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LOCATIONS IN MONTANA, IDAHO & WYOMING

HEADQUARTERS
215 South Wallace Avenue
Bozeman, Montana 59715
406.586.1593

Public Comments Processing

Attn: Docket No. FWS-R6-ES-2016-0042

U.S. Fish and Wildlife Service, MS: BPHC,

5275 Leesburg Pike, Falls Church, VA 22041-3803

RE: Fish and Wildlife Service (FWS) Proposed Rule: Endangered and Threatened Wildlife and Plants: Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears from the Federal List of Endangered and Threatened Wildlife FWS-R6-ES-2016-0042

Submitted electronically at <https://www.regulations.gov>

May 10, 2016

Dear Director Ashe,

The following comments address the Proposed Delisting Rule, the Draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria and Draft 2016 Conservation Strategy, released on March 11th, 2016 for public review.¹ These comments are submitted on behalf of the Greater Yellowstone Coalition (GYC), which has offices in Idaho, Montana and Wyoming and has been working on grizzly bear conservation issues in the Greater Yellowstone Ecosystem (GYE) for over three decades.

GYC's mission is to work with people to protect the lands, waters and wildlife of the GYE, now and for future generations. GYC was founded in 1983 on a simple premise: An ecosystem will remain healthy and wild only if it is kept whole and we advocate for the idea that ecosystem level sustainability and science should guide the management of the region's public and private lands. This vast ecosystem

¹ United States Department of the Interior, Fish & Wildlife Service, Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears from the Federal List of Endangered and Threatened Wildlife, 81 Fed. Reg. 13174 (Mar. 11, 2016) <https://www.gpo.gov/fdsys/pkg/FR-2016-03-11/pdf/2016-05167.pdf>.

includes 20 million acres of wild country that includes Yellowstone and Grand Teton National Parks, parts of five national forests, five national wildlife refuges, and state and private lands in Wyoming, Idaho, and Montana.

GYC works to ensure that a thoughtful and holistic approach is taken to managing natural and wildlife resources in harmony with people and modern development. We work to shape a future where wildlife populations maintain their full diversity and vitality, where ecological processes function on public lands with minimal intervention, where exceptional recreational opportunities abound for visitors and residents alike, and where communities can enjoy a healthy and diversified economy. GYC is based in Bozeman, MT with offices in Wyoming and Idaho, and over 40,000 members and supporters from within the Northern Rockies and across the country.

The Service has invited Tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed action. Our comments are arranged into five separate sections within this document; 1) General Comments on Process and our goals for grizzly bear management within the ecosystem; 2) Concerns regarding the Proposed Delisting Rule; 3) Concerns regarding the draft 2016 Conservation Strategy; 4) Comments addressing the draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria for the Greater Yellowstone Ecosystem; and 5) Comments regarding State Management Plans. Additionally, we have provided Appendices of our previous comments: Appendix A: *Greater Yellowstone Coalition and Defenders of Wildlife comments on Proposed Forest Plan Amendment to integrate the Northern Continental Divide Ecosystem (NCDE) Grizzly Bear Conservation Strategy (GBCS) into the forest plans for the Helena, Kootenai, Lewis and Clark, and Lolo National Forests.*; Appendix B: *Greater Yellowstone Coalition's Comments on Wyoming's draft Wyoming Grizzly Bear Management released on March 15th* ; and Appendix C: *Greater Yellowstone Coalition (GYC) on the Grizzly Bear Management Plan for Southwestern Montana, Draft Programmatic Environmental Impact Statement (EIS).*

Greater Yellowstone Coalition has a 30+ year organizational history of work on grizzly bear conservation and management in the GYE. We have a strong interest in grizzly bear delisting and future management in the GYE. Our members and staff relish the opportunity to view grizzly bears and to experience the wild places that grizzly bears represent. Living and recreating in grizzly bear country requires an awareness of your surroundings, it requires changing human behavior and it heightens your senses and experiences in a unique way that is difficult to describe. Grizzly bears are simply different than other wildlife and require respect and humility. Our organization challenged an attempt in 2007 to remove protections for grizzly

bears in the GYE² under the Endangered Species Act³ (ESA) because of concerns over the future viability of grizzly bears.

We recognize the efforts on behalf of grizzly bears made by the Service, states, federal agencies, conservation groups and the communities of the Greater Yellowstone that have made grizzly bears a conservation success story. Today, we now have grizzly bears in places they haven't been in more than 80 years. We thank all of the federal and state wildlife managers, non-governmental organizations, and landowners who have contributed to this success. This success also highlights the effectiveness of the Endangered Species Act. After a thorough review of the released documents, we are concerned that the Service has proposed a delisting rule that risks undermining these successes. We offer the below comments to improve the process and the various flaws we have identified.

I. Flawed Process and General Comments on Proposed Action

a. Procedural Concerns

Unfortunately, the proposed action is deeply flawed in terms of the process of removing the very protections and coordinated efforts that have made this success possible. As written, this rule and the associated plans unravel decades of efforts, in a hasty attempt to transition to state management that appears uncoordinated between state and federal agencies and contains many flaws and inconsistencies that we highlight throughout these comments. We recommend that the Service halt this process until all of the necessary pieces are in place, including functional and enforceable regulatory mechanisms that will allow for the continued recovery and stability of the grizzly bear population.

The proposed rule is legally deficient under the ESA and the Administrative Procedures Act (APA).⁴ Despite assurances of maintenance of a stable population post-delisting, it is clear that post-delisting, the proposed rule allows for a managed population decline of the grizzly bear population based upon changes to the Conservation Strategy and State plans.

The Service can only make a reasonable decision about future threats to grizzly bears and adequate regulatory mechanisms once state plans are complete. It is confusing to the public and in violation of the APA, to request input on this process until it is clear how the population will be managed post-delisting by the states. Wyoming wants to assume authority on private land inholdings within park boundaries, in violation of federal law. Montana's plan doesn't commit to allowing separate bear populations to connect

² *Greater Yellowstone Coalition, Inc. v. Servheen*, 672 F. Supp. 2d 1105, 1125 n. 9 (D. Mont. 2009), 665 F.3d 1015, 1020 (9th Cir. 2011).

³ 16 U.S.C. § 1531, et seq

⁴ 5 U.S.C. 551(1), Pub.L. 79-404, 60 Stat. 237

with each other and expand into other existing recovery areas, in particular the Selway-Bitterroot Ecosystem. Idaho's plan hasn't been updated since 2002 and is missing key regulatory frameworks around mortality thresholds. The proposed action relies heavily upon state and federal plans that are currently unavailable, out-of-date or under review.

The proposed action does not address concerns raised by the National Park Service (NPS) publicly⁵ and other members of the Yellowstone Ecosystem Subcommittee (YES) of the Interagency Grizzly Bear Committee (IGBC). During the April 13-14, 2016 meetings, various committee members raised significant concerns around the proposed action and inconsistencies within the Conservation Strategy. The committee proposed convening subcommittee work groups that will meet during the summer and fall of 2016. It is irresponsible for the Service to forge ahead without agreement from these sister agencies who all play critical roles in managing grizzly bears and their habitat. The meeting notes and final dates of these work groups have yet to be released.⁶

b. Habitat Protections

Equally concerning is the fact that habitat protections are in a complete state of confusion. The proposed Forest Plan Amendments are outdated and inadequate for protecting the places where bears live today. These amendments must undergo public review and contain adequate protections for federal lands to sustain a stable population of bear. Grizzly bears now occupy approximately 44,624 sq. km (17,229 sq. mi)⁷ and the Primary Conservation Area (PCA), where habitat protections ensure continued secure habitat for grizzly bears, only comprises 23,853 sq. km (9,210 sq. mi),⁸ barely half of the currently occupied habitat. The proposed Forest Plan Amendments, only impact habitat within the PCA, and are inconsistent with current federal actions and planning direction.

Similarly, the National Forests in the GYE (Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Galatin-Custer and Shoshone National Forests) have an obligation to manage habitat that allows for sustainable populations of native species. Under the Conservation Strategy, it is suggested that through Forest Plan revisions, bears may be identified in the future as a "sensitive species."⁹ Currently, each of the above forests is in various stages of forest planning and the "sensitive species" designation no longer exists under current planning direction. In the 2012 Forest Planning Rule, the National Forests are directed to: "Provide habitat for plant and animal diversity and species conservation. The requirements are intended to keep common native species common, contribute to the recovery of threatened and

⁵ http://www.bozemandailychronicle.com/news/wildlife/agencies-raise-concerns-with-yellowstone-grizzly-delisting-plan/article_9065f16e-ad60-5459-9433-e6289634e7d5.html

⁶ <http://igbconline.org/yellowstone-subcommittee/>

⁷ *Id.* at 13191.

