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# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

### Mountain-Prairie Region

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SEP 22 2014

Noah Greenwald  
Endangered Species Director  
Center for Biological Diversity  
P.O. Box 710  
Tucson, Arizona 85702-0710

Dear Mr. Greenwald:

This responds to your June 18, 2014, petition to prepare a recovery plan for the grizzly bear (*Ursus arctos horribilis*) across its native range in the conterminous United States. For the reasons set forth below, we deny your petition.

Your request was submitted pursuant to section 1553(f) of the Endangered Species Act, 16 U.S.C., § 1531, *et seq.* (ESA), and section 553 of the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* (APA). Section 1553(f) of the ESA authorizes petitions to add or remove a species from the list of Endangered and Threatened Wildlife and Plants and to amend existing critical habitat designations. The ESA does not authorize petitions for recovery plans. The APA authorizes citizens to petition for the issuance, amendment or repeal of a rule. 5 U.S.C. § 553(e).

Recovery plans are not rules under the APA. The APA defines a rule as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). In short, rules are regulatory actions with the effect of law. In contrast, recovery plans are discretionary guidance documents that are non-binding and non-enforceable. "A plan is a statement of intention, not a contract." *Friends of Blackwater, et al. v. Salazar, et al.*, 691 F.3d 428, 434 (DC Cir. 2012)). "Section 1533(f) makes it plain that recovery plans are for guidance purposes only." *Fund for Animals v. Rice*, 85 F.3d 535, 547 (11th Cir. 1996). Because recovery plans are not rules under Section 551 of the APA, Section 553(e) does not provide the right to petition for the issuance of a recovery plan. Thus, neither the ESA nor the APA authorizes petitions to prepare or revise recovery plans.

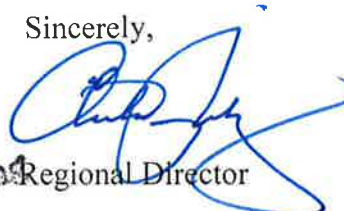
Furthermore, we believe we have satisfied our statutory responsibilities for recovery planning and implementation for the grizzly bear. Section 1533(f)(1) of the ESA instructs us to develop and implement plans for the conservation and survival of threatened and endangered species. The ESA also specifies that we must give priority to species that are most likely to benefit from such plans.

To this end, we have prioritized grizzly bear recovery planning and implementation efforts to focus on the locations where grizzly bear populations were present or thought to be present in 1975 (when they were listed) and where habitat and environmental conditions existed for grizzly recovery. These areas centered on and around the remaining populations in portions of Wyoming, Montana, Idaho, and Washington.

The grizzly bear recovery plan was completed in 1981 and revised in 1993. Several supplements were prepared in 1996, 1997, 2007, and 2013. We remain committed to recovery in all six ecosystems identified and covered by individual chapters in the recovery plan (i.e., the Greater Yellowstone, Northern Continental Divide, North Cascade, Selkirk, Cabinet-Yaak, and Bitterroot Ecosystems). Thus, recovery actions are ongoing across these areas. Any additional recovery planning would require redirecting limited grizzly bear recovery dollars away from these ongoing recovery efforts with subsequent erosion of recovery success. If and when we revise the existing recovery plan, we will provide the public with notice and the opportunity for review and comment in accordance with 16 U.S.C. § 1533(f)(4). Having satisfied our statutory responsibilities for recovery planning and implementation, any additional recovery planning is subject to Service prioritization and is discretionary.

Given the above, we do not anticipate additional follow-up on your petition. If you have any questions, please feel free to contact me at the above address.

Sincerely,



Adam Regional Director