

Grizzly bear delisting public comment issue and response drafts –Montana

Issue 26.5: Commenters expressed concerns that we either did not have or did not share effective plans for facilitating connectivity between the six grizzly bear recovery zones in the lower 48 states (especially in the preamble of the proposed rule). Commenters and peer reviewers both expressed concerns that management plans and regulations will discourage movement of grizzly bears and prevent necessary connectivity, including that: (2) Montana’s plan and regulations are noncommittal or unclear on the subject of connectivity and fail to protect bears moving between the GYE and the NCDE since they only promise to manage discretionary mortality and establish “attractant storage rules” and since they requested removal of any language committing to effective management of mortality to facilitate connectivity; (3) Montana has not met the Service’s apparent requirement in the proposed rule to effectively manage discretionary mortality in linkage zones (though the Governor of Montana emphasized that connectivity between the GYE and the NCDE should not be a requirement of delisting because it is “beyond the scope of the ESA,” because Montana has “committed through its management plan to allow bears to occur where they are tolerated,” and because they expect the populations to “intermingle” in the future); (4) the proposed rule, the Tri-State MOA, and the Conservation Strategy do not include strong enough commitments and clear partnerships that will ensure grizzly bear habitat connectivity (especially as considerations in any new road construction or highway improvement projects)...

Response 26.5:

Issue 66.7: Many commenters expressed concerns about the adequacy of Montana’s regulatory mechanisms and management plan. First, one commenter expressed confusion as to which Montana regulations or laws the Service considered in its assessment that Montana’s regulatory mechanisms were adequate; they took issue with the lack of rationale for this assessment in our Federal Register notice. Commenters were concerned that the MOA (which Montana relies on as its regulatory mechanism) is voluntary and thus insufficient to show that Montana will adequately manage grizzly bears in a post-delisting environment. Commenters claimed that the only true “regulatory mechanism” is its draft hunting regulations, a structure that

should be disqualified from consideration as a regulatory mechanism in our Factor D analysis because it was adopted without sufficient requisite public involvement, is the subject of an ongoing lawsuit, is not yet final, has missing information, lacks a date, is “substantially deficient,” lacks specificity, and only contains provisions to prohibit the hunting of females with cubs. These commenters requested additional opportunity for public comment once Montana actually has final regulations.

Second, many commenters took issue with the content of Montana’s regulatory mechanisms, including that they did not contain all five of the regulatory elements we deemed requisite for adequacy in our proposed rule. Commenters worried that Montana’s grizzly bear regulations, combined with existing Montana laws and practice (e.g. Montana Code § 87-3-130(1)), contain no explicit limits on grizzly bear discretionary mortality and could allow unlimited killing of grizzlies and the shooting of a grizzly at any time if the bear is causing conflict with livestock. Commenters also expressed concerns regarding the timing of the hunts described in Montana’s draft hunting regulations, claiming that they could jeopardize the stability of the GYE population because: (1) the timing of the spring hunt allows hunting when females with cubs are very vulnerable to accidental take; (2) no spring hunt could ensure the safety of females with cubs; (3) the fall hunt aligns with other big game hunts, exposing grizzlies unnecessarily because they will be attracted to hunter-killed carcasses; and (4) Montana Code Ann. § 87-5-302 could allow the Commission to open year-round hunting of grizzly bears. Commenters also expressed concerns and suggestions about where bears are allowed to be hunted under Montana’s framework, including claims that: (1) bears that spend time in the national parks could still be taken since all of the GBMUs coincide with the park boundaries; (2) the map of GBMUs was difficult to interpret since it did not mark the PCA or the DMA; (3) no hunting should be allowed in GBMUs 300 or 301 and portions of 302 and 303 to ensure connectivity between the NCDE and GYE; and (4) individualized quotas should be established in each GBMU to limit mortality in areas that border Yellowstone National Park or are within the PCA. One commenter believed that the quota system in Montana’s regulations did not adequately account for bears moving between units. They also believed that Montana’s discussion of how they will track population numbers and mortality was lacking.

Third, commenters thought that Montana’s “old” grizzly bear management plan required updating since it does not contain the most recent science, does not contain the mortality limits in

the 2016 Conservation Strategy, and does not support their claim of the importance of hunting for increasing human safety.

Response 66.7: