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INFORMATION MEMORANDUM FOR THE DIRECTOR

FROM: Gary Frazer, Assistant Director, Ecological Services, U.S. Fish and Wildlife Service

CC: Matt Hogan, Deputy Regional Director, U.S. Fish and Wildlife Service Mountain-Prairie Region
Mike Thabault, Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service Mountain-Prairie Region
Terry Rabot, Deputy Regional Director, U.S. Fish and Wildlife Service Pacific Region
Paul Henson, Acting Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service Pacific Region

SUBJECT: Proposed Rule Delisting Grizzly Bears in Greater Yellowstone Ecosystem

I. INTRODUCTION

We intend to reopen the public comment period on our March 11, 2016 proposed grizzly bear (*Ursus arctos horribilis*) delisting in the Greater Yellowstone Ecosystem in light the peer review and the state regulations in Wyoming, Montana, and Idaho, which clarify their approach to grizzly bear management after delisting. This Federal Register notice provides a brief summary of (1) the major highlights of the recently finalized state regulations; (2) a Service assessment; and (3) a brief discussion of the peer review.

II. BACKGROUND

On March 11, 2016, we proposed to remove the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) from the List of Endangered and Threatened Wildlife. In the proposal to delist this population of grizzly bears, we explained that state regulations surrounding human-caused grizzly bear mortality in Montana, Wyoming, and Idaho must include five elements; these five elements are reiterated in the Federal Register notice. In the proposed rule, we stated that regulatory mechanisms containing these provisions must be in place in each state for delisting to occur.

Montana, Wyoming, and Idaho recently finalized such regulatory mechanisms governing potential hunting seasons. These three states also approved a Memorandum of Agreement (Tri-State MOA), which outlines their plans for grizzly bear management and allocates discretionary mortality of grizzly bears in the GYE.

We have reviewed the recently finalized state regulations and our preliminary assessment is that these documents are consistent with the letter or intent of the regulatory requirements regarding human-caused mortality that we outlined in the proposed rule. Although the wording of some sections in the state regulations does not exactly match the phrasing of our requirements, we

believe that the text of these sections meets the intent of our requirements. Based on our review, we believe the regulatory framework in Montana, Wyoming, and Idaho, in combination with the Tri-State MOA, will maintain a recovered population of grizzly bears in the GYE.

We subjected the proposed delisting to peer review, in accordance with agency policy, and we are welcoming any comments on the proposed rule in light of these reviews.

III. POSITION of INTERESTED PARTIES

The information contained in this memorandum is for informational and outreach purposes only and has not been used as the basis for any potential Agency decision.

Federal Agencies:

Federal agencies have generally expressed support for delisting the GYE grizzly bear population, as long as adequate regulatory demographic management mechanisms are in place in state statutes to adequately protect grizzly bears once the protections of the ESA are removed.

Federal Agencies involved include: the National Park Service (NPS) - Yellowstone and Grand Teton National Parks; U.S. Forest Service (USFS) – Custer-Gallatin National Forest (NF), Beaverhead-Deerlodge NF, Caribou-Targhee NF, Bridger-Teton NF, and Shoshone NF; and the Bureau of Land Management (BLM).

State and Local Agencies:

State agencies are in support of delisting the GYE grizzly bear population; Montana, Wyoming, and Idaho have now included necessary demographic management details in their statutes, laws and regulations in order to illustrate the regulatory protections grizzlies will receive post-delisting. State agencies involved include: Wyoming Game and Fish Department (WGFD); Montana Department of Fish, Wildlife, and Parks (MTFWP); and Idaho Department of Fish and Game (IDFG).

Park County, Wyoming, Board of Commissioners sent a resolution encouraging the Service to move forward with a delisting rule for the GYE grizzly bear.

Government-to-Government Consultation (Tribal Outreach):

Almost all tribes contacted have expressed strong opposition to delisting based on their disapproval of trophy grizzly bear hunting that the states are expected to implement if the Yellowstone DPS is delisted.

