



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2022–0150; FF09E21000–256–FXES11130900000]

Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Greater Yellowstone Ecosystem of the Grizzly Bear in the Lower-48 States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to establish and delist a Greater Yellowstone Ecosystem (GYE) distinct population segment (DPS) of the grizzly bear (*Ursus arctos horribilis*) in the lower-48 States. After a thorough review of the best scientific and commercial data available, we find that grizzly bears in the petitioned DPS do not, on their own, represent a valid DPS. Thus, we find that the petitioned action to establish and delist a GYE DPS is not warranted at this time.

DATES: The finding in this document was made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The finding and the supporting information that we developed for this finding, including the species status assessment report and species assessment form, are available on the internet at <https://www.regulations.gov> under Docket No. FWS–R6–ES–2022–0150. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Coordinator, Grizzly Bear Recovery Office, telephone: 406–243–4903, email:

hilary_cooley@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; hereafter, “Act”), the grizzly bear (*Ursus arctos horribilis*) is currently listed as threatened species in the lower-48 States (40 FR 31734, July 28, 1975). We detail the original rulemaking and our subsequent actions for the species in our species status assessment (SSA) report (Service 2024, pp. 74–76) and summarize the relevant actions for this finding below.

On June 30, 2017, we finalized a rule to establish the Greater Yellowstone Ecosystem (GYE) distinct population segment (DPS) of the grizzly bear and remove it from the Federal List of Endangered and Threatened Wildlife (List) due to recovery (82 FR 30502). However, in 2018, the U.S. District Court for the District of Montana vacated and remanded the 2017 delisting rule, putting the GYE grizzly bear population back on the List (as threatened) as part of the lower-48 States listed entity. As a result, the List does not currently include an entry for a GYE DPS. On March 30, 2021, we completed a 5-year status review for the grizzly bear in the lower-48 States in which we concluded that the listed entity should retain its status as a threatened species under the Act (Service 2021, entire).

On January 21, 2022, we received a petition from the State of Wyoming (petitioner) to revise the listed entity of grizzly bear under the Act. The petition requested that we: (1) establish a GYE DPS; and (2) remove it from the List (“delist”), asserting

that the GYE DPS did not meet the definition of an endangered or threatened species. On February 6, 2023, we published a 90-day finding (88 FR 7658) that the petition contained substantial information indicating that establishing and delisting a GYE DPS may be warranted. This document and our supporting species assessment form constitutes our 12-month finding on the January 21, 2022, petition to establish and delist a GYE DPS of grizzly bear under the Act.

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 et seq.), we are required to make a finding, within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted, as to whether the petitioned action is warranted, not warranted, or warranted but precluded by other pending proposals (known as a “12-month finding”). We must publish a notification of this 12-month finding in the *Federal Register*.

This document announces the not-warranted finding on the petition for the GYE grizzly bear population in accordance with the regulations at 50 CFR 424.14(h)(2)(i). In this document, we have also elected to include a summary of the analysis on which this finding is based. This supporting information can be found on the internet at <https://www.regulations.gov> under Docket No. FWS–R6–ES–2022–0150 (see

ADDRESSES, above). We provide the full analysis, including our rationale and the data on which the finding is based, in the decisional file for the petition and our subsequent findings. The species assessment form contains an explanation of why we determined that grizzly bears in the petitioned DPS do not, on their own, represent a valid listable entity such that the petitioned actions are not warranted at this time. The following is a summary of the documents containing this full analysis.

Listable Entity Requirements

Under the Act, the term “species” includes any subspecies of fish or wildlife or

plants, and any distinct population segment of any vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). To interpret and implement the distinct population segment (DPS) provisions of the Act, the Service and the National Oceanic and Atmospheric Administration published in the *Federal Register* the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act on February 7, 1996 (61 FR 4722) (DPS Policy). Under the DPS Policy, we consider three elements to determine whether to classify a population of a vertebrate species as a DPS: (1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standard for listing, delisting, or reclassification. The Policy requires that a population segment meet both the discreteness and significance elements to be considered a valid DPS (i.e., a valid listable entity) and only then may we consider whether the DPS warrants listing under the Act.