⁸ *Id.* at 13187.

⁹ *Id.* at 13198.

endangered species, conserve proposed and candidate species, and protect species of conservation concern.”¹⁰ Grizzly bears are an umbrella species and a conservation reliant species.. These factors should warrant designation and the accompanying protections as “species of conservation concern” within Forest Plan Amendments.

c. Economic Impacts

Similar to concerns raised by the NPS, we believe that grizzly bears in National Parks and adjacent to the Park Service units are worth more alive to the American public, than they are as a hunted species. Research on economic impacts from National Park Service planning, has been used to estimate the income and employment generated in the local economy due to visitation to public lands. These impacts result from the amount of money non-local visitors spend in the local economy on their trips, which provides a measure of the significance of a regional resource such as Yellowstone.¹¹ For instance, in 2012, non-local visitors to Yellowstone National Park spent over \$398 million, supporting 5,594 jobs in the local economy and generating more than \$164 million in labor income.¹² Researchers found that if bears were discouraged from roadways, spending in the local economy by Park visitors could decrease by about \$10.1 million, resulting in a loss of 155 jobs.¹³ It’s important to note that bears are not contained by park boundaries and management actions adjacent to Park Service units may change grizzly bear behavior and distribution within Park boundaries. Additionally, visitors to Yellowstone National Park are willing to pay around \$41 more in Park entrance fees to ensure that bears are allowed to remain along roads within the Park. The States and Service should consider these results in future funding discussions for grizzly bear management.

d. Funding

Maintaining a successful recovery for grizzly bears into the future is dependent on adequate funding for both the state and federal agencies involved. Inadequate post-delisting funding for monitoring of grizzly bears and their habitat, and management and prevention of human-bear conflicts is a threat to the long-term survival of grizzly bears. Because of this we ask the Service to incorporate the action items below into a future proposed delisting rule and conservation strategy to ensure long-term recovery for the Greater Yellowstone grizzly population.

¹⁰ 36 CFR 219.26 consistent with the 2012 Planning Rule (SCC, 12.52d-2b 2012 Planning Handbook p.36).

¹¹ Duffield, J, C. Neher and D. Patterson. 2006. Wolves and People in Yellowstone: Impacts on the Regional Economy.

¹² Cullinane, Thomas, C., C. Huber, and L. Koontz. 2015. 2014 National Park visitor spending effects: Economic contributions to local communities, states, and the Nation. Natural Resource Report NPS/NRSS/EQD/NRR—2015/947. National Park Service, Fort Collins, Colorado.

¹³ Richardson, Leslie, Tatjana Rosen, Kerry Gunther, and Chuck Schwartz. 2014. The economics of roadside bear viewing. *Journal of Environmental Management*. 140:102-110.

The Service has a responsibility to proactively address funding shortfalls before bears are delisted. We suggest that a mechanism/s be determined that would provide long-term secure funding for the monitoring and management of grizzly bears and their habitat post-delisting. It is our understanding that the Interagency Grizzly Bear Committee (IGBC) is currently working to set up a Grizzly Bear Conservation Fund through National Fish and Wildlife Foundation. We strongly encourage this approach but feel that other mechanisms may also be possible. There is also commitment by the conservation community and our Greater Yellowstone Coalition to 1) Support the implementation of a Grizzly Bear Conservation Fund, and; 2) seek new, long-term, funding sources that are attached to non-traditional users of wildlife, and; 3) continue funding projects that increase tolerance for grizzly bears and prevent bear-human conflicts from occurring.

e. Distinct Population Segment (DPS)

The Service must recognize the potential problems that would arise with respect to the remainder of the original grizzly bear listing if a Yellowstone DPS is designated and delisted. It is important for the Service to address this issue concurrently with the Yellowstone delisting proposal in a transparent way that outlines the Service's commitment to recovery of grizzly bears in the lower 48 states.

This delisting rule follows the same course that was attempted in 2007, and one that caught the attention of the courts. The courts raised cautions (*Greater Yellowstone Coalition, Inc. vs. Servheen*) that "[u]nder such an interpretation, the Service could simply remove virtually any species from the threatened and endangered list simply by designating it a DPS."

Similarly, it was determined that the Service's designation of a Distinct Population Segment (DPS) for purposes of delisting the Upper Great Lakes population of Gray Wolves was illegal (*Humane Society of the United States v. Jewell*). The USFWS has chosen to ignore this decision, which is being appealed, and attempts to follow the same flawed process for GYE grizzlies.

We ask the Service to publish an Advance Notice of Proposed Rulemaking, that explains how the Service will address the remainder of the grizzly bear listed unit, sets forth a timeline for initiation and completion of such action and solicits public comment on possible ways under which the grizzly bear could be reclassified. In particular, we are concerned that the proposed rule and conservation strategy must clearly articulate the regulatory mechanisms that will allow for connectivity of bears with the Northern Continental Divide (NCDE) populations and how bears will eventually be recovered in the Selway-Bitterroot Ecosystem. This would allow for linkage and connectivity between all populations of grizzly bears in one interconnected Northern-Rockies metapopulation.

f. Sport Hunting of Grizzly Bears

Greater Yellowstone Coalition recognizes that hunting is an acceptable management tool that is used to

manage thriving population of hunted species under the North American Model of Wildlife Management. In fact, many of our staff and members are avid hunters of upland birds, deer and elk. Unfortunately the proposed delisting rule and the insistence of the Service that States finalize frameworks governing sport hunting of grizzly bears has directed a spotlight on the center of one of the most controversial aspects of delisting – the possibility of future sport hunting.

To be clear GYC opposes sport hunting of grizzly bears. We also realize that this is the most manageable threat that bears face. In 2015 alone, 61 bears were killed from various human conflicts in the GYE without hunting, while under the protections of the ESA.¹⁴ We ask the USFWS to require a 5-year delay in the hunting of grizzly bears and eliminate discretionary hunting mortality within the PCA. There are sound biological reasons for prohibiting hunting within the PCA, such as ensuring that Criterion 2 goals of 16 of 18 BMU's occupied by females with young is met. Also, this area has relatively few conflicts and could be described as "source" habitat to ensure that other criteria are met, and would direct discretionary mortality only into areas with chronic conflict. The PCA is also described as having the habitat security to maintain a grizzly bear population within the Greater Yellowstone Ecosystem and potential hunting could quickly erode the security of this "secure habitat."

Additionally, grizzly bears are what is known as a "conservation reliant" species, in that they will perpetually require efforts to conserve them on the landscape.¹⁵ This reliance and the relatively limited occurrence of bears within their historic range in the lower 48 requires additional caution compared to other species that are routinely hunted. We don't believe hunting will reduce conflicts on a large scale or provide for "social tolerance" as has been promoted. Studies on gray wolves post delisting have not supported the theory that social tolerance increases with hunting.¹⁶ The creation of hunting seasons similarly has not reduced human conflicts with black bears.¹⁷ No current science supports hunting as a biologically necessary tool to manage the population. However, we recognize that some or all of the three states might incorporate sport hunting into their management strategies. For all of these reasons, delaying the onset of hunting and eliminating the potential for hunting bears within the PCA should be adopted within the final rule.

¹⁴ <https://www.usgs.gov/data-tools/2015-known-and-probable-grizzly-bear-mortalities-greater-yellowstone-ecosystem>

¹⁵ Scott, J. M., Goble, D. D., Wiens, J. A., Wilcove, D. S., Bean, M. and Male, T. (2005), Recovery of imperiled species under the Endangered Species Act: the need for a new approach. *Frontiers in Ecology and the Environment*, 3: 383–389.

¹⁶ Treves A., Naughton-Treves L. & Shelley, V. S. (2013). Longitudinal analysis of attitudes toward wolves. *Conservation Biology* 27, 315 – 323.

¹⁷ Obbard, M. E., E. J. Howe, L. L. Wall, B. Allison, R. Black, P. Davis, L. Dix-Gibson, M. Gatt, and M. N. Hall. 2014. Relationships among food availability, harvest, and human–bear conflict at landscape scales in Ontario, Canada. *Ursus* 25(2):98-110.

II. Proposed Rule

The grizzly bear is currently listed as a threatened species under the ESA in the conterminous 48 states.¹⁸ Prior to any delisting attempt, the Service must determine that this species (or any population proposed for delisting) is no longer threatened by the five factors outlined in 16 U.S.C. § 1533(a)(1). These five factors include the present or threatened destruction, modification, or curtailment of the grizzly bear's habitat or range; the inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting the species' continued existence.

a. Discrepancies with the Proposed Rule's Demographic Criteria

The proposed rule is inconsistent in population and mortality management when compared with the Conservation Strategy, as well as with the documents that have been made publicly available in state plan modifications. This inconsistency appears to intentionally allow the states to manage for a post-delisting population decline of the grizzly bear. This intent is contrary to the ESA and the years of conservation effort and financial investments that were required to bring this species back from the brink of extinction.

