June 30, 2017

Secretary Ryan Zinke
U.S. Department of the Interior
1849 C Street, NW
Washington DC, 20240
exsec@ios.doi.gov

Acting Director Greg Sheehan
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240
Greg_Sheehan@fws.gov

Deputy Director Jim Kurth
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240
Jim_Kurth@fws.gov

Re: **Notice of Intent to Sue for Violations of the Endangered Species Act Relating to Removal of Grizzly Bears in the Greater Yellowstone Ecosystem from the Federal List of Endangered and Threatened Wildlife: 82 Fed. Reg. 30502 (June 30, 2017)**

Dear Secretary Zinke, Acting Director Sheehan, and Deputy Director Kurth:

This letter serves as notice that The Humane Society of the United States and the Fund for Animals intend to sue Ryan Zinke in his official capacity as Secretary of the Department of the Interior ("DOI"), Greg Sheehan in his official capacity as Acting Director of the U.S. Fish and Wildlife Service ("Service"), Jim Kurth in his official capacity as Deputy Director of the Service, the DOI, and the Service (collectively, the "Government Parties") for violations of the Endangered Species Act ("ESA," 16 U.S.C. §§ 1531-1544). The Government Parties have violated

and remain in violation of the ESA by issuing today's Final Rule removing grizzly bears in the Greater Yellowstone Ecosystem ("GYE") from the federal list of threatened species ("Final Rule"). 82 Fed. Reg. 30502 (June 30, 2017). The Final Rule removes protections necessary for the continued survival of this iconic and imperiled species in the continental United States, failing to comply with the conservation mandate of the ESA. 16 U.S.C. § 1531(b),(c). As described below, this regulation violates the ESA and its implementing policies and regulations by arbitrarily and unlawfully designating the GYE population as a Distinct Population Segment ("DPS") and failing to evaluate the ESA's listing factors using the best available science. *Id*. § 1533(a),(b)(1)(A); 50 C.F.R. § 424.11(d).

Pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g), this letter constitutes notice of the ESA violations to the Secretary of the Interior and all Government Parties. If the Government Parties do not take prompt action to cease these violations by rescinding the Final Rule within sixty (60) days, The Humane Society of the United States and the Fund for Animals will pursue litigation in federal court to remedy the Service's failure to protect grizzly bears in the GYE from extinction.

I. LEGAL FRAMEWORK

The ESA requires the Service to thoroughly consider five categories of threats to a species before determining that the species is eligible for removal from the list of threatened species: (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; and (E) other natural or manmade factors affecting its continued existence. 16 U.S.C. § 1533(a)(1), (c). "Section 4(a)(1) of the Act provides the Secretary 'shall' consider the five statutory factors when determining whether a species is endangered, and § 4(c) makes clear that a decision to delist 'shall be made in accordance' with the same five factors." *Friends of Blackwater v. Salazar*, 691 F.3d 428, 432 (D.C. Cir. 2012) (*quoting* 16 U.S.C. § 1533(a), (c)); *see also* 50 C.F.R. § 424.11(d)(2) (Service regulation governing delisting).

"A species may be delisted on the basis of recovery *only if* the best scientific and commercial data available indicate that it is no longer endangered or threatened." 50 C.F.R. § 424.11(d)(2) (emphasis added). *See also* 16 U.S.C. § 1553(b)(1)(A). The best available science standard is "intended to remove from the process of listing or delisting of species any factor not related to the biological status

of the species." *N.M. Cattle Growers v. U.S. Fish & Wildlife Service*, 248 F.3d 1277, 1284-85 (10th Cir. 2001) (*quoting* H.R. Rep. No. 97-567, pt. 1 at 29 (1982)); *see also* H.R. Conf. Rep. No. 835, 97th Cong. 2d Sess. 19-20 (1982) (the limitations on the factors the Service may consider in making listing decisions were intended to "ensure that decisions . . . pertaining to listing . . . are based solely upon biological criteria and to prevent nonbiological considerations from affecting such decisions."). The Service's previous attempt to remove ESA protections from GYE grizzly bears was vacated by federal courts pursuant to these standards in 2009 and 2011. *Greater Yellowstone Coal. v. Servheen*, 672 F. Supp.2d 1105 (D. Mont. 2009); *aff'd in relevant part by Greater Yellowstone Coal. v. Servheen*, 665 F.3d 1015 (9th Cir. 2011).