Summary of Biological Information

The grizzly bear is a large, long-lived mammal that occurs in a variety of habitat types in portions of Idaho, Montana, Washington, and Wyoming. Grizzly bears are light brown to nearly black and are so named for their “grizzled” coats with silver or golden tips. Grizzly bears in the GYE population and the lower-48 States need access to large, intact blocks of land with limited human influence that provide cover, high-caloric foods, dens, and areas for dispersal. The specific quality and quantity of these resources influence the ability of individual grizzly bears to reproduce, grow, and survive at different life stages and for the GYE population to be resilient or to withstand stochastic events (Service 2024, pp. 99–101). Our SSA report provides our full account of the life history, ecology, range, and historical and current distribution for the grizzly bear in the GYE population and the lower-48 States (Service 2024, pp. 39–73).

Summary of Information from the Petition

The petitioner requests that we establish a DPS for the GYE grizzly bear population (GYE DPS). Specifically, the petitioner requests that we establish a GYE DPS within the same geographic boundary that we established as a DPS in our June 30, 2017, final rule (82 FR 30502), which was subsequently vacated. The petitioner did not provide a new geographic delineation for the petitioned GYE DPS and instead referenced the boundary for the GYE DPS that we described in 2017 (hereafter, 2017 GYE DPS). In their arguments to support delisting, the petitioner indicates that the GYE grizzly bear population's range has expanded, including a four-fold increase in the occupied range since the time of listing in 1975. The species assessment form provides additional summary of the information presented in the petition, including a map of the petitioned 2017 GYE DPS.

Summary of Finding

In determining whether to recognize the petitioned DPS as a valid listable entity under the Act, we must base our decision on the best scientific and commercial data available. Since 2017, the abundance, distribution, and dispersal of grizzly bears within and surrounding the GYE has increased. New information supports the petitioner's claim that the GYE population has increased in size and distribution, so much so that grizzly bears have dispersed and expanded beyond the western boundary of the 2017 GYE DPS. The occupied range of the grizzly bear in both the GYE and the Northern Continental Divide Ecosystem (NCDE) located to the north of the GYE, has steadily expanded over time. From 2016 to 2022, occupied range in the GYE increased by 4 percent (Dellinger et al. 2023, pp. 22–23) and the NCDE increased by 19 percent (Costello et al. 2023, p. 13). As a result, the distance between these occupied ranges has decreased and continues to shrink. Models indicate that the GYE and NCDE are currently only 98 kilometers (61 miles) apart, within grizzly bear dispersal distance (Service 2024, p. 54).

In the June 30, 2017, final rule, we stated that the DPS Policy does not require absolute separation of one population from another and that occasional interchange does not undermine the discreteness of potential DPSs (82 FR 30502 at 30518). While we still agree with this statement, the 2022 estimated occupied range of the GYE population now extends beyond the 2017 GYE DPS western boundary. We expect this trend to increase over time.

Additionally, as the populations expand, individual grizzly bears are dispersing into new areas outside the estimated occupied range. Since 2017, there have been 190 verified observations of grizzly bears outside of the current estimated occupied range of grizzly bear populations in the lower-48 States. Currently, genetic studies have confirmed that at least two grizzly bears originating from the GYE population have dispersed beyond the 2017 GYE DPS border (IGBST, unpublished data). We have also verified 86 observations of grizzly bears outside of the 2017 GYE DPS boundaries and within potential connectivity pathways to the NCDE (NCDE Management Zone 2 (NCDE Subcommittee 2020, entire)) and to the Bitterroot Ecosystem (Sells et al. 2023, p. 6).

