



## INTRODUCTION

1. Plaintiffs in this case challenge the U.S. Fish and Wildlife Service's decision to designate the grizzly bears occupying the area in and around Yellowstone National Park a "distinct population segment" and remove that population from the list of threatened species under the Endangered Species Act. Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife, 82 Fed. Reg. 30,502 (June 30, 2017) (to be codified at 50 C.F.R. pt. 17) ("Final Rule").

2. The grizzly bear is both an immensely powerful and impressive wildlife species and a living embodiment of the wildness that remains in the Northern Rockies. For this reason, seeing a grizzly is a deeply meaningful and memorable experience for many people. Pulitzer Prize-winning Montana author A.B. Guthrie, Jr. described the "great bear" as "the most memorable creature alive on this continent," a "part of our lore and our heritage," and concluded: "I don't want it to disappear. Let him live." A.B. Guthrie, Jr., The Rocky Mountain Front in The Great Bear: Contemporary Writings on the Grizzly 113, 115 (John A. Murray ed., 1992).

3. The power and majesty of grizzly bears are well understood by members of plaintiff Northern Cheyenne Tribe, for whom grizzly bears are culturally and spiritually important animals. The ability of Northern Cheyenne

members to engage in the same cultural practices that their ancestors followed involving grizzly bears is severely limited due to the decline of grizzly bears, which once roamed freely on lands within the Northern Cheyenne Reservation in southeast Montana but are now extirpated from such lands.

4. The grizzly bears now living in the Greater Yellowstone Ecosystem—the region including Yellowstone National Park, Grand Teton National Park, and surrounding lands—are one of the last remnants of a population that once spanned most of western North America. These grizzlies were all but eradicated from the United States by the middle of the 20th century due to widespread hunting, trapping, and habitat destruction.

5. Grizzly bears persisted in the Greater Yellowstone Ecosystem, however, because they were listed as a threatened species under the Endangered Species Act (“ESA”) in 1975, along with all other grizzly bears in the lower-48 United States. Amendment Listing the Grizzly Bear of the 48 Conterminous States as a Threatened Species, 40 Fed. Reg. 31,734 (July 28, 1975). Following listing, the ESA protected Greater Yellowstone bears from the hunting and government-sponsored persecution that drove them to the brink. Grizzly population numbers in the Greater Yellowstone Ecosystem have accordingly improved, perhaps doubling over the last forty years. As a result, today the grizzly serves a critical function in the ecology of the Greater Yellowstone Ecosystem; plays an important cultural and

spiritual role in the lives of many people, including many indigenous people; brings economic benefits to local communities; and figures prominently in the experience of visitors to the Greater Yellowstone Ecosystem, including Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway.

6. On June 30, 2017, the U.S. Fish and Wildlife Service (“Service”) decided to remove the ESA’s protection for Greater Yellowstone grizzly bears. However, the Service’s decision irrationally and unlawfully ignored critical factors. First and foremost, due to climate change and the spread of disease and invasive species, grizzly bears’ traditional food resources in the Yellowstone region have declined in recent years. Bears—resourceful as they are—have shifted to heavier reliance on a meat-based diet, but at great risk to their safety. Bears seeking meat, including livestock and gut piles left by hunters, frequently come into conflict with humans—conflict that the bears often do not survive. Consistent with this trend, grizzly mortality due to human-bear conflicts has spiked in recent years, and, according to the Service’s own data, the Greater Yellowstone bear population has entered into decline: the Service’s point estimate of the Greater Yellowstone population was 695 bears in 2016, down from 757 two years earlier. This decline occurred even though the bears enjoyed ESA protection until the Final Rule went into effect at the end of July 2017. The Service has not squarely or

rationality addressed the threat posed by grizzly bears' dietary shift to meat, much less explained why Greater Yellowstone grizzly bears do not remain threatened as a result.

7. Rather than grapple with this difficult issue, the Service incorrectly suggested that annual bear mortality thresholds set by the Service will prevent any further decline in the bear population. However, the Service's mortality thresholds do not adequately limit the number of bears that may be killed due to conflicts with hunters and livestock. The 2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem, which governs bear management in a post-delisting world, acknowledges that "[a]ny mortality threshold will not affect the ... management of conflict grizzly bears" and advises that "[s]tate [bear management] plans provide for the take of conflict bears regardless of the current mortality quota upon consultation among all involved agencies." 2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem 48 (2016) ("Final Conservation Strategy" or "Final 2016 Grizzly Bear Conservation Strategy"). Thus, bear deaths due to livestock predation, conflicts with hunters, and similar causes—which are likely to increase because of grizzlies' shift to a more meat-focused diet—may exceed the mortality thresholds that the Service relied on to arrest population decline.

8. The Service’s reliance on the annual mortality thresholds further ignored models developed by independent grizzly bear experts, which show that—even if post-delisting management adheres to the thresholds—the Greater Yellowstone grizzly population will face an unacceptable risk of decline below recovery goals following delisting. The Service has not rationally addressed these models, or explained why their results do not contradict the Service’s conclusion that grizzly bears will persist in the Greater Yellowstone Ecosystem after delisting.

9. In addition to failing to account for the threat posed by Greater Yellowstone bears’ switch to a meat-based diet, the Service also failed to address the impact that extracting the Greater Yellowstone “distinct population segment” (“DPS”) from the larger listed entity—that is, the lower-48 grizzly bear population—would have on the legal status of the remaining grizzlies in the already-listed species and the threats to that species.

10. In short, the Service failed to rationally address key evidence that grizzly bears remain threatened both within and outside the Greater Yellowstone Ecosystem and unlawfully carved the Greater Yellowstone DPS out of the larger lower-48 listing for removal from the ESA’s protections, without considering the legal status of grizzly bears outside the Greater Yellowstone Ecosystem. Compounding these failings, the Service discarded several management requirements, stated in drafts of the Final Conservation Strategy, that would have

both limited the circumstances in which bears involved in conflicts with humans could be killed and maintained the quality of grizzly bear habitat at 1998 levels. Despite these significant changes, the Service neglected to submit its Final Conservation Strategy to public comment, contrary to the ESA and Administrative Procedure Act (“APA”) notice and comment requirements.

11. For these reasons, the Final Rule violates the ESA and the APA. The Court should therefore vacate the Final Rule and remand it to the Service for further proceedings consistent with governing law.

### **JURISDICTION AND VENUE**

12. This action is brought pursuant to the Endangered Species Act, 16 U.S.C. § 1540(g)(1)(C), which waives the defendants’ sovereign immunity. This Court has jurisdiction over plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal question) and the citizen-suit provision of the ESA, 16 U.S.C. § 1540(g), and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201–02.

13. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) because plaintiff Northern Cheyenne Tribe resides in this District, a substantial part of the ESA violations alleged in this Complaint occurred in this District, and defendant Hilary Cooley resides in this District. Venue is proper in the Missoula Division of this District because a substantial part of plaintiffs’ claims arose in Missoula County. See Mont. Code Ann. § 25-2-125; see also Local Civ. R. 3.2(b).

14. Plaintiffs provided defendants with 60 days' written notice of plaintiffs' intent to sue on June 30, 2017, as required by 16 U.S.C. § 1540(g)(2).

### **PARTIES**

15. Plaintiff Northern Cheyenne Tribe has been a federally recognized Indian tribe since the Friendship Treaty of 1825. See Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 81 Fed. Reg. 5019, 5022 (Jan. 29, 2016). The Tribe has approximately 11,000 members, most of whom live on or in close proximity to the Northern Cheyenne Reservation and within the historic range of the grizzly bear in southeast Montana.

16. Plaintiff Sierra Club is a national nonprofit organization with 67 chapters and more than 826,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

17. Plaintiff Center for Biological Diversity (the "Center") is a nonprofit organization dedicated to the preservation, protection and restoration of biodiversity, native species, and ecosystems. The Center was founded in 1989 and is based in Tucson, Arizona, with offices throughout the country, including in Victor, Idaho, within the Greater Yellowstone Ecosystem. The Center works



through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is actively involved in species and habitat protection issues and has more than 61,000 members throughout the United States and the world.

18. Established in 1919, the National Parks Conservation Association (“NPCA”) is an independent, nonpartisan organization that works to address major threats facing the National Park System. Its mission is to protect and enhance both the cultural and natural values of America’s national parks for present and future generations. The organization’s 1.3 million members and supporters advocate for protection of park resources, including those that transcend national park boundaries.

19. All plaintiffs have long-standing interests in the preservation and recovery of grizzly bears in the Greater Yellowstone Ecosystem, both because they and their members place a high value on the bears as a species, and because the presence of grizzly bears is essential to the healthy functioning of the ecosystem. Plaintiffs have been active in seeking to protect and recover grizzly bears through a wide array of actions, including public outreach and education, scientific analysis, and advocacy intended to promote achievement of healthy ecosystem functioning in the region.

20. Grizzly bears are important to the spiritual and religious practices of members of plaintiff Northern Cheyenne Tribe. Ethnographic materials document Northern Cheyenne beliefs and practices regarding the grizzly bear. For example, the Northern Cheyenne people believe the “bear possesses power—spiritual power,” “can heal himself, and can heal other bears,” and is “a great medicine animal.” George Bird Grinnell, The Cheyenne Indians: Their History and Ways of Life, vol. 2 at 105 (Bison Books 1972) (1923). The Northern Cheyenne people also believe the grizzly bear “has great strength and courage, and is hard to kill,” and thus a man who carried a shield adorned with grizzly bear claws would also possess such traits. Id., vol. 2 at 193; see also id., vol. 1 at 188 (“The figure of a bear painted on the shield [of a Northern Cheyenne warrior], or its claws attached, gave [the warrior] the bear’s toughness; and so of many of the qualities which belonged to the animals which the Cheyennes regarded as possessing superhuman powers.”).

21. Plaintiffs’ members derive spiritual renewal through their interactions with grizzly bears. For example, Doug Peacock, a member of plaintiff Sierra Club, found relief from post-traumatic stress disorder following a tour of duty in Vietnam by seeking out, interacting with, and filming grizzly bears in the Greater Yellowstone Ecosystem. Today, Mr. Peacock leads outings for veterans of the Iraq

and Afghanistan wars in search of grizzly bears in and around Yellowstone National Park.

22. Plaintiffs' members also rely on grizzly bears—especially individual bears that have acquired fame in the Yellowstone area—for their livelihoods. Nathan Varley, for example, who is a member of plaintiffs Sierra Club and NPCA, leads wildlife tours in search of grizzly bears in and around Yellowstone National Park. He and his clients often seek out certain highly visible and well-known bears that frequent accessible areas in the Greater Yellowstone Ecosystem.

23. The members of each of the plaintiffs also use the Greater Yellowstone Ecosystem for traditional activities and recreational pursuits, including hiking, camping, backpacking, horseback riding, hunting, wildlife viewing, and aesthetic enjoyment. In so doing, plaintiffs' members and staff seek to observe, photograph, and study the grizzly bear and signs of the grizzly bear's presence in its native habitat. Plaintiffs use and enjoy, on a continuing and ongoing basis, the habitat of the grizzly bear and the larger ecosystem upon which it depends. Plaintiffs derive aesthetic, recreational, scientific, inspirational, and other benefits from these activities.

24. The challenged decision to designate a Greater Yellowstone grizzly bear DPS and remove it from the list of threatened species will reduce opportunities for plaintiffs' members to experience grizzly bears and grizzly

presence in the wild in the Greater Yellowstone Ecosystem. Further, the loss of specific individual bears that are central to the ongoing experiences of many of plaintiffs' members would represent an irreparable harm to these members' interests. The legal violations alleged in this complaint therefore cause direct injury to the spiritual, religious, aesthetic, conservation, recreational, scientific, educational, economic, and wildlife preservation interests of plaintiffs and their members.

25. Plaintiffs' spiritual, religious, aesthetic, conservation, recreational, scientific, educational, economic, and wildlife preservation interests have been, are being, and, unless the relief prayed for in this Complaint is granted, will continue to be adversely and irreparably injured by defendants' failure to comply with federal law. These are actual, concrete injuries, traceable to defendants' conduct, that would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

26. Defendant Ryan Zinke is the U.S. Secretary of the Interior. In that capacity, defendant Zinke has supervisory responsibility over the U.S. Fish and Wildlife Service. The Secretary of the Interior is the federal official vested with responsibility for properly carrying out the ESA with respect to terrestrial mammals such as grizzly bears. Defendant Zinke is sued in his official capacity.

27. Defendant Greg Sheehan is the Acting Director of the U.S. Fish and Wildlife Service. Defendant Sheehan signed the Service's Final Rule designating the Greater Yellowstone grizzly bear DPS and removing the DPS from the list of threatened species. Defendant Sheehan is sued in his official capacity.

28. Defendant Hilary Cooley is the Grizzly Bear Recovery Coordinator for the U.S. Fish and Wildlife Service. Defendant Cooley is the Service official responsible for overseeing the process by which the Service removed the Greater Yellowstone Ecosystem bear population from the list of threatened species. Defendant Cooley is sued in her official capacity.