Relevant here, the term "species" includes a "distinct population segment" ("DPS"). 16 U.S.C. § 1532(16). While that term is not defined by Congress, the Service has adopted a policy that defines a DPS (61 Fed. Reg. 4722 (February 7, 1996)), which requires that two elements be considered when identifying a DPS: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs;[1] and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.[2] The structure, legislative history, and purpose of the ESA demonstrate that the agency may not designate a DPS only for the purpose of delisting an already-protected vertebrate population that is listed at a higher taxonomic classification – rather the DPS tool is designed to proactively protect a particular population in order to stave off threats to a species or subspecies as a whole.

II. NOTICE OF VIOLATIONS

a. Unlawful and Arbitrary Designation of Distinct Population Segment

[1] A population segment may be considered discrete if it satisfies one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

[2] If a population segment is considered discrete, its biological and ecological significance is then considered based on the following factors:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon.

The Final Rule designates the GYE grizzly bear population as a DPS at the same time as, and for the sole purpose of, *removing* – rather than granting – listed status under the ESA. 82 Fed. Reg. 30517 (June 30, 2017). This directly contravenes the intent of Congress when it amended the ESA to add the DPS as a conservation tool in 1978. 16 U.S.C. § 1532(16) (definition of "species" amended to include DPS). The legislative history of this amendment makes plain that Congress contemplated the DPS tool as being used exclusively to provide ESA protections to discrete and particularly imperiled populations, and never discussed the tool in terms of *removing* protections. *See, e.g.*, S. Rep. No. 96-151, at 6-7 (1979).

Federal courts have routinely chastised the Service for the very same ESA violation it has committed here, most recently in December 2014. *Humane Soc'y of the United States v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. 2014) (latest in a series of federal cases vacating FWS attempts to designate gray wolf DPS' for the purpose of delisting or downlisting) (hereinafter "*HSUS v. Jewell*"); *see also Humane Soc'y of U.S. v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008); *Defenders of Wildlife v. Sec'y, U.S. Dep't of Interior*, 354 F. Supp. 2d 1156 (D. Or. 2005); *Nat'l Wildlife Fed'n v. Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005). As the ESA's legislative history and more than a decade of litigation on the issue have made abundantly clear, the ESA does not allow FWS to designate a DPS for the purpose of removing ESA protections. *See HSUS v. Jewell*, 76 F. Supp. 3d at 112 ("[A]fter more than a decade of rulemaking, delisting, litigation, vacatur by District Courts, and relisting . . ., the time has come to resolve this long-running dispute . . . . [T]he creation or initial designation of a DPS operates as a one-way ratchet to provide ESA protections to the covered vertebrates.").

Carving out the designated GYE DPS also has the illegal effect of functionally revising the previously existing listing status of grizzly bears in the continental United States, creating a "remnant" listing that is not itself a legally listable entity under the plain language of the ESA. 16 U.S.C. § 1532(16). The Service cannot effect this change without resolving the status of the entire listed entity through the procedures specified in Section 4 of the ESA.

In addition to illegally using the DPS tool to designate a population of an already-listed entity for delisting, the Service separately committed legal error in its arbitrary and capricious definition of the particular boundaries of the GYE DPS created by the Final Rule. *See* Figure 1, 82 Fed. Reg. 30504 (June 30, 2017). The designated DPS includes an area currently occupied by grizzly bears, surrounded by a wide moat of what the Service erroneously deems "unsuitable habitat" – in fact,

more than half of the total area of the DPS lies within this allegedly uninhabitable zone. But the administrative record contains ample evidence that grizzly bears increasingly occupy this "unsuitable habitat" and the DPS boundary selected by the Service is arbitrarily based on geographic, rather than biologic, factors. Thus, the Final Rule arbitrarily fails to justify its decision to define the DPS by the identified land area. Indeed, the DPS boundary chosen – inside of which grizzly bears allegedly no longer suffer from any of the statutory threats analysis – contradicts the Service's own position that the area cannot be part of the range of the population due to its unsuitability. 82 Fed. Reg. 30556-57 (June 30, 2017). By the Service's own assumption, there is no legally adequate basis for including this area of "unsuitable habitat" within the DPS boundary.

