchafalaya Basin and Hwy 90 has become a death trap for bears. This is another example of the lack of commitment from the LDWF to its obligations under the Endangered Species Act (ESA) and the future of Louisiana’s natural resources for our children and their children.
- The LDWF’s lack of respect for the ESA was very well illustrated when the Department served Louisiana black bear meat, taken from a nuisance bear they had killed, at its National Hunting and Fishing Day event in Baton Rouge.

Where are the documents to prove that the delisting criteria have been met? What is the definition of “corridors?” How are black bear corridors and black bear habitat being protected?

On page 17, Section 3.2 of the Recovery Plan: Coordinate record keeping of all reported and investigated bear deaths. Where is this information? Why has a request for bear mortality data information been denied? How can an agency respond when requests for public documents related to bear mortality are met with, “that data is not available”, or “we do not need to make that information
public”? How can we, the public, make credible comments related to the delisting proposal if the mortality information is not made public? If human-caused mortality was determined to be a threat in the original listing document, those data should factor into the delisting proposal. Where are the records of “investigated” bear deaths? What kind of researcher or scientist will hide the data supporting their findings? Our agencies need to be reminded that they work for us, we pay their salaries and all documents related to their work are public records.

Section B.1.b in the 1994 BBCC Restoration Plan for the Louisiana black bear states, “Though relatively few in number, known kills from tagged and radio-collared bears suggest that annual mortality from illegal take could be as high as 12%.” Knowing that people are less likely to kill a collared bear than one without a collar, that number is going to be way higher. Jesse Troxler’s 2013 study of the coastal population finds that 10% of those bears are killed each year in vehicle collisions alone.

How many new areas with breeding bear populations have been established? How many females are breeding in those areas? How many breeding females are in western Mississippi and eastern Texas?

Before delisting the Louisiana Black Bear, the lack of appropriate bear population increases must be explained because whatever the problems are they will get worse without ESA protections. Some of the problems are listed below:

- The mortality rate of 13 bears per year is not correct. There is no excuse to hide data from the public unless the researcher has something to hide. Mortality rates that do not reflect the lack of appropriate population growth and are inconsistent with available research show either a lack of appropriate research, incompetence on the part of the researchers or data that is been manipulated for political reasons.
- Development continues undeterred in Louisiana critical habitat in the Atchafalaya Basin. (See Attachment)
- Agencies like the Corps of Engineers have refused to consult with the U.S. Fish and Wildlife Service before granting permits. Permits for development in bear habitat, including designated critical habitat are routinely given in the Atchafalaya Basin, including after-the-fact permits to violators. Enforcement from the Corps of Engineers is “selective,” depending on the political muscle of the violator or the person requesting the permit. (See Attachment).
- The USFWS cannot use the Clean Water Act as an example of ecosystem protection because the Corps does not have any enforcers, has no personnel to review permitted activities for compliance, and the regulatory department does
not even have a boat. Again, the Corps’ enforcement is “selective” at best and after-the-fact permits are routinely granted, even to recurrent violators.

-The Corps’ environmental easements are useless to protect bear habitat. The logging part of the easements was designed by industry personnel instead of scientists, and the way they are worded allows for extensive clear-cutting. The easements are not being enforced. (See Attachment)

-Clear-cutting of bottomland hardwood forests continues throughout black bear habitat, including Wildlife Management Areas. (See Attachment).

-Clear-cuts are taking place even in National Wildlife Refuges. In the early 2000s I visited Panther Swamp National Wildlife Refuge in Mississippi to find huge clear-cuts of mature hardwood forests. What a shame!

-It is false that big cypress trees are protected by federal law. Atchafalaya Basinkeeper documented huge hollow cypress trees that were logged for mulch in the past. Only the Corps’ easements in the Atchafalaya Basin protect large cypress, but the easements are not being enforced.

-Despite cypress and tupelo trees being recognized as critical for bears denning on floodplains, cypress forests in the Atchafalaya Basin are severely threatened. Cypress can take over 500 years to mature enough to provide bears with a denning site; our remaining second growth forests will take several human generations to reach maturity. Furthermore, most cypress-tupelo logging is not sustainable and these species will not regenerate at all. Old, hollow cypress trees die every year from lightning strikes or people burning them. Despite all of this, the Corps (with the blessing of the USFWS) just gave a permit to log cypress in the Atchafalaya Basin to a company with several previous violations, showing that our federal agencies do not have any intention of using our laws to protect habitat that is critical for bears and migratory birds. In 2006, Atchafalaya Basinkeeper (ABK) and Sierra Club Delta Chapter complained to the Corps about illegal logging roads south of Butte La Rose and the Corps refused to take action, saying that the roads were not on Navigable Waters of the US (Section 10 of the Rivers and Harbors Act), even though that area was navigated every year by commercial fishermen engaging in interstate commerce. After ABK and others sent a Notice of Intent to the violating company, the Corps came to the aid of the logging company. The Corps and EPA canceled a boat trip with ABK to the site that would have shown that there was no cypress regeneration in the logging site, claiming that the gas for the site visit was a “gift” and they could not accept “gifts.” After that, they did a site visit with the violator in the violator’s vehicles, (for some reason their gas was not considered a gift). Although ABK’s observation showed no evidence of cypress regeneration, the Corps claimed that there was. At that point, the Corps also changed its opinion, declaring the site to be Section 10 and gave the company a cease-and-desist order (all required to issue an after-the-fact permit to protect them from a lawsuit). Before the after-the-fact permit was given, ABK photographed the company illegally logging again, this
time on the site they had received the cease-and-desist order; the logging was taking place during high water, which is against Best Management Practices which must be followed to get the permit and the Corps ignored the violations. The Corps gave the permit to the company last March. The benefit to the millionaire land owner for this irreplaceable loss? About $150 per acre. (See Attachment).