Table 1 provides the post-delisting population and mortality management framework describing how the model averaged Chao2 population estimator will be used as the population measurement tool, that Chao2 population estimate for 2002–2014 was 674 (average lower 95% CI = 600; average upper 95% CI = 747), and that should the population fall below 600 all discretionary mortality cease.¹⁹

Two important footnotes are contained within Table 1:

“Consistent with USFWS Director Dan Ashe's letter of September 25, 2015, to the state directors, if the model-averaged Chao2 population estimate is less than 674, the total mortality rate for independent females and dependent young will be less than 7.6 (emphasis added)%.”

Total mortality: Documented known and probable grizzly bear mortalities from all causes including but are not limited to: management removals, illegal kills, mistaken identity kills, self-defense kills, vehicle kills, natural mortalities, undetermined-cause mortalities, grizzly bear hunting, and a statistical estimate of the number of unknown/unreported mortalities.”

The intent of the proposed rule is clear. Setting the mortality threshold for independent females and dependent young at EQUAL to (instead of less than) 7.6% will cause the population to decline. As it stands, the Conservation Strategy allows the mortality of independent and dependent young at $\leq 7.6\%$. In

¹⁸ 40 Fed. Reg. 31,734 (July 28, 1975)

¹⁹ Id. at 13188

addition to the Conservation Strategy, this figure is cited in Wyoming Game and Fish Department's (WGFD) Draft Grizzly Bear Management Plan on page 4, and in proposed regulation modifications by Montana Fish Wildlife and Parks (MFWP) that are currently up for Commission review.^{20,21,22} All of the state plans, Final Conservation Strategy, and Draft Supplement: Draft Revised Demographic Criteria for the Yellowstone Ecosystem must contain the important direction within these footnotes. Should the population drop below 674, which arguably is the goal of the proposed thresholds, there is critical disagreement on how discretionary mortality will be managed allowing the population to rebound. We are opposed to an arbitrary post-delisting reduction of the GYE grizzly bear population and the Service must revisit these proposed limits.

b. Mortality Thresholds are Arbitrary

We are very concerned that the proposed mortality thresholds are too high at ≤ 7.6 to prevent the population from falling. Grizzly bear numbers would likely always be controlled below 674 and no growth in the population would be possible. The Service has stated numerous times and in numerous places that the goal is to maintain a stable grizzly bear population. If so, it seems logical that all discretionary mortality would cease if the population falls below 674, rather than at 600 as proposed. Alternatively, if discretionary mortality were to continue to be allowed, this threshold should be reduced to the previous thresholds that allowed for population growth prior to 2007.²³ The protocol in place at that time ensured that:

"Known human-caused mortality was not to exceed 4% of the conservative, minimum population size index based on the most recent 3-year sum of unduplicated FCOY. Mortality limits were set at 4% of Nmin, with no more than 30% of this 4% (1.2% of the population) to be females. The 4% total mortality and 30% female values came from simulation work conducted by Harris (1986), suggesting that a population of grizzly bears similar to those in the U.S. Northern Rockies sustaining approximately 6% added human-caused mortality (to an assumed background level of natural mortality) would have a very low probability of decline (on average, 70% of simulated mortalities were of males). Further, to account for the likelihood that not all dead bears would be known and thus enter the calculations, it was assumed that 1 additional bear died for each 2 that were documented. This was accomplished by further reducing the mortality limit from 6% to 4% annually."

²⁰ Draft Conservation Strategy, pg. 35-36

²¹ <https://wgfd.wyo.gov/WGFD/media/content/Wildlife/Hot%20Topics/FINAL-DRAFT-GB-Mgmt-Plan-3-15-16.pdf>

²² <http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?coversheet&topicId=37482185>

²³ Interagency Grizzly Bear Study Team. 2012. Updating and evaluating approaches to estimate population size and sustainable mortality limits for grizzly bears in the Greater Yellowstone Ecosystem. Interagency Grizzly Bear Study Team, U.S. Geological Survey, Northern Rocky Mountain Science Center, Bozeman, Montana, USA.

We would like to see a scientific explanation of the proposed total mortality thresholds for population estimates between 675-747 and >747. There is little explanation of the derivation of the higher mortality limits proposed by the Service in Criterion 3. What will be the cumulative impacts of mortality rates of 9-10% for females or 20-22% for males if the population is above 675 or 747, respectively? Our concern is these arbitrary thresholds allow the population to decline and reducing mortality to ≤ 7.6 cannot in response to this anticipated decline will not correct a decline allowing the population to continue downward even after reducing mortality. There must be some scientific justification for these mortality limits and the models used to derive these thresholds must be released to the public for independent peer review.

c. Total Discretionary Mortality Discrepancies

The Proposed Rule defines total mortality to include documented known and probable grizzly bear mortalities from all causes including but are not limited to: Management removals, illegal kills, mistaken identity kills, self-defense kills, vehicle kills, natural mortalities, undetermined- cause mortalities, grizzly bear hunting, and a statistical estimate of the number of unknown/unreported mortalities that will count against the proposed mortality thresholds.²⁴ However, the Conservation Strategy and updated recovery criteria are ambiguous and contain subtle, but critical differences, in how post-delisting mortality will be accounted for. These inconsistency have been passed down and embellished in flawed state plans. All known, probable, and a statistical estimate calculating unreported human-caused mortalities must count against mortality thresholds as defined in the Proposed Rule and this definition must remain certain in all associated documents. This inconsistency represents the inadequacy of the proposed regulatory mechanisms as the USFWS has failed to maintain a consistent criteria

We also have concerns for how discretionary mortality will be allotted to each individual state and the need for discretionary mortality within NPS, USFWS and tribal lands. The Draft State MOU (Appendix P of the Conservation Strategy, to be added upon completion) has not been appended to the Conservation Strategy. To be considered regulatory mechanisms these must be in place by law and regulation for delisting to occur. In review of Wyoming's plan (which released a draft MOU), the direction appears to only include discretionary mortality between the states. Appendix I, IV, A, page 36:

“Allocate discretionary mortality available for regulated harvest for independent males and females to each management jurisdiction as provided in the following table. The Parties may agree to adjust the allocation of discretionary mortality based on management objectives and spatial and temporal circumstances.

²⁴ *Id.* at 13203

Management Jurisdiction	% of DMA outside NPS Lands
WY inside DMA	58%*
MT inside DMA	34%
ID inside DMA	8%

*Four percent (4%) of the DMA outside of National Park System lands in Wyoming is under the jurisdiction of the Joint Business Council of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation”

The Service in finalizing Appendix P, the MOU between the states, must provide for further limits on how discretionary mortality is distributed. Discretionary mortality is necessarily only required by the states, but for the National Park Service units and Wind River Indian Reservation. Discretionary mortality should consider agency take or management removals that occur as a result of a federal action or in response to conflicts that are non-human threatening. The Park Service should be included in conversations of allowable discretionary mortality in response to existing known incidental take statements within Park Service lands. These additions to discretionary mortality must be subtracted from the overall allowable discretionary mortality that is allotted to the states.

Finally, the phrase “discretionary mortality” must be clearly defined and reflected in all associated management documents. The only definition provided states: “Discretionary mortality: Mortalities that are the result of hunting or management removals.”²⁵

This is critical because the Proposed Rule states” [b]elow 600: No discretionary mortality would be allowed unless necessary to address human safety issues.”²⁶ Further the Service proposes “[s]uspending all discretionary mortality inside the DMA, except if required for human safety, if the model-averaged Chao2 population estimate falls below 600.”²⁷ Is the Service ensuring that no management removals will occur if the population is below 600 with the exception of for human safety purposes? How will “human safety” be defined? We have already seen the actions of the states, permitted by the service, to preemptively remove bears from locations with high possibility for human conflicts. There are very blurred lines between human conflict and human safety and the potential exists for the states to continue management removals in response to conflicts that they perceive as human safety concerns, even if the

²⁵ *Id.* at 13226.

²⁶ *Id.* at 13201.

²⁷ *Id.* at 13203.

population drops below 600. Criterion 3 cannot be considered an adequate regulatory mechanism until these discrepancies are clearly defined.

d. Status Review Triggers

We remain concerned that states' post-delisting commitments to sustainably manage grizzly bears are unenforceable, and the Proposed Rule, as written, lacks a clear mechanism for returning bears to protected status if current threats worsen or future threats arise.

