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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

<p>ALLIANCE FOR THE WILD ROCKIES, NATIVE ECOSYSTEMS COUNCIL, and WESTERN WATERSHEDS PROJECT, Plaintiffs, vs. RYAN ZINKE, Secretary of the Department of the Interior, GREG SHEEHAN, Acting Director of U.S. Fish & Wildlife Service, and HILARY COOLEY, Grizzly Bear Recovery Coordinator, Defendants.</p>	<p>CASE NO. _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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I. INTRODUCTION

1. Plaintiffs in this case challenge the U.S. Fish and Wildlife Service's ("Service") decision to create a distinct population segment ("DPS") for the Greater Yellowstone Ecosystem ("Greater Yellowstone") grizzly bear population (*Ursus arctos horribilis*). Plaintiffs also challenge the Service's determination that the Greater Yellowstone DPS is recovered and no longer meets the definition of an endangered or threatened species under the Endangered Species Act ("ESA"). The Service published the challenged Final Rule in the Federal Register on June 30, 2017, with an effective date of July 31, 2017. 82 FR 30502 (June 30, 2017).

2. The designation and delisting of the Greater Yellowstone DPS violates the ESA because the Service may not designate a DPS solely for the purpose of delisting; the ESA does not allow the Service to designate a sub-DPS; the Service's delisting determination and recovery conclusion are arbitrary and inconsistent with the best available science; the final Conservation Strategy deviates substantially from the draft Conservation Strategy without opportunity for meaningful public review and comment; the Greater Yellowstone DPS delisting decision failed to consider the impact of delisting on the status of the remaining grizzly bear populations in the conterminous 48 states; and the Service misapplied and incorrectly defined the ESA's terms and standards.

II. ADMINISTRATIVE REMEDIES

3. Plaintiffs participated in the public comment process on the proposed Greater Yellowstone DPS designation and delisting rule that appeared in final form in the Federal Register on June 30, 2017. *See* 82 FR 30502. Plaintiffs provided Defendants a 60-day notice of their intent to sue pursuant to 16 U.S.C. § 1540(g). Defendants did not resolve Plaintiffs' concerns. Accordingly, Plaintiffs now file this action in the United States District Court as they have exhausted the available administrative remedies and satisfied the statutory requirements.

III. JURISDICTION AND VENUE

4. Plaintiffs bring this action pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*, and the ESA, 16 U.S.C. § 1531 *et seq.* The claims brought by Plaintiffs are federal questions pursuant to 28 U.S.C. § 1331 and the citizen-suit provision of the ESA, 16 U.S.C. § 1540(g). Accordingly, this Court has jurisdiction over Plaintiffs' claims. This Court may issue a declaratory judgment and further relief for Plaintiffs' claims pursuant to 28 U.S.C. §§ 2201-02.

5. Venue is proper under 16 U.S.C. § 1540 (g)(3)(A), 28 U.S.C. § 1391(e) in this District because one or more Plaintiffs and Defendants reside within the District, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Venue is proper in the Missoula Division because the events giving rise to this matter occurred primarily in Missoula, Montana.

Defendant Hilary Cooley, the Grizzly Bear Recovery Coordinator for the Service, is based in Missoula. Moreover, all comments and materials received in public comments, as well the Service's documents and documentation regarding the Final Rule are located in Missoula.

IV. PARTIES

6. Plaintiff NATIVE ECOSYSTEMS COUNCIL is a non-profit Montana corporation with its principal place of business in Three Forks, Montana. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the Northern Rockies. Its members use and will continue to use the Greater Yellowstone Ecosystem for viewing and enjoying the grizzly bear in its natural environment. The Service's unlawful actions adversely affect Native Ecosystems Council's organizational interests, as well as its members' use and enjoyment of the Greater Yellowstone Ecosystem and viewing, photographing, studying, and enjoying the grizzly bear throughout the region. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

7. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000 individual members,

many of whom are located in Montana and the Greater Yellowstone area. Members of the Alliance observe, enjoy, and appreciate the Northern Rockies' native wildlife, especially the grizzly bear, its water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Greater Yellowstone area. Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve the grizzly bear as set forth below. Alliance for the Wild Rockies brings this action on its own behalf and on behalf of its adversely affected members.

