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

WILDEARTH GUARDIANS, a non-
profit organization,

Plaintiff,

vs.

RYAN ZINKE, as Secretary of the
Department of the Interior; the UNITED
STATES DEPARTMENT OF THE
INTERIOR, a federal department; GREG
SHEEHAN, as acting director of the U.S.
Fish and Wildlife Service; and the

No.

COMPLAINT

UNITED STATES FISH AND WILDLIFE
SERVICE, a federal agency,

Federal-Defendants.

INTRODUCTION

1. Plaintiff, WildEarth Guardians (“Guardians”) brings this civil action against the above named Federal-Defendants (“the Service”) under the citizen suit provision of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, for violations of the ESA.

2. This case challenges the Service’s decision to designate a Greater Yellowstone Ecosystem grizzly bear distinct population segment (“DPS”) and related determination that this grizzly bear DPS is recovered and no longer meets the definition of a threatened or endangered species under the ESA. The Service’s decision was published in the Federal Register on June 30, 2017 (82 Fed. Reg. 30502) and took effect on July 30, 2017.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 16 U.S.C. § 1540(c), and 5 U.S.C. § 704.

4. This Court has the authority to review the Service’s action(s) complained of herein and grant the relief requested, under the ESA’s citizen suit provision, 16 U.S.C. § 1540(g), and the APA, 5 U.S.C. § 706.

5. All requirements for judicial review required by the ESA are satisfied. Guardians hand delivered a letter to all named defendants in this action on June 30, 2017. These letters notified all defendants of Guardians' intent to file a civil action to rectify the legal violations described in the letter. More than sixty days have elapsed since all defendants received Guardians' notice of intent to sue for violating Section 4 of the ESA when designating and delisting the Greater Yellowstone Ecosystem population of grizzly bears.

6. All requirements for judicial review required by the APA are satisfied. Guardians exhausted its administrative remedies related to the final rule challenged by this lawsuit. Guardians submitted timely comments to the Service on multiple occasions related to its proposal to designate and delist the Greater Yellowstone Ecosystem population of grizzly bears.

7. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory Judgment), 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706 (APA).

8. Venue is proper in this Court under 16 U.S.C. § 1540 (g)(3)(A) and 28 U.S.C. § 1391(e). Venue is proper in this division because the events giving rise to this dispute largely occurred in Missoula, Montana. Hillary Cooley—the Grizzly Bear Recovery Coordinator for the U.S. Fish and Wildlife Service—is based in Missoula, Montana. The authors of the final rule challenged in this lawsuit are staff members of the Service's Grizzly Bear Recovery Office in Missoula, Montana.

The comments and materials received during public comment opportunities related to the final rule challenged by this lawsuit, as well as supporting documentation used by the Service in preparation of the final rule are located in Missoula, Montana. These documents are available for public inspection in Missoula, Montana. Guardians maintains an office in Missoula, Montana, where most of its grizzly bear protection and advocacy work occurs, including work on the final rule challenged by this lawsuit.

9. Guardians satisfies the minimum requirements for Article III standing to pursue this civil action. Guardians—including their members, supporters, and staff—have suffered and continue to suffer injuries to their interests in grizzly bears, grizzly bear habitat, and pursuing their interests in areas occupied by grizzly bears caused by the Service’s decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS. This Court can redress these injuries. There is a present and actual controversy between the parties.

PARTIES

10. Plaintiff, WILDEARTH GUARDIANS (“Guardians”), is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and the health of the American West. Guardians is specifically committed to ensuring the survival and recovery of grizzly bears in the contiguous United States and within the Greater Yellowstone Ecosystem, including increasing the population of grizzly bears (actual and trend), expanding the species’ range and habitat, and increasing opportunities for linkage and connectivity in the region. Guardians has approximately 184,000 active members and supporters across the American West, including many who reside in Montana, Idaho, Wyoming. Many

of Guardians' members and supporters also reside and routinely recreate in the Greater Yellowstone Ecosystem, including within the Service's DPS boundary for the Greater Yellowstone Ecosystem grizzly bear DPS, the Service's Demographic Monitoring Area ("DMA") and the Service's Primary Conservation Area ("PCA"). Guardians maintains an office in Missoula, Montana, where most of its work to ensure the survival and recovery of grizzly bears in the contiguous United States and Greater Yellowstone Ecosystem occurs. Guardians has a long history of working to protect and restore native carnivore species across the West, including grizzly bears in the Greater Yellowstone Ecosystem. Guardians brings this action on behalf of itself, its members, and its supporters.

11. Guardians' members, supporters, and staff are dedicated to ensuring the long-term survival and recovery of grizzly bears in the Greater Yellowstone Ecosystem and ensuring the Service complies with the ESA and bases all of its listing decisions on the best scientific and commercial data available.

12. Guardians' members, supporters, and staff live in or near and/or routinely recreate in or near the Greater Yellowstone Ecosystem, including in portions of Idaho, Montana, and Wyoming within the boundaries of the DPS, the DMA, and the PCA. Guardians' members, supporters, and staff enjoy observing—or attempting to observe—and studying grizzly bears within the Greater Yellowstone Ecosystem, including signs of the grizzly's presence and observing, studying, and/or photographing grizzly bears in areas where bears are known to travel, disperse, roam, and sometimes congregate (moth sites, root fields, watering spots, bison kills, and trout streams). The opportunity to view grizzlies or signs of grizzlies in the wild in the Greater Yellowstone Ecosystem and within the

boundary of the Greater Yellowstone Ecosystem grizzly bear DPS —by itself—is of significant interest and value to Guardians’ members, supporters, and staff and increases their use and enjoyment of the area.

13. A result of designating and delisting the Greater Yellowstone Ecosystem grizzly bear population is that the States of Montana, Wyoming, and Idaho will allow trophy hunting of grizzly bears. These proposals to allow trophy hunting harm Guardians’ members’, supporters’, and staff’s interests in grizzly bears in the Greater Yellowstone Ecosystem and surrounding areas and decrease their ability to observe, or attempt to observe, and enjoy grizzly bears and their sign in the wild.

14. The final rule challenged in this lawsuit harms these interests in grizzly bears and diminishes Guardians’ members’, supporters’, and staff’s enjoyment of recreating within the Greater Yellowstone Ecosystem DPS boundaries and surrounding areas.

15. Guardians’ members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from grizzlies in the Greater Yellowstone Ecosystem, recreating in areas occupied by and used by grizzlies, and in working to protect grizzly bears from human-caused mortality and disturbance and in working to restore grizzly bears in the contiguous United States and within the Greater Yellowstone Ecosystem. In furtherance of these interests, Guardians’ members, supporters, and staff have worked and continue to work to conserve grizzlies in the Greater Yellowstone Ecosystem, including work to promote increased dispersal and connectivity to other grizzly bear populations in the contiguous United States.