The proposed rule states:²⁸

“Should we finalize this proposal and delist the GYE grizzly bear population, we will use the information in IGBST annual reports and adherence to total mortality limits as per tables 1, 2, and 3, above, to determine if a formal status review is necessary. Because we anticipate the YGCC and IGBST are fully committed to maintaining GYE grizzly bear population management and habitat management through implantation of the draft 2016 Conservation Strategy and State and Federal management plans, and to correct any problems through the process established in the draft 2016 Conservation Strategy and described in the preceding section, we created a higher threshold for criteria that would trigger a formal Service status review.

Specifically, the following scenarios *would result in a formal status review* by the Service: (1) Any changes in Federal, State, or Tribal laws, rules, regulations, or management plans that depart significantly from the specifics of population or habitat management detailed in this proposed rule and significantly increase the threat to the population; or (2) if the population falls below 500 in any year using the model- averaged Chao2 method, or counts of females with cubs fall below 48 for 3 consecutive years; or (3) if independent female total mortality limits as per tables 1, 2, and 3, above, are exceeded for 3 consecutive years and the population is fewer than 600; or (4) if fewer than 16 of 18 bear management units are occupied by females with young for 3 consecutive 6-year sums of observations. For example, if independent female total mortality limits were exceeded in 3 of 4 years, but they were not 3 consecutive years, the Service would conduct a status review.

Status reviews and relisting decisions would be based on the best available scientific and commercial data available. *If* a status review is triggered, the Service would evaluate the status of the GYE grizzly bear population to determine *if* relisting is warranted. We would make prompt use of the Act's emergency listing provisions if necessary to prevent a significant risk to the well-being of the GYE grizzly bear population. We have the authority to emergency relist at any time, and a completed status review is not necessary to exercise this emergency relisting authority.”

²⁸ *Id.* at 13225.

However, previously in the document it states “[i]f this proposed rule is made final, the Service *may* initiate a formal status review and *could* emergency relist the GYE grizzly population until the formal status review is complete under the following conditions.”²⁹

Also, should the Interagency Grizzly Bear Study Team detect demographic, habitat, or food source changes it could result in actions that, “*may* involve increased habitat protection, increased mortality management, or a status review and emergency relisting of the population if management actions are unable to address the problems.”³⁰

The Service *can also initiate* a status review independent of the IGBST or the YGCC should the total mortality limits be exceeded by a significant margin or *routinely* violated or *if substantial* management changes occur *significant enough to raise concerns* about population level impacts.³¹

The final rule must clearly state how and when a formal status review will happen, not “if” or “may” occur. This subjective language around “routine, substantial, and significant” must be quantified in an enforceable manner. The ambiguity and uncertainty that is introduced by using this type language of language makes these statements unenforceable regulatory mechanisms.

If any of the above scenarios occurred, it is critical that the Service conduct a formal status review that is published in the Federal Register and if the population were to fall below 600 or initiate an emergency relisting, because as we’ve documented above, discretionary mortality would still be allowed to occur.

III. Draft Conservation Strategy

a. Connectivity

The grizzly bear was listed as a threatened species in the *contiguous* lower 48 states under the ESA, and should be recovered and managed as a large, well-connected Northern Rockies metapopulation. Historic evidence supports the existence of a true meta-population structure for grizzly bears in the contiguous United States, including connectivity between the NCDE and the GYE, as well as other populations.

^{32,33,34} “The future of grizzly bear persistence in southwest Canada and northwest USA is likely dependent

²⁹ *Id.* at 13204.

³⁰ *Id.* at 13215.

³¹ *Id.* at 13225.

³² Craighead, F.L., and E. Vyse. 1996. Brown/grizzly bear meta-populations. In: D. McCullough (Ed.) Metapopulations and Wildlife Conservation Management. Island Press, Washington DC and Covelo CA. Chapter 14: pp. 325-351.

³³ Picton, H. D. 1986. A possible link between Yellowstone and Glacier grizzly bear populations. Int. Conf. Bear Res. and Mgmt. 6:7-10.

³⁴ Merriam, C.H. 1922. Distribution of grizzly bears in U.S. Outdoor Life 50:405-406. Miller, C.R., and L.P. Waits. 2003. The history of effective population size and genetic diversity in the Yellowstone grizzly (*Ursus arctos*): Implications for conservation. Proceedings of the National Academy of Sciences 100:4334-4339.

on management actions that promote and ensure meta-population function." ³⁵

Pursuant to the five-factor analysis, the Service must consider how the currently isolated GYE grizzly bear population can qualify as recovered without regulatory mechanisms that provide for connectivity between this population and the Northern Continental Divide Ecosystem (NCDE) population. In fact, the Service's direction is in direct conflict with other agency regulations, violating the National Forest Management Act (NFMA), National Environmental Policy Act (NEPA), and APA. Revising the Conservation Strategy to commit to and provide for connectivity must be done in order to bring this critical issue and the associated Forest Plan Amendments into compliance with existing laws.

Section 219.9 of the 2012 Forest Planning Rule ³⁶ implements this statutory mandate, and provides for a "complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area." As part of this approach, plans must include, inter alia, "components to maintain or restore [ecosystem] structure, function, composition, and connectivity (emphasis added)." ³⁷ The components outlined in a plan must be sufficient to conserve threatened and endangered species and maintain viable populations of species of conservation concern; if the components are insufficient in this regard, additional, species-specific components must be included. ³⁸

The Conservation Strategy is also in direct conflict with the long-term goal for other listed grizzly bears. As stated by the Service, the goal is to "achiev[e] connectivity and manag[e] grizzly bear populations in the northern Rockies as subpopulations of a metapopulation." ³⁹ In the Proposed Rule and Conservation Strategy the Service must not only consider connectivity as a threat to the GYE grizzly bear population, but also to other recovery areas under Section 7 of the ESA.

Connectivity provides for the adaptation of species to the effects of climate change and is critical to the conservation of species diversity. ⁴⁰ Simply put, connectivity will be crucial as climate change modifies habitats. It is also generally accepted that isolated populations are at greater risk of extinction over the long term, and the largest and rarest species tend to disappear first. ⁴¹ Some level of movement and gene

³⁵ Proctor M., B. McLellan, D. Paetkau, C. Servheen, W. Kasworm, K. Kendall, G. Stenhouse, M. Boyce, and C. Strobeck. 2005. Delineation of sub-population boundaries due to anthropogenic fragmentation of grizzly bears in southwest Canada and northwest usa using genetic analysis. Oral presentation. International Bear Association 16th annual conference. Trentino, Italy.

³⁶ 77 Fed. Reg. 21,162, 21,265 (Apr. 9, 2012), to be codified at 36 C.F.R. § 219.9

³⁷ 36 C.F.R. § 219.9(a)(1)

³⁸ 36 C.F.R. § 219.9(b)

³⁹ 72 FR 19549 2011 Grizzly Bear 5-Year Review, p.14

⁴⁰ Heller, N. E. and E. S. Zavaleta. 2009. Biodiversity management in the face of climate change: a review of 22 years of recommendations. *Biological Conservation*. 142(1): 14-32

⁴¹ Soulé, M.E., editor. 1987. *Viable populations for conservation*. Cambridge University Press, New York.

flow between geographically separate populations however, decreases the probability of extinction, promotes population persistence, mitigates genetic erosion, and allows for immigration and emigration in response to random genetic, demographic, and environmental changes, including disease epidemics, cyclical food shortages, climate change or large scale fire events. ^{42,43,44}

A metapopulation is a population of spatially separated populations whose range is composed more or less of isolated patches that are interconnected through patterns of movement between them. ⁴⁵ Boyce et al. demonstrated the importance of multiple “connected” populations to the survival of the grizzly in the Northern Rockies, and metapopulation theory directs that connectivity is the best long-term strategy to increase the resiliency and probability of persistence of remaining grizzly bear populations in the lower 48 States. ^{46,47}

The lack of connectivity is a concern for the long-term genetic health of the isolated GYE population. ⁴⁸ Studies indicate that 1-2 male migrants every 10 years (i.e., genetic rescue) may be adequate to maintain current levels of genetic diversity in the GYE. Previously, because genetic exchange had not yet occurred, the FWS suggested that human assisted techniques (i.e. translocation of bears from other ecosystems to the GYE) be employed if natural connectivity/genetic exchange has not occurred by the year 2020. ⁴⁹ We appreciate the shift in focus to natural movements of bears between ecosystems, rather than solely relying upon human assisted translocation as in the previous rule: ⁵⁰

“However, the Service recognizes that the long-term viability of the GYE grizzly bear population will benefit from occasional gene flow from nearby grizzly bear populations like that in the NCDE. Thus, efforts will continue to facilitate occasional movement of male bears between the NCDE and Yellowstone in the intervening areas between the GYE and the NCDE. To increase the

⁴² Hanski, I. 1999. Meta-population ecology. Oxford University Press, Oxford, U.K. Harrison, S. 1994. Meta-populations and conservation. Pages 111-128 in P. J. Edwards, R. M. May and N. R. Webb, eds. Large-scale ecology and conservation biology. Blackwell Scientific Press, Oxford, U.K.