Beginning in April 2014, the Grizzly Bear Recovery Program sent consultation invitation letters to the four tribes having treaty interests in the proposed GYE grizzly bear delisting area: Northern Arapaho, Eastern Shoshone, Northwestern Band of the Shoshone Nation, and Shoshone-Bannock Tribes.

During the next year, the Service was made aware of many more tribes that have an interest in the GYE grizzly bear and expanded our efforts in explaining the status of the bear and offering government-to-government consultation. On February 17, 2015, the Service sent letters offering government-to-government consultation to 26 tribes.

On June 15, 2015, the Service sent a second round of letters to 48 tribes, offering another opportunity for consultation, followed by personal phone calls or emails from Service leadership personally inviting them to engage in government-to-government consultation.

On August 13, 2015, the Service met with the Rocky Mountain Tribal Leaders Council in Billings, Montana and invited tribal representatives to engage in consultation concerning the Yellowstone grizzly bear population.

On October 29, 2015, the Service sent letters to 53 tribes, which included all tribes, Tribal Councils, and First Nations in Canada that have contacted the Service regarding the GYE grizzly bear population. Region 6 coordinated with the other regions in the Service and distributed this letter to all tribes west of the Mississippi River following advice from Native American Liaison Scott Aikin. The letters invited tribes in the United States to engage in government-to-government consultation, and invited all tribes to participate in a tribal webinar and conference call. To date, the Service has conducted five government-to-government tribal consultations.

Other Entities:

The Service has received a letter in support of a proposed delisting of the GYE grizzly bear from the Wildlife and Hunting Heritage Conservation Council. They also offered to have a workgroup from the council meet with the Service to discuss Yellowstone grizzly bear delisting and conservation.

Several environmental groups, including Center for Biological Diversity, WildEarth Guardians, Earthjustice, and Sierra Club have been outspoken in their opposition to this delisting.

IV. POTENTIAL ISSUES

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Earthjustice has previously issued the Service a Notice of Intent to sue due to the conflicts between grizzly bears and livestock grazing in allotments in the Upper Green River area of southwest Wyoming.

The Service was litigated on the 2007 delisting of the GYE grizzly bear by the Greater Yellowstone Coalition, and we will likely be challenged again by other litigants if we finalize this proposed delisting.

There were several public commenters at the Yellowstone Ecosystem Subcommittee meeting (November 3–4, 2015) that stated their intent to challenge a proposed GYE grizzly bear delisting on the basis of the Western Great Lakes wolf DPS ruling that is currently being appealed.

This notice must be sent to the Federal Register by August 22 if we are to stay on schedule. The states are expecting our final rule to publish by the end of the calendar year.

V. COMMUNICATIONS AND OUTREACH

Outreach Lead: Serena Baker, Public Affairs Specialist, Region 6

Media POC: Press release to be issued by Region 6: Contact Serena Baker, (303) 236-4588; serena_baker@fws.gov

The Service's Washington Office External Affairs program is coordinating with Department of Interior (DOI) OCO, DOI OCL and DOI OEA: Contact Brian Hires, (703) 358-2191; brian_hires@fws.gov

Congressional: Region 6 will distribute the press release to Congressional District Offices. Service CLA Alyssa Hausman, in coordination with DOI OCL, will distribute the press release to Member Offices on Hill. Personal phone calls to select Hill Members may be made by Service Leadership.

State Contacts: The Service Director, Deputy Regional Directors, or their designees will contact the Governor's offices, key stakeholders, and partners involved with the Interagency Grizzly Bear Committee: NPS, USFS, BLM, U.S. Geological Survey, and Wildlife Agency Directors in the GYE states of Idaho, Montana, and Wyoming.

Other outreach: Press release will be sent to all partners, and stakeholders listed above, along with media in Idaho, Montana, and Wyoming, and select national reporters. The press release, GYE map, and high resolution pictures of Yellowstone grizzly bears will be posted to the R6 website, and links shared on social media. An Interested Party Letter will also be sent to partners and stakeholders.

We propose to send a letter to all known interested Tribes alerting them to the reopening of the comment period.