The Demographic Monitoring Area ("DMA")—an area of the DPS including the central Primary Conservation Area ("PCA") and core grizzly bear habitat surrounding it—is the only portion of the DPS where state wildlife agencies in Wyoming, Montana, and Idaho will monitor these bears post-delisting. Outside of the DMA, bears will not be counted toward population objectives or discretionary mortality limits and will, as a result, be subjected to potentially unmitigated persecution. Yet, these outwardly dispersing individuals are vital for providing connections between GYE grizzly bears and other ecosystems, maintaining genetic diversity, and preventing genetic drift and inbreeding depression. In effect, the Final Rule draws two concentric circles around the PCA – the DMA, where bears will be subject to unacceptably high lethal management; and the zone outside the DMA but within the DPS, where no limits on take apply. These twin lethal perimeters will function to lock grizzly bears inside the National Parks – the only area where they will be protected from direct human persecution – and will foreclose the possibility of further dispersal.

b. Evaluation of Listing Factors

Even if the GYE DPS created by the Final Rule were valid, the Service nevertheless violated the ESA and Administrative Procedure Act, 5 U.S.C. § 706, by delisting GYE grizzly bears even though the best available science does *not* "indicate that the population is no longer threatened." 50 C.F.R. § 424.11(d)(2). Rather, application of the best available science to the five listing factors in Section 4(a)(1) – the continued existence of *any one* of which suffices to mandate continued ESA protection – requires that GYE grizzly bears remain listed as threatened. *See Sw. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 60 (D.C. Cir. 2000) (listing required – and delisting prohibited – if "*any* of § 1533(a)(1)'s five factors are sufficiently implicated") (emphasis added).

Declining Food Sources. Essential to the continued existence of imperiled species is a habitat that includes adequate food sources. The Final Rule fails to adequately consider the continued threat to GYE grizzly bears posed by the degradation of its habitat through a decline in key food sources including cutthroat trout and – most importantly – whitebark pine. 82 Fed. Reg 30536-40 (June 30, 2017). These are the very grounds that resulted in the Service's *prior* delisting rule's vacatur by federal courts in 2009 and 2011 under factors 4(a)(1)(A) and (E) of the Act. *Greater Yellowstone Coal. v. Servheen*, 672 F. Supp.2d 1105 (D. Mont. 2009); *aff'd in relevant part by Greater Yellowstone Coal. v. Servheen*, 665 F.3d 1015 (9th Cir. 2011). These flaws have not been remedied in the Final Rule. Instead, the Final Rule misinterprets a perceived shift toward non-staple food sources as evidence of grizzly bears' capacity to adapt when, in fact, reliance on these new food sources puts GYE grizzly bears at greater risk than ever. *See* Attachment A. The direct and indirect effects of the loss of food resources pose novel threats to the persistence of GYE grizzly bears including increasing human- and livestock-related conflict resulting from a trend toward compensatory reliance on meat, and vulnerability to the likely crash in army cutworm moth supply. The Final Rule fails to adequately consider these effects, instead arbitrarily relying on a small subset of studies that identify the shift in diet necessitated by whitebark pine decline without discussing its dangerous consequences. Even to the extent that there is any uncertainty about the effects of the loss of these food sources on GYE grizzly bear persistence, the ESA requires that protections be maintained – not removed. *See, e.g., Natural Resources Defense Council v. Pritzker*, 62 F. Supp.3d 969, 1021 (N.D. Cal. 2014) ("To the extent that there is any uncertainty as to what constitutes the best available scientific information, Congress intended 'to give the benefit of the doubt to the species.'") (*quoting* H.R. Conf. Rep. No. 96–697, 1st Sess. 12, reprinted in 1979 U.S.C.C.A.N. 2572, 2576).