⁴³ Hedrick, P.W., and M.E. Gilpin. 1996. Meta-population genetics: Effective population size. In I. Hanski and M. Gilpin, (Eds.) Meta-population dynamics: Ecology, genetics, and evolution. Academic Press, New York. Pp. 1-29.

⁴⁴ Breitenmoser, U., C. Breitenmoser-Wurston, L. Carbyn, S. Funk. 2001. Assessment of carnivore reintroductions. In J. Gittleman, S. Funk, D. MacDonald, and R. Wayne (eds.) Carnivore conservation, pp. 241-281. Cambridge University Press.

⁴⁵ Lande, R. and G.F. Barrowclough. Effective population size, genetic variation, and their use in population management. Pp. 87-123. in M. Soule (ed.) Viable Populations for Conservation. Cambridge University Press. New York, New York.

⁴⁶ Boyce, M. S., B. M. Blanchard, R. R. Knight, and C. Servheen. 2001. Population viability for grizzly bears: a critical review. International Association for Bear Research and Management, Monograph Series 4.

⁴⁷ Boyce, M.S. 2000. Meta-population analysis for the Bitterroot population. Appendix 21C. Pages 6-242 – 6-246 in Grizzly bear recovery in the Bitterroot ecosystem, Final Environmental Impact Statement. U.S. Fish and Wildlife Service, Missoula, MT, USA.

⁴⁸ Haroldson, M. A., C. C. Schwartz, K. C. Kendall, K. A. Gunther, D. S. Moody, K. Frey, and D. Paetkau. 2010. Genetic analysis of individual origins supports isolation of grizzly bears in the Greater Yellowstone Ecosystem. *Ursus* 21:1–13. *BioOne*

⁴⁹ *Id.* at 13212

⁵⁰ *Id.* at 13191

likelihood of occasional genetic interchange between the GYE grizzly bear population and the NCDE grizzly bear population, the State of Montana has indicated they will manage discretionary mortality in this area in order to retain the opportunity for natural movements of bears between ecosystems. Translocation of bears between these ecosystems will be a last resort and will only be implemented if there are demonstrated effects of lowered heterozygosity among GYE grizzly bears or other genetic measures that indicate a decrease in genetic diversity.”

Despite these modifications, we are concerned that the Conservation Strategy, as currently drafted, does not provide specifics or details on how this level of connectivity will be secured between the GYE and NCDE will occur because of habitat protections or state management plans (detailed on pages 27-28). Similarly, we have raised concerns in comments that we provided on the NCDE Draft Conservation Strategy and Forest Plan amendments around clarity in how habitat between the two primary conservation areas of the two ecosystems will be managed to allow for genetic exchange. Additional comments we provided on these Draft Amendments and additional science that may be missing or excluded from the Draft Conservation Strategy but is very relevant for the purposes linkage and genetic connectivity have been included in Appendix A of these comments.

See Appendix A: *Greater Yellowstone Coalition and Defenders of Wildlife comments on Proposed Forest Plan Amendment to integrate the Northern Continental Divide Ecosystem (NCDE) Grizzly Bear Conservation Strategy (GBCS) into the forest plans for the Helena, Kootenai, Lewis and Clark, and Lolo National Forests.*

e. Linkage Zones and Modifications in the DMA

The Draft Revised Demographic Recovery Criteria for the Yellowstone Ecosystem states, “grizzly bear occupancy will not be actively discouraged outside the DMA and grizzly bears will not be persecuted just because they are present there.”⁵¹ Where is this language compatible with state plans or the Conservation Strategy? This language should be specific and enforceable rather than left open to interpretation or flexible as “adaptive management.”

Unfortunately, the lands outside of the PCA but within the DMA, and outside of the DMA, and within important linkage zones lack key protections to allow them to be functional or to prevent bears from being “discouraged” or “persecuted.” The intervening lands that support connectivity between the various populations are considerably fragmented,⁵² requiring significant habitat protections for the remaining

⁵¹ Draft Supplement: Draft Revised Demographic Recovery Criteria for the Yellowstone Ecosystem, pg. 8

⁵² Servheen C., J.S. Waller, and P. Sandstrom. 2001. Identification and Management of Linkage Zones for Wildlife between the Large Blocks of Public Land in the Northern Rocky Mountains.

blocks of undeveloped/public lands. Characteristics associated with effective linkage zone function for large carnivores and ungulates include low open road density, low concentrations of human occupancy and development, an abundance of productive foraging habitat, and a healthy mix of forested and non-forested lands. ^{53,54,55,56}

Appendix A of these comments summarizes the best available corridor assessments and linkage modeling results, and each study corroborates the importance of an effective linkage area (based on current conditions or with improved habitat protections) for grizzly bears between the GYE and NCDE. We have recommended in the past that Zone 2 and Zone 3 protections for the NCDE be increased to include special provisions that more closely resemble those suggested for the two existing Demographic Connectivity Areas (DCAs) proposed in the NCDE Forest Plan Revisions, “including road density and site development restrictions to support grizzly bear occupancy and eventual dispersal to the GYE.” Similarly, it would be prudent for the Service to designate Zone 2 and Zone 3 protections for the lands between the two ecosystems within the Yellowstone DPS in southwest Montana. We propose the USFWS modify the Conservation Strategy to include similar protections as the NCDE for the GYE grizzly population, specifically creating Zone 2 and 3 protections in the landscape of southwest Montana, between the two isolated populations (see example below in Figure 1).

Additionally, the DMA should be expanded to all designated wilderness lands adjacent to the proposed DMA. At least in one location, in the Southern Winds, these lands have erroneously been withdrawn from the DMA and clearly provide biologically suitable habitat for grizzly bears.

⁵³ Craighead, A.C., E.A. Roberts, and F.L. Craighead. 2001. Bozeman Pass wildlife linkage and highway safety study. Progress Report. Craighead Environmental Research Institute. Bozeman, MT

⁵⁴ Walker, R. and L. Craighead. 1998. Corridors: key to wildlife from Yellowstone to Yukon. Pages 113-121 in L. Wilcox, B. Robinson, A. Harvey (editors). A Sense of Place: An Atlas of Issues, Attitudes, and Resources in the Yellowstone to Yukon Ecoregion. Yellowstone to Yukon Conservation Initiative. Cranmore, Alberta.

⁵⁵ Servheen, C., J.S. Waller, and P. Sandstrom. 2003. Identification and management of linkage zones for wildlife between the large blocks of public lands in the northern Rocky Mountains. Updated July 8, 2003. USDI, Fish and Wildlife Service, Missoula, MT. www.cfc.umt.edu/research/MFCES/programs/GrizzlyBearRecovery/Linkages_Report_2003.pdf

⁵⁶ Olimb, S. and E. Williamson. 2006. Regional habitat connectivity analysis: crown of the continent ecosystem. American Wildlands, Bozeman, MT. 29 pp. www.wildlands.org

population goal of the average population size 2002-2014.”⁵⁷ This language should memorialize this objective in order to potentially recalibrate future methodologies to Chao2, the Table 1 proposed mortality thresholds, and the objective of maintaining a stable population within the DMA. We would also add that the population should be managed as stable to increasing because some lands within the DMA are currently unoccupied.⁵⁸

g. Nuisance Bear Standards

As we’ve described previously, there must be clarity in how management removals are considered “discretionary” vs. “non-discretionary.” Similarly there are nuisance bear standards identified within the Draft Conservation Strategy that should reflect spatially where and how nuisance bears will be addressed.⁵⁹ For example, within the PCA, “Management of nuisance bear situations will emphasize removal of the human cause of the conflict, when possible, or management and education actions to limit such conflicts.”⁶⁰

It is critical that removal, relocation and conflict management procedures described in the Conservation Strategy are implemented on all lands within the DMA. The population today is now dependent upon the continued maintenance of the grizzly bear beyond the PCA boundaries, or within the DMA. Because of this, the final Conservation Strategy must adopt the same nuisance bear standards throughout these lands. Conservative and cautious management of this species, while preventing sources of mortality, is key to ongoing recovery and continued expansion of the population. The Conservation Strategy states that “if the population declined to 500, more than one third of the suitable habitat in the DMA would be unoccupied (van Manen 2015, *in litt.*), and, therefore, the grizzly bear population could not be considered demographically recovered.⁶¹ What measures have been put in place to ensure that grizzlies within the DMA but outside of the PCA will be managed in a consistent method between the three states ensuring that nuisance bears do not exceed mortality thresholds, Criteria 1-3 are met, and facilitates genetic connectivity?

h. Habitat Protections within the Conservation Strategy

The Conservation Strategy for grizzly bears contains grizzly bear habitat standards that are implemented through Forest Plan Amendments that go into effect post-delisting. However, as we noted earlier, the

⁵⁷ Draft Conservation Strategy, Appendix C, pg. 2

⁵⁸ Bjornlie, D.D., D.J. Thompson, M.A. Haroldson, C.C. Scharz, K.A. Gunther, S.L. Cain, D.B. Tyers, K.L. Frey, and B.C. Aber. 2014. Methods to estimate distribution and range extent of grizzly bears in the Greater Yellowstone Ecosystem. Wildlife Society Bulletin 38: 182–187. Doi: 10.1002/wsb.368.