16. Guardians' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from grizzlies in other parts of the contiguous United States, including the Bitterroot Ecosystem, Cabinet-Yaak Ecosystem, Northern Cascades, Ecosystem, Northern Continental Divide Ecosystem, and Selkirk Ecosystem. Guardians' members', supporters', and staff's interests in grizzlies in the Greater Yellowstone Ecosystem impact their interests in grizzlies found in other parts of the contiguous United States.

17. Guardians' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by the Service's decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS. If this Court issues the relief requested the harm to Guardians' interests will be alleviated and/or lessened.

18. Defendant RYAN ZINKE is sued in his official capacity as Secretary of the United States Department of the Interior. As Secretary, Mr. Zinke is the federal official with responsibility for all Service officials' inactions and/or actions challenged in this complaint.

19. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal department responsible for applying and implementing the federal laws and regulations challenged in this complaint.

20. Defendant GREG SHEEHAN is sued in his official capacity as Acting Director of the U.S. Fish and Wildlife Service. As Acting Director, Mr. Sheehan is the federal official with responsibility for all Service officials' inactions and/or actions challenged in this complaint.

21. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of Interior that is responsible for

applying and implementing the federal laws and regulations challenged in this complaint.

FACTS

The grizzly bear.

22. Grizzly bears (*Ursus arctos horribilis*) are a member of the brown bear species (*U. arctos*) that occur in North America, Europe, and Asia. Grizzly bears are limited to parts of North America. Grizzly bears generally live to be around 25 years old. Grizzly bears are generally larger than other bears. Adult grizzly bears average 400 to 600 pounds for males and 250 to 350 pounds for females in the contiguous United States.

23. Adult grizzly bears are normally solitary animals, except when females have dependent young or when bears gather at concentrations of rich food sources like bison carcasses, spawning trout streams, root fields, watering spots, and/or army cutworm moth sites. Grizzly bears are not territorial and home ranges for bears frequently overlap. Home range size for grizzly bears is affected by resource availability, sex, age, and reproductive status. Females with cubs-of-the-year or yearlings have the smallest home range size. Adult male grizzly bears in the Greater Yellowstone Ecosystem have a home range of approximately 309 square miles. Adult female home ranges in the Greater Yellowstone Ecosystem are approximately 81 square miles. Large home ranges for adult males helps enhance

maintenance of genetic diversity in the population by enabling males to mate with numerous females.

24. Grizzly bears mate from May through July. The majority of mating occurs in June. A female's fertilized embryo does not implant into the uterus for further development until late fall. Greater fat stores obtained by female grizzly bears at the end of the fall are positively correlated with earlier birth dates and quicker growth rates for cubs. Females may have a body fat threshold below which females may not produce cubs. Cubs are born in the den in late January or early February and nurse for 3 to 4 months inside the den. Cubs remain with their mother for 1.5 to 2.5 years.

25. Grizzly bears have one of the slowest reproductive rates among all terrestrial mammals. The average age of first reproduction by a grizzly in the Greater Yellowstone Ecosystem is 6 years old. Litter size ranges from 1 to 4 cubs with a mean litter size of 2.04 cubs. The average time between litters in the Greater Yellowstone Ecosystem is 2.78 years. It takes a female grizzly bear 10 or more years to replace herself in the population. Grizzly bears cease reproducing in their 20s.

26. Grizzly bears in the contiguous United States occupy dens for 4 to 6 months each year, beginning in October or November. In preparation for

hibernation, bears increase their food intake dramatically during a stage called hyperphagia.

27. Hyperphagia occurs throughout the 2 to 4 months prior to den entry (August through November). During this period, excess food is converted into fat and grizzly bears gain as many as 3.64 pounds per day. Grizzly bears must consume food rich in protein and carbohydrates in order to build up fat reserves to survive denning and post denning periods. Fat stores are important for hibernating bears, as they are a source of energy and insulation. Fat stores are equally important in providing energy to the bear upon emergence from the den, when food is still sparse relative to metabolic requirements.

28. Grizzly bears in the Greater Yellowstone Ecosystem eat a wide variety of foods; from distinct plant and animal species, to grasses, fungi, berries, seeds, fish, carrion and other meat sources. Grizzly bears in the Greater Yellowstone Ecosystem have a unique diet that differs from other populations in the contiguous United States. Grizzly bears in the Greater Yellowstone Ecosystem are the only bears in the contiguous United States that prey on bison and rely on whitebark pine seeds. The four most important food sources for grizzly bears in the Greater Yellowstone Ecosystem are: meat from ungulates (bison, elk, deer, and moose); whitebark pine seeds; army cutworm moths; and cutthroat trout.

29. Grizzly bears in the Greater Yellowstone Ecosystem rely heavily on meat from ungulates for their diet. Grizzly bears in the Greater Yellowstone Ecosystem also rely on whitebark pine seeds and army cutworm moths which provide an important source of fat and protein. Grizzly bears in the Greater Yellowstone Ecosystem also rely on cutthroat trout for their diet.

30. Grizzly bears in the Greater Yellowstone Ecosystem consume winter-killed elk, deer, and bison in the early spring as carrion. Grizzly bears also kill elk, deer, and bison calves opportunistically, consume hunter-killed carcasses or gut piles, and prey upon adults weakened during the fall breeding season. Elk and deer numbers in the Greater Yellowstone Ecosystem are in decline.

31. Whitebark pine seeds are an important food source for grizzly bears in the Greater Yellowstone Ecosystem. Grizzly bears consume whitebark pine seeds in the fall. Grizzly bears consume whitebark pine seeds because of their high fat content. Grizzly bears that have whitebark pine seeds in their home range may feed predominantly on the seeds when production levels are high (exceeding 20 cones per tree). Approximately two-thirds of grizzly bear home ranges in the Greater Yellowstone Ecosystem contain whitebark pine seeds. Whitebark pine trees are declining in numbers in the Greater Yellowstone Ecosystem. More than 80 percent of whitebark pine trees are now dead or dying in the Greater Yellowstone

Ecosystem due to mountain pine beetles, white pine blister rust, and other impacts related to climate change.

32. Whitebark pine trees are a candidate species for listing under the ESA.

Whitebark pine trees are currently warranted for listing under the ESA.

33. The best available science reveals that the availability of whitebark pine seeds can influence the reproductive and survival rates of grizzly bears on an annual basis. There is an increased risk of human-caused grizzly bear mortality during years of low whitebark pine availability because grizzlies are forced to disperse to seek for additional food sources. During periods of low whitebark pine availability, grizzly bears in the Greater Yellowstone Ecosystem rely more heavily on other food sources, including meat.

34. Army cutworm moths are an important food source for grizzly bears in the Greater Yellowstone Ecosystem. Army cutworm moths aggregate on remote, high elevation talus slopes in the Absaroka Mountains, just east of Yellowstone National Park. Grizzly bears forage for army cutworm moths on these slopes from mid to late summer. Grizzly bears are known to congregate at these army cutworm moth sites from mid to late summer to forage for moths.

35. All of the army cutworm moth sites are located outside Yellowstone National Park. Some of the army cutworm moth sites are located outside the PCA.

Climate change may adversely impact army cutworm moths by changing the distribution of plants that the moths feed on or the flowering times of the plants.

36. Cutthroat trout are an important food source for grizzly bears in the Greater Yellowstone Ecosystem. The cutthroat trout population in the Greater Yellowstone Ecosystem is in decline due to the introduction of nonnative lake trout, a parasite that causes whirling disease, and several years of drought conditions in the region.

37. Grizzly bears use a variety of habitats in the Greater Yellowstone Ecosystem. A grizzly bear's habitat needs are generally driven by the search for food, mates, cover, security, or den sites.

38. Human activities are the primary factor impacting habitat security and the ability of bears to find access to food, mates, cover, and den sites. The most effective habitat management tool for reducing grizzly bear mortality is limiting human access to occupied grizzly bear habitat. The primary factor affecting grizzly bears at both the individual and population level is excessive human-caused mortality.

The grizzly bear's decline in the contiguous United States.

39. Grizzly bears once occurred throughout the western half of the contiguous United States, central Mexico, western Canada, and most of Alaska. The grizzly bear's historic range in the western contiguous United States extended

from portions of New Mexico and Arizona, to Colorado, Wyoming, Idaho, and Montana, as well as from California to Oregon and Washington.

40. There were approximately 50,000 grizzly bears in the western contiguous United States prior to European settlement. With European settlement and government-funded bounty programs, grizzly bears were shot, poisoned, and trapped wherever they were found. This resulted in dramatic and significant declines in population numbers and range throughout the 1900s.

41. By the early 1970s, grizzly bears had lost approximately 98 percent of their historic range in the western contiguous United States. By the early 1970s, only a few thousand grizzly bears remained in the contiguous United States in a few isolated locations.

42. In 1975, approximately 136 to 312 grizzly bears likely remained in the Greater Yellowstone Ecosystem. This is a best-guess based on an estimated minimum population size. Accurate population estimates (actual and trend) for grizzly bears are difficult to obtain. For grizzly bears, it takes at least 6 years' worth of monitoring data and as many as 30 females with radio-collars to accurately estimate average annual population growth.

The Service's listing of grizzly bears as a threatened species in the contiguous United States.

43. In 1975, and based on the best available science, the Service listed all grizzly bears in the contiguous United States a threatened species under the ESA. 40 Fed. Reg. 31734 (July 28, 1975).

44. In the 1975 Federal Register notice for the listing rule, the Service determined that grizzly bears in the contiguous United States were threatened by a combination of factors. The Service determined grizzly bears in the contiguous United States had lost a significant amount of habitat and range and were now confined to only three regions in Montana, Idaho, and Wyoming, including: (1) the Selway-Bitterroot Ecosystem in Idaho; (2) the Bob Marshall Ecosystem in northern Montana; and (3) the Greater Yellowstone Ecosystem. The Service determined that the grizzly bear population in the Bob Marshall Ecosystem was large enough and had reached “population pressures” that warranted allowing limited regulatory taking. In 1975, the existence of a large population of grizzly bears in the Bob Marshall Ecosystem did not disqualify grizzly bears in the ecosystem or contiguous United States from listing because two of the three populations of grizzly bears in the contiguous United States remained isolated from other grizzly bear populations. Other threats to grizzly bears identified in the 1975 Federal Register notice for the listing rule include human-caused mortality, the inadequacy of existing regulatory mechanisms, an overall lack of data and scientific information on grizzly bear needs, and increasing human use of Yellowstone National Park and surrounding areas.

45. The Service's 1975 listing rule is designed to ensure the grizzly bear's "conservation in all three of these ecosystems and to protect any members of the species occurring elsewhere in the 48 conterminous States." 40 Fed. Reg. at 31735. The 1975 listing rule is designed to ensure the conservation of all grizzly bears within the contiguous United States.

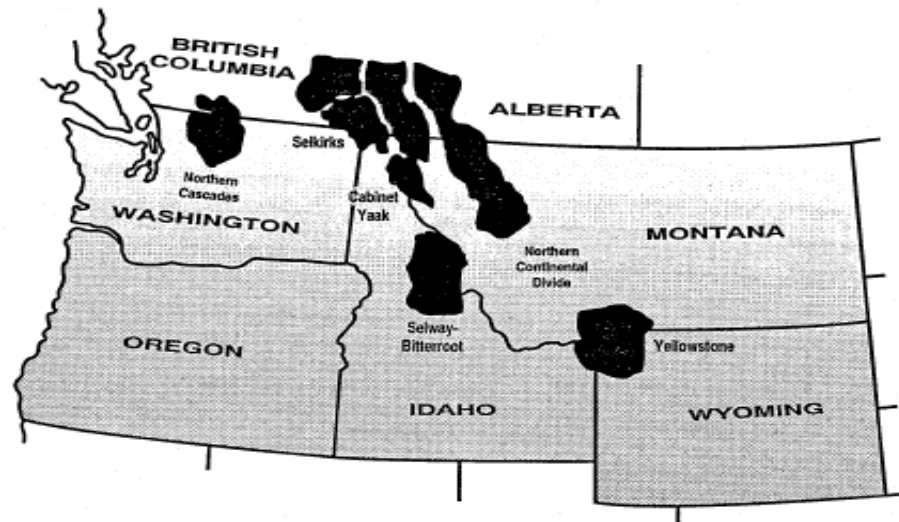
The Service's plan to recover grizzly bears in the contiguous United States.

46. The Service completed a recovery plan for threatened grizzly bears in the contiguous United States in 1982. The ESA requires preparation of recovery plans. Recovery plans are guidance documents for the Service. Recovery plans serve as road maps for species recovery because they lay out where the Service needs to go and how to get there. Recovery plans are often modified, amended or supplemented based on new information or new science or new priorities.

47. The objective of the Service's 1982 recovery plan for grizzly bears in the contiguous United States was to "identify the actions necessary for the conservation and recovery of the grizzly bear." The 1982 recovery plan "attempts to provide a sequence of actions necessary for the conservation and recovery of the grizzly bear in the selected areas of the conterminous 48 states."

48. In the 1982 recovery plan, the Service outlined the steps necessary to ensure the recovery of grizzly bears in the contiguous United States. The Service identified six recovery ecosystems in the contiguous United States where grizzly bears are known to have inhabited and where suitable habitat available for grizzly

bear conservation remains. These six ecosystems include: (1) the Greater Yellowstone Ecosystem; (2) the Northern Continental Divide Ecosystem; (3) the Cabinet-Yaak Ecosystem; (4) the Selkirk Mountains Ecosystem; (5) the Bitterroot Ecosystem; and (6) the North Cascades Ecosystem (see map below). These six ecosystems are shown in the map below, which comes from the Service's 1993 recovery plan and is an accurate representation of the image found in that document.