8. Plaintiff WESTERN WATERSHEDS PROJECT ("WWP") is a non-profit conservation organization founded in 1993 with the mission of protecting and restoring western watersheds and wildlife through education, public policy initiatives, and legal advocacy. Headquartered in Hailey, Idaho, Western Watersheds Project has 1,400 members and field offices in Idaho, Montana, Wyoming, Nevada, Arizona, and California. WWP has a long-standing interest in the preservation and recovery of the grizzly bear in the greater Yellowstone ecosystem because its members place a high value on grizzly bears as a species and because the presence of these bears promotes the healthy functioning of ecosystems. WWPs actively seeks to protect and recover the grizzly bear through a wide array of actions including public education, scientific analysis, and advocacy. These actions include submission of comments on the proposed de-listing of the Greater Yellowstone

grizzly, past legal advocacy to defend grizzlies from unreasonable killing, and advocacy for protection of grizzly bears and their habitats in the context of federal livestock grazing, land-use planning, and land and resource management projects.

9. Native Ecosystems Council, Alliance for the Wild Rockies, and Western Watersheds Project and their members use public lands in the Greater Yellowstone Ecosystem, including lands in Grand Teton and Yellowstone National Parks and surrounding National Forests and Bureau of Land Management lands, for recreational pursuits, including hiking, fishing, camping, backpacking, hunting, horseback riding, wildlife viewing (including bear watching), and aesthetic enjoyment. Plaintiffs' staff and/or members have viewed and have planned concrete efforts to attempt to view grizzly bears and signs of bear presence in the wild in the Greater Yellowstone Ecosystem. The Service's actions in this case would unlawfully facilitate and exempt from otherwise applicable civil and criminal liability the killing of grizzly bears in the Greater Yellowstone Ecosystem and permit destruction and degradation of occupied and necessary habitat, thereby reducing Plaintiffs' opportunities to view grizzly bears and signs of bear presence in the Greater Yellowstone Ecosystem. For this reason, the Service's challenged actions represent a direct threat to the interests of all Plaintiffs. Accordingly, the legal violations alleged in this Complaint cause direct injury to the aesthetic, conservation,

economic, recreational, scientific, educational, and wildlife preservation interests of the Plaintiffs and/or Plaintiffs' members.

10. Plaintiffs' aesthetic, conservation, economic, recreational, scientific, educational, and wildlife preservation interests have been, are being, and, unless their requested relief is granted, will continue to be, adversely and irreparably injured by Defendants' failure to comply with federal law. These are actual, concrete injuries, traceable to Defendants' conduct that would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

11. All Plaintiffs are long-time contributors and active participants in public policy related to the preservation and recovery of grizzly bears in Montana, Yellowstone National Park, and the surrounding states and ecosystem. Plaintiffs actively seek to protect and recover grizzly bears through a wide array of actions including public education, scientific analysis, public policy efforts, and advocacy directed at promoting the conservation of the grizzly bear and the ecosystems where the bear resides throughout their current range, including the Greater Yellowstone Ecosystem.

12. Defendant HILARY COOLEY is the U.S. Fish and Wildlife Service Grizzly Bear Recovery Coordinator. Defendant Cooley drafted the proposals at issue in the case, and served as the primary contact for public comment and/or questions on the proposals. Defendant Cooley is sued in her official capacity.

13. Defendant GREG SHEEHAN is the Acting Director of the U.S. Fish and Wildlife Service. Defendant Sheehan is responsible for the signed U.S. Fish and Wildlife Service decision designating the Greater Yellowstone DPS and removing the Greater Yellowstone DPS from the list of threatened species. Defendant Sheehan is sued in his official capacity.

14. Defendant RYAN ZINKE is the U.S. Secretary of the Interior. In that capacity, Secretary Zinke has supervisory responsibility over the U.S. Fish and Wildlife Service. Defendant Zinke is sued in his official capacity.

