

Case 2:23-cv-00092-ABJ Document 33-1 Filed 07/26/24 Page 1 of 5

I, Matt Hogan, declare as follows:

1. I am the Regional Director for the Mountain-Prairie Region of the U.S. Fish and Wildlife Service (“Service”), an agency of the U.S. Department of the Interior (“DOI”), located in Lakewood, Colorado. In my capacity as Regional Director, I report directly to the Deputy Director of the Service and the Secretary of the Interior for the administration of the Endangered Species Act (Act).

2. I am submitting this declaration in response to Wyoming’s May 24, 2023 complaint “petition for review of final agency action unlawfully withheld.”

3. This declaration modifies my previous declaration filed with this court, dated July 19, 2023.

4. The grizzly bear is currently listed as a threatened species in the lower-48 States (40 FR 31734, July 28, 1975).

5. The Service previously designated and delisted the Greater Yellowstone Ecosystem (GYE) distinct population segment (DPS). We published a Final Rule delisting the GYE DPS on June 30, 2017. However, in September 2018, the U.S. District Court for the District of Montana vacated and remanded our Final Rule. The Ninth Circuit Court of Appeals affirmed the District of Montana Court’s decision to vacate and remand the final rule delisting the grizzly bears in the GYE. *Crow Indian Tribe v. United States*, 965 F.3d 662 (9th Cir. 2020).

6. On January 21, 2022, we received a petition from the State of Wyoming to revise the listed entity of grizzly bear under the Act by identifying a

GYE DPS and removing it from the list of endangered or threatened species. We also received two other petitions: one from the State of Idaho to delist the lower-48 States entity, and one from the State of Montana to designate and delist a Northern Continental Divide Ecosystem (NCDE) DPS.

7. On February 6, 2023, the Service published its findings on each of the three petitions in the Federal Register (88 FR 7659). We found that the State of Wyoming's petition presented substantial scientific and commercial information indicating that revision of the listed entity, the grizzly bear in the lower-48 states, by designating a GYE DPS and delisting the DPS, may be warranted. We found that Montana's petition also presented substantial information that the NCDE may qualify as a DPS and that threats have been reduced in the NCDE such that the population may no longer meet the definition of a threatened species under the Act. We also found that Idaho's petition did not present substantial, credible information that the grizzly bear in the lower-48 States is not a valid "species" as defined by the Act.

8. On July 19, 2023, I signed a declaration filed with this Court describing a proposed schedule for finalizing the GYE 12-month finding in response to Wyoming's petition. In that declaration, I estimated the Service would complete and issue a 12-month finding by July 31, 2024.

9. In the intervening months, several significant events have occurred that affect the Service's GYE 12-month finding:

10. On August 14, 2023, Save the Yellowstone Grizzly filed a complaint in the United States District Court for the District of Idaho challenging federal and state actions regarding the lethal removal of three grizzly bears in Idaho. *Save the Yellowstone Grizzly v. FWS*, No. 23-363 (D. Id.). Both the Service and the Idaho Department of Fish and Game (IDFG) were named as defendants in that case.

11. On September 29, 2023, IDFG brought counterclaims and crossclaims which, in part, challenged the entirety of the Service's listing of the grizzly bear in the lower-48 states.

12. On February 22, 2024, the parties to that case entered into a settlement agreement. In that settlement, the Service committed to issuing a final rule that revises or removes the entire ESA listing of grizzly bears in the lower-48 states on or before January 31, 2026.

13. On July 11, 2024, the State of Montana submitted a 60-day Notice of Intent to Sue the Service under the Act for failing to issue a 12-month finding on its petition requesting the designation and subsequent delisting of an NCDE DPS.

14. Service staff have spent significant time preparing responses to Wyoming's and Montana's petitions. Service staff are also preparing a draft of a proposed rule that revises or removes the entire ESA listing of grizzly bears in the lower-48 states. The proposed rule will be published in the *Federal Register*

for public comment as soon as practicable to meet the January 31, 2026, deadline in the *Save the Yellowstone Grizzly* settlement agreement.

15. The Proposed Rule, GYE and NCDE 12-month findings directly impact one another because all three actions require the Service to analyze possible DPSs for grizzly bear populations within the lower-48 states.

16. To ensure consistency between these decisions, the Service currently intends to finalize all three of these documents – the GYE 12-month finding, the NCDE 12-month finding, and the proposed rule revising or removing the entire ESA listing of grizzly bears in the lower-48 states –simultaneously.

17. Therefore, the Service anticipates finalizing the GYE 12-month finding and submitting the finding to the Office of the Federal Register for publication no later than January 31, 2025.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

MATTHEW HOGAN Digitally signed by MATTHEW
HOGAN
Date: 2024.07.26 09:33:46 -06'00'

Matt Hogan
Regional Director
Mountain-Prairie Region