⁵⁹ Draft Conservation Strategy, pg. 90

⁶⁰ Draft Conservation Strategy, pg. 92

⁶¹ Draft Conservation Strategy, pg. 52

proposed Forest Plan Amendments are outdated and inadequate for protecting the places bears live today. These amendments must undergo public review and contain protections for management of federal lands to sustain a stable population of bears. The proposed Forest Plan Amendments, only impacting habitat within the PCA, are inconsistent with current federal actions and planning direction. Should grizzly bears be delisted in the future, for planning and management purposes, we suggest that they be considered by the Forest Service as a Species of Conservation Concern. As a Species of Conservation Concern across its range, the Forest Service should begin to consider the ecological conditions necessary to maintain and contribute to grizzly bear populations that will “persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments.”⁶²

i. Habitat Protections inside the Primary Conservation Area

The National Forests in the GYE (Beaverhead-Deerlodge, Bridger-Teton, Caribou-Targhee, Gallatin-Custer and Shoshone National Forests) have an obligation to manage habitat that allows for sustainable populations of native species and bears should be identified in the future as a “species of conservation concern” regardless of where they’re located on forest lands. Since 2007, there have been many positive modifications in grizzly bear habitat and changes that have occurred on some of these lands include recent travel planning and forest planning. We recommend that the USFS assess the general status of habitat security within the PCA and update the 1998 baseline.

ii. Habitat Protections Within the DMA (Outside of PCA)

Since the 2007 Conservation Strategy, the grizzly bear population has expanded its distribution far beyond the boundaries of the PCA where habitat standards would apply. In fact, the PCA only encompasses about half of the suitable habitat, as defined by the Service, and grizzly bear distribution continues to expand beyond this artificial line. It’s critical that forest habitat standards apply to the geography that bears have expanded into, which is in part because of the loss of a primary food source, whitebark pine. In 2011, the 9th circuit court of appeals found that, “[b]ased on the evidence of a relationship between reduced whitebark pine seed availability, increased grizzly mortality, and reduced grizzly reproduction, it is logical to conclude that an overall decline in the region's whitebark pine population would have a negative effect on its grizzly bear population.”⁶³

The 2005 Record of Decision (ROD) for the Forest Plan amendments contained few standards, and those standards only apply to inside the PCA. Outside of the PCA, there are no enforceable standards. Instead, there are “guidelines” for managing grizzly bears.⁶⁴ Whether the 2005 regulations apply or not,

⁶² Greater Yellowstone Coal., Inc. v. Servheen, 665 F.3d 1015, 1026 (9th Cir. 2011)

⁶³ 36 CFR 219.19

⁶⁴ Forest Plan Amendment for Grizzly Bear Habitat Conservation for the Greater Yellowstone Area National Forests. Final Environmental Impact Statement. April 2006.

these “guidelines” are discretionary and thus legally unenforceable. The Service and Federal Agency partners are obligated to implement increased habitat protections that reflect the current distribution of grizzly bears in the proposed delisting rule and in Forest Plan Amendments before delisting is finalized. These protections should also include new protective measures that have occurred since 2007. For example, expanding food storage orders for GYE forests to include all of the five forests and BLM lands. Similarly, standards should include road density, secure habitat, and no surface occupancy stipulations that currently exist on Federal Lands. These modifications would reflect positive changes that have occurred within the DMA, including recent travel planning, forest planning and protections included in the Wyoming Range Legacy Act.⁶⁵

This point is indeed critical. Expanding the habitat standards, which were designed to protect grizzly bears, to the area that grizzly bears will be counted towards the population and therefore recovery goals, is logical and necessary to ensure a stable population. The Service and its Federal Agency partners have a commitment to protect suitable habitat for grizzly bears post-delisting. This is critical to both bears residing in core habitat and bears attempting to disperse to other populations. Proper food storage directly reduces human-bear conflicts and increases human safety. Road density and secure habitat standards ensure that the population remains robust and helps avoid hitting mortality thresholds. Roads and developed sites are the two strongest indicators of grizzly bear survival.

iii. Habitat Protections for Connectivity

Managing the landscape to reduce hazards to bears requires balancing road density standards with the amount of secure habitat available.⁶⁶ “[I]f road densities become too great, secure areas become isolated islands surrounded by heavily roaded areas. Travel among secure islands then becomes more hazardous, effectively fragmenting the landscape.”⁶⁷ These secure islands are critical for the movement of bears between the NCDE and GYE (See Appendix A)

We contend that connectivity can be accomplished with improvements in habitat protections in the Conservation Strategy and in Forest Service Plan Amendment (yet to be released or available for public review.) The U.S. Forest Service must consider the potential for connectivity for grizzly bear according to the 2012 Planning Rule. Otherwise, the Service and Forest Service must provide justification for ignoring the best available science on connectivity.

⁶⁵ S.22 - Omnibus Public Land Management Act of 2009

⁶⁶ Summerfield, B., W. Johnson, and D. Roberts. 2004. Trends in road development and access management in the Cabinet–Yaak and Selkirk grizzly bear Recovery Zones. *Ursus* 15:115–122.

⁶⁷ Schwartz, C. C., M. A. Haroldson, G.C. White. 2010. Hazards Affecting Grizzly Bear Survival in the Greater Yellowstone Ecosystem. *Journal of Wildlife Management* 74(4):654-667.

The Forest Service must consider that roads (permanent or temporary, open or closed) and site development will increase human-bear conflicts and grizzly bear mortality. "Potential effects of highway improvements, such as increased motorized access, higher traffic volume, and higher speed limits, are known to increase grizzly bear mortality, reduce habitat connectivity, and potentially inhibit gene flow among nearby populations (Mace 2004, Summerfield et al. 2004, Proctor et al.2012). Certain road designs and road improvements potentially discourage bear crossings, may lead to increased mortality from vehicle collisions, and may cause habitat fragmentation. The potential impact of highways on demographic and genetic connectivity of grizzly bears in the GYE is a key consideration in the transportation planning process." ⁶⁸ While we support this language, there are key issues that make it unenforceable. First, State Highway Departments of Transportation are not a member of the IGBC. Second, these lands that are critical to the demographic and genetic connectivity are beyond the PCA boundaries. It is critical that the Service work with the respective Forest's to implement the above language. The scope of this language must also include standards for all types of roads, including illegal ORV routes, system trails, Forest Service maintained travel routes, county roads, state highways, and interstate highways. Forest Plan amendments are the only enforceable regulatory mechanism within the Conservation Strategy that can address this critical issue on Federal lands and therefore must be expanded.

Ensuring habitat connectivity between the GYE and NCDE would benefit not only grizzly bears, but multiple wildlife species, and would be consistent with language within the Draft NCDE Grizzly Bear Conservation Strategy, USFWS Grizzly Bear Recovery Plan (pp. 24-25), the Grizzly Bear Management Plan for Western (pp. 54-56) and Southwestern Montana (p. 41), the Western Governors' Association Resolution 07-01 (2007), and the interagency statement of support for the concept of linkage zones signed by the state wildlife agencies in Montana, Washington, Idaho, and Wyoming and the USFS, USFWS, USGS, NPS, and BLM (IGBC 2001).^{69, 70, 71, 72,73} Similar to the draft Conservation Strategy, these plans have recommendations, but lack regulatory mechanisms thereby rendering them unenforceable..

⁶⁸ Draft Conservation Strategy, pg. 85

⁶⁹ US Fish and Wildlife Service. 1993. Grizzly bear recovery plan. Missoula, MT.

⁷⁰ Montana Fish, Wildlife and Parks (MFWP). 2006. Grizzly Bear Management Plan for Western Montana. Final Programmatic Environmental Impact Statement 2006-2016.

⁷¹ Montana Fish, Wildlife and Parks (MFWP). 2013. Grizzly bear management plan for Southwestern Montana 2002-2013. Helena, Montana, USA.

