

Billing Code ????

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2016-0042]

[??????]

RIN ?????

**Endangered and Threatened Wildlife and Plants; Removing the Greater Yellowstone
Ecosystem Population of Grizzly Bears from the Federal List of Endangered and
Threatened Wildlife**

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule; reopening of comment period; notice of availability of peer review
and supplementary documents

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our March 11, 2016, proposal to remove the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) from the List of Endangered and Threatened Wildlife. In our proposal to delist, we emphasized that, before delisting could occur, Montana, Wyoming, and Idaho needed to promulgate regulations managing human-caused mortality of grizzly bears. Montana, Wyoming, and Idaho recently finalized such regulatory mechanisms and approved a joint Memorandum of Agreement, which together explain the state rules surrounding human-caused grizzly bear mortality. We are also announcing the receipt of five independent peer reviews of the proposed delisting rule. We are reopening the comment period for the proposed rule to allow all interested parties an additional opportunity to comment on the proposal in light of these documents. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59pm Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for FWS–R6–ES–2016–0042, which is the docket number for this rulemaking. On the

search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to "Open" to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2016–0042; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see “**Public Comments**” in **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: For information on grizzlies see <https://www.fws.gov/mountain-prairie/es/grizzlyBear.php>, or contact U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406-243-4903. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the March 11, 2016 proposal (81 FR 13174) to remove the GYE population of grizzly bears (*Ursus arctos horribilis*) from the List of Endangered and Threatened Wildlife in light of the five peer review documents and the recently finalized state regulatory documents, which illustrate Wyoming, Montana, and Idaho's approach to grizzly bear management should we delist the grizzly bear in the GYE, including: the Memorandum of Agreement between the three states (Tri-State MOA), Montana's Grizzly Bear Hunting Regulations, Chapter 67 of Wyoming Game and Fish Commission Regulations, and Idaho's Fish and Game Commission Proclamation. Copies of the Tri-State MOA, Montana Grizzly Bear Hunting Regulations, Chapter 67 of Wyoming Game and Fish Commission Regulations, and Idaho's Fish and Game Commission Proclamation are available: on the Internet at <http://www.regulations.gov> or <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>; or upon request from the Mountain-Prairie Region Office, Ecological Services Division (see **FOR FURTHER INFORMATION CONTACT**). We will consider information and recommendations from all interested parties.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>,

your entire comment—including your personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the Mountain-Prairie Region Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On March 11, 2016, we proposed to remove the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) from the List of Endangered and Threatened Wildlife. In the proposal to delist this population of grizzly bears, we explained that state regulations surrounding human-caused grizzly bear mortality in Montana, Wyoming, and Idaho must include five elements:

1. Suspending all discretionary mortality inside the Demographic Monitoring Area (DMA), except if required for human safety, if the model-averaged Chao2 population estimate falls below 600;

2. Suspending grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1, and 2, and 3 in the proposed rule) are met at any time during the year (the mortality limits in these tables are reiterated in Table 1 below);
3. Female grizzly bear with young will not be available for recreational harvest;
4. In a given year, discretionary mortality will only be allowed if non-discretionary mortality (e.g. mortality from illegal kills, mortality from self-defense, calculated unknown/unreported mortalities, natural mortalities, and mortality from other causes such as vehicle collisions) does not meet or exceed total mortality limits for that year; and
5. Any mortality that exceeds total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year to assure that long-term mortality levels remain within prescribed limits inside the DMA.

Table 1.¹ Total mortality² limits inside the DMA. These Mortality Rates Were Calculated as Those Limits Necessary To Manage Toward the Long-Term Average Population Size That Occurred From 2002 to 2014 Using the Model-Averaged Chao2 Population Estimate Method (674, 95% CI = 600 -747). If Population Size Is Estimated as Fewer Than or Equal to 600 in Any Year, No Discretionary Mortality Will Occur Unless Necessary for Human Safety

	Total grizzly bear population estimate		
	≤674	675-747	>747
Mortality limit % for independent FEMALES (using model-averaged Chao2 method)	≤7.6%	9%	10%
Mortality limit % for independent MALES (using model-averaged Chao2 method)	15%	20%	22%
Mortality limit % for independent DEPENDENT YOUNG (using model-averaged Chao2 method)	≤7.6%	9%	10%

¹Table 1 in proposed rule

²Total 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.

We noted that regulatory mechanisms containing these provisions must be in place in each state for delisting to occur.

Montana, Wyoming, and Idaho recently finalized such regulatory mechanisms governing potential hunting seasons. These three states also approved a Memorandum of Agreement (Tri-State MOA), which outlines their coordinated plans for grizzly bear management and allocates discretionary mortality of grizzly bears in the GYE between the three states ([CITE MOA](#)). Wyoming approved the Tri-State MOA on May 11, 2016, Idaho approved the Tri-State MOA on May 16, 2016, and Montana approved the Tri-State MOA on July 13, 2016.

Highlights of Recently Released State Grizzly Bear Management Regulations

Montana, Wyoming, and Idaho each used a different regulatory method to enact their state rules governing human-caused grizzly bear mortality. Montana's Fish and Wildlife Commission adopted hunting regulations that outline the structure of a grizzly bear hunting season on July 13, 2016 ([CITE MT REGS](#)). Before adopting these regulations, Montana released the draft regulations for public comment and review. Montana's Fish and Wildlife Commission also approved the Tri-State MOA ([CITE MOA](#)). Montana has indicated that by adopting the Tri-State MOA in the same manner as its regulations, through a public process, the provisions of the Tri-State MOA, as they apply to Montana Fish, Wildlife, and Parks, are equal to a regulatory, non-voluntary mechanism. The binding authority is through the adoption of the Tri-State MOA as a regulation through passage by the Fish and Wildlife Commission. This

notice and the Service Assessment below assume the Tri-State MOA is regulatory, as indicated by the State. We are accepting public comments on this issue.

