



Governor Brad Little

State Capitol :: Boise, Idaho 83720
(208) 334-2100 :: gov.idaho.gov

February 2, 2023

The Honorable Deb Haaland
Secretary, U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
exsec@ios.doi.gov

The Honorable Martha Williams
Director, U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240
fws_director@fws.gov
Martha_Williams@fws.gov

Sent via electronic and certified mail

RE: 60-day Notice of Intent to Sue for Violation of the Endangered Species Act Relating to the U.S. Fish and Wildlife Service's Failure to Make a 90-Day Finding on Idaho's Petition to Remove Grizzly Bear in the Conterminous "Lower-48" States from the list of Endangered Species

Dear Secretary Haaland and Director Williams:

This letter serves as a 60-day notice of intent to sue you in your official capacities as the Secretary of the Interior and Director of the U.S. Fish and Wildlife Service ("USFWS"). We provide this notice pursuant to the citizen suit provision of the Endangered Species Act, 16 U.S.C. § 1540(g), based on USFWS' failure to make a required "90-day finding" on the State of Idaho's March 9, 2022, petition to remove grizzly bear in the conterminous ("lower-48") United States from the list of Endangered Species Act (ESA).

Idaho does not send this notice lightly. We prefer to invest the resources of federal and state conservation agencies on actual conservation, rather than on lawsuits. However, we cannot continue to accept vague excuses and inexplicable delays by USFWS representatives concerning grizzly bear delisting. The current listed entity does not meet the definition of "species" under the Endangered Species Act (ESA), we have robust grizzly bear populations that continue to cause conflict in our rural communities, and we have addressed the concerns of prior judicial reviews.

If Idaho must bring a lawsuit to motivate USFWS to perform its duties regarding delisting, we are prepared to do so.

Idaho has repeatedly emphasized the importance of delisting to continued grizzly bear conservation and social tolerance of grizzly bears in Idaho. As stated in our petition for delisting, the goal of ESA conservation is "to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary" (16 U.S.C. § 1532). When conservation efforts



accomplish this point, but the formal step of delisting does not occur, or worse yet, appears unachievable, we risk conservation tragedy through loss of community support. This risk is even larger when it involves species such as grizzly bears, whose successful conservation requires ongoing intensive management.

Before submitting our petition, Idaho analyzed the ESA, implementing regulations, USFWS' ESA policies, and a tangled web of court decisions interpreting "lower-48 listings." Idaho determined the reasonable course of action is to address the primary cause of judicial concern at its source - the overly broad 1975 listed entity that was not based on taxonomy or biology from the beginning, and that is not an entity on which current ESA jurisdiction is based.

Over 10 months ago, Idaho petitioned for delisting the "lower-48" grizzly bear listed entity on the basis that this listing does not qualify as a "species" under the ESA, because the entity is not a taxonomic species, taxonomic subspecies, or distinct population segment that interbreeds when mature. Idaho also petitioned for delisting on the basis that the currently listed entity is not a threatened or endangered species; grizzly bears in the lower-48 now number over 2,000. There is a robust, secure population in the Greater Yellowstone Area, and the grizzly bears of the northern Rockies connect across the U.S.- Canada border, extending to Alaska, with an estimated subspecies population of 60,000 grizzly bears.

Under the ESA, USFWS was required to make a "90-day" finding by June 7, 2022, to "the maximum extent practicable," as to whether Idaho's petition presents "substantial scientific or commercial information indicating that the petitioned action may be warranted." 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. § 424.14(b)(1). USFWS has not made this finding, and Idaho is not aware of a supportable basis for USFWS to assert impracticality.

"Substantial information" refers to credible scientific or commercial information that would lead a reasonable person to conclude that the measure proposed in the petition may be warranted. 50 C.F.R. § 424.14(h)(i). Idaho's petition does not require USFWS to engage in review of hundreds of pages of new scientific studies or novel scientific concepts. Instead, Idaho's petition relies primarily on USFWS' own documents, including the USFWS' 2021 status assessment and 5-year status review for grizzly bear in the "lower-48" listed entity.

Idaho's petition generally reflects Idaho's prior comments on USFWS' draft species status assessment (SSA) for lower-48 grizzly bears and similar documents, which comments USFWS has received and largely ignored. The petition reviews the proper application of the ESA's definition of species and USFWS' failure to properly apply



its agency policy (*see* 61 Federal Register 4,722) on the recognition of distinct population segments relative to their ability to interbreed when mature, and their discreteness and significance to the taxonomic subspecies/species. It should have been straightforward for USFWS to make an initial determination, either to admit that the delisting of the current listed entity “may” be warranted on the basis it does not comport with the definition of a “species” under the ESA, or to deny what appears obvious to us from USFWS’ own documents, the ESA, implementing regulations, and DPS policy.

We cannot identify any “impracticality” in taking well beyond the 90-day period for an initial finding on Idaho’s petition. Moreover, in mid-November 2022, USFWS announced it was restarting consideration of a non-essential, experimental reintroduction of grizzly bears to the North Cascades, which implies financial and personnel resources are not a reason for USFWS’ delayed response to Idaho’s petition.

USFWS has provided only vague excuses and evasive answers as to why the agency has not made an initial determination on Idaho’s petition. USFWS’ lack of transparency on this subject has persisted, despite requests to discuss this subject at various meetings, including meetings of the Interagency Grizzly Bear Executive Committee and Subcommittees, Association of Fish and Wildlife Agencies, and Western Association of Fish and Wildlife Agencies. In November 2022, Idaho’s entire congressional delegation sent a letter to USFWS Director Williams urging response to Idaho’s petition and requesting a status report from USFWS. The delegation’s letter remains unanswered.

Within twelve months “after receiving a petition that is found ... to present substantial information indicating that the petitioned action may be warranted” USFWS must determine whether listing of the species is “not warranted,” “warranted,” or “warranted ... but precluded” by other listing priorities. 16 U.S.C. § 1533(b)(3)(B). The 90-day and 12-month findings are not subject to notice-and-comment rulemaking. *See* 16 U.S.C. § 1533(b)(3). **Importantly, the 12-month deadline has no exceptions. Twelve months from USFWS’ receipt of the petition is March 9, 2023.**

In summary, it is now over 10 months after Idaho submitted its petition for delisting. USFWS has still not shared any details to explain continued delay in making the “90-day” initial finding, and we are aware of no “impracticality” causing the delay. Absent a suitable reason for delay, combined with USFWS’ lack of transparency, we are notifying you of our intent to sue under the ESA.



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A determination on Idaho's petition is what the ESA requires and what grizzly bear conservation and Idahoans deserve. Unless USFWS makes the initial determination on Idaho's petition within the next 60 days, we intend to file suit.

Please contact Mike Edmondson, Administrator Idaho Governor's Office of Species Conservation at (208) 332-1552 or Ed Schriever, Director Idaho Department of Fish and Game, if you wish to discuss this matter further. Our legal counsel are also available to discuss this matter with your Solicitor's Office or with your department's representatives at the U.S. Department of Justice.

It is my hope that your Department will take the appropriate actions to avoid suit.

Sincerely,

Brad Little
Governor of Idaho