

# Questions and Answers



## 90-day Finding on Petitions to List the Yellowstone

### Bison DPS

June 3, 2022

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#### **What is a 90-day finding? How does the petition process work?**

Petitions are formal requests to list a species as endangered or threatened under the Endangered Species Act (ESA). The ESA requires the U.S. Fish and Wildlife Service to make an initial finding within 90 days as to whether the petition includes “substantial information” indicating that a listing may be warranted. If a substantial finding is made, the next step is to conduct a status review and issue a further finding as to whether listing is warranted. [Learn more about the petition process.](#)

#### **What does this announcement mean for current bison management?**

This 90-day finding does not convey any protections under the Endangered Species Act. Current management will remain unchanged at this time. Authority to manage the species remains with state, Tribal, and land management authorities.

#### **How does this finding impact the National Park Service’s ongoing Environmental Impact Statement (EIS) on bison management in Yellowstone National Park?**

This action is a separate action from the National Park Service (NPS) EIS. However, any listing decision may be of interest to NPS as they go through the EIS process.

#### **What is a “Distinct Population Segment”?**

The ESA allows the listing or delisting of a distinct population segment (DPS) of vertebrate species (i.e., mammals, birds, fish, reptiles, and amphibians). A DPS is a portion of a species' or subspecies' population or range that is discrete from, and significant to, the species as a whole. A DPS listing is described in geographic terms instead of biologically.

#### **What did the Service conclude in their 90-day finding?**

The Service found that the petitioners present credible and substantial information that range curtailment may impact the Yellowstone bison due to loss of migration routes, lack of tolerance for bison outside Yellowstone National Park, and habitat loss. Petitioners also provided information suggesting that regulatory mechanisms (in the form of management actions intended to address disease provided in the Interagency Bison Management Plan),

overutilization, disease, and loss of genetic diversity may pose further threats. The Service will fully evaluate potential threats as part of the 12-month assessment.

**What are the next steps?**

The Service will conduct an in-depth status review and analysis using the best available science and information to arrive at a 12-month finding on whether listing is warranted. If listing is found to be warranted, the Service would then conduct a separate rulemaking process, with public notice and comment.

**Were the petitions evaluated for “emergency” listing?**

This finding addresses the petitions as formal requests to list the species as endangered or threatened under the ESA. One of the petitions (Horsley, 2018) requested that the Service conduct an emergency listing. Listing a species on an emergency basis is not a petitionable action under the ESA, and the question of whether to list on an emergency basis is left to the discretion of the Service. Based on our review of the available information, we do not believe that the bison is in need of emergency listing at this time.

**Didn’t the Service already issue a finding on these petitions? Why is this action occurring now?**

The Service previously published a single finding for three petitions (the first from Western Watersheds Project and Buffalo Field Campaign in 2014; the second from James Horsely in 2015, both originally remanded on January 31, 2018; and a third petition from Horsley in 2018), concluding that the petitions did not provide substantial scientific or commercial information indicating that the petitioned action may be warranted. On March 23, 2020, petitioners from the first petition as well as a third party (Friends of Animals) brought suit under the ESA and the Administrative Procedure Act asserting that our determination was arbitrary and capricious.

On January 12, 2022, the Court remanded the finding for the Service to conduct a new 90-day finding. The Court found that the Service “has continued to disregard the [Halbert study](#) without explaining why the study does not, at the very least, show that there is substantial disagreement among reasonable scientists regarding genetic differentiation between the herds” (Memorandum Opinion 2022, p. 18).

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