⁷² <https://www.nature.nps.gov/biology/migratoryspecies/documents/WGAWildlifeCorridorsInitiative.pdf>

⁷³ Interagency Grizzly Bear Committee. 2001. Support for the concept of linkage zones, signed memo.

Ensuring grizzly bear occupancy in connectivity areas will also help ensure compliance with NFMA, which requires Forest Plans to “provide for diversity of plant and animal communities” and “maintain viable populations.”⁷⁴ In 1982, the Forest Service promulgated regulations to ensure such diversity:

“Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed within the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.”⁷⁵

Both NEPA and ESA require that the effects of the future proposed habitat amendments on grizzly bears be determined. NFMA requires that these effects be evaluated in terms of diversity and viability requirements, while the ESA requires a determination of whether the effects of the amendments will contribute to the recovery of the species, range wide. These analyses require a clear presentation of the amendment’s decisions and effects, and where they apply in relation to important habitat (including connectivity lands proposed as Zone 2 on page 18 above). After completing these required analyses, the Forest Service may find that it must provide more specific and proactive guidance for management of connectivity. Areas to be managed for connectivity should be defined and identified in the amendments, and a map of areas to be managed for connectivity should be included.

IV. Draft Supplement: Revised Demographic Recovery Criteria

a. Criterion 1

Specific to Demographic Recovery Criterion 1, the Criterion update is to “reflect the demographic goal of maintaining a population size of at least 500 grizzly bears.” The update also includes an important footnote “This number is required to maintain short-term genetic fitness in the next few decades. It is not a population target, but a minimum.”⁷⁶ This important footnote must be reflected in the Conservation Strategy, Final Delisting Rule and final MOU with the states. Unfortunately, after of state management plan documents review and participation in state planning process, it is clear that the concept of a 500 grizzly bear population floor is pervasive. The Proposed Rule even describes “[t]he Recovery Plan target for a minimum population size of 500 animals inside the DMA to assure genetic health has been met since at least 2007, using the conservative model-averaged Chao2 estimate,”⁷⁷ contradicting its own

⁷⁴ 16 U.S.C. § 1604(g)(3)(B)

⁷⁵ 36 C.F.R. § 219.19.

⁷⁶ Draft Supplement: Draft Revised Demographic Recovery Criteria for the Yellowstone Ecosystem, pg. 2

⁷⁷ *Id.* at 13221

language from the Revised Demographic Recovery Criteria that “500 is not a population target.” The states must clearly articulate how they will manage for a grizzly bear population objective well above this criteria, which may trigger a status review.⁷⁸

It also seems that Criterion 1 is inconsistent with Criterion 3 below. The language around “maintaining a population size of at least 500 bears” seems to undermine the language in Criterion 3 that says “if any annual population estimate falls below 600, this criterion will not be met.”⁷⁹ Criterion 1 should reflect the same population minimum of 600 bears rather than set two separate population floors and Criterion that directly contradict each other.

b. Criterion 2

Criterion 2 is largely unchanged from previous language in the Recovery Plan. We continue to have concerns that the timeframe proposed will be insufficient to address declining numbers and documented occupancy of reproductive females in the PCA. “If less than 16 of 18 bear management units are occupied by females with young for 3 consecutive 6-year sums of observations this criterion will not be met.” Potentially, this means that this criterion could allow for long-term reduction of occupied BMU’s (nearly 18 years) before the Criterion would be considered unmet. This criterion should include a shorter timeframe to avoid a slow, long-term decline in the population that will take years and considerable resources to reverse.

c. Criterion 3

We have specific concerns over the definitions and language contained in Criterion 3. The Criterion states, “[t]hese adjustable mortality rates were calculated as necessary to manage the population to the model average of 674 bears which occurred during the time period that this population’s growth stabilized.”⁸⁰ How and when will these rates be adjusted? These rates are the very foundation of regulatory mechanisms that the Service believes will maintain a stable population of grizzly bears and is using to support the proposed delisting (pending a Final MOU available to public review) and that future populations will be maintained by. To allow these rates to be adjustable in the future by the states reflects a lack of enforceable regulatory mechanisms in the Draft Supplement.

The Criterion goes on to state, “[i]f mortality limits are exceeded for any sex/age class for three consecutive years and any population estimate falls below 612” there will be some management

⁷⁸ *Id.* at 13204

⁷⁹ Draft Supplement: Draft Revised Demographic Recovery Criteria for the Yellowstone Ecosystem, pg. 3

⁸⁰ Draft Supplement: Draft Revised Demographic Recovery Criteria for the Yellowstone Ecosystem, pg. 3

response from the IGBST. Our first concern here is the “and” should be replaced by an “or.” Secondly, the management response by the IGBST should not be so discretionary and ambiguous as the “appropriate” management response suggests. Instead, this should trigger a status review consistent with our previous comments.

Criterion 3 must also reflect the intent of the proposed mortality thresholds, which is to maintain a stable population based upon the past 12 years average population estimate under Chao2. It is critical that this criterion’s objective is described as maintaining a stable population because of potential shifts in counting methodologies in the future.

V. State Management Plan Concerns

All regulatory mechanisms that are meant to ensure the continued management and recovery of grizzly bears must be in place by law and regulation for delisting to occur. The state regulations referred to within the Conservation Strategy and Proposed Rule are in various stages of agency process, and yet to be finalized and adopted as regulation.⁸¹ Similarly, there is no final or draft version of the State Memorandum of Understanding appended to the Conservation Strategy, even as it appears in various documents released by the states with apparent modifications. The final plans of all of the states must contain the exact language included in Table 1 of the Proposed Rule. We also have additional concerns with the direction of the state plans and the Service’s dependence on these plans, which we believe are flawed. There are inconsistencies between the Proposed Rule and assurances from the states, and in some instances violation of the law governing our National Parks.

Further, the Service’s statements seem uncertain whether these documents will be finalized prior to a final delisting decision. “It is our expectation that these adequate regulatory mechanisms as described above will be finalized prior to the publication of any final rule resulting from this proposal.”⁸² “We expect that State wildlife commissions would also promulgate regulations with commitments to coordinate hunting limits within the DMA among jurisdictions and within the total mortality limits calculated annually by the IGBST.”⁸³ The Service must have more than expectations about the regulations in the form of an MOU that are instrumental to grizzly bear recovery. Documents the public will never have the chance to review, are insufficient to enable FWS to move forward with delisting.

Each of the states must clearly articulate that 500 is not a population target, noting that the Service will initiate a formal status review and could emergency relist the population if the population falls below

⁸¹ *Id.* at 13202.

⁸² *Id.* at 13204.

⁸³ *Id.* at 13211.

500.⁸⁴ These changes would clarify to the public, to future managers and especially the state Commission's and legislative bodies, the objective for managing the population is clearly above the minimum estimate of 500 under Chao 2.

a. Wyoming Plan Concerns

GYC continues to be concerned with Wyoming's interpretation of management authority over grizzly bears in the John D. Rockefeller Jr. Memorial Parkway (JDR), a unit of the National Park System. The JDR Parkway is the 24,000-acre connection between Yellowstone and Grand Teton National Park (GTNP). This area is a crucial connection north and south between Yellowstone National Park and GTNP and east to west between the Greater Yellowstone Ecosystem and Central Idaho/Northwest Montana. Wyoming must explicitly withdraw this jurisdiction from the state's management authority and future hunting plans. In our opinion, the National Park Service (NPS) has sole authority to manage grizzly bears in the JDR Parkway, and sole authority for establishing regulations within Park Service boundaries and managed units. The NPS Organic Act mandates that the NPS promote and regulate park use.

"The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."⁸⁵

The NPS also has authority to address hunting and wildlife management in the JDR Parkway as provided by the enabling act:

"The Secretary [of the Interior] shall permit hunting and fishing in the area described by section 1(a) of this Act in accordance with applicable laws of the United States and the State of Wyoming, except that the Secretary may designate zones where, and periods when, no hunting or fishing shall be permitted for reasons of public safety, administration, or public use and enjoyment..."⁸⁶

We continue to have concerns over other elements of the Department's management strategies. For example, the occupancy of bears in Wyoming should not be limited based merely on social acceptance or tolerance for bears. We recognize that conflict potential is fluid and could be reduced in the future allowing for occupancy. Therefore, we think that a priority should be placed on reducing conflicts and also

⁸⁴ Draft Conservation Strategy, pg. 120

⁸⁵ *The Organic Act*. See 16 U.S.C. Sec. 1

⁸⁶ *Id.* See Pub. L. 92-404, Sect 3(b)

allowing conflict to dictate potential future distribution rather than lines drawn within this plan based on arbitrary assessments of social tolerance.