V. FACTUAL BACKGROUND

15. Grizzly bears define wilderness in the northern Rocky Mountain region. Grizzlies survive only in the lands most inhospitable to humans. The grizzly was once the victim of an aggressive campaign by settlers to drive the bear from the western landscape. Those efforts were largely successful: persecution, poisoning, conflicts with ranchers, sport hunting, and habitat destruction associated with the march of human development nearly eliminated the grizzly bear from the lower-48 states by the time of the bear's listing as a threatened species in 1975. 40 FR 31,734 (July 28, 1975). The only places where the grizzly bear survived this extermination campaign were those places so remote, so wild, and so inhospitable to humans that the bear could find refuge: places like the wildlands of the Greater Yellowstone Ecosystem.

16. As a result of settlement of the West, the grizzly bear was relegated to a mere one percent of its historic range in the lower 48 states and saw its population shrink from more than 50,000 to roughly 1,000 bears. What once was a large contiguous population of bears has been reduced to isolated fragments of mountainous terrain; and what once was country filled with abundant sources of native foods such as large bison herds on the plains is now abundant in humans, roads, and civilization.

17. In the face of persecution and severe habitat degradation and fragmentation, the Service listed the entire grizzly bear population in the lower 48 states as a threatened species in 1975. At that time, grizzly numbers were estimated at roughly 1,000 animals living in six separate ecosystems in the Rockies and North Cascades. Since their listing, the grizzly bear population in the San Juan Mountains of Colorado has gone extinct. The small populations in the Selkirk Mountains and Cabinet-Yaak region in northwestern Montana, northern Idaho, and northeast Washington are endangered, with roughly 25-35 bears in the Selkirks and less than 50 bears in the Cabinet-Yaak. Research suggests a 95-100% probability of extinction of both populations over 100 years unless conditions quickly improve. Today, despite significant recovery efforts, the grizzly remains at 1% of its former numbers, surviving on 1-2% of its former habitat.

18. In listing the grizzly bear as threatened throughout the lower 48 states, the Service focused on the “present or threatened destruction, modification, or curtailment of its habitat or range,” 16 U.S.C. § 1533(a)(1)(A), because the once wide-ranging grizzly bear was “confined to isolated regions in Montana, Idaho, and Wyoming.” 40 FR 31,734 (July 28, 1975). The Service also recognized that “in two of the three areas where grizzly bears still occur, the bears are isolated from other populations so that they cannot be reinforced, either genetically or by movement of individual bears.” *Id.* Thus, the Service specifically acknowledged the decrease in habitat quality and quantity, the low population numbers, and the isolated nature of the grizzly bear populations, including the Greater Yellowstone population, as principal reasons for listing the bear.

19. Although a major reason for listing the grizzly bear was concern over habitat loss of a species that is especially sensitive to the effects of development, the Service has consistently failed to address habitat degradation in subsequent actions. For example, because Service failed to establish habitat targets in its 1993 revised grizzly recovery plan, even though habitat degradation was a primary basis for listing, a federal district court found the 1993 recovery plan to be deficient. *See Fund for Animals v. Babbitt*, 903 F.Supp. 96 (D.D.C. 1995). Now the Service proposes to delist the Greater Yellowstone DPS without ensuring adequate habitat protections throughout its occupied range.

20. In the Greater Yellowstone Ecosystem, including portions of Idaho, Montana and Wyoming surrounding Yellowstone National Park, grizzly bears exist today on an isolated habitat “island” that is relatively small, containing an estimated 700 bears. The best available science indicates that a population of 2,000 to 3,000 grizzly bears is necessary over the long term to prevent extinction due to environmental changes and genetic impoverishment.

21. In its 1993 Grizzly Bear Recovery Plan, the Service acknowledged that grizzly bear presence in all six grizzly bear recovery zones is necessary to the species’ survival. The Service also observed that bear migration between ecosystems is necessary to maintain adequate genetic diversity. Connecting Greater Yellowstone grizzlies to other grizzly populations is vital for the genetic health of Greater Yellowstone bears, which have lost a considerable amount of their genetic diversity in 100 years of isolation.

22. Yet the Service has changed direction under political pressure to delist and remove the Greater Yellowstone grizzly’s ESA protections. The population has not yet achieved the goals the Service set forth the 1993 recovery plan. Instead, with the 2017 decision, the Service now seeks to delist and isolate this population and abandon the landscape-level approach necessary to maintain adequate genetic diversity.

