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Public Comments Processing
Attn: Docket No. FWS-R6-ES-2016-0042
U.S. Fish and Wildlife Service
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Additional Comments on Proposal to Remove Grizzly Bear (*Ursus arctos horribilis*) from List of Endangered and Threatened Species
Docket No. FWS-R6-ES-2016-0042

Ladies and Gentlemen:

I have previously submitted comments, which were transmitted both electronically via Regulations.gov and by U.S. mail, on the March 11, 2016 proposal by the United States Fish and Wildlife Service (USFWS) to remove the Greater Yellowstone Ecosystem (GYE) Distinct Population Segment (DPS) of the grizzly bear¹ (*Ursus arctos horribilis*) from the list of threatened and endangered species.² I write today to offer supplemental comments on the merits of this proposed de-listing.

First, however, I urge USFWS to extend the comment period on this proposed de-listing. Several environmental advocacy organizations, including Center for Biological Diversity, Defenders of Wildlife, Endangered Species Coalition, Gallatin Wildlife Association, Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, National Parks Conservation Association, Natural Resources Defense Council, Park County Environmental Council, Sierra Club, The Cougar Fund, Western Watersheds Project, WildEarth Guardians, and Wyoming Wildlife Advocates, have previously made a similar request. An additional sixty days beyond May 10, 2016 would be a reasonable extension period.

The Administrative Procedure Act (APA) requires USFWS to provide the public with a meaningful opportunity to participate in deliberations regarding an administrative rule such as that proposed by the agency with regard to the GYE DPS of *U.a. horribilis* on March 11, 2016.

¹ The grizzly bear should be referred to informally as the North American brown bear so as to avoid confusion. That informal name is used in this letter.

² 81 FR 13174.

See 5 U.S.C. § 553 (b)-(c). USFWS' proposed action relies on a large and detailed amount of information. Among the documents that must be considered in making any informed decision about whether to finalize the proposed de-listing are the Draft 2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem; the Draft Supplement: Draft Revised Demographic Recovery Criteria for the Yellowstone Ecosystem; a substantial catalog of cited literature; and grizzly bear management plans for the states of Idaho, Montana, and Wyoming. Review and analysis of this large body of new and, in some cases, forthcoming material is necessary to formulate informed and meaningful public comment for your agency's consideration but is difficult to accomplish within the allotted 60-day comment period set forth in the agency's March 11, 2016 notice.

USFWS should consider that, where the matter under consideration is of "of great importance, or where the public submission of facts will be either useful to the agency or a protection to the public," the administrative rulemaking process should "naturally be accorded more elaborate public procedures." Administrative Procedure Act: Legislative History, S. Doc. No. 248, at 259 (1946). As a federal court explained decades ago, "[u]nder our system of government, the very legitimacy of general policymaking performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall." *Sierra Club v. Costle*, 657 F.2d 298, 401 (D.C. Cir. 1981).

USFWS should therefore schedule and conduct public information meetings and hearings on the merits of its proposal to remove the GYE DPS of the North American brown bear from the list of threatened and endangered species. Only two public events relating to this proposal have been scheduled and held: One on April 11, 2016 in Cody, Wyoming and the other on April 12, 2016 in Bozeman, Montana. But the status of the grizzly bear is a matter of national concern and there is a great deal of public interest in the agency's deliberations regarding the status of the North American brown bears that are resident in and around Yellowstone National Park. Therefore, before USFWS makes any decision about whether to remove the GYE DPS from Endangered Species Act protection, it should provide for far more extensive opportunities for public input than has been provided to date. I suggest that USFWS conduct hearings in both the Greater Yellowstone Ecosystem, other areas of the western United States, and in several East Coast cities. The following cities are recommended:

Greater Yellowstone Ecosystem	Other Western U.S.	Eastern U.S.
Gardiner, MT	Boise, ID	Boston, MA
Jackson, WY	Denver, CO	New York, NY
	Flagstaff, AZ	Washington, DC
	Missoula, MT	
	Portland, OR	
	San Francisco, CA	
	Seattle, WA	

On the merits of the proposal, I add the following comments to those I previously submitted. Nothing herein amends or nullifies any of my previous comments.

1. USFWS has failed to give adequate consideration to the lack of connectivity between isolated populations of the North American brown bear and should, instead of considering de-listing of the GYE DPS, USFWS should reintroduce the North American brown bear to areas within the GYE and elsewhere that provide excellent quality habitat. Those areas should include, at minimum, the Selway-Bitterroot area of Idaho and Montana and Colorado's San Juan mountains. USFWS has been asked via a 2014 petition to re-introduce North American brown bears to the Selway-Bitterroot area.
2. De-listing will complicate, or even render impossible, investigations into illegal killing of North American brown bears. As the comments of former USFWS Special Agent Samuel F. Jojola (May 6, 2016) indicate, federal law enforcement agents employed by USFWS play a crucial role in the deterrence of such activity. Removal of the GYE DPS of the North American brown bear from the list of threatened and endangered species would likely mean that many fewer or no USFWS special agents would be available to assist in enforcement of other federal wildlife laws, including the Lacey Act, within the GYE and, specifically, when North American brown bears are killed in violation of such laws.
3. Trophy hunting is really just another form of poaching. Whatever its social or economic merit, and there is precious little, if any, of that, there is absolutely no scientific justification at all for a policy that encourages relatively few individuals to seek the heads or other body parts of large mammals for display. Indeed, bear bile is a product that engenders a large amount of demand in Asia and there have been incidents in which traffickers in wildlife have advertised in U.S. media a desire to purchase bear body parts. The U.S. government has in place a comprehensive strategy against wildlife trafficking, a cornerstone of which is a 2013 executive order, and it would undermine that strategy to adopt a de-listing which would encourage trafficking in the body parts of North American brown bears