29. Defendant U.S. Fish and Wildlife Service is a federal agency within the Department of Interior. The Service is responsible for administering the ESA with respect to terrestrial wildlife such as grizzly bears, and with listing and delisting decisions concerning grizzly bears.

### **THE THREATENED GRIZZLY BEAR**

30. The grizzly bear, *Ursus arctos horribilis*, once numbered roughly 50,000 individuals in the western United States. Before European-American settlement of the American West, grizzly bears roamed from the Great Plains to the Pacific coast, inhabiting all but the hottest and most arid desert lands. Grizzlies fed on bison carcasses in the Great Plains and beached whales on the Pacific coast. They played central roles in the functioning of a wide variety of ecosystems as

well as in the cultural and spiritual beliefs and practices of many native people, including the Northern Cheyenne Tribe. With European-American settlement, however, grizzlies were “shot, poisoned, and killed wherever humans encountered them,” eliminating them from all but mountain redoubts far removed from human intolerance. Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife, 72 Fed. Reg. 14,866, 14,920 (Mar. 29, 2007).

31. In an historical blink of an eye, humans reduced the range of grizzly bears by more than 98%, isolating the remaining bears in a few remnant islands of wild country. By the 1930s, the grizzly bear population in the continental United States had plummeted to fewer than 1,000 individuals. Even in Yellowstone, our nation’s first national park, an isolated grizzly bear population spiraled toward extinction.

32. Despite its legendary ferocity, the grizzly’s natural characteristics make it particularly vulnerable to human persecution—grizzly populations are hard to grow and individual bears are easy to kill. Due to their “[l]ate age of first reproduction, small average litter size, and the long interval between litters,” grizzlies “have one of the slowest reproductive rates among terrestrial mammals.” Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From

the Federal List of Endangered and Threatened Wildlife, 81 Fed. Reg. 13,174, 13,177 (proposed Mar. 11, 2016). Female grizzlies in the Yellowstone area generally do not reproduce until their sixth year and, on average, produce small litters of only two bears. Only about one in two cubs survives to adulthood.

Grizzly bear cubs stay with their mothers for one and one half to two and one half years, learning how to survive in the wild before they disperse to establish their own home ranges. As a result, it may take a single female ten or more years to replace herself.

33. Grizzlies require large home ranges, with adult male home ranges averaging 309 square miles. After leaving their mother, young female grizzly bears establish home ranges within or overlapping with their mother's home range, making range expansion—and thus recovery of the bears' historic range—a long and difficult endeavor. Because grizzly bears roam widely within their home ranges, habitat degradation, improper storage of human foods, and close proximity to threatening human activities in any portion of their home range puts them at risk.

34. Human-caused mortality—including grizzly bears killed because they are involved in conflicts with livestock, mistaken for black bears, or perceived as threats to hunters—remains the principal cause of grizzly bear deaths in the Greater Yellowstone region.

## **GRIZZLY LISTING UNDER THE ENDANGERED SPECIES ACT**

35. In 1973, spurred in part by the grizzly's plight, Congress enacted the Endangered Species Act for the purpose of protecting and recovering threatened and endangered species and the ecosystems upon which they depend. See 16 U.S.C. § 1531; see also Tenn. Valley Auth. v. Hill, 437 U.S. 153, 183–84 (1978) (noting Congress's determination that “the continental population of grizzly bears ... [wa]s surely threatened” and “[o]nce [the ESA] bill [wa]s enacted, the appropriate Secretary ... w[ould] have to take action to see that this situation is not permitted to worsen, and that these bears are not driven to extinction”) (quoting 119 Cong. Rec. 42,913 (1973)) (emphasis omitted). Two years later, the Service listed grizzly bears in the lower-48 states as a threatened species. See 40 Fed. Reg. at 31,734.

36. To achieve the ESA's goals, Section 4 of the Act requires the Service to determine whether a species is threatened or endangered, 16 U.S.C. § 1533(a)(1), and therefore should be shielded by the ESA. A “species” for purposes of the Act “includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. § 1532(16). Listed species enjoy strong protections. Most importantly, federal agencies must “insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the



continued existence of” any listed species. 16 U.S.C. § 1536(a)(2). Further, the “take” of any member of a listed species—defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct, 16 U.S.C. § 1532(19)—is generally prohibited, with strictly limited exceptions.

37. Under the Act, a species is “endangered” if it is “in danger of extinction throughout all or a significant portion of its range,” id. § 1532(6), and it is “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range,” id. § 1532(20). The Service may list a species if it finds the species is endangered or threatened because of:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

Id. § 1533(a)(1). The Service may also list a “distinct population segment” (“DPS”) of a larger species upon finding that, in addition to being endangered or threatened, the population segment is discrete—that is, “markedly separated from

other populations of the same taxon”—and significant. See Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act, 61 Fed. Reg. 4722, 4725 (Feb. 7, 1996).

38. While imperilment under any one of the ESA’s listing criteria alone would have compelled recognition of the grizzly bear’s threatened status, the Service determined that grizzlies were imperiled in the continental United States under four of the five statutory listing factors. First, the Service determined that the bears were threatened by habitat loss, 16 U.S.C. § 1533(a)(1)(A), because the once wide-ranging species was “confined to isolated regions in Montana, Idaho and Wyoming,” 40 Fed. Reg. at 31,734. Second, the Service determined that lower-48 grizzlies were threatened by “overutilization,” 16 U.S.C. § 1533(a)(1)(B), because of both illegal and legal killings associated with perceived threats to livestock and human safety, 40 Fed. Reg. at 31,734. Third, the Service determined that lower-48 grizzlies were threatened by “the inadequacy of existing regulatory mechanisms,” 16 U.S.C. § 1533(a)(1)(D), due to the “lack of regulatory mechanisms to control take and protect habitat,” 72 Fed. Reg. at 14,922; see also 40 Fed. Reg. at 31,734–36. Finally, the Service determined that lower-48 grizzlies were further threatened by “other natural or manmade factors,” 16 U.S.C. § 1533(a)(1)(E), including recreational use of Yellowstone National Park, livestock grazing on public lands, and the fact that “[i]n two of the three areas where grizzly

bears still occur”—including the Yellowstone region—“bears are isolated from other populations so that they cannot be reinforced, either genetically or by movement of individual bears,” 40 Fed. Reg. at 31,734.

