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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2019-0015; FXES11130900000C6-190-FF09E42000]

RIN 1018-BD86

Endangered and Threatened Wildlife and Plants; Reinstatement of ESA Listing for the Grizzly Bear in the Greater Yellowstone Ecosystem in Compliance With Court Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that had the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the grizzly bear (*Ursus arctos horribilis*) in the Greater Yellowstone Ecosystem (GYE). Thus, this final rule is required to reflect the change effected by that order to the GYE grizzly bear population's status on the List of Endangered and Threatened Wildlife.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. However, the court order had legal effect immediately upon being filed on September 24, 2018.

ADDRESSES: This final rule is available:

- Electronically at <http://www.regulations.gov> in Docket No. FWS-R6-ES-2019-0015;

- From U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office, University of Montana, University Hall #309, Missoula, MT 59812; telephone 406–243–4903. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Dr. Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406–243–4903. For Tribal inquiries, contact Anna Munoz, Native American Liaison, U.S. Fish and Wildlife Service; telephone 303–236–4510. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2017, we published a final rule establishing a distinct population segment (DPS) of the grizzly bear (*Ursus arctos horribilis*) for the GYE and removing this DPS from the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) (82 FR 30502, June 30, 2017; “2017 delisting rule”). In the 2017 delisting rule, we determined that the GYE grizzly bear population was no longer an endangered or threatened population pursuant to the ESA, based on the best scientific and commercial data available. Additional background information on the grizzly bear in the GYE and on this decision, including previous Federal actions, is found in our 2017 delisting rule.

Subsequently, six lawsuits challenging our 2017 delisting rule were filed in Federal district courts in Missoula, Montana, and Chicago, Illinois. The Chicago lawsuit was transferred to Missoula, Montana, and all six lawsuits were consolidated as *Crow Indian Tribe, et al. v.*

United States, et al., case no. CV 17–89–M–DLC (D. Mont. 2018). Plaintiffs’ allegations focused primarily on violations of the ESA and the Administrative Procedure Act (5 U.S.C. 500, *et seq.*).

On September 24, 2018, the Montana District Court issued an order in *Crow Indian Tribe, et al. v. United States, et al.*, 343 F.Supp.3d 999 (D. Mont. 2018), that vacated the 2017 delisting rule and remanded it back to the Service. Thus, this final rule is required to reflect the change in the GYE grizzly bear population’s status effected by that order.

Rule Effective Upon Publication

This rulemaking is necessary to comply with the September 24, 2018, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impracticable and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

Per the September 24, 2018, court order, any and all grizzly bears in the GYE are once again listed as a threatened species under the ESA. Because the Court vacated the entire 2017 delisting rule, all grizzly bears in the lower 48 States are again listed as threatened. Accordingly, we are revising the entry for grizzly bear in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). An existing rule under section 4(d) of the ESA governing the regulation of grizzly bears in the lower 48 States (50 CFR 17.40(b)) again applies to this entire population.

We are also taking this opportunity to correct an omission in the “Listing citations and applicable rules” column. Per 50 CFR 17.11(f), the information in this column “is for reference and navigational purposes only.” We have become aware that the list of citations in this column

does not include a final rule that published in 2010: “Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Grizzly Bear in the Greater Yellowstone Ecosystem in Compliance With Court Order.” Therefore, we are adding this citation in chronological order to the list: 75 FR 14496, 3/26/2010. This change is purely administrative and has no regulatory effect.

This rule will not affect the grizzly bear’s Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Amendment

Accordingly, in order to comply with the court order discussed above, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.11(h) by revising the first entry for “Bear, grizzly” under “Mammals” in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

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Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
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MAMMALS

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Bear, grizzly	<i>Ursus arctos horribilis</i>	U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	T	32 FR 4001, 3/11/1967; 35 FR 16047, 10/13/1970; 40 FR 31734, 7/28/1975; 72 FR 14866, 3/29/2007; 75 FR 14496, 3/26/2010; 82 FR 30502, 6/30/2017; 84 FR <u>[INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS], [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER];</u> 50 CFR 17.40(b). ^{4d}
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Dated: June 6, 2019.

Margaret E. Everson,

Principal Deputy Director,

exercising the authority of the Director

for the U.S. Fish and Wildlife Service.

[FR Doc. 2019-16350 Filed: 7/30/2019 8:45 am; Publication Date: 7/31/2019]