49. The Service states that it would need to “[e]stablish recovery of at least three populations in three distinct grizzly bear ecosystems in order to delist the species in the conterminous 48 states.” The Service’s 1982 recovery plan notes that the question of how many populations would be needed in order to delist the species and declare it recovered was “debated repeatedly” and that “[n]o one would recommend a single population in a single ecosystem as being adequate to provide

a reasonable margin of safety against . . . ‘systematic pressures and stochastic perturbations.’” The Service stated that the “conservation and recovery of three populations, as opposed to only one or two populations, is believed to be necessary to assure perpetuation of the species to a point that no longer requires protection of the ESA.”

50. In 1986, the Interagency Grizzly Bear Committee (“IGBC”) – an organization formed to promote the conservation of grizzly bears on National Forest, National Park, Bureau of Land Management, and state lands – published guidelines for the management of grizzly bear habitat. These guidelines were submitted to the Service for review and formal consultation. The Service determined in a Biological Opinion that implementation of the IGBC’s guidelines “will promote conservation of the grizzly bear.” The IGBC’s guidelines are designed to obtain the objectives of the 1982 recovery plan.

51. On September 10, 1993, the Service completed a revision to the 1982 recovery plan to include additional tasks and new information on recovery efforts. The 1993 recovery plan establishes “recovery zones” for the six ecosystems identified in the 1982 recovery plan (see map above).

52. The 1993 recovery plan also identifies and considers a seventh ecosystem – the San Juan Ecosystem in Colorado – as an additional recovery zone based on the availability of suitable habitat.

53. The 1993 recovery plan uses three measurable parameters as indicators of population status: (a) number of females with cubs; (b) number of known human-caused mortalities; and (c) the distribution of family groups throughout the ecosystem. These three parameters used by the Service to set recovery criteria and targets in the 1993 recovery plan differ from the parameters and criteria used in the 1982 recovery plan. The Service states that the 1993 recovery plan criteria and target are more easily measured on an annual basis.

54. The 1993 recovery plan recognizes the importance of linkage between the grizzly bear recovery zones to the species' conservation. The Service states that fragmentation of habitat and the isolation of populations is a "major factor" contributing to the demise of wildlife species, including grizzly bears in the contiguous United States.

55. The Service states that it is "widely accepted in conservation biology that island populations of any species are subject to high rates of extinction and that these rates are directly related to the size of the island. Wide ranging mammals are particularly sensitive to the detrimental effects of insular distribution." The Service states that the "five known grizzly bear populations in the lower 48 states are largely if not completely isolated from each other."

56. The Service states that the Greater Yellowstone Ecosystem population of grizzly bears "is completely isolated from populations in other U.S. ecosystems

and Canada.” In the 1993 recovery plan, the Service states that the Greater Yellowstone Ecosystem population of grizzly bears is “vulnerable to the detrimental effects of the loss of genetic diversity, and to environmental and demographic stochasticity” due to its small size and isolation. The 1993 recovery plan commits the Service to study the potential for linkage between the grizzly bear recovery zones and develop strategies to conserve, or restore where possible, the connectivity within and between the recovery zones.

57. The Service states that each individual ecosystem of grizzly bears will remain listed until its specific recovery criteria are met and that the “species throughout the lower 48 States can be delisted when the populations in all established recovery zones have been delisted.” The recovery objective in the 1993 recovery plan differs from the recovery objective in the 1982 recovery plan.

58. The IGBC works to implement the 1993 recovery plan. The IGBC stated that “[w]ildlife habitat conservation and the eventual recovery of listed species such as grizzly bears will require connections between populations.”

59. In 1996 and 1997, the Service released supplemental chapters to the 1993 recovery plan to direct recovery efforts in the Bitterroot Ecosystem and North Cascades Ecosystems. In both ecosystems, the Service outlined plans in the 1996 supplement and 1997 supplement to reintroduce grizzly bears to assist with recovery efforts.

60. In 2007, the Service revised the 1993 recovery plan by updating the habitat and demographic recovery criteria.

61. In 2013 and 2016, the Service proposed additional revisions to the 1993 recovery plan pertaining to recovery criteria for the Greater Yellowstone Ecosystem. In 2017, the Service finalized those revisions and made changes to the 1993 recovery plan's criteria for the Greater Yellowstone Ecosystem.

The status of the Service's plan to recover grizzly bears in the contiguous United States.

62. The Service has not met the recovery objections or goals from the 1982 recovery plan. The Service has not met the recovery objectives or goals of the original 1993 recovery plan. The Service has not met the recovery objectives or goals of the 1993 recovery plans, as modified and supplemented. Grizzly bears are not recovered in the contiguous United States. Five of the six known grizzly bear ecosystems in the contiguous United States remain isolated from one another.

63. The Service declined to try and recover grizzly bears to their historic range in the San Juan Ecosystem of Colorado as discussed in the 1993 recovery plan.

64. Efforts to restore grizzly bears to the North Cascades Ecosystem in Washington, as discussed in the 1997 supplement to the 1993 recovery plan, are not currently being actively pursued. In the 1993 recovery plan the Service committed itself to develop a plan and the necessary planning documents to

recover grizzly bears in the North Cascades Ecosystem and promote the conservation of grizzly bears in the contiguous United States. In the 1997 supplement to the 1993 recovery plan, the Service outlined a plan for reintroducing grizzly bears into the North Cascades Ecosystem to promote the conservation of the species. In 2013, the Service issued a proposed rule explaining why the grizzly bear population in the North Cascades Ecosystem warrants uplisting from threatened to endangered, due to threats from its small size and isolation. In 2014, the Service, in conjunction with the National Park Service, initiated a National Environmental Policy Act (“NEPA”) planning process to explore reintroducing grizzly bears to into the North Cascades Ecosystem. Public comment on a draft EIS for the reintroduction project closed on April 28, 2017.

65. The Service abandoned efforts to reintroduce grizzly bears to the Bitterroot Ecosystem. The Service’s 1982 recovery plan called for the evaluation of the Bitterroot area of Idaho and Montana (“the Bitterroot Ecosystem”) as a potential recovery area for grizzly bears. Grizzly bears historically occupied the Bitterroot Ecosystem. In 1991, the IGBC concluded that the Bitterroot Ecosystem provided suitable habitat and could support approximately 200 to 400 grizzly bears. The IGBC endorsed the Bitterroot Ecosystem as a grizzly bear recovery area and directed the Service to initiate measures to achieve recovery in the area. The

Service's 1993 recovery plan and 1996 supplement to the recovery plan outlined a plan for reintroducing grizzly bears into the Bitterroot Ecosystem.

66. In 2000, the Service issued a final Record of Decision ("ROD") and final rule on the establishment of a non-essential experimental population of grizzly bears in the Bitterroot Ecosystem (65 Fed. Reg. 69623). The Service's ROD and final rule authorizes the reintroduction of grizzly bears into the Bitterroot Ecosystem pursuant to a special rule in order to reestablish a viable grizzly bear population in the area, which is one of six grizzly recovery areas identified in the 1993 Recovery Plan.