These occurrences outside of areas considered occupied range are becoming increasingly common, particularly in areas immediately to the north and west of the 2017 GYE DPS. While in most cases the source population of such grizzly bears is unknown, a number of them likely originated from the GYE population, given their close proximity to the GYE. The locations of these verified observations reveal the leading edges of grizzly bear expansion within and between ecosystems (see Service 2024, Fig. 1) (Dellinger et al. 2023, pp. 22–23). With the increasing trends of population growth and expansion over the last 7 years, we anticipate range expansion and dispersal events to continue under current management, including the protections of the Act, such that natural connectivity between the NCDE population and GYE population will likely occur in the near future (Service 2024, p. 54).

To summarize, information provided by the petitioner and the best scientific and commercial data available indicate that grizzly bear abundance, distribution, and dispersal have increased, and grizzly bears have expanded beyond the 2017 GYE DPS boundary. As a result, the petitioned DPS identified in 2017 is no longer based on the best scientific and commercial data available and is obsolete. As populations have grown and expanded, grizzly bears have dispersed beyond the 2017 GYE DPS boundary, often into areas considered to be previously unoccupied.

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. In determining whether the test for discreteness has been met under the DPS policy, we allow but do not require genetic evidence to be used.

Although the DPS Policy does not require absolute separation of one population from another, (82 FR 30502, June 30, 2017, p. 30518), the standard for discreteness must allow us to distinguish between the DPS and other members of the species for purposes of administering and enforcing the Act (61 FR 4722, February 7, 1996, p. 4724). As summarized above, the best scientific and commercial data available indicate that the estimated occupied range of the grizzly bear population in the GYE has expanded since 2017. The NCDE population has also expanded its range, and the two populations are increasingly closer in proximity. Due to this expansion, which is expected to continue in the future under current management, including the protections of the Act, we no longer

consider the 2017 GYE DPS to be discrete, as grizzly bears have dispersed and expanded to such an extent that it is not markedly separate from other members of the taxon. Because grizzly bears within the boundaries of the 2017 GYE DPS described by the petitioner are not markedly separated from other populations of the taxon, it does not meet the discreteness element in the DPS Policy as a consequence of physical, physiological, ecological, or behavioral factors (61 FR 4722, February 7, 1996). Therefore, we find that grizzly bears in the 2017 GYE DPS do not, on their own, represent a valid DPS and we therefore do not consider the status of grizzly bears in this petitioned entity as a separately listable entity under the Act. Accordingly, we find that the petitioned action to establish and delist the GYE DPS is not warranted.

We are in the process of fully evaluating the latest information regarding the status of the grizzly bear in the lower-48 States in a rulemaking expected by January 31, 2026. This rulemaking is pursuant to a settlement agreement associated with the State of Idaho's petition to delist the grizzly bear in the lower-48 States. That rulemaking, to either remove or revise the currently listed entity of the grizzly bear in the lower-48 States, will fully evaluate the best scientific and commercial data available, which could include potential DPSs, while considering potential population segment's conservation status and Congress's direction to exercise DPSs sparingly and only when the biological evidence indicates that such action is warranted. The trends of increasing distribution and dispersal point to the need for a broader, holistic evaluation at the rangewide level, which will be completed as part of the rulemaking already underway. Consistent with the DPS Policy, that analysis will require careful consideration of the extent to which formerly isolated populations are connected, or likely to be connected, and the need for connectivity to small or isolated populations and unoccupied recovery zones, given the best and most recent biological data available that support a durable recovered grizzly bear in the lower-48 States.

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the SSA report for the grizzly bear in the lower-48 States. Results of this structured peer review process can be found at <https://www.regulations.gov>. We incorporated the results of these reviews, as appropriate, into the SSA report, which is the scientific foundation for this finding.

References Cited

A list of the references cited in this petition finding is available in the species assessment form, which is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2022-0150 (see **ADDRESSES**, above).

Authors

The primary authors of this document are staff members of the Grizzly Bear Recovery Office, Ecological Services Program.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Martha Williams,
Director,
U.S. Fish and Wildlife Service.

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