39. To remove a species from the list of threatened and endangered species, the Service must determine that the listed species is no longer threatened or endangered, based on an evaluation of the same five listing factors. 50 C.F.R. § 424.11(d). The Service must base this determination on consideration and evaluation of the status of the entire listed entity; the Service may not, for example, remove a subpopulation of the listed entity without evaluating the status of the listed entity as a whole. See Humane Soc’y of the U.S. v. Zinke, No. 15-5041, — F.3d —, 2017 WL 3254932, at \*11 (D.C. Cir. Aug. 1, 2017).

### **PRIOR RECOVERY AND DELISTING ACTIONS**

40. Even under the ESA’s protective framework, politically driven agency decision making has frequently undermined grizzly bear management and recovery. As a result, public advocacy and judicial intervention have been necessary to enforce the Act’s requirements for grizzly bear protection and conservation.

41. In response to regional political pressure, the Service abandoned an early, and highly contentious, proposal to designate critical habitat for lower-48 grizzlies under the ESA. See Proposed Determination of Critical Habitat for the

Grizzly Bear, 41 Fed. Reg. 48,757 (proposed Nov. 5, 1976). That proposal would have applied new legal protections to important habitat for Yellowstone grizzlies. Id.; see also 16 U.S.C. § 1536(a)(2) (prohibiting “the destruction or adverse modification” of designated critical habitat by federal agencies). The Service has never again proposed an ESA critical habitat designation for threatened grizzlies.

42. In 1982—seven years after the species’ listing—the Service adopted its first recovery plan for grizzlies. Recovery plans, which are in most cases mandatory under the ESA, are meant to provide “for the conservation and survival of endangered species and threatened species listed pursuant to” the Act. 16 U.S.C. § 1533(f)(1). The plan identified a “recovery zone” in the Yellowstone region that was designed to delineate habitat for only 301 grizzlies—an area much smaller than that which the Service had previously proposed as critical habitat in the region, and which lacked the legal protections that an ESA critical-habitat designation would have afforded. The agency then developed a revised recovery plan in 1993 that failed to withstand judicial scrutiny because it lacked recovery criteria for grizzly habitat, despite the Service’s prior finding that grizzlies were imperiled by habitat loss. See Fund for Animals v. Babbitt, 903 F. Supp. 96, 112–13 (D.D.C. 1995), amended by 967 F. Supp. 6 (D.D.C. 1997); 40 Fed. Reg. at 31,734. The plan was subsequently amended pursuant to a settlement agreement. See 72 Fed. Reg. at 14,870.

43. In 2007, the Service declared that the Greater Yellowstone population was recovered and made its first attempt to designate that population a DPS and remove it from the ESA's list of threatened species. This Court remanded and vacated that decision in 2009 based, in part, on its conclusion that the Service had arbitrarily found that recent declines in a key grizzly bear food source in the Yellowstone region—the seeds of the whitebark pine tree—did not threaten the species. See Greater Yellowstone Coal. v. Servheen, 672 F. Supp. 2d 1105, 1120 (D. Mont. 2009). The U.S. Court of Appeals for the Ninth Circuit affirmed this Court's ruling on that issue in a 2011 decision, stating:

Perhaps the Service's delisting process, based on two decades of grizzly population growth, was well underway before the whitebark pine loss problem appeared on the radar and could be studied. But now that this threat has emerged, the Service cannot take a full-speed ahead, damn-the-torpedoes approach to delisting—especially given the ESA's "policy of institutionalized caution."

Greater Yellowstone Coal. v. Servheen, 665 F.3d 1015, 1030 (9th Cir. 2011)  
(citation omitted).

44. Notwithstanding this Court's and the Ninth Circuit's admonitions, the Service has once again taken "a full-speed ahead, damn-the-torpedoes approach to delisting" despite evidence of emerging threats and increased negative impacts to the Greater Yellowstone grizzly bear population. As a result, judicial intervention is once again required to ensure compliance with the ESA.

## **THE CHALLENGED RULE**

45. On March 11, 2016, The Service published a proposed rule to designate a new Greater Yellowstone Ecosystem grizzly bear DPS and remove that DPS from the list of threatened species. 81 Fed. Reg. 13,174. The Service also issued a draft 2016 Grizzly Bear Conservation Strategy, which sets out requirements for managing the grizzly bears such that, according to the Service, they will remain recovered after delisting. Wyoming, Montana, and Idaho fish and game agencies and the U.S. Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service are all parties to the Conservation Strategy.

46. Publication of the proposed rule was followed by a 60-day public comment period and two public meetings. The Service reopened public comment for 30 days on September 7, 2016, to allow comment on scientific peer reviews of the proposed rule and documents adopted by Idaho, Montana, and Wyoming incorporating post-delisting grizzly bear management provisions. Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife, 81 Fed. Reg. 61,658 (Sept. 7, 2016) (reopening public comment period). The Service released the Final 2016 Grizzly Bear Conservation Strategy to the public on June 22, 2017, several months after the public comment period had closed. The Service published the Final Rule delisting the Greater Yellowstone grizzly bear DPS on June 30, 2017.

47. As was the case with the Service's unlawful 2007 delisting decision, the agency published its Final Rule for the 2017 delisting decision despite, and in disregard of, recent information demonstrating an emerging threat to the Yellowstone population. The most pressing threat to grizzly bears today arises from their recent shift to a greater dependence on meat food sources. After catastrophic declines in some of their traditional foods, including whitebark pine seeds and cutthroat trout, in recent years Greater Yellowstone grizzly bears shifted to a diet based more extensively on wild ungulates, offal and wounded animals left by hunters, and livestock. As the Final Rule explains:

[I]n years of poor whitebark pine seed production, grizzly bears shifted their diets and consumed more meat. ... Given these observations of diet shifts, Ebinger *et al.* (2016, p. 705) examined whether grizzly bear use of ungulate carcasses in the fall had increased during the period of whitebark pine decline. This was indeed the case, supporting the interpretation that responses to changing food resources were primarily behavioral.

82 Fed. Reg. at 30,538.

48. As bears switch to meat in response to a dearth of whitebark pine seeds, they increasingly come into conflict with hunters and ranchers—conflict that often proves fatal to the bears:

During years of low availability of whitebark pine seeds, grizzly bear-human conflicts tend to increase as bears use lower elevations, and when those areas are within less secure habitats (Gunther *et al.* 2004, pp. 13–15; Schwartz *et al.* 2010, pp. 661–662). Approximately six more independent females and six more independent males die across the ecosystem in poor versus good whitebark pine years (IGBST 2013, p. 25, figure 5). These mortalities are primarily due to defense of life encounters and wildlife management agency removals of conflict bears (Gunther *et al.* 2004, pp. 13–14; IGBST 2009, p. 4).

