



May 9, 2016

Public Comments Processing  
Attn: Docket No. FWS-R6-ES-2016-0042,  
U.S. Fish and Wildlife, MS: BPHC,  
5275 Leesburg Pike, Falls Church, VA 22041-3803

Dear Sir or Madam:

Please accept these comments on the proposed delisting rule for the Greater Yellowstone Ecosystem (GYE) grizzly bear Distinct Population Segment (DPS), hereafter referred to as the proposed rule. These comments represent the consensus positions of the Wyoming Game and Fish Department (WGFD), Idaho Department of Fish and Game (IDFG), and Montana Fish, Wildlife and Parks (MFWP), and reflect the commitment of our three agencies to work together to collectively manage the recovered GYE grizzly bear distinct population segment (DPS) at an ecosystem scale.

We are in strong agreement that the GYE grizzly bear population constitutes a DPS per the DPS policy, is biologically recovered, and has been for more than a decade. This is a significant conservation achievement about which we are very proud, and are committed to maintain. Legal delisting is not only warranted, but necessary to achieve the objectives of the Endangered Species Act (ESA). We strongly advocate that issuance of a final delisting rule be among the highest priorities of the U.S. Fish and Wildlife Service (USFWS). Our comments are offered in the spirit of ensuring that a final rule is technically accurate and properly reflects the distinction between federal ESA requirements for protection of species likely to become in danger of extinction within the foreseeable future and state requirements for protection of species that are not threatened or endangered. Our comments are organized by general theme, with recommended edits to the proposed rule to accomplish these two objectives. For ease of pointing out specific wording, the page numbers referred to in our comments refer to the PDF version of the proposed rule (vs. the federal register notice).

We are able and willing to address or clarify any questions you have about these comments, and look forward to celebrating this conservation success with issuance of a final delisting rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Virgil Moore".

Virgil Moore, Director  
Idaho Dept of Fish and Game  
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A handwritten signature in black ink, appearing to read "M. Jeff Hagener".

M. Jeff Hagener, Director  
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A handwritten signature in black ink, appearing to read "Scott Talbott".

Scott Talbott, Director  
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\*Note: All page references correspond to the initial document released by the Service prior to the federal register notice

The three state agencies agree that the grizzly bear population in the Greater Yellowstone Ecosystem (GYE) meets the criteria for a distinct population segment (DPS) under USFWS' policy based on the population's discreteness and the relationship of this population to the species' range.

The state agencies also agree the GYE DPS is not likely to become in danger of extinction for the foreseeable future, and is a recovered population. As such, the state agencies support the prompt removal of the recovered GYE DPS from the list of threatened species and its return to state management consistent with congressional intent under the ESA.

The state agencies agree that the Demographic Monitoring Area (DMA) encompasses suitable habitat and is an appropriate geographic area for monitoring and mortality assessment.

The state agencies agree that Chao2 represents the best available science for monitoring and evaluation of population trends.

Our states are signatories to a Conservation Strategy, which describes commitments of state and federal wildlife and land management agencies to cooperatively manage grizzly bears and their habitat in the GYE DPS. We have also developed a tri-state Memorandum of Agreement (MOA) that commits our three agencies to collaboratively manage the population at levels and mortality rates that will keep the population above established recovery criteria. Our three states have a strong track record, individually and collectively, for grizzly bear conservation and management (see acknowledgement of this in text from page 191). All three states have grizzly bear management plans, interrelated existing regulatory mechanisms, and expertise in place that demonstrate strong commitments to a viable, healthy and recovered Yellowstone grizzly bear population. The states find no threat from inadequate existing regulatory mechanisms, overutilization, habitat/range destruction, disease/predation, or other factors warranting continued listing of the GYE DPS.

#### Distinction between ESA Requirements for listed species and State Requirements for non-listed species

Throughout the proposed rule, there are references to requirements that transcend the ESA's authority and are unduly prescriptive for management of the recovered GYE DPS. These references are contrary to Congress' delineation between federal authority under the ESA and traditional state wildlife management authority, and contrary to the standards of the federal Administrative Procedure Act. In the absence of other federal law, such as the Migratory Bird Treaty Act, traditional state jurisdiction and responsibility for management of non-listed species applies.

## Adaptive Management and Conservation Reliance

Some of the references in the proposed rule are also at odds with fundamental tenets of professional resource management—adaptive management. Given the recognition and reliance of U.S. Department of Interior agencies on adaptive management, both in general and in specific regards to grizzly bear management, these references may simply be a matter of inartful wording. For example, the final rule should eliminate references to “perpetuity” and “indefinitely” when describing documents or specific wildlife or habitat management actions. Responsible management and conduct of government entails the ability to make legislative, administrative, and scientific adjustments as situations or assumptions change in the future.

