

Comments on the state response dated May 8, 2015:

1. The state's population goal set at 683 (95% CI 607-757) must be measured with the Chao2 method. This cannot be the goal using the mark-resight method, which shows 1229 bears in 2007. Mixing monitoring results for management is not possible.
2. We have already let the states reduce the population post-delisting by letting them go to the 2007 number using Chao2 – from 757 to 683.
3. A 7.6% independent female mortality level below 683 will never allow the population to increase above that number, so it continually declines. That is why below 683 the mort limit must be <7.6%.
4. MOUs signed by state directors are not in any way regulatory of anything. They can be changed at will since such an MOU only involves the regulated.
5. Tribes do not have to negotiate with states.
6. There is no mention of how populations would be monitored or of the IGBST. No mention of use of ISBST data or how regulation will take place. The courts will want more specifics as follows: 9th circuit (grizzly): “more specific management responses, tied to more specific triggering criteria, are required.” “the promise of adaptive management is not a sufficient answer to scientific uncertainty”. The statement about MOUs and adaptive management is meaningless without specific criteria enforceable by management responses and these enforceable management responses cannot end at 5 years.
7. Connectivity is an accepted conservation effort for all species. What we are asking for is management efforts to facilitate connectivity, not demonstrated connectivity. The USFS is doing a lot to facilitate connectivity in these areas like implementing food storage regulations on public lands. The state refuses to do anything for connectivity thereby nullifying the USFS efforts. This is a huge deal for the NGOs and will be a litigation point if not included. What we are asking the state to do will cost them nothing since there are few if any bears in these areas most of the time to hunt anyway. This is MAJOR issue. The objection to doing this is driven by extreme ideology.
8. Triggers must be regulatory and objective and measurable. Molloy (grizzly): “[A biology and Monitoring Review] does not serve as a regulatory mechanism because...the Service and other agencies are not required to take any concrete response to protect grizzlies if monitoring shows population or habitat declines.” 9th circuit (grizzly): “...more specific management responses, tied to more specific triggering criteria, are required.” “the promise of adaptive management is not a sufficient answer to scientific uncertainty.”
9. We took the states recommended mortality limits on a sliding scale to keep the population at the 2007 level and accepted them completely. We added triggers and connectivity to make this biologically and legally defensible. They did not even recognize what we did to appease them and instead asked for more.

10. 5-year limit on standards. This is the most egregious departure from the approach we have used to build post-delisting management plans (Conservation Strategies). There has never been anything discussed in the 14+ years of meetings among all agencies that any standards would disappear after 5 years post-delisting. Everyone has always agreed that the CS demographic and habitat management standards are to be in place in perpetuity post-delisting. These standards can be amended as necessary as long as such amendments are based on the best available science and the amendments are subject to public comment, but they are never to just disappear.
11. Note that if we somehow decide to allow the demographic standards to disappear after 5 years for the states, they also disappear for the tribes as well and we have lots of bears on 2 reservations in the NCDE. This will compound uncertainty and make such a decision even more indefensible.
12. The Service does not have the power to decide that the demographic standards in the CS will go away after 5 years because this is an interagency document signed by all state and federal and Tribal agencies and binding them to implement it. The demographic standards are not a state-FWS pact independent of the other agencies (even though some seem to think they are). Any idea to change the standards and make them disappear after 5 years would require reopening the entire Yellowstone and NCDE CS documents (the NCDE draft went out for comment in 2013). This would take years to rewrite these if it was to succeed, which I strongly doubt. A “5 year disappear” clause for demographic criteria would destabilize the foundation of the documents and be a significant departure requiring reopening the process and the public comment process. This would significantly weaken the CS and the proposed rule.
13. This idea that demographic standards disappear after 5 years and that concerns about policy changes from the states or legislatures disappear after 5 years is from one radical state administrator who has not been involved in any of this process. He has essentially hijacked the entire process at the 11th hour making delisting impossible and we are letting him do it.
14. When we completed the 2007 CS and rule we did not have RO and WO involvement in these documents. Instead we were backed up on what we did in my office and we got it done. Now we have been on hold for almost 10 months because the states appealed to the RO and WO and, instead of saying what we are doing is the way we need to get the delisting accomplished, the states were given uncertainty about what we (at the field level) were doing. This uncertainty from the RO and WO has allowed the states to depart from science and hijack the process and get us to the very edge of biological and legal defensibility where we are now.
15. It is useful to review where we are:
 - a. As an interagency team (just as we did in 2007), we developed by mid-2014 a scientifically sound approach to delisting using the new data on whitebark pine and incorporated state concerns about the need to increase management flexibility by reducing the area where

we counted mortality by half (almost 48,000 sq km) and stabilized the population management approach. This approach was ready for a proposed rule to come out in the fall of 2014.