23. To understand the arbitrary nature of the Service decision-making processes, one must understand the overall management of the grizzly bear and the constantly changing course of gerrymandered rulemaking by the Service, which ultimately arrived at a decision delisting the Greater Yellowstone DPS.

24. It is clear the Service is failing to do its job throughout the range of the grizzly bear.

25. The Service failed to provide plans or efforts to recover grizzly bears in the San Juan Ecosystem of Colorado as required by the 1993 recovery plan.

26. The Service has failed to restore grizzly bears to the North Cascades Ecosystem in Washington, as discussed in the 1997 supplement to the 1993 recovery plan.

27. No efforts are being made by the Service to reintroduce grizzly bears to the Bitterroot Ecosystem. The Bitterroot Ecosystem is one of the six critical areas identified in the 1993 recovery plan, and is a key linkage for grizzly bears between the Greater Yellowstone area and the Northern Continental Divide area centered in Glacier National Park. The Service's 1993 recovery plan and 1996 supplement to the recovery plan outlined a plan for reintroducing grizzly bears into the Bitterroot Ecosystem. The Service has failed to implement these plans.

28. The Service has failed to meet the 1993 recovery criteria for grizzly bears in the Cabinet-Yaak ecosystem.

29. None of the Service’s 1993 recovery goals for the grizzly bears in the Selkirk Ecosystem have been met.

30. The Service is “setting its sights” on delisting the population of grizzly bears in the Northern Continental Divide (NCDE), where the population faces many similar threats to food sources as the bears in the Greater Yellowstone area.

31. In the Greater Yellowstone area, although the grizzly bear population has increased in number in the past, the population is currently declining. Under pressure from changing and dwindling food sources, the Greater Yellowstone grizzly bears have declined since 2014—with human-caused mortality on the rise (98 human caused mortalities since 2015).

VI. APPLICABLE PROVISIONS OF THE ESA

32. The ESA was enacted to “provide a program for the conservation of . . . endangered species and threatened species” and to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b). To receive the full protections of the ESA, a species must first be listed by the Secretary as “endangered” or “threatened” pursuant to section 4 of the ESA. *Id.* § 1533.

33. The ESA defines “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6).

34. A “threatened species” is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).

35. The term “species” is defined to include “any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.* § 1532(16).

36. The ESA requires the Secretary to “determine whether any species is an endangered species or a threatened species because of any of the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.” *Id.* § 1533(a)(1).

37. The Secretary must make these determinations “solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species.” *Id.* § 1533(b)(1)(A).

38. Once a species is listed as “endangered” or “threatened” under the ESA, it is protected under the ESA’s substantive and procedural provisions. Among other things, the ESA prohibits any federal agency from taking any action found “likely to jeopardize the continued existence of any endangered species or threatened

species or result in the destruction or adverse modification of [critical habitat].” *Id.* § 1536(a)(2).

VII. THE SERVICE’S DECISION

39. The Service originally attempted to delist a Greater Yellowstone DPS in 2007. The 2007 decision was invalidated by this Court and the Ninth Circuit because the Service disregarded the best available science related to current and future threats to Greater Yellowstone grizzlies.

40. The Service’s 2017 decision is no different. Unfortunately, the Service, under great political pressure from state governments and industry, has determined that ignoring the meaning and purpose of the ESA is the path to accomplishing the delisting of the Greater Yellowstone grizzly bear.

41. On June 30, 2017, the Service published a notice in the Federal Register (Docket No. FWS-R6-ES-2016-0042) announcing its final decision to designate a Greater Yellowstone DPS and remove it from the federal list of threatened and endangered species. In its final decision, the Service asserts that the Greater Yellowstone DPS is recovered and no longer meets the definition of a threatened or endangered species under the ESA.

42. As a result of delisting, all prohibitions and conservation measures provided by the ESA, including sections 7 and 9, no longer apply to the Greater

Yellowstone DPS. Grizzly bears that travel or live inside the Greater Yellowstone DPS boundary are no longer protected under the ESA.

VIII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The Service's creation and delisting of the Greater Yellowstone DPS is arbitrary and capricious and violates the ESA.