Second, the Final Rule failed to apply its own policy for evaluating threats to a species' survival within a significant portion of its range ("SPR") in the context of this factor. Even though it acknowledges a well-documented decline in these staple food sources concentrated within the PCA – the core of the proposed DPS (*see* Figure 1, 82 Fed. Reg. 30504 (June 30, 2017)) – the Final Rule does not analyze the PCA as an SPR of the proposed DPS. This contradicts the Service's SPR Policy (79 Fed. Reg, 37577 (July 1, 2014)), which requires a separate listing factors analysis for portions of the range that provide a "contribution to the viability of the species is so important that, without the 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." 82 Fed. Reg. 30632 (June 30, 2017). The PCA plainly qualifies as an

SPR under this definition, yet the Final Rule failed to separately address listing factors within the PCA – where declining food sources, especially whitebark pine and cutthroat – present the most dire threat.

Inadequacy of Existing Regulatory Mechanisms. The ESA prohibits delisting a native species unless there are adequate, existing state regulatory mechanisms in place to protect the species from becoming in danger of extinction. 16 U.S.C. § 1533(a)(1)(D). The proposed rule preceding the Final Rule stated unequivocally that the "regulatory mechanism[s]…that would govern potential hunting seasons must be in place by law and regulation in each State for delisting to occur," in a form that is "legally binding" and "enforceable." 81 Fed. Reg. 13173, 13210-11 (March 11, 2016) ("Proposed Rule").[3] It further provided that if any of the three states failed to promulgate binding regulations implementing each of five enumerated post-delisting protections, "delisting could not occur." *Id.* at 13204. Seven months later, the Service issued a supplemental notice that identified and sought public comment on state policies adopted in the intervening months, reaffirming "that regulatory mechanisms containing these provisions must be in place in each State for delisting to occur because…[t]he ESA requires the Service to consider existing regulatory mechanisms when making listing determinations." 81 Fed. Reg. 61658, 61659 (Sept. 7, 2016) ("Supplemental Notice"); *see also* Attachment B (The HSUS' comment on Supplemental Notice, identifying major flaws in each state regulatory mechanism).

The Final Rule arbitrarily reverses its position on the importance of these binding state protections, instead asserting without explanation that the binding commitments it identified in both public notices are no longer necessary for the ongoing conservation of GYE grizzly bears. This violates the Administrative Procedure Act's prohibition on unexplained reversal of agency policy. *See, e.g., State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983); *Alpharma, Inc. v. Leavitt,* 460 F.3d 1, 6 (D.C. Cir. 2006). And the underlying failure to address the major

[3] The Proposed Rule stated this requirement equally firmly in several other sections. *See* Proposed Rule at 13202 ("If State agencies decide to establish hunting seasons, the following regulatory mechanisms *must* be in place by law and regulation for delisting to occur."); 13211 ("These [state] regulations would constitute legally enforceable regulatory mechanisms and these regulations *must* be adopted and in place before the Service goes forward with a final delisting rule"), ("Legally enforceable regulatory mechanisms that would be in place if this proposed rule is finalized [include state laws and regulations listed in tables 1, 2, and 3]"), ("We conclude that the inadequacy of existing regulatory mechanisms will not constitute a threat to the GYE grizzly bear DPS…*if* the appropriate regulatory mechanisms are adopted and maintained by the States in enforceable regulations before this proposed rule becomes final.") (emphases added).

shortcomings with the state regulations that exist at the time of publication violates the Service's responsibility under Section 4(a)(1)(D) of the Act.