The PCA, which includes Yellowstone National Park, a portion of Grand Teton National Park and the John D. Rockefeller Memorial Parkway, should have the greatest protections for grizzly bears in a post-delisting environment. In addition, grizzly bears should not be hunted within Grand Teton National Park (GTNP), including park inholdings, or on the National Elk Refuge. These areas are excellent locations for managing for wildlife watching opportunities rather than hunting opportunities and have minimal conflicts. “The PCA will be a secure area for grizzly bears, with populations and habitat conditions maintained to ensure a recovered population is maintained for the foreseeable future and to allow bears to expand outside the PCA.”⁸⁷ The addition of hunting mortality is simply not compatible with ensuring that this area will continue to be secure habitat for grizzly bears into the future.

Another flaw with Wyoming’s plan is the description of areas within the state that may not meet essential requirements for occupancy of bears such as the Sierra Madres, Snowy Range, Laramie Range and the Black Hills. These areas are actually well outside the proposed DPS boundary and in areas where grizzly bears would continue to be listed as threatened if the Proposed Rule is adopted. We think it’s inappropriate for Wyoming to dictate within their state plan the acceptance of occupancy for bears where they have no authority, especially since conflicts will limit bear distribution from occurring in these areas.

Finally, we feel that it is critical that consultation be broadened and formalized with all involve agencies. We request that the state of Wyoming enter into a Memorandum of Understanding with the National Park Service, Wind River Indian Reservation, and U.S. Forest Service to formalize this collaboration and consultation process because of the issues we have raised above. Attached to this document are our full comments on Wyoming’s plan. Appendix B: *Greater Yellowstone Coalition’s Comments on Wyoming’s draft Wyoming Grizzly Bear Management released on March 15th*

b. Montana Plan Concerns

MFWP went through a public process and updated their grizzly bear management plan for SW Montana in December 2013, however the Draft Conservation Strategy only includes the outdated plan from 2002 within its appendices. This leads us to believe that Montana has yet to finalize its 2013 plan. We raised significant concerns during the public comment period and public meetings around modifications between the 2002 and 2013 plans. Our primary concerns raised were that the plan did not promote connectivity through explicit goals and improved management in linkage zones and concerns over the management of post-delisting grizzly bear hunting.

⁸⁷ Draft Conservation Strategy, pg. 3

These concerns are again brought to light by the lack of clear direction about how Montana will manage for connectivity as described within the Conservation Strategy and as relied upon in the Proposed Rule. “The State of Montana has indicated they will manage discretionary mortality in this area in order to retain the opportunity for natural movements of bears between ecosystems.”^{88, 89}

This is a critical component of the Proposed Rule and the adequacy of the regulatory mechanisms in place to ensure that future natural connectivity will occur and that existing threats to the population are diminished, no longer requiring human intervention. Montana’s revised plan states, on page 8, “[a]s part of this revision the area beyond the suitable habitat line and out to the CMA boundary has become irrelevant to management decisions. Therefore, this final plan, discusses management only along the Demographic Monitoring Area (DMA) line and the Recovery Zone line.” Our concern is this plan does not apply between the suitable habitat line and the previous Conservation Management Area and it doesn’t apply to the management of bears between the two ecosystems that the Service has ensured would be managed to retain the opportunity for natural movements of bears between.

Montana made significant changes to its 2002 plan regarding post delisting hunting. MFWP’s 2002 grizzly bear plan very clearly articulated that hunting of bears would not be suitable in certain geographies and would not occur immediately post-delisting. FWP’s plan removed language describing geographies that may not be suitable for the hunting of grizzly bears, such as linkage zones or areas of core grizzly bear habitat adjacent to Yellowstone National Park. The previous plan also delayed hunting of bears a minimum of one-year post-delisting. The benefits of these measures allowed Montana to develop an ecosystem approach to coordinating management between states regarding the continued monitoring of populations, mortality, and food sources.

Finally, Montana should plainly describe how hunting and post-delisting management of grizzly bear mortality will be coordinated between three states, two National Parks, National Wildlife Refuges, and a variety of stakeholders. The updated plan does not include the mortality framework in Table 1 of the Proposed Rule and it doesn’t appear that Montana is considering updating its plan before prematurely embarked on a regulation making process.⁹⁰

Attached to this document are our full comments on Montana’s plan. Appendix C: *Greater Yellowstone Coalition (GYC) on the Grizzly Bear Management Plan for Southwestern Montana, Draft Programmatic Environmental Impact Statement (EIS)*.

⁸⁸ *Id.* at 13191.

⁸⁹ *Id.* at 13204.

⁹⁰ <http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?coversheet&topicId=37482186>

c. Idaho Plan Concerns

Idaho's plan is the most ambiguous and concerning of all of the three states. The plan is badly outdated, not having been updated since 2002.⁹¹ Significant new scientific information and proposed modifications to the Conservation Strategy and recovery criteria are not addressed within this current plan. For example, the plan pre-dates the development of the DMA and only addresses the management of bears within the PCA.

Idaho's plan also has serious flaws surrounding the use of bear baiting within occupied habitat. The Idaho Fish and Game Department (IDFG) proposed modifying their bear baiting regulations to reduce the potential for human conflicts at bear baits (both for the hunting and non-hunting public) and reduce the potential for mistaken identity mortalities by bear hunters in 2015. The action would also have addressed safety concerns by reducing potential for food conditioning and creation of nuisance bears in grizzly bear habitat where it is currently legal to use bait to hunt black bears in eastern Idaho.⁹² Unfortunately, Idaho failed to enact the proposed rules and baiting continues to occur in occupied grizzly habitat in eastern Idaho.

The Idaho Plan also states "[T]he Idaho Fish and Game Commission should consider promulgating a regulation which prohibits the baiting of grizzly bears for any purpose, including hunting, photography, viewing, etc."⁹³ To our knowledge, no such regulation has ever been promulgated. The Service is flawed in their assumption that grizzly bears will be protected by adequate regulatory mechanisms in Idaho's plan because "[b]aiting and use of hounds are not allowed within the PCA in Idaho."⁹⁴ Occupied grizzly habitat has greatly increased in eastern Idaho as predicted in the state's plan and the ongoing baiting and use of hounds within the DMA represent a significant threat to grizzly bears in this portion of the ecosystem. Idaho's plan must prohibit the use of baiting and hounds for the purposes of hunting grizzly bears.

The plan also critically lacks information on how the agency will fund and staff grizzly bear management activities. To move forward with the proposed delisting rule without a plan that makes the commitments outlined within the Conservation Strategy and the Proposed Rule, particularly around monitoring and management of discretionary mortality would be arbitrary and highlights our concerns with this flawed process.

⁹¹ Draft Conservation Strategy, Appendix K, pg. 245

⁹² <https://fishandgame.idaho.gov/public/about/?getPage=33>

⁹³ Draft Conservation Strategy, Appendix K, pg. 262

⁹⁴ Draft Conservation Strategy, pg. 31

As we have on other state plans, we look forward to the opportunity to engage with Idaho Fish and Game in an update of their 2002 plan and provide more substantive comments.

Conclusions

On behalf of the Greater Yellowstone Coalition, I appreciate the opportunity to submit these comments on Proposed Delisting Rule, the Draft Grizzly Bear Recovery Plan Supplement: Revised Demographic Criteria and Draft 2016 Conservation Strategy. Yellowstone's grizzly bear is one of the great conservation success stories of our time. We urge the Service to abandon this proposed rule until all facets of recovery are complete, including the implementation of functional and enforceable regulatory mechanisms that will allow for continued recovery of grizzly bears and maintains adequate protections to allow the GYE population of bears to remain resilient into the future.

Once near extinction in the GYE, protections afforded by the Endangered Species Act allowed the grizzly population to rebound from less than 200 to an estimate of more than 700 grizzly bears today. GYC has been a voice for Yellowstone grizzly bears in Greater Yellowstone for more than thirty years. Grizzly bears embody the mystique of Yellowstone and define what sets Yellowstone apart from the rest of the West. They can only thrive where their habitat remains vast and with continual management of human-caused mortality. We are determined to ensure that Yellowstone remains a stronghold for bears for generations to come.

We ask that the Service please seek to improve the final documents with the above suggestions. The Service must release all of the final documents for further public review before issuing a final determination. Unless the key issues raised above are adequately addressed before delisting is occurs, we believe the proposed delisting rule and accompanying documents are flawed and legally vulnerable. We recommend that the Service halt this process until all of the necessary pieces are in place, including functional and enforceable regulatory mechanisms that will allow for the continued recovery and stability of the grizzly bear population.

Thank you for your consideration of these comments.

Respectfully,



Chris Colligan
Wildlife Program Coordinator
Greater Yellowstone Coalition
P.O. Box 4857, Jackson, WY 83001
[\(307\) 734-0633](tel:3077340633)