82 Fed. Reg. at 30,537 (emphasis added).

49. Mothers and cubs attempting to feed on animal carcasses are also more likely to encounter aggressive male bears and other predators that dominate such food sources, yielding increasing levels of cub and subadult grizzly mortality.

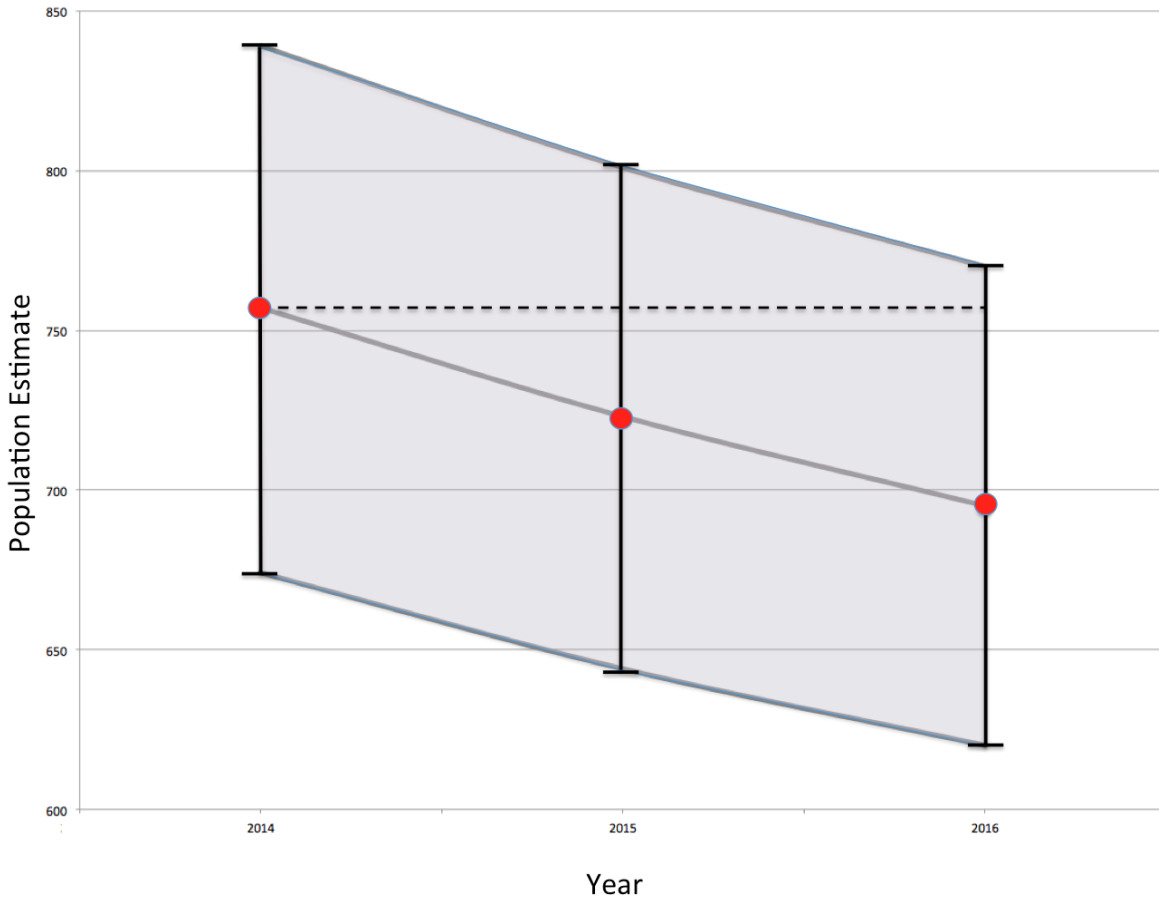
50. Because of this dietary shift to meat, bear deaths due to human conflicts have spiked in the last few years. Forty-five bear deaths due to human conflicts occurred in 2015 alone, up from sixteen such deaths in 2014; thirty-five deaths due to conflicts occurred in 2016. Cub recruitment—the rate at which bear cubs survive to adulthood—has also decreased in recent years, likely because of predation by other bears, as grizzlies compete for meat food sources.

51. As a result of this recent spike in mortalities, the Yellowstone grizzly bear population has begun to decline. The Service’s own point estimate of the Greater Yellowstone population was just 695 bears in 2016, down from 723 in 2015 and 757 in 2014. The decline documented by the Service’s own data is illustrated below in Figure 1. This decline occurred even though the bears enjoyed



ESA protection until the Final Rule went into effect at the end of July 2017.

Notably, the Service stated in the Final Rule’s analysis of cumulative threats to the grizzly population that “[w]e consider estimates of population trend (i.e., ‘lambda’) to be the ultimate metric to assess cumulative impacts to the population.” 82 Fed. Reg. at 30,544.



**Figure 1.** Estimated numbers of grizzly bears in the Yellowstone ecosystem (red dots) along with 95% Confidence Intervals denoted by the bracketed lines above and below. See F.T. van Manen et al., eds., Yellowstone Grizzly Bear Investigations 2014: Report of the Interagency Grizzly Bear Study Team 16 tbl. 7 (2015); F.T. van Manen et al., eds., Yellowstone Grizzly Bear Investigations 2015: Annual Report of the Interagency Grizzly Bear Study Team 17 tbl. 7 (2016); F.T. van Manen et al., eds., Yellowstone Grizzly Bear Investigations 2016: Annual Report of the Interagency Grizzly Bear Study Team 19 tbl. 7 (2017).

52. Nevertheless, the Final Rule did not acknowledge this decline, instead flatly asserting that there is “no evidence to date of a decline.” 82 Fed. Reg. at 30,544.

53. Nor did the Final Rule squarely address the threat to the species posed by the mortality consequences of grizzly bears’ recent shift to a diet based increasingly on meat. The Service acknowledged that grizzly bears have shifted to meat in response to the decline in whitebark pine; that more bears die due to human conflicts during years of poor whitebark pine production; and that human-bear conflict mortality has spiked in recent years. But the Service did not address or evaluate the logical conclusion arising from these facts: that is, grizzly bears’ shift to meat has brought bears into more frequent contact with hunters and livestock and, therefore, caused the recent upsurge in mortality. As a result, the Final Rule did not assess whether grizzly bears’ dietary shift threatens their persistence in the Greater Yellowstone Ecosystem.