As The HSUS noted in its comments on the Proposed Rule and Supplemental Notice, and a letter to your offices dated June 20, 2017, the regulations, plans, and/or frameworks adopted by Idaho, Wyoming, and Montana (the "States") – including the Tri-State Memorandum of Agreement ("MOA") are for several reasons inadequate to protect grizzly bears from excessive mortality post-delisting, and will present a threat to the delisted DPS that the Service did not adequately address under Section 4(a)(1)(D). *See* Attachments A-C (The HSUS' comments on Proposed Rule, Supplemental Notice, and June 20 Letter). First, most of these mechanisms – including (by Wyoming's own admission) the Wyoming Grizzly Bear Management Plan and the MOA – as well as the Idaho Declaration and the Montana Grizzly Bear Regulation Framework are not sufficiently binding state regulations and cannot be relied upon as an accurate representation of how the States will manage grizzly bears post-delisting. In fact, rulemaking processes regarding grizzly management remain incomplete in all three states. Second, the legal status of three of these mechanisms – the MOA, Wyoming Grizzly Bear Management Plan, and Montana Grizzly Bear Regulation Framework – is in question because they are presently under judicial review in state courts in Montana and Wyoming, where they may be vacated for failure to comply with mandatory state rulemaking procedures. For these reasons, the Service erred on relying on any of these state actions as "existing regulatory mechanisms" for the purpose of Section 4(a)(1)(D). *See Colo. River Cutthroat Trout v. Salazar*, 898 F. Supp. 2d 191, 208 (D.D.C. 2012) ("FWS cannot rely on promised and unenforceable conservation agreements in evaluating existing regulatory mechanisms") (internal citation omitted); *In re Polar Bear ESA Listing & 4(d) Rule Litig.*, 794 F. Supp. 2d 65, 103 (D.D.C. 2011) ("voluntary agreements" are not "regulatory mechanisms"); *Or. Nat. Res. Council v. Daley*, 6 F.Supp. 2d 1139, 1155 (D. Or. 1998) ("regulatory mechanism" must be legally binding and include "some method of enforcing compliance").

Separate from their unenforceability and possible vacatur, the state regulatory frameworks relied on in the Final Rule fails as a matter of substance to meet the Section 4(a)(1)(D) criterion for delisting. The level of recreational hunting allowed by the MOA and state plans would prove devastating to GYE grizzly bears. The Final Rule did not adequately consider the best available science regarding to the super-additive and multiplicative effects of trophy hunting on this fragile population, including the increase in intraspecific mortality, disruption in social dynamics, increase in human-bear conflicts, and decline in genetic fitness resulting

from trophy hunting. Nor did it address the effect that trophy hunting on state-controlled land would have even on grizzly bears in National Parks or otherwise protected on federal land within the PCA.

Finally, even if the mechanisms discussed above *were* adequate, the Final Rule concedes that they apply *only* within the Demographic Monitoring Area ("DMA"), the area outside the PCA where grizzly bears will be monitored under the Final Conservation Strategy – which covers less than half of the designated DPS. It does not identify any concrete state regulations or policies in place *outside* the DMA, where States have made no commitments of any kind and will be free to allow any amount of direct or indirect mortality. The failure to address this deficiency – which will threaten the ability of grizzly bears to expand their range outside of Yellowstone, secure connectivity with other populations, and obtain food sources as staples within the PCA continue to decline – is arbitrary and a violation of Section 4(a)(1)(D) (must consider "inadequacy of existing regulatory mechanisms" in delisting analysis).

Human-Caused Mortality. The ESA prohibits delisting a species that is threatened with extinction through overutilization for commercial and recreational purposes or through other natural or manmade factors affecting its continued existence. 16 U.S.C. § 1533(a)(1)(B), (E). The Final Rule does not apply the best available science to its analysis of the greatest cause of grizzly bear mortality in the GYE: human-caused deaths, which consistently account for more than 60% of all recorded deaths in the ecosystem. 82 Fed. Reg. 30527 (June 30, 2017). The Final Rule fails to supply an evidentiary basis for its conclusion that human-caused mortality will remain flat post-delisting, despite ample record evidence that human caused mortality overall, and specifically poaching, accidental killings, and conflict removals related to livestock depredation, have been increasing to record levels in recent years – likely as a result of bears' shift to other food sources in the face of whitebark pine decline. In sum, this is a threat that the best available science shows has not been ameliorated – and is, in fact, getting worse. It will only become more dire upon delisting, because Section 9's protections against human-caused mortality will no longer be in place. The Final Rule's failure to adequately address this threat violates its obligation under Section 4(a)(1)(E).