The proposed rule also inappropriately links post-delisting requirements beyond the ESA’s mandates based on USFWS’ characterization of grizzly bears as a “conservation-reliant” species. These proposed requirements impinge upon the legal authority of the three state Wildlife Commissions to manage wildlife.

Notably, the literature reference for the GYE DPS as “conservation reliant” recommends against perpetual requirements and for “necessary management actions as long as necessary” (Scott et al. 2005, p. 384). This same literature reference, as well as a more updated paper from the same author, posits that conservation reliant species are simply those requiring conservation management post delisting (Scott et al. 2005, p. 384, Scott et al. 2010, p. 92). Additionally, USFWS relates “conservation reliance” to low resilience influenced by “excessive” human caused mortality. The tri-state MOA and the states’ commitment in many forms to mortality limits and the regulatory mechanisms to maintain a recovered population all work to prevent “excessive” human caused mortality.

All three states manage a wide array of “conservation-reliant” species in the absence of ESA listing and they do so in a science-based, responsible and publicly accountable manner. Mere “conservation reliance” does not mandate ESA protection or extension of federal requirements post-delisting.

USFWS should change references in the final rule to reflect that the interagency Conservation Strategy, habitat and population monitoring programs, and periodic review of population vital rates demonstrate the adequacy of existing regulatory mechanisms as to management of the GYE DPS and bear habitat. The final rule should not prescribe or imply any particular management or monitoring action will be unresponsive to future change. For example, USFWS should make the following deletions or other edits for the final rule:

- Page 56-- ~~Consequently, the 2016 Conservation Strategy will remain in effect indefinitely—beyond the 5-year post-delisting monitoring period required by the Act—to facilitate and assure continue successful management of the population and its habitat across multiple land ownerships and jurisdictions.~~

- Page 121-- To ensure total mortality rates remain ~~consistent~~congruent with population objectives ~~vital rates~~ after delisting, the IGBST will conduct a demographic review of population vital rates (Table 2, item #7) ~~at least every 5 to 10 years in perpetuity. The states will use results of these reviews will be used to make appropriate adjustments to mortality limits to ensure the population remains recovered. to assure adherence to the population objective to maintain the average population from 2002-2014 inside the DMA and to maintain a recovered population in accordance with the recovery criteria.~~
- Page 142—~~The 2016 Conservation Strategy will remain in effect in perpetuity, beyond delisting and the 5-year monitoring period required by the Act as grizzly bears, like many other species, will always be “conservation-reliant” (Scott et al. 2005, p. 384) because of their low resiliency to excessive human-caused mortality.~~
- Page 152--~~These indicators of fitness will be monitored annually, in perpetuity.~~
- Page 203—~~The 2016 Conservation Strategy will remain in effect beyond the 5-year monitoring period required by the Act because grizzly bears are a “conservation-reliant” species (Scott et al. 2005, p. 384) because of their low resiliency to excessive human-caused mortality and the manageable nature of this threat.~~

#### Population / Management Objective

The proposed rule makes numerous references to a population management objective for the GYE DPS within the DMA at 674 bears. These references confuse USFWS recovery criteria for a listed population with state objectives for management of a non-listed population. Recovery criteria are within USFWS' authority to identify metrics for a population to not warrant federal ESA protection; state management objectives incorporate various factors appropriate for a non-listed population, which may appropriately include reducing conflicts and providing for regulated take of wildlife.

To appropriately distinguish ESA requirements and state requirements and explain their relationship to each other, the final rule should identify the states' agreed-upon management objectives in relation to the recovery criteria. The states have agreed upon a tri-state management objective for the DMA of at least a range between 600 and 747 (based on the 95% confidence interval of the estimated average population size between 2002-2014) and upon mortality rates to keep the population within this range. The proposed rule sometimes incorrectly states or implies that the management objective is a single point objective of 647 bears. The proposed rule should properly reflect the tri-state management objective as a range (600-747).

The final rule should identify that the tri-state management objective (600-747) for the DMA is at levels well above the population recovery criterion (500 bears for the entire GYE DPS). The tri-state MOA and individual state regulatory mechanisms for management within this objective address threats to the GYE DPS, such that ESA protection is no longer warranted.

The proposed rule also makes references to discretionary, managed and regulated mortality; for rule clarity, we recommend USFWS refer to a single term “discretionary mortality,” which encompasses the various aspects of state management.

