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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
Northern Continental Divide 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 Northern Continental Divide Ecosystem (NCDE) 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 an NCDE 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 a 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 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 Endangered Species Act (Act) (Service 2021, entire). On December 17, 2021, we received a petition from the State of Montana (petitioner) to revise the listed entity of grizzly bear under the Act. The petition requested that we: (1) establish a NCDE DPS; and (2) remove it from the List (“delist”), asserting that the

NCDE 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 NCDE DPS may be warranted. This document and our supporting species assessment form constitutes our 12-month finding on the December 17, 2021, petition to establish and delist a NCDE 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 NCDE 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 finding. 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 NCDE 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 NCDE 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 NCDE 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 NCDE grizzly bear population (petitioned DPS) that occurs entirely within the State of Montana. In their arguments to support delisting, the petitioner indicates that the NCDE 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 DPS.

Summary of Finding

In determining whether to recognize the petitioned DPS as a valid DPS (e.g., a listable entity under the Act), we must base our decision on the best scientific and commercial data available. Since the time of the original listing in 1975, the abundance, distribution, and dispersal of grizzly bears within and surrounding the NCDE has increased. New information supports the petitioner's claim that the NCDE population has increased in size and distribution, so much so that grizzly bears have dispersed and expanded their occupied range and verified outliers are occurring beyond the western and

southern boundary of the petitioned DPS. From 2014 to 2022, estimated occupied range in the NCDE increased by 21 percent, averaging 5 percent every 2 years. As a result, the distance between the occupied range in the NCDE and that of other ecosystems has decreased and continues to shrink. Models indicate that the NCDE estimated occupied range overlaps with the Cabinet-Yaak Ecosystem (CYE), although no genetic or demographic connectivity has been documented. In addition, models indicate that the estimated occupied ranges of the NCDE and Greater Yellowstone Ecosystem (GYE) populations are currently only 98 kilometers (61 miles) apart, within grizzly bear dispersal distance.

The 2022 estimated occupied range of the NCDE population of grizzly bear extends beyond the western and southern boundaries of the petitioned DPS (Service 2024, figure 1). From 2020 to 2022, occupied range in the NCDE increased by 11 percent (Costello et al. 2023, p. 13). 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 2014, there have been 213 verified observations of grizzly bears outside of current estimated occupied range in the lower-48 States. Currently, genetic studies have confirmed that at least 14 grizzly bears originating from the NCDE population have dispersed beyond the boundary of the petitioned DPS. Seven of these individuals are known to have emigrated from the NCDE to the CYE, however, no gene flow is known to have occurred as of 2022 (Kasworm et al. 2024, p. 34). These occurrences outside of areas considered occupied range are becoming increasingly common. While in most cases, the source population of such grizzly bears is unknown, a number of them likely originated from the NCDE population. The locations of these

verified observations reveal the leading edges of grizzly bear range expansion within and between ecosystems (see Service 2024, figure 1) (Costello et al. 2023, pp. 13–17; Dellinger et al. 2023, pp. 22–23). With the increasing trend of population growth and expansion over the last several 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 other grizzly bear populations in the lower-48 States will likely occur in the near future (Service 2024, p. 54).

Additionally, we anticipate that dispersing bears from the NCDE will re-establish a population in the Bitterroot Ecosystem (BE) in the next 15 to 20 years. The estimated occupied range for the NCDE grizzly bear population is less than 5 kilometers (3 miles) from the Bitterroot recovery zone and a subadult female dispersed to within 5 kilometers (3 miles) of the BE in 2022. This information indicates that the grizzly bear population has expanded beyond the boundary of the petitioned DPS and continues to expand.

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 petitioned DPS boundary. As a result, the petitioned DPS is not based on the best scientific and commercial data available and is obsolete. As populations have grown and expanded, estimated occupied range has expanded beyond the petitioned DPS boundary. In addition, grizzly bears have dispersed beyond the petitioned 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 NCDE has expanded steadily in the past decade. The GYE and CYE populations have also expanded their range and these populations are increasingly closer in proximity to the NCDE population. Grizzly bears have dispersed beyond the boundaries of the petitioned DPS and the NCDE population has expanded to such an extent that it is not markedly separate from other populations of the taxon. Due to ongoing population growth and range expansion, which is expected to continue in the future under current management, including the protections of the Act, we do not consider the petitioned DPS to be discrete due to physical factors. Because grizzly bears within the boundaries of the petitioned DPS are not markedly separated from other populations of the taxon, the petitioned DPS does not meet the

discreteness element in the DPS Policy. Therefore, we find that grizzly bears in the petitioned 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.

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 these actions 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.