67. The reestablishment of a grizzly bear population in the Bitterroot Ecosystem will increase the survival probabilities and further the conservation of the species in the contiguous United States. Reintroducing grizzly bears to the Bitterroot Ecosystem will enhance grizzly bear conservation over the long-term by providing an additional population and thus adding a measure of security for the species. Reintroducing grizzly bears to the Bitterroot Ecosystem will improve the chances of connectivity for grizzly bears in the Greater Yellowstone Ecosystem.

68. On June 22, 2001, the Service issued a proposed rule to remove the rule on the establishment of a non-essential experimental population of grizzly bears in the Bitterroot Ecosystem (66 Fed. Reg. 33620), but this proposed rule was never

finalized. Grizzly bears have not been reintroduced to the Bitterroot Ecosystem.

The Service has no plans to reintroduce grizzly bears to the Bitterroot Ecosystem.

69. The grizzly bear population in the Cabinet-Yaak Ecosystem is in decline. The grizzly bear population in the Cabinet-Yaak Ecosystem is no longer viable. Approximately 40-50 grizzly bears inhabit the Cabinet-Yaak Ecosystem. None of the Service's 1993 demographic recovery criteria for the Cabinet-Yaak Ecosystem have been met.

70. The grizzly bear population in the Selkirk Ecosystem is in decline. The grizzly bear population in the Selkirk Ecosystem is no longer viable. Approximately 80 grizzly bears inhabit the Selkirk Ecosystem. Only approximately 25 of those grizzlies are located in the contiguous United States. None of the Service's 1993 demographic recovery criteria for the Selkirk Ecosystem have been met.

71. Grizzly bear numbers are currently in decline in the Greater Yellowstone Ecosystem. Grizzly bears have been in decline in the Greater Yellowstone Ecosystem since 2014. There are approximately 700 grizzly bears in the Greater Yellowstone Ecosystem. Grizzly bears in the Greater Yellowstone Ecosystem remain isolated from all other grizzly bear populations in the contiguous United States and grizzly bear populations in Canada. Grizzly bears in the Greater Yellowstone Ecosystem are experiencing abnormally high human-caused mortality

levels. Since 2015, at least 139 bears have been killed in the Greater Yellowstone Ecosystem (including 20 documented deaths thus far in 2017, 58 dead bears in 2016, and 61 dead grizzlies in 2015). Of these, 98 were human-caused mortalities, and 30 deaths are either undetermined or remain under investigation.

The Service's 2017 decision to designate and delist grizzlies in the Greater Yellowstone Ecosystem.

72. On June 30, 2017, the Service published a final rule designating a Greater Yellowstone Ecosystem grizzly bear DPS under the ESA and removing this DPS from the list of threatened and endangered species protected under the ESA. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS had recovered and no longer met the definition of a threatened or endangered species under the ESA.

73. The Service's June 30, 2017 final delisting rule took effect on July 30, 2017. The prohibitions and conservation measures provided by the ESA, including through sections 7 and sections 9 of the ESA, no longer apply to the Greater Yellowstone Ecosystem grizzly bear DPS. Grizzly bears that travel inside the Greater Yellowstone Ecosystem grizzly bear DPS boundary or remain inside the DPS boundary are no longer protected under the ESA.

74. The states of Montana, Wyoming, and Idaho now assume primary regulatory authority over the management of grizzly bears inside the Greater Yellowstone Ecosystem grizzly bear DPS boundary. Grizzly bears inside the DPS

boundary are now classified as a “game” species. Grizzly bears that travel inside or remain inside the Greater Yellowstone ecosystem grizzly bear DPS boundary may now be subject to recreational hunting, as authorized by the states of Montana, Wyoming, and Idaho. Grizzly bears that remain outside the Greater Yellowstone Ecosystem grizzly bear DPS boundary or travel outside the DPS boundary remain fully protected under the ESA.

75. The Service’s 2017 final delisting rule does not restrict where the states of Montana, Idaho, and Wyoming may allow recreational hunting of grizzly bears outside National Parks. Recreational hunting may be allowed on lands adjacent to Yellowstone National Park. Recreational hunting may be allowed in areas where grizzly bears congregate to consume food sources, including moth sites, carcasses, root fields, and spawning areas. Recreational hunting may be allowed in important linkage zone or connectivity areas used by grizzly bears that disperse outside Yellowstone National Park.

76. The State of Montana has announced plans to allow recreational hunting of grizzly bears within the Greater Yellowstone Ecosystem. The State of Idaho has announced plans to allow recreational hunting of grizzly bears within the Greater Yellowstone Ecosystem. The State of Wyoming has announced plans to allow recreational hunting of grizzly bears within the Greater Yellowstone Ecosystem.

FIRST CAUSE OF ACTION
(Violation of the ESA – no piecemeal delisting)

77. Guardians hereby incorporates all preceding paragraphs.

78. The purpose of the ESA is to conserve threatened and endangered species and the ecosystems they depend on. 16 U.S.C. § 1531(b). The Service is directed to “conserve endangered species and threatened species” and utilize its authority in furtherance of such conservation efforts. 16 U.S.C. § 1531(c). To “conserve” means to “use all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided [by the ESA] are no longer necessary.” 16 U.S.C. § 1532(3).

79. In 1975, the Service listed all grizzly bears in the contiguous United States as a single, threatened species under the ESA. 40 Fed. Reg. 31734, 31736 (July 28, 1975). Grizzly bears in the contiguous United States exist as a metapopulation. A metapopulation is a network of semi-isolated populations, each occupying a suitable patch of habitat in a landscape of otherwise unsuitable habitat. Metapopulations require some level of regular or intermittent migration and gene flow among subpopulations, in which individual populations support one another by providing genetic and demographic enrichment through mutual exchange of individuals. Individual subpopulations may go extinct or lose genetic viability, but are then rescued by immigration from other subpopulations, thus ensuring the persistence of the metapopulation as a whole.

80. In the 1975 listing rule, the Service determined that all grizzlies in the contiguous United States – the larger metapopulation – qualified as a “threatened” species due to lost habitat and range, human-caused mortality, lack of data on

necessary management standards and regulations, and the isolated nature of the last three remaining grizzly bear populations in the contiguous United States. 40 Fed. Reg. at 31734. The 1975 listing rule is designed to ensure the conservation of all grizzly bears within the contiguous United States. 40 Fed. Reg. at 31735. The 1975 listing rule includes any and all of the composite segments or subpopulations that might be included within the taxonomically listed species.

81. Under the ESA, and in accordance with the Service's 1975 listing rule, the duty to "conserve" applies to all grizzly bears in the contiguous United States. Under the ESA, the Service is required to manage, conserve, and evaluate the status of grizzly bears in the contiguous United States, not just a segment or subpopulation of it. Under the ESA, a fragment of a species' current range cannot be declared recovered before the species is recovered at the larger, regional scale.