43. Plaintiffs incorporate all preceding paragraphs.

44. In 1975, the Service “determined that the grizzly bear (*Ursus arctos horribilis*) of the 48 coterminous States of the United States is a threatened species.” 40 FR 31734, 31735 (July 28, 1975).

45. In the 2011 five-year status review, the Service determined that grizzly bears in the contiguous United States qualified as a single DPS.

46. The Service never determined that a Greater Yellowstone Ecosystem grizzly bear DPS qualified as a threatened or endangered species under Section 4(a)(1) of the ESA, 16 U.S.C. § 1533(a)(1).

47. The Service never listed a separate Greater Yellowstone Ecosystem grizzly bear DPS as a threatened or endangered species under the ESA.

48. Under the ESA, listing a species, subspecies, or DPS is a precondition to delisting a species, subspecies, or DPS.

49. The Service cannot delist a species, subspecies, or DPS unless it is first listed as a threatened or endangered species, subspecies, or DPS under the ESA.

50. Although the entire grizzly population in the lower 48 states was the entity listed as a DPS in 1975, on June 30, 2017, the Service drew a circle around the Greater Yellowstone Ecosystem, called this circle a sub-DPS of the already existing DPS, and then delisted.

51. “The plain language of the ESA does not allow the agency to divide a DPS into a smaller taxonomy.” *Defenders of Wildlife v. Salazar*, 729 F.Supp.2d 1207, 1212 (D.Mont. 2010) (vacating the Service’s rule delisting the northern Rocky Mountain gray wolf DPS). The ESA “stops at a designated DPS — nothing smaller.” *Id.* at 1215–16.

52. “Listing distinctions below that of a subspecies or a DPS of a species are not allowed under the ESA.” *Alsea Valley v. Evans*, 161 F. Supp. 2d 1154, 1162 (D. Or. 2001) (citing *Southwest Center for Biological Diversity v. Babbitt*, 980 F. Supp. 1080, 1085 (D. Ariz. 1997)).

53. The Service’s decision to simultaneously create and delist a Greater Yellowstone Ecosystem grizzly bear DPS violates the ESA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

54. Under the ESA, and in accordance with the 1975 listing rule, the Service can delist grizzly bears in the contiguous United States only if the best

available science reveals grizzly bears in the entire contiguous United States DPS are recovered and no longer qualify as a threatened or endangered species.

55. Grizzly bears in the contiguous United States DPS are not recovered.

56. “[T]he structure, history, and purpose of the ESA demonstrate that the agency may not designate a DPS only for the purpose of delisting the covered vertebrate population, particularly when those vertebrates are already protected at a higher taxonomic classification.” *Humane Society of the U.S. v. Jewell*, 76 F.Supp.3d 69, 104 (D.D.C. 2014).

57. Furthermore, the Service did not provide a reasonable explanation for why it chose to change its position and its previous reasoning for listing grizzly bears in 1975 and its related commitment in the 1982 recovery plan to manage and recover grizzly bears as a single, threatened species in the contiguous United States.

58. For the reasons set forth above, the Service’s attempt to delist a sub-DPS of a listed DPS before the listed DPS has recovered, without a reasonable explanation for its change in position, is unlawful, arbitrary and capricious, and violates the APA and ESA.

SECOND CLAIM FOR RELIEF

The Service’s conclusion that Greater Yellowstone grizzly bears have recovered is arbitrary and capricious and violates the ESA.

59. Plaintiffs incorporate all preceding paragraphs.

60. Under the ESA, the Service can only delist if the best available science reveals the DPS is recovered. 50 C.F.R. 424.11(d)(2).

61. The Service concluded that the Greater Yellowstone DPS is biologically recovered based upon purported compliance with the Service's 1993 recovery plan criteria (as amended and supplemented), despite the fact that the 1993 recovery criteria were never intended to be a tool to justify piecemeal delisting of individual isolated sub-populations. The intention was that all sub-populations should meet recovery criteria before the entire population is delisted. That has not occurred.