- b. Certain state administrators went to the RO and WO and wanted to reduce the population post-delisting. They were given the impression that it might be possible, so movement forward on a proposed rule was stalled and has been stalled for almost 10 months.
- c. At a meeting in February 2015, the state administrators were presented with multiple scientific indicators by USGS that the population has been essentially stable since the early 2000s and that a less biased population estimator showed the population was now about 1200 bears and was at that same level in 2007 and before. The state response was to deny these scientific facts. They thought the population was increasing and they preferred to use the Chao2 estimate of 757 bears in 2014.
- d. The Service overruled NPS concerns about mortalities and allocated the percentage of the mortalities for NPS area populations to the states for state management.
- e. In April 2015, the states proposed a management system to reduce the population to the 2007 Chao2-based number of 683 with a sliding scale of mortality levels to maintain this 2007 level of population. On April 17, 2015, the Service accepted everything the states proposed and added management triggers showing responses should there be departure from the state proposal. These additions by the Service were necessary to make the state proposal biologically and legally defensible.
- f. The state response dated May 8, 2015 to the Service document making the state approach defensible in a delisting proposal was to remove every item the Service added to make the state approach defensible.
- g. Not one of the many state biologists I have talked to in these 3 states supports this approach. This is an administrator-produced approach
- h. If we want to produce a biologically and legally defensible delisting proposal and actually delist the Yellowstone grizzly bear, we cannot go any farther than we went with our acceptance of the state proposal on April 17, 2015. If we remove any of the items we added like triggers and connectivity management in intervening habitats, or (most damaging) make the demographic criteria disappear after 5 years, we will not be able to biologically and legally defend it and we will be not be able to delist.
- i. Proposing something we cannot biologically and legally defend risks the future of the recovered grizzly populations we have worked for 34 years to recover, gravely hurts the credibility of the Service, erodes local public support for grizzly bears, and will damage the ESA.
- j. I believe we will have broad local public support for the proposal we put forth on April 17, 2015. The local publics will see this as meeting

their needs for management flexibility while maintaining a health population in the demographic monitoring area. Local people are particularly interested in actually achieving delisting and this proposal has a real chance to succeed. Proposing an approach that has little chance of delisting success to meet the desires of a few state administrators will erode local public support for the grizzly bear and the ESA.

- k. The Service is the lead on the conservation of listed species. For 34 years we have led the recovery effort and the result is the recovered populations we have today in the Yellowstone and the NCDE. We have to defend any delisting proposal biologically and legally. The states do not. We should be taking the lead is what is necessary to delist the grizzly and not be in a reactive mode to certain state administrators.
- l. To put this last 10 months of drifting along on a delisting approach in perspective, if we would have had a similar approach over the last 34 years of the recovery effort whereby necessary recovery actions and tasks could be appealed to the RO and WO by the states or other agencies with resulting suspension or manipulation of these necessary recovery actions, we would never have achieved recovery. What got us to recovery was sufficient depth of political support for the tough decisions that had to be made. We (the Service) made tough decisions and held to these with support within the Service leadership and we achieved recovery.
- m. To move forward we need to send our April 17 outline back to the states and tell them this is what will be necessary to delist with a biologically and legally defensible proposal. We should note that this approach:
 - i. Accepts the sliding scale of mortality the states proposed to manage the population.
 - ii. Increases management flexibility in many ways to allow the states to manage bear-human conflicts.
 - iii. Accepts the state desire to manage the population down to the Chao2 population estimate of 683 bears when the Yellowstone bears were delisted in 2007.
 - iv. Allows for increased discretionary take.
 - v. Has a good likelihood of succeeding in delisting the Yellowstone population.