

200 DPS comments

- The USFWS cannot create a DPS to remove that DPS from the list of threatened and endangered species. *Humane Society of the United States v. Jewell*, 2014 WL 7237702 (D.D.C., Dec 19, 2014). One-way ratchet. There cannot be a DPS without an endangered or threatened status.
- Because grizzly bears were listed as a threatened species as a single unit in the lower 48 states, they must be delisted the same way.
- The Service erroneously interprets range as meaning the range in which the species currently exists.
- SPR analysis: the Service fails to explain that current range is a sufficient fraction of its larger, historical range. "it is on the record apparent that the area in which the [species] is expected to survive is much smaller than its historical range, the Secretary must at least explain her conclusion that the area in which the species can no longer live is not a 'significant portion of its range.'" The proposed rule only focuses on the GYE itself and dismisses areas outside of the 5 currently occupied zones as "likely to never contribute meaningfully" to the population of GYE grizzly bears. The SPR document 16 USC §§ 1532 is currently subject to litigation.
- The Service must not consider whether expansion into historic range would be "socially acceptable" or politically popular or economically disadvantageous.
- The Service must analyze SPR to include the grizzly bear's historic range and analyze where lost historical range qualifies as a "significant portion"
- And if the DPS is legal, then must consider if the lost historic range of the proposed DPS is significant. "The Service failed to adequately analyze other threats to the grizzly bear within portions of the proposed DPS, including, but not limited to, trophy hunting of grizzly bears, incidental take from hunting and trapping activities (both state regulated hunting and trapping as well as hunting and trapping by federal entities such as the U.S. Department of Agriculture's Wildlife Services), lack of connectivity to other populations and genetic diversity issues, increased road densities in parts of the proposed DPS, intense increased human development within the proposed DPS, and other discussed at length in these comments." (Wild Ear Guardians)
- The Service's July 1, 2014 policy defining SPR is contrary to the intention of Congress. Congress was clear "The term 'range' [in the ESA] is used in the general sense, and refers to the historical range of the species."
- The SPR analysis fails to analyze whether any threats to any portion of the entire grizzly bear range constitute a significant portion of the grizzly bear's range. (Wild Earth Guardians)
- "The Service failed to consider whether other threats found elsewhere in the range of the currently listed entity are significant, including, for example, incidental take from hunting and trapping activities (both state regulated hunting and trapping as well as hunting and trapping by federal entities such as the U.S. Department of Agriculture's Wildlife Services), lack of connectivity to other populations and genetic diversity issues, increased road densities, and others discussed at length in these comments." (Wild Earth Guardians) (i.e., do threats to bears outside of the DMA constitute a threat to a significant portion of the DPS)
- The areas outside of the DPS which will remain protected by the Act must be clearly identified by name and location (i.e., the Bitterroot Ecosystem).
- DPS justification "affirms an abandonment of grizzly bear restoration beyond the currently occupied range"
- The Service fails to evaluate the third factor for declaration of a DPS: the population segment's conservation status (cannot designate a DPS to remove protections from the covered species designation).

- The Service attempts to evaluate the status of the “DPS” under Section 4 and finds it does not qualify as either endangered or threatened and therefore it does not meet the definition of a “species” under the act.
- The GYE does not meet the DPS policy’s significance, discreteness, or status factors.
 - The Service argues for “markedly separated” for discreteness – acknowledges that future connectivity with the NCDE is desirable but that occasional movement does not undermine discreteness as absolute separation is not necessary. This argument is nonsensical. The roads which define the DPS are permeable to grizzly bears.
 - Genetic data of 60% heterozygosity is an unconvincing argument. The Service’s later analysis finds that genetic differences do not support a find that the population is significant: “Because we do not know the biological significance (if any) of the observed differences, we cannot say with certainty that the GYE grizzly bear population’s genetics differ ‘markedly’ from other grizzly bear populations.” Low heterozygosity is evidence that linkage is necessary.
 - Basis for significance is that “loss would represent a significant gap in the range of the taxon”. The argument only makes sense if you’re moving to protect the GYE bears further, not delist them. Undermines duty to recover the species as a whole.
 - None of the DPS examples justify the Service’s approach because federal courts have rendered the Service’s interpretation as arbitrary and capricious.
 - The 2008 solicitor’s opinion does not give the Service legally binding support to proceed.
- Even if the Service was correct in its appeal of the western great lake wolves DPS ruling, the Service cannot designate the GYE as a DPS because you cannot have a DPS of a DPS. The listing of the lower-48 portion of the species is already a DPS.
- Request that the Service publish an Advance Notice of Proposed Rulemaking that explains how the Service will address the remainder of the grizzly bear listed unit, sets forth a timeline for initiation and completion of such actions, and solicits public comment on possible ways under which the grizzly bear could be reclassified.
- The Service must first designate multiple grizzly bear DPSs that encompass the entire range of the subspecies, set recovery goals for each DPS, and evaluate the status of each DPS for listing.

Highlighted portions = what is not explicitly covered in Wild Earth Guardians comment