82. 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 contiguous United States are recovered and no longer qualify as a threatened or endangered species. Grizzly bears in the contiguous United States are not recovered and still qualify as a threatened species.

83. The Service cannot avoid its legal obligation to conserve grizzly bears in the contiguous United States under the ESA and engage in a comprehensive review of the status of grizzly bears in the contiguous United States by carving out and then delisting smaller populations or sub-populations of grizzly bears within the contiguous United States. Having started the process and listed the larger metapopulation of grizzly bears as threatened in the contiguous United States, the

ESA requires the Service to conserve grizzly bears at this level and engage in a comprehensive review of the status of the species, as listed, on a continuing basis.

84. In 2017, the Service chose to draw a circle around grizzlies in the Greater Yellowstone Ecosystem, remove all grizzly bears inside the circle (the distinct population segment (“DPS”) boundary) from the larger 1975 listing, and declare grizzlies inside the circle recovered and no longer a threatened or endangered species.

85. In designating and delisting a Greater Yellowstone Ecosystem grizzly bear DPS, the Service focused solely on the status of and threats to grizzly bears within the DPS boundary. The Service’s threats analysis for the Greater Yellowstone Ecosystem grizzly bear DPS and finding that this DPS is recovered, no longer threatened in all or a significant portion of its range, and qualifies for delisting is solely a function of the circle drawn around the subpopulation by the Service. The Service does not consider or analyze any impacts or threats to grizzly bears outside the DPS boundary. The Service does not consider or analyze the need to conserve grizzly bears in suitable but occupied habitat outside (and inside) the DPS boundary.

86. The Service’s 2017 decision to designate and remove protections for the Greater Yellowstone Ecosystem grizzly bear DPS was made in the absence of a comprehensive review of the entire listed species protected under the 1975 listing rule and its continuing status in the contiguous United States. The Service never considered the consequences of its decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS on grizzly bear conservation and the remaining grizzly bears in the contiguous United States.

87. Under the ESA and the Service's 1996 DPS policy, 61 Fed. Reg. 4722, the Service has the authority to designate a DPS. The Service's 1996 DPS policy requires the Service to evaluate the "discreetness" and "significance" of the population segment before designating a DPS. Both of these factors must be met before a DPS can be recognized. Both of these factors require consideration of both the newly created population segment and the larger remnant population, including a comparative analysis of the two, and the implications to the entire listed species from creating a DPS.

88. The Service's failure to analyze the implications of its decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS on the larger, listed population of grizzly bear in the contiguous United States and focus solely on the characteristics of the Greater Yellowstone Ecosystem grizzly bear DPS by itself violates the ESA, the Service's 1996 DPS policy, 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).

89. 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.

90. The Service's failure to provide a reasonable explanation for its change in position on listing and recovery of grizzly bears in the contiguous United States violates 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).

91. The Service’s 2017 decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS and remove it from the 1975 nationwide listing undermines the overall purpose and intent of the ESA.

92. Under the ESA, and in accordance with the 1975 listing rule and the Service’s 1996 DPS policy, the Service cannot avoid its duty to conserve grizzly bears in the contiguous United States by dividing the contiguous United States population into smaller populations or units and then delisting those smaller populations or units. Delisting sub-populations or small populations of a larger, nationwide listing undermines the purpose and intent of the ESA and the 1975 listing rule. Under the ESA, the Service cannot abandon grizzly bear conservation and recovery beyond the species’ currently occupied range. Under the ESA, the Service cannot ignore significant portions of the range of the grizzly bear in the contiguous United States that offer suitable yet unoccupied habitat. Under the ESA, the Service cannot provide a standard for delisting grizzly bears that differs from the original standard for listing grizzly bears. Under the ESA, the Service cannot declare a species “recovered” before the species is recovered at the larger, regional scale.

93. The Service’s decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS and remove it from the larger, nationwide listing of grizzly bears 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).

SECOND CAUSE OF ACTION
(Violation of ESA – failure to consult on impacts of piecemeal delisting)

94. Guardians hereby incorporates all preceding paragraphs.

95. To achieve the ESA’s conservation goal, Section 7 of the ESA directs federal agencies to engage in consultation with the Service to ensure any actions it funds, authorizes or carries out are “not likely to jeopardize the continued existence” of any listed species. 16 U.S.C. §1536(a)(2). The “actions” subject to this consultation requirement include “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies” 50 C.F.R. § 402.02. Examples of such actions “include but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights of way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.” *Id.*

96. Under Section 7 of the ESA, actions that are “likely to adversely affect a listed species” must obtain a biological opinion from the Service discussing the effects of the action and including a finding whether the action “is likely to jeopardize the continued existence” of the species. 16 U.S.C. §1536(a)(2); 50 C.F.R. § 402.14.

97. The Service has and continues to violate Section 7 of the ESA by failing to initiate and complete consultation on how its decision to designate and delist a

Greater Yellowstone Ecosystem grizzly bear DPS may affect the survival and conservation of the remaining grizzlies in the contiguous United States. The Service never analyzed how delisting the Greater Yellowstone grizzly bear DPS may affect grizzly bears, grizzly bear conservation, and the grizzly bear's legal status outside the DPS boundary. The Service never analyzed how delisting a Greater Yellowstone Ecosystem grizzly bear DPS may affect dispersal, connectivity, and grizzly bear recovery in the contiguous United States.

98. The Service's failure to initiate and complete Section 7 consultation on its decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS violates Section 7 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).

THIRD CAUSE OF ACTION
(Violation of ESA – cannot simultaneously create and delist a DPS)

99. Guardians hereby incorporates all preceding paragraphs.

100. Under the ESA, the Service has the authority to list a species, subspecies, or DPS when the best available science reveals it is threatened by one or all of the five factors outlined in Section 4(a)(1) of the ESA, 16 U.S.C. § 1533(a)(1). Under the ESA, the Service has the authority to delist a protected species, subspecies, or DPS when the best available science reveals recovery is obtained and the species, subspecies, or DPS is no longer threatened by the five factors outlined in Section 4(a)(1) of the ESA. 50 C.F.R. § 424.11(d).

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

102. In 1975, the Service listed all grizzly bears in the contiguous United States as a threatened species. In the 2011 five-year status review, the Service determined that grizzly bears in the contiguous United States qualified as a single DPS. The Service never listed a separate Greater Yellowstone Ecosystem grizzly bear DPS as a threatened or endangered species under the ESA. 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). The Service never evaluated the need to designate critical habitat for a Greater Yellowstone Ecosystem grizzly bear DPS. The Service never prepared a recovery plan solely for the Greater Yellowstone Ecosystem grizzly bear DPS.

103. The Service chose to create a Greater Yellowstone Ecosystem grizzly bear DPS for the sole purpose of delisting a Greater Yellowstone Ecosystem grizzly bear DPS. The Service simultaneously created and delisted a Greater Yellowstone Ecosystem grizzly bear DPS.