This attempt to delist the Louisiana black bear shows the worst of Louisiana politics. The USFWS Louisiana Black Bear Recovery Action Plan (2009) states that “delisting the Louisiana black bear is a priority of the Secretary of the Louisiana Dept. of Wildlife and Fisheries.” LDWF Secretary Robert Barham has stated publicly many times that his number one priority for his second term of office is to delist the bear and establish a hunting season before he leaves office in January, 2016. Since the recovery goals for the Louisiana black bear have not been met, it appears that Secretary Barham is more interested in hunting bears than protecting them.

Conclusion

The decision to delist the Louisiana black bear is purely political. Since Mr. Barham was appointed as the Secretary of LDWF, the management of Louisiana black bears (or lack of management) has been done behind closed doors. There should be no room for this kind of politics in a civilized society that cares for its children and future generations.

Public hearings were not advertised appropriately and as a result very few people attended the meetings. In addition, people were not allowed to ask any questions to presenters and my request to make a second short statement was denied, despite having 45 minutes left on the agenda and no one else waiting to make a statement. This is another reflection of the politics involved in this decision.

These are some the actions that need to take place to guarantee the long term survival of Louisiana’s Black Bears for many generations to come:

1. Conduct accurate population counts in all black bear breeding areas.
2. Implement a complete investigation on black bear mortality, followed by a plan to reduce bear mortality.
3. Establish a strong education campaign to increase people’s tolerance for bears. It is not admissible that, even today, most hunters fear for their life when bears are in the area.
4. Create a nuisance bear program that includes help to protect crops and bee hives from bears and a bear damage compensation fund.
5. Stop relocating bears outside their home range to avoid creating problem bears.
6. Create corridors under Hwy. 90 to allow bears to safely cross the highway.
7. Create habitat blocks that will connect the coastal bear population with the Atchafalaya Basin.
8. Define characteristics needed for an efficient bear corridor. Create real corridors connecting all bear populations.
9. As demonstrated in Maryland, acorns and hickory nuts are essential for bears. Other wildlife, like interior forests birds species and deer will also greatly benefit by protecting mature forests. Bear management plans should include preservation of mature bottomland hardwoods.
10. Change the environmental easements in the Atchafalaya Basin to exclude logging, while properly compensating landowners.
12. Stop granting permits for cypress logging in wetlands.
13. Enforce all laws that protect bear habitat, including the Clean Water Act and the Rivers and Harbors Act.
14. Stop granting after-the-fact permits to environmental criminals.
15. Use permanent easements to protect all of those bottomland hardwood forests that were established to increase bear habitat and corridors.
16. Buy permanent environmental easements to protect all or most forests in critical bear habitat from development and logging.
17. Educate landowners about the true costs and challenges of managing bottomland hardwood forests and cypress swamps for timber, while maintaining ecological values. The cost of restoring a logged bottomland hardwood forest or cypress swamp can be several times the amount the landowner makes from the timber sale. Many landowners regret the decision to log because they were misinformed by the State and the Louisiana Forestry Association about the true economic returns from logging. Landowners have the right to know!
18. Educate law enforcers about the proper way to handle nuisance bears.
19. Prosecute poachers to the full extent of the law.
20. Stop hiring anti-regulators to regulate.
21. Support science and your biologists at all costs.

LDWF, the Corps and the USFWS have very competent enforcers, scientists and biologists, who are dedicated to doing the job of enforcing our environmental laws and managing our natural resources for generations to come. The kind of politics that brought us to this situation undermines all of those dedicated professionals and public servants, who, in many cases, are replaced by anti-regulators after they retire. For any of you amazing people reading these
comments, who do your jobs with the best interests of the public in mind rather than for political motives, my message is that you are not alone. Many of us are very thankful for your skills and integrity. In the name of all of our children and grandchildren—THANK YOU!

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ATTACHMENT

Illegal road and dams on wetlands “protected” by environmental easements in critical habitat.
Camp and illegal road built on land “protected” by the Corps’ environmental easements in critical habitat.

Photo courtesy of SouthWings
Illegal dam on land “protected” land by Corps easements in critical habitat
The dry lake bed of Fisher Lake, illegally drained in critical habitat. The Corps refused to take action until we sent a 60-day-notice of intent. The Corps then gave the violator a cease & desist order and an after-the-fact permit without consulting with the U.S. Fish and Wildlife Service. The permit is being challenged in court at this time.

Development on the banks of the Atchafalaya River in critical habitat.
Fisher Lake’s dry bed. The lake was illegally drained and is in critical habitat

Photo courtesy of SouthWings
Aerial picture of development on the banks of the Atchafalaya River in critical habitat.

Photo courtesy of SouthWings
Clear-cuts in Three Rivers Wildlife Management Area
Clear-cuts in Red River Wildlife Management Area
Photo courtesy of SouthWings