62. Furthermore, the best available science reveals that the 1993 recovery criteria are inadequate, that an isolated population cannot be recovered without genetic exchange with other isolated populations, and that the isolated population of 500-900 grizzly bears in the Greater Yellowstone Ecosystem is not recovered, but rather is likely to become threatened or endangered in the foreseeable future throughout all or a significant portion of its range, and remains vulnerable to demographic, environmental, and genetic fluctuations and natural catastrophe

63. For the reasons set forth above, the Service's determination that the Greater Yellowstone grizzly bear is recovered violates the APA and ESA and is arbitrary and capricious.

THIRD CLAIM FOR RELIEF

The Service's failure to conduct an adequate assessment of the five delisting factors violates the APA and ESA.

64. Plaintiffs incorporate all preceding paragraphs.

65. The ESA requires the Service to consider whether a species qualifies as an endangered or threatened species due to one or more (or a combination) of factors described in Section 4(a)(1) of the ESA. These factors include: (a) the present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence. 16 U.S.C. § 1533(a)(1).

66. These same factors must be considered before delisting a species, subspecies, or DPS. 50 C.F.R. § 424.11(d).

67. The Service failed to properly conduct this analysis.

68. The Service unlawfully ignored factors that threaten the grizzly bear now and for the foreseeable future.

69. The Secretary must make these determinations “solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species.” *Id.* § 1533(b)(1)(A).

70. The Service failed to apply the best available science.

71. The Service failed to adequately evaluate numerous threats including:

(A) The decline and precarious status of the whitebark pine, a primary food source that is warranted for listing as an endangered species itself, including the impact on grizzly bears from being forced to forage for meat in low-elevation areas near human development and livestock allotments in lieu of foraging for whitebark pine nuts in high-elevation areas far from human development; (B) The major decline in native cutthroat trout, another primary food source that is vulnerable to a warming climate; (C) The major projected losses of army cutworm moths, another primary food source, due to climate change; (D) The cumulative effects of climate change on grizzly habitat and food sources; (E) The current trend in high grizzly bear mortalities; (F) The impact of recreational hunting on grizzly population dynamics; and (G) The incomplete and inadequate regulatory mechanisms proposed by the States, National Forests, and National Park Service.

72. For the reasons set forth above, the Service's threat assessment is not supported by the best available science. The Service unlawfully ignores factors that threaten the grizzly bear and comes to conclusions that are arbitrary and inconsistent with the best available science in violation of the ESA. The Service's failure to use the best available science is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

FOURTH CLAIM FOR RELIEF

The Service's failure to provide the opportunity for meaningful public review and comment on the final Conservation Strategy violates the APA and ESA.

73. Plaintiffs incorporate all preceding paragraphs.

74. The APA requires the Service to provide opportunity for comment on its proposed plans. 5 U.S.C. § 553.

75. As part of the delisting process, the Service relied on a new final Conservation Strategy that differs substantially from the draft Conservation Strategy. The Service released the proposed rule without reopening the public comment period on the new final Conservation Strategy in violation of the notice and comment requirements of the Administrative Procedure Act (“APA”), 5 U.S.C. § 553, and the ESA.

76. The Service's decision to delist the Greater Yellowstone grizzly bear was based primarily on the formal adoption of a final Conservation Strategy in December 2016. However, the final Conservation Strategy withdrew protections found in the draft for grizzly bear-human conflicts, conservation commitments to the 1998 habitat baseline in the Primary Conservation Area “PCA,” demographic recovery criteria, and negative deviations from the Conservation Strategy that would trigger relisting.

77. The public could not have reasonably anticipated that the Service would withdraw or revoke these key protections for grizzly bears, and could not have

commented on these substantive changes as the Service had closed the public comment period.

78. The public was entitled by law to be given a meaningful chance to comment on these significant changes to the final Conservation Strategy prior to a final agency decision. The Service's failure to provide meaningful opportunity to comment on these changes is a violation of the ESA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

VIII. REQUEST FOR RELIEF

Plaintiffs respectfully request this Court:

1. Declare that the Service decision to delist the Greater Yellowstone grizzly bear violates the ESA and APA;
2. Vacate and remand the June 30, 2017 Final Rule;
3. Award Plaintiffs their reasonable attorneys' fees, costs and expenses of litigation;
4. Grant Plaintiffs any other relief this Court deems just and proper.

Respectfully submitted this 6th day of September, 2017.

/s/Timothy M. Bechtold

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