To clarify confusion and inaccuracies in the proposed rule, we recommend the following edits:

- Page 22--~~Because there are limited opportunities to increase or control these habitat components, the objective for grizzly bear habitat management is to reduce or mitigate the risk of human-caused mortality~~
- Page 55--Total mortality rate limits inside the DMA. These mortality rates ~~were calculated as those limits necessary to~~ support management toward within the range of 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).
- Page 112--~~the total mortality limits for independent females will be set at 7.6 percent when the population is at 674, less than 7.6% when the population is lower, and more than 7.6 percent when the population is higher (as per Table 1, above, and Tables 2 and 3, below)."~~ The States will set mortality limits within the DMA in accordance with guidance provided in Table 1 above and Tables 2 and 3 below.
- Page 113 - "Framework to manage inside the DMA ~~for the population goal of the average population for 2002-2014 using the model-averaged Chao2 method"~~
- Page 114 -:

2. <del>Goal of the draft 2016 Conservation Strategy Recovery Criteria 3 requirements</del> <u>Tri-state population management objective</u>	To maintain the population around the average <del>population estimate for 2002-2014</del> <u>Chao2 modeled average (95% CI = 600-757; average = 674; 95% CI = 600-757; 90% CI 612-735)</u> during a period of population stability using the model-averaged Chao2 methodology (Keating et al. 2002; Cherry et al. 2007; Harris et al. 2007). <u>by maintaining annual mortality limits for independent females, independent males, and dependent young as shown in Table 1 in this rule. This will serve to ensure the continuation of a recovered grizzly bear population in accordance with the three demographic recovery criteria as described in the updated supplement to the Recovery Plan and the draft 2016 Conservation Strategy.</u>
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- Page 114-Table 2 number 5

5. Allocation process for <del>managed</del> <u>discretionary</u> mortalities	The States will meet annually in the month of January to review population monitoring data supplied by IGBST and collectively establish <u>the allocation of discretionary mortality within the total mortality limits per age/sex class available for regulated harvest</u> for each jurisdiction (MT, ID, WY) in the DMA so that DMA thresholds are not exceeded. If requested, the WRR will receive a portion of the available mortality limit based on the percentage of the WRR geographic area within the DMA. Mortalities outside the DMA are the responsibility of each State and do not count against total mortality limits.
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- Page 114-Table 2 number 6:

6. Management of hunting mortalities	<del>Per State regulations and MOA, hunting seasons will be closed within 24 hours of meeting total mortality limits for</del>
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<u>Conditions to stop discretionary mortality and contingency for exceeding mortality limits.</u>	<del>any age/sex class as per this table.</del> Any mortality exceeding total mortality limits in any year will be subtracted from that age/sex class total mortality limit for the following year. If any state enacts hunting seasons, <del>they will enact existing regulatory mechanisms that will</del> ensure the season is closed upon meeting any of the mortality limits for age/sex.
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- Page 114 - Table 2 number 7:

7. Management review by the IGBST.	<del>IGBST will conduct A a management review will be conducted by the IGBST</del> every 5 to 10 years at the direction of the YGCC. This management review will assess if the management system is achieving the desired goal of ensuring a recovered grizzly bear population in accordance with recovery criteria. The management review is a science-based process that will be led by the IGBST (which includes all State and Federal agencies and the WRR Tribes) using all recent available scientific data to assess population numbers and trend against <del>the management objective and the</del> recovery criteria. Age/sex-specific survival and reproductive rates will also be reevaluated using the most recent data to adjust total mortality levels as necessary.
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- Page 116-117-Table 3-This table creates confusion by using information that will change and is subject to multiple variables. Since this document will endure through the 5 year post-delisting period, a reader may refer to this document in years to come when these variables have changed. We recommend deleting the table.
- Page 121 – See previous recommended edit.
- Page 123--In addition to State Laws and regulations, the IGBST will conduct a demographic review of the population vital rates every 5 to 10 years on which allowable mortality limits are based to ~~assure adherence to the population objective~~ ensure the population remains recovered.

### Stability

The proposed rule makes numerous inaccurate references to stability, a stable population, and the population stabilizing after 2002. The science indicates that while population growth has slowed, it continued to grow at a rate of 0.3-2.2% per year during 2002-2011 versus 4-7% per year during 1983-2001. In 2014, the population estimate increased by 200 grizzly bears compared to 2002 using the model-averaged Chao2 population estimation method. As wildlife populations are and will be dynamic, we recommend all references to “stability” be deleted, and instead refer to growth rate, reaching apparent carrying capacity, and population fluctuation.

