

**Testimony of Stephen Guertin, Deputy Director for Policy, U.S. Fish and Wildlife Service,
Department of the Interior, Before the House Committee on Natural Resources,
Subcommittee on Water, Wildlife, and Fisheries**

On

**H.R. 764, Trust the Science Act; H.R. 1245, Grizzly Bear State Management Act of 2023;
and H.R. 1419, Comprehensive Grizzly Bear Management Act of 2023**

March 23, 2023

Introduction

Good morning, Subcommittee Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. I am Stephen Guertin, Deputy Director for Policy for the U.S. Fish and Wildlife Service (Service) within the Department of the Interior (Department). I appreciate the opportunity to testify before you today on three bills related to the Endangered Species Act (ESA).

The Service's mission is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. For more than 150 years, the Service has collaborated with partners across the country and around the world to work to fulfill this mission. To conserve our Nation's natural resources, including threatened and endangered species, migratory birds, certain marine mammals, and certain fish, the Service administers and enforces an array of environmental laws enacted by the Congress, including the National Wildlife Refuge System Administration Act, Migratory Bird Treaty Act, Lacey Act, and ESA. These statutes are the foundation of the Service's mission, and they mandate and guide our work on behalf of the American people.

The ESA, which has an important nexus to the legislation being considered in today's hearing, turns 50 years old this year. The ESA is a bedrock conservation law that plays a critical role in preventing the extinction of imperiled species, promotes the recovery of wildlife, and helps conserve the habitats upon which they depend. In 1988, the late Congressman John Dingell, a sponsor of the original ESA, wrote the following about the passage of the law in 1973:

The goal Congress set then was unparalleled in all of history. Our country resolved to put an end to the decades – indeed, centuries – of neglect that had resulted in the extinction of the passenger pigeon and the Carolina parakeet, and the near extinction of the bison and many other species with which we share this great land. If it were possible to avoid causing the extinction of another species, we resolved to do exactly that... When Congress passed the Endangered Species Act, it set a clear public policy that we would not be indifferent to the destruction of nature's bounty.¹

Congressman Dingell's statement remains just as powerful and relevant today.

¹ Rohlf, Daniel J. "Forward." *The Endangered Species Act: A Guide to Its Protections and Implementation*. Stanford Environmental Law Society, 1989, pp.1.

The ESA has been highly effective in many respects. It is credited with saving a remarkable 99 percent of listed species from extinction. It has facilitated proactive conservation of imperiled species before the need to list them under the law. And it has also laid the foundation for recovery of listed species. For most threatened and endangered species, recovery is a long process, requiring coordinated efforts and commitments from many stakeholders sustained for many years. Thus far, more than 100 species of plants and animals have been delisted based on recovery or reclassified from endangered to threatened based on improved conservation status. Many of these successes are due to coordinated efforts and collaboration with partners. For example, in January 2023, through a partnership with the Department of Defense, the Service delisted the San Clemente Bell's sparrow and four San Clemente Island plant species. Other examples of recovered and delisted species include: the snail darter (southeastern fish); Monito gecko (reptile in Puerto Rico); Louisiana black bear; brown pelican (southeastern states); Oregon chub (fish); Columbian white-tailed deer (Oregon); Aleutian Canada goose (Alaska and northwestern states); Kirtland's warbler (upper midwestern songbird); interior least tern (spans 18 states in its migration from Texas to Montana); Virginia northern flying squirrel; Delmarva Peninsula fox squirrel; Hawaiian hawk, and, in the lower 48 states, the bald eagle. Just last month, the Service published a proposed rule to delist the wood stork, a large wading bird that inhabits a number of southeastern states. Hundreds of additional species are stable or improving thanks to the collaborative actions of Federal agencies, State and local governments, Tribes, conservation organizations, sportsmen and women, private landowners, and other private citizens.

The Service has developed a number of programs that encourage voluntary conservation of listed species and declining species, while also providing regulatory predictability to landowners. These programs include Safe Harbor Agreements, Voluntary Candidate Conservation Agreements, and Candidate Conservation Agreements with Assurances. Removing identified threats to a declining species can head off the need to list the species. The Service recently proposed modifications to permitting under section 10 of the ESA to encourage and facilitate more participation in these programs.