Climate Change. The Service considers climate change impacts on a species as part of its analysis of "other natural or manmade factors affecting the survival of a species" under ESA Section 4(a)(1)(E). 82 Fed. Reg. 30524, 30541 (June 30, 2017). Here, the best available science shows that climate change uniquely threatens GYE

grizzly bears due to the climate-sensitivity of key food sources. Yet the Final Rule fails, in violation of Section 4(a)(1)(E), to address this ongoing and increasingly dire threat, instead relying on generic and out of date studies that do not address threats specific to the GYE ecosystem. *See Greater Yellowstone Coalition v. Servheen*, 665 F.3d at 1025-26 (climate change considered under ESA threats analysis); *Nat. Res. Def. Council v. Kempthorne,* 506 F. Supp. 2d 322, 367 (E.D. Cal. 2007) (same); *see also Natural Resources Defense Council v. Pritzker*, 62 F. Supp.3d at 1021 (uncertainty regarding threats must be resolved in favor of listing). Furthermore, the Final Rule will only magnify the threat posed to GYE grizzly bears identified by the best available science, because key food sources within the PCA will continue to decline, requiring migration and colonization of areas outside PCA. The Final Rule will expose these bears to trophy hunting, human conflicts, and other mortality sources in less-regulated parts of the DPS as the climate-induced need to migrate beyond the PCA becomes more important over time.

c. Procedural Violations

Finally, the Final Rule deviates substantially from the Proposed Rule, containing dramatic changes to core provisions that were not opened to public comment and are not logically connected to the content of the Proposed Rule. For instance, the Final Conservation Strategy, referred to throughout the Final Rule as the bedrock framework for post-delisting grizzly management and heavily relied upon in the Service's evaluation of *every* listing factor in the Final Rule, was not published or adopted until December 2016 – *after* the close of comments on both the Proposed Rule and the Supplemental Notice. But the Final Conservation Strategy contains major differences from the Draft Conservation Strategy on such fundamental issues as the use of lethal control as a response to bear-human conflicts, and commitments to connectivity between the GYE ecosystem and other grizzly bear populations.

Additionally, as described in detail in section (b) above, the Final Rule deviates wildly from both the Proposed Rule and the Supplemental Notice regarding the regulatory mechanisms required to be put in place by the states before delisting could occur. Where the Proposed Rule and Supplemental Notice stated that particular protections must have been "in place by law and regulation in each State for delisting to occur," 81 Fed. Reg. at 13210-11, the Final Rule makes no mention of this approach. This massive reversal in policy – encapsulated by the Final Rule's complete abandonment of the detailed 5-factor chart that was central to the Service's Section 4(a)(1)(D) analysis in both prior notices (*see* 81 Fed. Reg. 61660) –

should have been, but was not, subject to additional notice and comment because it is not a foreseeable or logical outgrowth from those prior documents.

The Administrative Procedure Act forbids the adoption of final rules that contain such significant changes unless supplemental notice and opportunity to comment is provided. 5 U.S.C. § 706; *Mid Continent Nail Corp. v. United States*, 846 F.3d 1364, 1374 (Fed. Cir. 2017) (applying "logical outgrowth" doctrine to vacate final rule that significantly deviated from proposed rule without notice); *Envtl. Integrity Project v. E.P.A.*, 425 F.3d 992, 996 (D.C. Cir. 2005) (same). But no such opportunity for comment was made available here – an especially significant failure because the Final Rule was adopted more than sixteen months after the publication of the Proposed Rule, and more than one year after the close of public comments on the Proposed Rule, giving the Service ample time to solicit the legally required public comment on these changes.

III. CONCLUSION

For the reasons stated above, the Government Parties have committed multiple violations of the ESA, its implementing regulations, and the APA by adopting the Final Rule. If these violations are not remedied by withdrawing the rule and restoring threatened status to grizzly bears in the GYE within sixty (60) days, The Humane Society of the United States and the Fund for Animals intend to pursue all available remedies in federal court.

Sincerely,

Anna Frostic (D.C. Bar No. 977732)
Senior Attorney, Wildlife Litigation
The Humane Society of the United States
1255 23rd Street NW, Suite 450
Washington, DC 20037

Nicholas Arrivo (Cal. Bar No. 296173)
Staff Attorney
The Humane Society of the United States
1255 23rd St NW, Suite 450
Washington, DC 20037

cc: Dr. Hilary Cooley, Coordinator
Grizzly Bear Recovery Program
U.S. Fish and Wildlife Service
University Hall, Room 309
Missoula, MT 59812
Hilary_Cooley@fws.gov