54. Further, the Service misleadingly asserted in the Final Rule that, whatever mortality threats the grizzly bear population may face, post-delisting state management will prevent a population-level decline. In this regard, the Final Rule turns grizzly bear management over to Idaho, Wyoming, and Montana wildlife agencies. The states, the Final Rule asserts, will manage the bear population according to the Final Conservation Strategy, which was promulgated along with

the Final Rule. This document memorializes certain steps that, according to the Service and the states, state wildlife agencies will take to purportedly protect Greater Yellowstone grizzly bears in the absence of ESA protection. Chief among these measures is a set of criteria that are prescribed to maintain grizzly mortality below certain thresholds with the ultimate goal of “maintain[ing] the population around the long-term average population size for 2002–2014 of 674.” 82 Fed. Reg. at 30,530–31; see also id. at 30,537–38 (regardless of the cause of change in the population growth rate, “the management response would be the same: To carefully manage human-caused mortality based on scientific monitoring of the population.”). The Final Conservation Strategy sets these thresholds at different points for three different cohorts of the population—independent females, independent males, and dependent young—depending on total population size as determined by a population estimation methodology known as the Chao2 method. Id. at 30,531. For example, the mortality threshold for independent females is set at less than 7.6% when the total population is estimated to be less than or equal to 674 grizzly bears, 9% when the total population is estimated to be 675 to 747 grizzly bears, and 10% when the total population is estimated to exceed 747 grizzly bears. See id.

55. However, while these thresholds may impose a ceiling on trophy hunting under state management, they do not limit the number of bears that may be

killed due to conflicts with human activities. According to the Final Conservation Strategy, “[a]ny mortality threshold will not affect the ... management of conflict grizzly bears” and “[s]tate [bear management] plans provide for the take of conflict bears regardless of the current mortality quota upon consultation with all involved agencies.” Final Conservation Strategy at 48 (emphases added). Consistent with this statement, the state management documents published with the Final Rule provide for recreational hunting of grizzly bears to be halted when mortality thresholds are reached, but provide no similar limitation on management removals—that is, bear killing by government agencies in response to conflicts with humans. This is not a minor omission. Management removals accounted for 43% of human-caused bear mortalities between 2002 and 2014, and 54.7% of such mortalities in 2015.

56. The Final Conservation Strategy’s only possible limit on management removals is a provision stating that “there will be no discretionary mortality, except as necessary for human safety” if the annual bear population estimate falls below 600. Final Conservation Strategy at 35. Many management removals, however, necessarily fall under the rubric of human safety, and will not be curtailed even by this lower limit.

57. In Montana and Idaho, the mortality thresholds are even less protective of grizzly bears. Both Montana law and Idaho law provide that bears

may be shot on sight if they are discovered attacking or molesting livestock. These statutes appear to grant ranchers a license to kill grizzly bears without regard for the mortality thresholds. The Final Rule makes no claim to the contrary.

58. Further, while the Service concluded that the Chao2 method would be used to estimate the grizzly population size for the purpose of applying the mortality thresholds “for the foreseeable future,” 82 Fed. Reg. at 30,531, the agency did not address the prospect that management agencies may adopt a different methodology yielding a higher population estimate. In this regard, the Service and the Interagency Grizzly Bear Study Team (“IGBST”) have considered another method, the “mark-resight” method, that estimates grizzly bear population size at a level higher than the Chao2 method. If management agencies decide in the future that mark-resight or another undetermined methodology represents the best available science for estimating grizzly bear population size, it appears likely that they would generate a higher total population estimate. However, if the existing goal of managing the population “around” 674 bears, see 82 Fed. Reg. at 30,530, were not also adjusted to reflect a higher goal commensurate with such a new population estimating methodology, the states could exploit a change in counting methodology to increase the amount of discretionary grizzly bear mortality available to them under the Final Conservation Strategy. There would not actually be more bears on the ground; rather, the increased estimate would be

merely an artifact of the chosen estimation method. But that would not matter—states would be able to authorize the killing of those “extra” bears as long as they maintained a population estimate “around” the 674 benchmark. The Service in the Final Rule offered no rational response to this issue.

59. The Final Rule therefore failed to grapple with both emerging threats to Greater Yellowstone grizzlies and the loopholes in the ultimate safety net that the Service relied upon to arrest any post-delisting population decline. Compounding these failures, the Final Rule failed to adequately grapple with the best available science, which suggests that the Greater Yellowstone population is likely to substantially decline after delisting under the very mortality management framework that the Service heralded as a safeguard against excessive grizzly bear mortality. Population models submitted to the Service by independent experts David Mattson and Len Broberg demonstrate that there is an unacceptable risk that the Greater Yellowstone grizzly bear population will quickly fall below recovery goals under post-delisting management. The Final Rule did not address these models in a rational manner.

60. David Mattson, who developed one of the models, worked as a research biologist with the U.S. Geological Survey until 2013. Mattson began studying grizzly bears in the Greater Yellowstone Ecosystem in 1979, and from 1984–1993, he was a member of the IGBST. He has published extensive peer-

reviewed scientific literature on grizzly bear biology and demography over the last 30 years.

61. Starting with conservative assumptions, Mattson’s modeling analysis found that the independent male bear population outside of Yellowstone and Grand Teton National Parks will decline precipitously shortly after delisting. (The Final Rule defines “Independent males” as “males 2 years old or older.” 82 Fed. Reg. at 30,632.) This decline will occur because, under the Final Rule’s framework, hunting mortality will fall disproportionately on independent male bears outside national parks: the Final Rule provides that as many as 22% of such bears may be killed per year, while the maximum mortality rate for independent females is 10%. (Bears inside national parks would face smaller population declines because they are not subject to hunting unless they leave the parks—not an uncommon occurrence.) As a result, the total bear population would decline as well: In the majority of Mattson’s modeling simulations, the total bear population declined below the population goal of 600 bears within eight years of delisting.

62. At the same time, however, Mattson found that the management agencies’ estimate of the bear population would not recognize such a population decline but would instead stabilize at about 800 bears—200 bears above the actual population number. This discrepancy occurs because, under the Chao2 population estimate methodology, grizzly bear population estimates in the Greater

Yellowstone Ecosystem are based on counts of females with cubs of the year, and the number of such females should not decline, even as the number of independent male bears outside of national parks plummets to near zero, given that females would be more extensively shielded from hunting mortality than males under state management. Accordingly, rather than a population below management goals—suggesting the need for a change in management strategy to avoid further declines—the management agencies’ Chao2 calculations would show a population greatly exceeding goals. As a result, allowable mortality limits would remain very high—at the level that the Service has deemed appropriate for a population exceeding 800 bears rather than at the lower levels expected to sustain a population of 600 bears.