The ESA enables the protection and restoration of a wide array of threatened and endangered species, from the smallest, most unassuming plants to keystone predators. When it comes to large carnivores like grizzly bears or wolves, coordination across all levels of government, Tribes, and stakeholders becomes even more important to our shared success. Working towards recovery of these apex species brings challenges, but we have also seen substantial progress. The Service is committed to recovery of these species and engaging with States, Tribes, and other stakeholders to ensure regulatory mechanisms and conservation tools are in place to protect the species into the future. We continue to work with our many partners to find collaborative solutions to work towards effective coexistence and help address human-wildlife conflicts.

We appreciate the Subcommittee's interest in the ESA and the Service's work to implement the law. We offer the following comments on the three ESA-related bills under consideration today and look forward to discussing our views with the Subcommittee.

H.R. 764, Trust the Science Act

H.R. 764 would direct the Secretary of the Interior to reissue a final rule delisting the gray wolf within 60 days of enactment of the bill. The legislation would also exclude reissuance of the final rule from judicial review.

Since 2007, the Service has published several different rules to delist different populations of gray wolves due to recovery. Prior delisting rules have considered populations in the Western Great Lakes, Northern Rocky Mountains (NRM), and contiguous United States. These rules have been litigated, and most were vacated by courts. Wolves in most of the Northern Rocky Mountains (Montana, Idaho, Northern Utah, Eastern Washington, and Eastern Oregon) have been delisted due to recovery and under State and Tribal management since 2011, and in Wyoming since 2017. In 2020, the Service published a final rule delisting gray wolves in the remaining lower 48 states and Mexico. The rule was litigated, then vacated by the U.S. District Court for the Northern District of California in February 2022. Following that ruling, gray wolves outside the NRM are once again protected under the ESA. In January 2023, the Court temporarily stayed appeals on this decision until February 2024. During this time, the Service is updating the status review for the gray wolf throughout the lower 48 states, commencing a stakeholder engagement effort, and preparing a new proposed rule concerning the listing status of gray wolves in the lower 48 states. The Service intends to submit this proposed rule to the Office of the Federal Register in February 2024.

Separately, over the last couple of years, the States of Montana and Idaho passed laws with the objective of reducing wolf populations through hunting, trapping, and other means. In 2021, the Service received two petitions to list gray wolves in the Northern Rocky Mountains and Western United States, and in September 2021, the Service published substantial 90-day findings on the petitions. The Service is currently conducting robust scientific analyses to determine if the petitioned actions are warranted.

The Service opposes H.R. 764. The Service is in the process of conducting two separate actions regarding the listing status of gray wolves in the Northern Rocky Mountains and Western United States, and in the lower 48 states. We are fulfilling our statutory responsibilities to utilize the best available scientific and commercial data in making these determinations and conducting these actions. We believe that the administrative rulemaking process prescribed by the ESA and the Administrative Procedure Act (APA), including public participation, is the best path for adding or removing species from the protections of the ESA. This legislation would circumvent that statutory process.

H.R. 1245, Grizzly Bear State Management Act of 2023

H.R. 1245 would direct the Secretary of the Interior to reissue a final rule within 180 days of enactment of the bill to delist the Greater Yellowstone Ecosystem (GYE) population of grizzly bears, without regard to any other provision of law that applies to the issuance of the final rule. This legislation would also prevent judicial review, both of the reissuance of the final rule and of the bill's language barring it.

The grizzly bear is currently listed as threatened under the ESA in the lower 48 states. In 2007 and 2017, the Service finalized rules to establish the GYE distinct population segment (DPS) and delist it due to recovery. Courts vacated both rules, reinstating ESA protections.

The States of Wyoming, Montana, and Idaho separately petitioned the Service to delist grizzly bears in 2022, with each petition pertaining to a different set of grizzly bear populations in the United States. The Service announced 90-day findings on these petitions in February 2023. The findings included substantial 90-day findings for Wyoming's petition regarding the GYE and Montana's petition regarding the Northern Continental Divide Ecosystem (NCDE), and a not-substantial 90-day finding for the Idaho petition, which pertained to the entirety of the lower 48 states. The Service has initiated a comprehensive status review of the grizzly bear in the GYE and NCDE based on the best scientific and commercial data available to inform 12-month findings on whether the removal of ESA protections for grizzly bears in either of these ecosystems are warranted. If those findings result in proposing one or more DPS for delisting, the Service will consider those in the context of the ongoing recovery for the rest of the population in the larger listed entity. In those cases, removing ESA protections would then be initiated through a separate rulemaking process, with additional public notice and comment.