Trophy hunting is apparently already occurring in and around the GYE and the consequences are already horrendous for North American brown bears and all Americans who value this species as a living symbol of the wilderness and of functional and healthy ecosystems in the American west. At least 22 North American brown bears were unlawfully killed by hunters in the GYE between 2002 and 2014. A Montana hunter killed three individual North American brown bears in 2014, for example, and, very recently, an iconic individual named Scarface was killed by an unknown shooter. That this level of carnage inflicted by hunters who brazenly disregard federal law occurred despite protection of the North American brown bear under the ESA should give USFWS a great deal of pause before proceeding with de-listing. Even assuming that effective hunting laws are in place in Idaho, Montana, and Wyoming, it is highly unlikely that those states will enforce them consistently and, if they do, that penalties would be onerous enough to effectively discourage poaching.

Idaho, Montana, and Wyoming have already proven that they are unwilling to enact or enforce hunting laws in a manner that assures a sustainable population of a large predatory mammal species. In the case of the formerly ESA-protected (still protected in Wyoming) gray wolf, hunting has occurred at unsustainable levels in two of the GYE states.³

4. The total population of North American brown bears in the United States is not more than 1,800 individuals. That is at least 5 times too few individuals to assure a long-term persistence of the species.⁴
5. USFWS misconstrued the conclusions of another study⁵ when it asserted, on page 153 of the March 11, 2016 notice, that “[t]he current effective population is more than four times the minimum effective population size suggested in the literature. . . .” The study to which USFWS referred made clear that a population size of 500-5,000, not 100, is the minimum necessary for long-term genetic viability.
6. USFWS “cherry-picked” the highest of several estimates of the current population of GYE North American brown bears that was included in a 2015 study.⁶ That study did include the “high-end” estimate of 469 cited by USFWS in the March 11, 2016 notice, but there were more conservative estimates of the GYE North American brown bear of 213 and 280 discussed in the same paper.

If those more conservative estimates are correct, then the current population of GYE North American brown bears is only half the size necessary for long-term genetic persistence. As the authors of the Kamath et al. paper state,

“the historically small N_e , relatively low diversity and isolation over many generations suggest the grizzly population could benefit from increased fitness following the restoration of gene flow . . . , particularly given the unpredictability of future climate and habitat changes.”

³ Ausband, D.E., C.R. Stansbury, J.L. Stenglein, J.L. Struthers, and L.P. Waits. 2015. Recruitment in a social carnivore before and after harvest. *Animal Conservation* 18(5): 415-423.

⁴ Frankham, R., B.W. Brook, C.J.A. Bradshaw, L.W. Traill, and D. Spielman. 2013. 50/500 rule and minimum viable populations: response to Jamieson and Allendorf. *Trends in Ecology and Evolution* 28(4):187-188. Available at http://izt.ciens.ucv.ve/ecologia/Archivos/ECO_POB%202013/ECOP02_2013/Frankham%20et%20al%202013.pdf (last visited May 9, 2016).

⁵ Miller, C.R. and L.P. Waits. 2003. The history of effective population size and genetic diversity in the Yellowstone grizzly (*Ursus arctos*): implications for conservation. *Proceedings of the National Academy of Sciences* 100(7): 4334-4339.

⁶ Kamath, P.L., M.A. Haroldson, G. Luikart, D. Paetkau, C. Whitman, and F.T. van Manen. 2015. Multiple estimates of effective population size for monitoring a long-lived vertebrate: an application to Yellowstone grizzly bears. *Molecular Ecology* 24(22): 5507-5521.

Given the strong likelihood that the GYE North American brown bear population is below the level needed for long-term persistence, and given the long isolation of a relatively small number of individuals in that population as well as the indisputable evidence of anthropogenic climate change, USFWS should be considering re-introduction of the species into other areas of the American west with suitable habitat instead of a de-listing proposal.

Indeed, the ESA's recovery mandate requires USFWS to consider such re-introduction initiatives. The statutory command that USFWS facilitate the "conservation" of listed species means that USFWS must take all necessary steps, including "propagation, live trapping, and transplantation," to return a listed species to a degree of long-term population stability and ecosystem condition under which that species no longer needs ESA protection. 16 U.S.C. § 1532(3). As explained in my prior comments, USFWS may not avoid this mandate by creating a DPS for the purpose of removing that DPS from the list of threatened and endangered species.

Thank you for considering these additional comments.

Sincerely,

Henry B. Lacey