



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R6-ES-2022-0028; FF09E21000 FXES1111090FEDR 223]

### Endangered and Threatened Wildlife and Plants; 90-Day Finding for Three Petitions To List the Yellowstone Bison

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notification of petition findings and initiation of status reviews.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on three petitions to add a distinct population segment of the Plains bison (*Bison bison bison*) in and around Yellowstone National Park (Yellowstone bison) to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a status review to determine whether the petitioned actions are warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding the Yellowstone bison and factors that may affect its status. Based on the status review, we will issue a 12-month petition finding, which will address whether or not the petitioned action is warranted, in accordance with the Act.

**DATES:** The findings announced in this document were made on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. As we commence our status review, we seek any new information concerning the status of, or threats to, the Yellowstone bison, or its habitats. Any information we receive during the course of our status review will be considered.

**ADDRESSES:** *Supporting documents:* A summary of the basis for the petition findings contained in this document is available on <https://www.regulations.gov> in Docket No. FWS-R6-ES-2022-0028. In addition, this supporting information is available by contacting the person specified in **FOR FURTHER INFORMATION CONTACT**.

*Status reviews:* If you have scientific or commercial data or other information concerning the status of, or threats to, the Yellowstone bison, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R6-ES-2022-0028, which is the docket number for this action. Then, click on the “Search” button. After finding the correct document, you may submit information by clicking on “Comment.” If your information will fit in the provided comment box, please use this feature of <https://www.regulations.gov>, as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R6-ES-2022-0028, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us.

**FOR FURTHER INFORMATION CONTACT:** Tyler Abbott, Field Supervisor, Wyoming Ecological Services Field Office, 307–757–3707, [tyler\\_abbott@fws.gov](mailto:tyler_abbott@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the

United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (i.e., “list” a species), remove a species from the Lists (i.e., “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (i.e., “reclassify” a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the *Federal Register*.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)).

The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

- (c) Disease or predation (Factor C);
- (d) The inadequacy of existing regulatory mechanisms (Factor D); and
- (e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after

conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248, July 27, 2016).

## **Summary of Petition Findings**

### *Evaluation of Three Petitions To List the Yellowstone Bison*

All three petitions request listing of a distinct population segment (DPS) for the Yellowstone bison. Bison (*Bison bison*) is a recognized species by the Integrated Taxonomic Information System. The division of bison into two subspecies (Plains bison [*Bison bison bison*] and wood bison [*Bison bison athabasca*]) has been the subject of debate among experts; however, we recognize Plains bison as a valid subspecies, following the American Society of Mammalogists and the American Bison Specialist Group of the International Union for Conservation of Nature.

Species and Range: Plains bison in and around Yellowstone National Park (YNP)

Historical range: approximately 7,720 square miles (mi<sup>2</sup>; 20,000 square kilometers [km<sup>2</sup>]) in and around YNP

Current range: approximately 1,226 mi<sup>2</sup> (3,175 km<sup>2</sup>) in and around YNP

All three petitions identify Yellowstone bison as a potential DPS of the Plains bison. Two of the three petitions identify two breeding herds of Yellowstone bison as separate potential DPSs.

### **Petition History**

On November 14, 2014, we received a petition (dated November 13, 2014) from Western Watersheds Project and Buffalo Field Campaign, requesting that Plains bison in and around YNP

(Yellowstone bison) be listed as threatened or endangered under the Act (first petition). The first petition clearly identified itself as a petition, and the petitioner included the identification information required by 50 CFR 424.14(c). On March 2, 2015, we received a petition from James Horsley, who also requested that Yellowstone bison be listed as threatened or endangered under the Act (second petition). We published a single finding for both petitions, concluding that the petitions did not provide substantial scientific or commercial information indicating that the petitioned action may be warranted (81 FR 1368, January 12, 2016). On September 26, 2016, petitioners from the first petition as well as a third party (Friends of Animals) brought suit under the Act and the Administrative Procedure Act (APA; 5 U.S.C. 551 et seq.) asserting that our determination was arbitrary and capricious. On January 31, 2018, the United States District Court for the District of Columbia (Court) remanded the finding to the Service to conduct a new 90-day finding.

On March 16, 2018, we received a new petition (dated February 28, 2018) from James Horsley; this third petition requested emergency listing for Yellowstone bison. The third petition clearly identified itself as a petition, and the petitioner included the identification information required by 50 CFR 424.14(c). The Act does not provide for petitions to emergency list; therefore, listing a species on an emergency basis is not a petitionable action under the Act. The question of when to list on an emergency basis is left to the discretion of the Service. If the Service determines that the standard for emergency listing in section 4(b)(7) of the Act is met, the Service may exercise that discretion to take an emergency listing action at any time. Consequently, we considered the third petition as a petition to list Yellowstone bison.

We published a single finding for the three petitions (the first and second petitions from the 90-day finding remanded on January 31, 2018, and the third petition received March 16, 2018), concluding that the petitions did not provide substantial scientific or commercial information indicating that the petitioned action may be warranted (84 FR 46927, September 6, 2019). On March 23, 2020, petitioners from the first petition as well as a third party (Friends of

Animals) brought suit under the Act and the APA asserting that our determination was arbitrary and capricious. On January 12, 2022, the Court again remanded the finding for the Service to conduct a new 90-day finding.

This finding addresses the three petitions from the 90-day finding remanded on January 12, 2022.

#### Evaluation of Information Summary and Finding

We reviewed the petitions, sources cited in the petitions, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors—as may be ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petitions and readily available information regarding range curtailment, we find that the petitioners present credible and substantial information that range curtailment (Factor A) may be a potential threat to the Yellowstone bison. The petitioners also provide credible information that management actions taken under the Interagency Bison Management Plan may curtail the species' available winter habitat through culling, hunting, hazing, and quarantine (Factor D). Therefore, we find that the petitions present substantial information indicating that one or more of the petitioned entities may warrant listing. The petitioners also presented information suggesting that overutilization (Factor B), disease (Factor C), and loss of genetic diversity due to culling (Factor E) may be threats to the Yellowstone bison. We will fully evaluate these and all other potential threats, as well as the validity of each DPS, in detail based on the best scientific and commercial data available when we conduct the status assessment and make the 12-month finding.

The basis for our finding on these petitions, and other information regarding our review of the petitions, can be found as an appendix at [https:// www.regulations.gov](https://www.regulations.gov) under Docket No. FWS-R6-ES-2022-0028 under the Supporting Documents section.

#### **Conclusion**

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that the petitions summarized above for the Yellowstone bison present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating a status review of the species to determine whether the actions are warranted under the Act. At the conclusion of the status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

### **Authors**

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

### **Authority**

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Martha Williams,**  
*Director,*  
*U.S. Fish and Wildlife Service.*

[FR Doc. 2022-12054 Filed: 6/3/2022 8:45 am; Publication Date: 6/6/2022]