104. 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).

FOURTH CAUSE OF ACTION
(Violation of ESA – cannot designate a DPS of a DPS)

105. Guardians hereby incorporates all preceding paragraphs.

106. Under the ESA and in accordance with the Service’s 1996 DPS policy, the Service has the authority to list a species, subspecies, or DPS. Under the ESA, the Service does not have the authority to divide a DPS into a smaller taxonomic unit or make distinctions below that of a subspecies or a DPS level. The ESA does not allow the creation of a sub-DPS or the creation of a DPS of a DPS.

107. The Service’s 1975 grizzly bear listing pre-dated the 1978 amendments to the ESA (which replaced “population” with “distinct population segment”) and the Service’s 1996 DPS policy defining the term “distinct population segment.”

108. In the Service’s 2011 five-year grizzly bear status review, and in accordance with the Service’s 1996 DPS policy, 61 Fed. Reg. 4722 (February 7, 1996), the Service undertook a DPS analysis for the 1975 grizzly bear listing.

109. The Service’s 2011 status review determined that the 1975 listing rule complied with the 1978 amendments to the ESA and the 1996 DPS policy. The Service’s 2011 status review determined that grizzlies in the contiguous United States qualified as a DPS. The Service’s 2011 status review explained that grizzly bears in the contiguous United States qualify as a DPS because they: (1) are discrete from other populations (due to the international border with Canada); (2) are significant to the remainder of the taxon (the loss of the lower 48 population would result in a significant gap); and (3) qualify as threatened under the ESA. The Service concluded in the 2011 status review that “grizzly bears in the contiguous United States thus ‘warrant[] recognition as a DPS under the ESA.’”

110. The Service's decision to designate and delist a Greater Yellowstone Ecosystem grizzly bear DPS from an already established contiguous United States 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).

FIFTH CAUSE OF ACTION
(Violation of ESA – the isolated grizzly population is not recovered)

111. Guardians hereby incorporates all preceding paragraphs.

112. Under the ESA, the Service can only delist a Greater Yellowstone Ecosystem grizzly bear DPS if the best available science reveals the DPS is recovered. 50 C.F.R. 424.11(d)(2). A species, subspecies, or DPS is only deemed recovered if it is no longer in need of ESA protections and no longer qualifies as a threatened or endangered species. If the Greater Yellowstone Ecosystem grizzly bear DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range, it is not recovered under the ESA. The Service never analyzed whether the Greater Yellowstone Ecosystem grizzly bear DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

113. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is biologically recovered. The Service determined that compliance with the Service's 1993 recovery plan criteria (as amended and

supplemented) proves the Greater Yellowstone Ecosystem grizzly bear DPS is recovered and no longer in need of ESA protections.

114. The best available science reveals an isolated population of 500-900 grizzly bears in the Greater Yellowstone Ecosystem is not recovered. The best available science reveals an isolated population of 500-900 grizzly bears in the Greater Yellowstone Ecosystem is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. The best available science reveals an isolated population of 500-900 grizzly bears in the Greater Yellowstone Ecosystem remains vulnerable to demographic, environmental, and genetic fluctuations and natural catastrophe.

115. The Service's determination that the Greater Yellowstone Ecosystem grizzly bear DPS is biologically recovered, reliance on the 1993 recovery plan criteria (as amended and supplemented) to prove recovery, and failure to analyze whether the Greater Yellowstone Ecosystem grizzly bear DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range conflicts with the best available science, violates 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).

SIXTH CAUSE OF ACTION
(Violation of ESA – inadequate threats assessment)

116. Guardians hereby incorporate all preceding paragraphs.

117. Under the ESA, the Service must consider whether the Greater Yellowstone Ecosystem grizzly bear DPS 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). These same factors must be considered before delisting a species, subspecies, or DPS. 50 C.F.R. § 424.11(d).

118. Under the ESA, the evaluation of threats for purposes of delisting requires consideration of both the threats currently facing the species, subspecies, or DPS and the threats that are reasonably likely to affect the species, subspecies, or DPS in the foreseeable future following the removal of the ESA's protections.

119. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range from motorized access, livestock grazing, developed sites, mineral and energy development, recreation,

snowmobiling, climate change, vegetation management (*i.e.*, logging, prescribed fire, and salvage logging), or habitat fragmentation. This determination is not supported by the best available science, is devoid of any analysis of lost habitat and range (present and future), fails to consider how the loss of vast amounts of the grizzly bear's historic range in the contiguous United States impacts grizzly bears (both inside and outside the Greater Yellowstone Ecosystem DPS boundary), is arbitrarily based on the 1998 baseline, fails to account for climate change impacts, and fails to consider threats to all habitat and range inside the DPS boundary.

120. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is not threatened by overutilization for commercial, recreational, scientific, or educational purposes, including the introduction of recreational hunting in Montana, Idaho, and Wyoming. This determination is not supported by the best available science, fails to take into account recent and expected high levels of background mortality, and is based on an unreliable and inaccurate monitoring program. The Service's determination also fails to account for all grizzly mortalities from hunting inside the DPS boundary (mortalities outside the DMA but inside the DPS boundary will not be considered or counted), and fails to account for the impacts hunting would have on population dynamics and the impacts to dispersal, movements, and connectivity.

121. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is not threatened by disease or predation. This determination is based on incomplete and inaccurate data on grizzly bear mortalities (including the number of female mortalities), fails to account for unreported deaths, and is contrary to the best available science. The Service relies on outdated average mortality levels (the numbers are now much higher). The Service also failed to consider and analyze the age and sex of the grizzlies killed, *i.e.*, how many females, how many cubs, and how many cubs indirectly impacted (thereby unable to mature into adulthood), or whether this amount of mortality exceeds replacement rates. The Service's assertion that the majority of grizzly bear deaths are effectively mitigated by outreach efforts, adequate enforcement, monitoring, and "science-based" management is unsupported by evidence in the record and conflicts with the best available science.

122. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is not threatened by the inadequacy of existing regulatory mechanisms including non-binding state management plans and regulations (that can be changed and amended by the States), National Forest management plans, National Park Service operating plans, and the recently finalized 2016 Conservation Strategy. The Service determined that these measures are adequate to protect the Greater Yellowstone Ecosystem grizzly bear DPS. This finding of

adequate regulatory mechanisms pursuant to section 4(a)(1)(D) and section 4(b)(1)(A) of the ESA is unsupported by evidence before the agency, conflicts with the best available science, and violates the ESA. Under the ESA, the Service cannot rely on non-binding, voluntary conservation efforts that have no proven track record of success.

123. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is not threatened by other natural or manmade factors, including threats from low genetic diversity, changes to food sources, climate change, and human attitudes toward grizzly bear conservation in the Greater Yellowstone Ecosystem. The Service's findings regarding genetic diversity, changes in food sources, the likely impacts of climate change, and human attitudes are unsupported by evidence before the agency, based on incomplete information or misinterpretations of the data and scientific findings, and cannot be justified. The Service's findings also conflict with the best available science and fail to take into account and analyze the indirect effects associated with declining food sources, in particular, whitebark pine seeds and cutthroat trout, and increased reliance on ungulates (meat) and army cutworm moth sites that exist outside Yellowstone National Park. The Service's findings also conflict with the best available science and fail to take into account and analyze the anticipated effects of climate change on grizzly bears and their food sources.

124. The Service determined that the Greater Yellowstone Ecosystem grizzly bear DPS is not threatened by any synergistic, combined, or cumulative threats. The Service determined that all cumulative stressors have been adequately minimized and ameliorated and do not threaten the Greater Yellowstone Ecosystem grizzly bear DPS. This determination is made in the absence of any analysis and conflicts with the best available science.

125. The Service's determination that the isolated grizzly bear population in the Greater Yellowstone Ecosystem is no longer threatened now or in the foreseeable future conflicts with the best available science, 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).

SEVENTH CAUSE OF ACTION
(Violation of ESA – arbitrary and misleading population trend data)

126. Guardians hereby incorporate all preceding paragraphs.

127. The Service's final rule to delist the Greater Yellowstone Ecosystem grizzly bear DPS relies on population trend data. The Service relies on population trend data to, among other things, satisfy the demographic criteria in the 1993 recovery plan (as amended and supplemented), to evaluate threats to the Greater Yellowstone Ecosystem grizzly bear DPS (including cumulative threats), and to support its conclusions and findings regarding delisting.

128. The Service's population trend data for the Greater Yellowstone Ecosystem grizzly bear DPS utilizes four different methods.

129. In 1975, the Service estimated *minimum* population size. This method uses counts of observed females with cubs-of-the year without any adjustments to account for females with cubs-of-the-year that may have gone undetected. This method was used by the Service from 1959 to 2006 as the primary means of monitoring annually-adjusted size and trend of the Greater Yellowstone Ecosystem's grizzly bear population.

130. In 2007, the Service estimated *total* population size assuming a 0.64:1 sex ratio of males to females and using the Chao2 method to adjust counts of females with cubs-of-the-year. This method attempts to account for females with cubs-of-the-year that may have gone undetected using a statistical model called Chao2. This approach assumed that there were roughly 3 independent females in the population for every 2 males of the same age-cohort. Use of this method was first reported in 2007, with confidence intervals added in 2012.

131. In 2012, and up through 2014, the Service estimated total population size assuming a 1:1 sex ratio of males to females and using the Chao2 method to account for females with cubs-of-the-year. Under this method, one male is assumed for every female past the age of dependence. Estimated population size is always greater under this method compared to the method used in 2007 and based on a 0.64:1 sex ratio.

132. In 2012, and up through the present, the Service estimated total population size assuming a 1:1 sex ratio of males to females but using a Mark-Resight method to adjust counts of females with cubs-of-the-year. The Mark-Resight method is a less biased but also more uncertain method to estimate the total number of females with cubs-of-the-year. Mark-Resight based estimates of total population size are always higher than Choa2 based estimates.

133. The four methods used by the Service to estimate the population trend for the Greater Yellowstone Ecosystem grizzly bear DPS are not comparable to one another. The four methods used by the Service to estimate the population trend for the Greater Yellowstone Ecosystem grizzly bear DPS cannot be used as an accurate basis for documenting population trends and estimating impacts. Using four methods to estimate the population trend for the Greater Yellowstone Ecosystem grizzly bear DPS conflicts with the best available science and misleads the public about the population's trend.

134. The Service's decision to estimate the population trend for the Greater Yellowstone Ecosystem grizzly bear DPS using four different methods and rely on this estimate to assess threats and satisfy recovery criteria, conflicts with the best available science, 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).

EIGHTH CAUSE OF ACTION
(failure to conduct significant portion of its range analysis)

135. Guardians hereby incorporate all preceding paragraphs.

136. Under the ESA, a species is "threatened" if it is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. § 1532(20). The term "likely to become" means something less than 100% certainty. A 51% chance (more likely than not) suffices. The term "foreseeable future" extends so far as reasonably "reliable" predictions can be made. Reliable predictions are not certain predictions. Predictions are reliable if they provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the ESA. The phrase "significant portion of its range" means, among other things, a major geographical area in which the species is no longer viable but once was. The task of defining the phrase includes, but is not limited to, quantifying of the species' historic range and an evaluation of whether the lost habitat amounts to a "significant portion" of that range.

137. Under the ESA, a species is "endangered" if it is "in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6). The term "in danger of extinction" does not mean or require a high risk of extinction.

138. In deciding to create a DPS for the Greater Yellowstone Ecosystem grizzly bear population and simultaneously delist that population from the list of

threatened and endangered species, the Service failed to properly define and apply the phrase “significant portion of its range.” This failure led to a legally insufficient significant portion of its range analysis, and ultimately a legally insufficient decision to delist the Greater Yellowstone Ecosystem grizzly bear population.

139. The Service’s definition of significant portion of its range excludes the consideration of a species’ lost historic range. The Service’s definition of significant portion of its range only considers a species’ current range. The Service did not consider the Greater Yellowstone Ecosystem grizzly bear population’s lost historic range within the Greater Yellowstone Ecosystem DPS in the significant portion of its range analysis. The Service did not consider the lost historic range of the grizzly bear throughout the contiguous United States in the significant portion of its range analysis.

140. The Service’s definition of “significant” only considers the portion’s biological contribution to the larger species. The Service’s definition of “significant” on deems a portion of a species’ range to be “significant” if its “contribution to the viability of the species is so important that, without members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.” The Service failed to consider the independent significant of portions of the Greater Yellowstone

Ecosystem DPS possessed independent significance, regardless of contribution to the larger species as a whole. The Service failed to consider all factors in determining significance.

141. The Service's failure and/or refusal to properly define and apply the ESA's statutory terms and phrases in deciding delist the Greater Yellowstone Ecosystem grizzly bear population violates the ESA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706(2)(A), 706(1).

REQUEST FOR RELIEF

Plaintiffs respectfully request this Court:

A. Declare the Service has violated and continues to violate the law as alleged above;

B. Set aside the Service's June 30, 2017 rule challenged herein pending compliance with the ESA, as alleged herein;

C. Remand this matter back to the Service with instruction to comply with the ESA, as alleged herein;

D. Award Plaintiffs their reasonable attorneys' fees, costs and expenses of litigation;

E. Issue any interim or permanent injunctive relief or other relief this Court deems necessary, just, or proper or that Guardians may subsequently request.

Respectfully submitted this 30th day of August, 2017.

/s/ Matthew K. Bishop
Matthew K. Bishop

/s/ John R. Mellgren
John R. Mellgren
application for pro hac vice pending

/s/ Kelly E. Nokes
Kelly Nokes

Counsel for Guardians