On July 8, 2016, Wyoming Game and Fish Commission approved a regulatory framework that “provides for the management of grizzly bears in Wyoming to ensure a recovered population” (Chapter 67). The Wyoming Game and Fish Commission invited the public to participate in the process of developing these regulations with a public comment period. Once the Governor of Wyoming approves and signs these regulations, they will be incorporated into Chapter 67 of the Wyoming Game and Fish Commission’s regulations. This notice and the Service Assessment below assume that the Governor of Wyoming will sign the version of the regulations that was approved by the Wyoming Game and Fish Commission.

Idaho’s Fish and Game Commission issued a proclamation relating to the limit of the take of grizzly bears in the GYE on **DATE**. Idaho Code Section 36-105 gives the Idaho Fish and Game Commission the authority to use proclamations, which “have full force and effect as law,” as a means of “setting any season or limit on numbers, size, sex or species of wildlife classified by the commission as game animals” (Idaho Code Section 36-105). Since grizzly bears are classified as game animals in IDAPA 13.01.06.100.01e, the Idaho Fish and Game Commission may use a proclamation to establish binding rules limiting the hunting of grizzly bears (Idaho Administrative Code 13.01.06.100.01e).

Table 2 cross references the aforementioned requirements in the proposed rule with the content of each state’s regulations. The full text of the regulations can be found on the Internet

at <http://www.regulations.gov> or <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>;
or upon request from the Mountain-Prairie Region Office, Ecological Services Division (see
FOR FURTHER INFORMATION CONTACT).

DRAFT

Table 2. Cross reference between the regulatory requirements in the proposed rule and the state grizzly bear management regulations

Required element described in the proposed rule	Montana (Tri-State MOA and MT State Hunting Regulations)	Wyoming (Chapter 67 of WY Game and Fish Commission Regulations)	Idaho (ID Fish and Game Commission Proclamation)
Requirement 1: Suspending all discretionary mortality inside the Demographic Monitoring Area (DMA), except if required for human safety, if the model-averaged Chao2 population estimate falls below 600.	Tri-State MOA: Section IV(2)(c)(i) and Section IV(2)(a)(i)	Section 4(c)	Section 2
Requirement 2: Suspending grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1, and 2, and 3 in the proposed rule) are met at any time during the year (these mortality limits are reiterated in Table 1 in this notice).	Tri-State MOA: Section IV(2)(c), Section IV(4)(a), and Section IV(6)	Section 4(d)	Section 5
Requirement 3: Female grizzly bear with young will not be available for recreational harvest.	Tri-State MOA: Section IV(4)(b); MT State Hunting Regulations p. 4 and p. 7	Section 4(e)	Section 4
Requirement 4: In a given year, discretionary mortality will only be allowed if non-discretionary mortality (e.g. mortality from illegal kills, self-defense, calculated unknown/unreported mortalities, natural mortalities,	Tri-State MOA: Section IV(2)(c), Section IV(4)(a), and Section IV(6)	Section 4(d) and Section 4(k)	Section 5

and other causes such as vehicle collisions) does not meet or exceed total mortality limits for that year.			
Requirement 5: Any mortality that exceeds total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year to assure that long-term mortality levels remain within prescribed limits inside the DMA.	Tri-State MOA: Section IV(2)(c)	Section 4(g), Section 4(k), and Section 4(l)	Section 6

Service Assessment

The Service has reviewed the recently finalized state regulations governing the management of grizzly bears in the GYE and the regulation of human-caused mortality (including the Tri-State MOA, Montana Grizzly Bear Hunting Regulations, Chapter 67 of Wyoming's Game and Fish Commission Regulations, and Idaho's Fish and Game Commission Proclamation). Our preliminary assessment is that these documents are consistent with the letter or intent of the regulatory requirements regarding human-caused mortality that we outlined in the proposed rule. Although the wording of some sections in the state regulations does not exactly match the phrasing of our requirements, we believe that the text of these sections meets the intent of our requirements. Thus, based on our review, we believe the regulatory framework in Montana, Wyoming, and Idaho, in combination with the Tri-State MOA, will maintain a recovered population of grizzly bears in the GYE. We are accepting public comments on these issues.

Peer Review and Public Comments

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we subjected the proposed delisting rule to peer review. The submissions from the five independent peer reviewers are available as supplementary documents and we welcome any comments on the proposed rule in light of these reviews (Amec Foster Wheeler 2016). These peer reviews were conducted by third-party selected scientific experts in large carnivore ecology and management with expertise in one or more of the following areas:

population ecology, management, demographics, conservation, and population genetics. The over 290,000 public comments we received on the proposed rule during our first comment period are also available on [regulations.gov](http://www.regulations.gov), should the public want to review any of the comments we are currently considering.

References Cited

A complete list of references cited is available: on the Internet at <http://www.regulations.gov> or <https://www.fws.gov/mountain-prairie/es/grizzlyBear.php>; or upon request from the Mountain-Prairie Region Office, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Mountain-Prairie Region Office, Ecological Services Division, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: _____

Signed: _____