Grizzly bear recovery and conservation is complex, requiring coordination among Federal agencies, States, Tribes, and stakeholders. The Service appreciates the States' historical commitments and partnerships to recover grizzly bears, particularly through conflict-prevention efforts that have been effective in reducing human-caused mortality. We will fully evaluate all potential threats to the bears, and associated State regulatory mechanisms, in detail when we conduct the status assessments and make the 12-month findings.

The Service opposes H.R. 1245. The Service is currently conducting a status review to inform a 12-month finding on whether the removal of ESA protections for grizzly bears in the GYE is warranted, and is carefully fulfilling our statutory responsibilities to follow the best scientific and commercial data available in making this determination. This legislation would circumvent the rulemaking process under the ESA, and discount the integral scientific review process currently underway. We believe that the administrative process prescribed by the ESA and the APA, including public participation, is the best path for adding or removing species from the protections of the ESA.

H.R. 1419, Comprehensive Grizzly Bear Management Act of 2023

H.R. 1419 would direct the Secretary of the Interior to issue a final rule within 180 days of enactment of the bill that would delist the NCDE population of grizzly bears, without regard to any other provision of law that applies to the issuance of such rule. The legislation would also bar both the issuance of the final rule and that section of the bill from judicial review.

As noted in our testimony regarding H.R. 1245, over the last several years, the Service has taken a series of actions regarding grizzly bear conservation and the status of specific DPSs. In 2022, the States of Montana, Wyoming, and Idaho separately petitioned the Service to delist different grizzly bear populations. The Service's February 2023 announcement of our 90-day findings on these petitions included substantial findings for Montana's petition regarding the NCDE. The Service has initiated a comprehensive status review of the grizzly bear in the NCDE based on the best available scientific and commercial data. The status review will inform 12-month findings on whether the removal of ESA protections for grizzly bears in either the NCDE or GYE ecosystems is warranted. If those findings result in proposing one or more DPSs for delisting, the

Service will consider those in the context of the ongoing recovery for the rest of the population in the larger listed entity. If that is the case, removing ESA protections would then be initiated through a separate rulemaking process, with additional public notice and comment.

Grizzly bear recovery and conservation is complex and requires substantial coordination among Federal agencies, States, Tribes, and stakeholders, and the Service appreciates past collaboration on this work. The impact of recently enacted State laws and regulations affecting these two grizzly bear populations needs to be evaluated. We will fully evaluate all potential threats, and associated state regulatory mechanisms, in detail when we conduct the status assessments and make the 12-month findings.

The Service opposes H.R. 1419. Delisting of the NCDE has never been proposed or finalized by the Service. Under the ESA, if the Service were to determine that delisting is warranted, the subsequent regulatory process would include a proposed rule, with an opportunity for public comment, followed by a final rule or a withdrawal of the proposed rule. Further, as stated previously, the Service is currently conducting a status review of NCDE and GYE DPSs to inform 12-month findings on whether the removal of ESA protections for grizzly bears in DPS is warranted. We are carefully fulfilling our legal duties to follow the best available scientific and commercial data in making this determination. H.R. 1419 would circumvent existing statutory, regulatory, and scientific processes, including the agency's thorough, science-based assessment on grizzly bears that is currently underway. Under the ESA, it is the responsibility of the Service, as the federal agency with primary authority and scientific expertise regarding endangered and threatened species, to make scientific biological assessments and decisions. We believe that the administrative process prescribed by the ESA and APA, including public participation, is the best path for adding or removing species from the protections of the ESA.

Conclusion

We appreciate the Subcommittee's interest in the ESA and the Service's work to implement this critical conservation law. Although we oppose the three bills being considered today, we support the overall goal of recovering wolves and grizzly bears. We are committed to continuing our work in partnership with all stakeholders towards that goal.

Wildlife, fish, plants, and their habitats face many stressors. Conserving imperiled species through the ESA helps alleviate some of the stressors because of the broad benefits to other wildlife that depend on the same ecosystems. Similarly, conservation work under the ESA benefits people and the economy. Healthy ecosystems support hunting, fishing, outdoor recreation, and provide clean air and water.

We look forward to continued communication with the Subcommittee regarding the recovery process and status for wolves and grizzly bears, and all aspects of the Service's work.

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