63. In a separate and independent modeling analysis, Len Broberg—a professor at the University of Montana with more than twenty years of experience studying conservation biology and environmental policy—produced even grimmer results for the grizzly population’s trajectory under the post-delisting management framework prescribed by the Service. He found that there is a 62% chance the grizzly population will fall below 500 if the anticipated decline in the independent male bear population is not detected, as is likely under the Chao2 methodology.

64. In the Final Rule, the Service acknowledged that “the model-averaged Chao2 technique would not detect changes in the male subpopulation,” but



speculated that, if male survival declines, data derived from “[t]he sample of radio-monitored bears (females and males) will allow the IGBST to update” the estimated ratio of male to female bears and other parameters it uses to calculate the total bear population size. 82 Fed. Reg. at 30,591. However, neither the Final Rule nor the Final Conservation Strategy includes any specific commitment to revise these parameters in response to monitoring data.

65. In addition to its failure to address the threat posed by grizzlies’ shift to a meat-based diet and inadequate management safeguards to prevent a resulting population decline, the Final Rule attempted to remove ESA protection from a portion of the lower-48 grizzly population—the listed entity for purposes of the ESA—without considering the status of the listed entity as a whole. As the U.S. Court of Appeals for the D.C. Circuit recently held in the context of a rule delisting a distinct population segment of gray wolves in the Western Great Lakes region:

The Endangered Species Act’s text requires the Service, when reviewing and redetermining the status of a species, to look at the whole picture of the listed species, not just a segment of it. ... Thus, when a species is already listed, the Service cannot review a single segment with blinders on, ignoring the continuing status of the species’ remnant. ... Having started the process, the Service cannot call it quits upon finding a single distinct population segment.

Humane Soc’y, 2017 WL 3254932, at \*11. In short, “the Service cannot find that a population segment is distinct—in the Service’s words, that it is severable because it is ‘discrete’ and ‘significant’—without determining whether the remnant

itself remains a species so that its own status under the Act will continue as needed.” Id. at \*10.

66. Here, despite extracting the newly-designated Greater Yellowstone DPS from the original lower-48 grizzly bear listing, the Service has not determined whether the remnant lower-48 population remains a listable entity—that is, a “species” as defined in the Act, 16 U.S.C. § 1532(16)—that is adequately protected to conserve the species outside of the Yellowstone area. (The remnant lower-48 population includes grizzlies in the Northern Continental Divide, Cabinet-Yaak, Selkirk, and North Cascades regions.) To the contrary, the Service simply stated in the Final Rule that “consideration and analyses of grizzly bear populations elsewhere in the lower 48 States is outside the scope of this rulemaking.” 82 Fed. Reg. at 30,546. “Absent such a determination, the Service has left entirely unexplained how the remaining [bears’] existing [threatened] status would continue.” Humane Soc’y, 2017 WL 3254932, at \*12. This omission is significant for grizzly conservation and survival, because grizzly bears are critically imperiled in, or entirely absent from, four of the six grizzly bear recovery zones identified by the Service in the lower-48. The Service’s delisting action gives rise to a threat that bears in these remaining recovery zones could lose ESA protection merely because they are no longer part of a valid listed entity. See id. Yet the Service failed to consider this issue. “The Service cannot circumvent the Endangered

Species Act's explicit delisting standards by riving an existing listing into a recovered sub-group and a leftover group that becomes an orphan to the law." Id.

67. Finally, the Service further erred in designating and delisting the Greater Yellowstone grizzly bear DPS because the agency vitiated grizzly conservation commitments stated in drafts of the 2016 Grizzly Bear Conservation Strategy without explanation or an opportunity for public comment. As described above, the Final Conservation Strategy "document[s] the regulatory mechanisms and coordinated management approach necessary to ensure the long-term maintenance of a recovered population" after state wildlife agencies take over bear management. 82 Fed. Reg. at 30,515. The Service's conclusions that grizzlies will not be threatened in the foreseeable future by habitat degradation, motorized recreation, habitat fragmentation, livestock conflicts, human-caused mortality, and a lack of genetic connectivity all depend on standards set out in the Final Conservation Strategy. The Final Conservation Strategy emerged, however, only after the final public comment opportunity on the Service's proposed delisting of the Greater Yellowstone grizzly population had concluded.

68. The Final Conservation Strategy departed in several important ways from the draft that the Service circulated during the public comment period. Most troubling given the pressing mortality threats faced by grizzly bears, the Final Conservation Strategy omitted several protections included in the Draft

Conservation Strategy for bears involved in conflicts with humans. For example, the Draft Conservation Strategy provided that “[n]o bear may be removed [that is, killed] for any offense, other than unnatural aggression, without at least one relocation unless representatives of the affected agencies document the reason in writing,” Draft 2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem 91 (2016) (“Draft Conservation Strategy”); the Final Conservation Strategy dropped this limitation. Similarly, the Final Conservation Strategy eliminated a requirement, stated in the Draft Conservation Strategy, that “[n]o grizzly bear involved in livestock predations in the [Primary Conservation Area] shall be removed unless it has been relocated at least one time and continues to cause livestock depredations.” Id. (The Primary Conservation Area has the same boundaries as the Yellowstone Recovery Zone identified in the 1993 Grizzly Bear Recovery Plan.) The Service gave the public no opportunity to comment on whether these changes would threaten a bear population that is more and more frequently coming into conflicts with humans.

69. The Draft Conservation Strategy also included a commitment to maintain bear habitat quality in the Primary Conservation Area at or above 1998 levels. Draft Conservation Strategy at 61. Although the Final Rule misleadingly stated that the “National Forests and National Parks will continue to implement and maintain the 1998 baseline,” 82 Fed. Reg. at 30,545, the Final Conservation

Strategy actually abandoned this commitment and provided that management agencies would soon “revis[e]” the 1998 habitat baseline to allow additional land development in the Primary Conservation Area. Final Conservation Strategy at 55–56. Although this revision was controversial even among the management agencies, the Service gave the public no opportunity to comment on whether relaxing the habitat standard would threaten grizzly bears, or whether there are alternative strategies to address management agencies’ asserted need for administrative flexibility.

70. These changes unveiled for the first time in the Final Conservation Strategy represent a substantial shift in the regulatory paradigm governing grizzly bear habitat and conflict management—a shift that the public could not have anticipated based on the Draft Conservation Strategy. See Nat. Res. Def. Council v. EPA, 279 F.3d 1180, 1187–88 (9th Cir. 2002) (“In determining the adequacy of EPA’s notice and comment procedure as to this issue, the salient question is, as we have noted, ‘whether interested parties reasonably could have anticipated the final rulemaking from the draft permit.’” (citation omitted)). Yet the Service denied any opportunity for public comment on the Final Conservation Strategy and its impact on conservation of the iconic Greater Yellowstone grizzly bear population.

**FIRST CAUSE OF ACTION**  
**(Violation of Endangered Species Act—**  
**Failure to rationally address threats to grizzly bears)**

71. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 70.

72. The ESA required the Service to rationally determine, among other things, whether the Greater Yellowstone grizzly bear population is threatened by “overutilization for commercial, recreational, scientific, or educational purposes” or “other natural or manmade factors affecting its continued existence,” 16 U.S.C. § 1533(a)(1)(B) & (E), and, in doing so, to utilize “the best scientific and commercial data available” to the agency, *id.* § 1533(b)(1)(A).

73. However, the Service failed to rationally explain why Greater Yellowstone grizzly bears are not threatened by a recent dietary shift toward more extensive reliance on meat food sources that yields increasing conflicts with hunters and ranchers, increasing conflicts among grizzly bears, and, therefore, increasing grizzly bear mortalities. The best available scientific evidence indicates that such increasing mortality levels have recently pushed the Greater Yellowstone grizzly population into decline.

74. Despite acknowledging the grizzlies’ increasing reliance on meat as a food source, the Service failed to address or explain why the mortality consequences of this dietary shift do not represent an ongoing threat to the Greater Yellowstone population. Further, the Service not only failed to consider but

persistently denied the existence of any decline in the population—despite the fact that the Service’s own grizzly bear population point estimates demonstrate a decline.

75. The Service also failed to address loopholes in the mortality management framework established by the Final Conservation Strategy and population models developed by independent experts, which show that there is an unacceptable risk that the bear population will decline below recovery goals soon after delisting. The Service did not explain why these loopholes and models do not undermine the Service’s claim that the Greater Yellowstone grizzly population will remain recovered in a post-delisting world.

76. The Service therefore failed to consider an important aspect of the problem before it and failed to provide a rational explanation for its conclusion that Greater Yellowstone grizzly bears are no longer threatened.

77. The challenged decision is therefore arbitrary, capricious, and not in accordance with law and should be set aside pursuant to the ESA and APA. 16 U.S.C. § 1533; 5 U.S.C. § 706(2).

**SECOND CAUSE OF ACTION**  
**(Violation of Endangered Species Act—**  
**Failure to consider the status of the lower-48 grizzly population as a whole)**

78. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 77.

79. When the Service attempts to carve out a DPS from a larger listed entity, the ESA requires, at a minimum, that the Service evaluate whether the remnant population itself remains a valid listable entity so that its protected status under the Act will continue as needed. As the U.S. Court of Appeals for the D.C. Circuit recently concluded:

The Endangered Species Act’s text requires the Service, when reviewing and redetermining the status of a species, to look at the whole picture of the listed species, not just a segment of it. Section 1533(c)(2)(A) requires that the review cover the “species included in a list.” 16 U.S.C. § 1533(c)(2)(A); see also id. § 1533(c)(1), (b)(1)(A) (directing the Service, when revising the status of a species, to “make [its] determinations \* \* \* after conducting a review of the status of the species” as listed) (emphasis added); see also id. § 1533(c)(2)(B). ... [T]hat review can reasonably be read to include any and all of the composite segments or subspecies that might be included within a taxonomically listed species. ... Thus, when a species is already listed, the Service cannot review a single segment with blinders on, ignoring the continuing status of the species’ remnant. The statute requires a comprehensive review of the entire listed species and its continuing status. Having started the process, the Service cannot call it quits upon finding a single distinct population segment.

Humane Soc’y, 2017 WL 3254932, at \*11 (citations omitted).

80. However, in designating and delisting the Greater Yellowstone DPS, the Service failed to conduct any analysis of the status or sufficiency, for ESA listing purposes, of the remnant lower-48 grizzly bear listing. Thus, the Service



failed to evaluate whether the remnant remains protectable under the ESA and, if so, on what basis.

81. The challenged decision is therefore arbitrary, capricious, and not in accordance with law and should be set aside pursuant to the ESA and APA. 16 U.S.C. § 1533; 5 U.S.C. § 706(2)(A).

**THIRD CAUSE OF ACTION**  
**(Violation of the Endangered Species Act and Administrative Procedure Act**  
**— Failure to provide for meaningful public comment)**

82. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 81.

83. The ESA provides, with certain exceptions not applicable here, for the notice and comment rulemaking requirements of the APA, 5 U.S.C. § 553, to “apply to any regulation promulgated to carry out the purposes of [the ESA],” 16 U.S.C. § 1533(b)(4). The APA’s rulemaking requirements include a mandate for federal agencies to provide the public with a meaningful opportunity to comment on the elements of a rule and the materials that form the basis for the rule. 5 U.S.C. § 553(c); 16 U.S.C. § 1533(b)(4); Idaho Farm Bureau Fed’n v. Babbitt, 58 F.3d 1392, 1404 (9th Cir. 1995).

84. However, in promulgating the Final Rule, the Service failed to provide any opportunity for public comment on the Final 2016 Grizzly Bear Conservation Strategy, despite the fact that the Final Conservation Strategy departed in critical ways from earlier drafts in a manner that the public could not

reasonably have anticipated. Most significantly, the Final Conservation Strategy discarded protections for bears involved in conflicts with humans and vitiated the requirement that land management agencies maintain bear habitat quality at 1998 levels.

85. The challenged decision is therefore arbitrary, capricious, and not in accordance with law and should be set aside pursuant to the ESA and APA. 16 U.S.C. § 1533; 5 U.S.C. § 706(2).

### **PRAYER FOR RELIEF**

THEREFORE, plaintiffs respectfully request that the Court:

1. Declare that the Service's decision to designate the Greater Yellowstone grizzly bear DPS violates the ESA and APA;
2. Declare that the Service's decision to remove the Greater Yellowstone grizzly bear DPS from the ESA's list of threatened species violates the ESA and APA;
3. Set aside and vacate the June 30, 2017 Final Rule designating the Greater Yellowstone grizzly bear DPS and removing that DPS from the ESA's list of threatened species;
4. Award plaintiffs temporary, preliminary, and permanent injunctive relief prohibiting the Service from implementing its decision to designate the

Greater Yellowstone grizzly bear DPS and to remove that DPS from the ESA's list of threatened species pending compliance with governing law;

5. Award plaintiffs their reasonable fees, costs, and expenses, including attorney fees, associated with this litigation; and

6. Grant plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 30th day of August, 2017.

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