Specific recommendations for edits include:

- Page 7 -~~The population is stable~~ growth rate of the grizzly bear population has slowed and sex ratios have changed as bear densities have approached carrying capacity...

- Page 28 –Population ~~stability~~ (i.e. fluctuation around carrying capacity or a long-term equilibrium) is often influenced by a combination of density-dependent and density-independent effects.
- Page 48 – (3) the population has ~~basically stabilized~~ slightly increased inside the DMA since 2002, with an average population size between 2002-2014 of 674 using the model-averaged Chao2 population estimation method (95% Confidence Interval (CI) = 600-747). ~~This stabilization is evidence that~~ The population is close to its carrying capacity as evidenced by density dependent regulation occurring inside the DMA (van Manen et al. 2015, entire).
- Page 49 –The IGBST found that that population growth had slowed since the previous time period, but was ~~still stable to~~ slightly increasing. ~~meaning the population had not declined.~~
- Page 49 –We recommend inserting a sentence at the end of the second paragraph to reflect continued increase of the population through 2014:
  - However, subsequent annual population estimates published by IGBST indicated the population did not level off in 2011 as population estimates continued to increase through 2014.
- Page 54 –The population growth had slowed ~~during stabilized~~ 2002-2014 at a mean model-averaged Chao2 population size of 674 (95% CI=600-757), which is very similar to the population size of 683 when the Yellowstone population was previously delisted in 2007 (72 FR 14866; March 29, 2007). The population growth has ~~now naturally stabilized~~ slowed because of density-dependent population effects that resulted in reduced survival of dependent young.
- Page 111 –
  - (2<sup>nd</sup> paragraph) The population growth has slowed ~~basically stabilized~~ inside the DMA since 2002,...
  - (3<sup>rd</sup> paragraph) ~~The population inside the DMA has stabilized itself at this population size through density-dependent regulation.~~
- Page 112 – A total mortality limit of 7.6 percent for independent females is the mortality level that the best available science shows results in population stability minimizing the fluctuation around carrying capacity or a long-term equilibrium (IGBST 2012, entire).
- Page 113 –These total mortality rates ~~will result in population stability~~ are calibrated to maintain the population around the long-term average population size of 674 (95% CI = 600-747) that existed during 2002-2014 as calculated using the model-averaged Chao2 population estimate method.
- Page 171 – (6<sup>th</sup> sentence) Current data show that the GYE bear population has not declined ~~stabilized or increased~~ despite the loss reduced availability of whitebark pine seeds (IGBST 2012, p.34).
- Page 188 – (2nd paragraph; either eliminate or edit sentences)
  - Inside the DMA, the population growth has ~~stabilized~~ slowed since 2002 and is exhibiting density dependent population regulation (van Manen et al. 2015, entire).

## Hunting

The states are concerned with the proposed rule's discussion of discretionary hunting of grizzly bears. Namely, the proposed rule appears to assume that all three states will establish hunting seasons. This assumption is premature, unnecessary and inappropriate. The States recommend that the Service recognize this fact and alter its discussion of potential hunting seasons and regulations accordingly.

One cannot reasonably interpret the ESA to require states to establish hunting seasons before delisting can occur. The proposed rule apparently misunderstands existing state regulatory mechanisms for protection of wildlife in the cases where states authorize private individuals to hunt or otherwise take wildlife. Each state will determine whether or not it uses hunting as a management tool, and under what circumstances it will do so. The application of existing regulatory mechanisms for limiting mortality from potential harvest of bears is variable depending on the specifics of a harvest season a Commission might authorize in the future; however, the regulatory mechanisms are in existence and are adequate to limit harvest and other discretionary mortality for bears based on geography, demographic class or time. Using existing regulatory mechanisms, states have established or would establish general harvest management frameworks for grizzly bears to specifically address reporting requirements, prohibition on take of females with young, season closure where a mortality limit is reached, and subtraction of excess mortality from the following year's allocation. Notably, none of the three states implemented hunting seasons following the 2007 final delisting rule. The language in the proposed rule exceeds USFWS' authority under the ESA.

The states have agreed to maximum mortality thresholds that will be applied at an ecosystem scale and will account for all forms of mortality, of which hunting is but one. By committing to managing so those thresholds are not violated (see tri-state MOA), it is unnecessary and inappropriate to focus on hunting as a more significant mortality issue than any other source of mortality. By making adoption of additional, specific hunting regulations a condition of delisting, USFWS has created a public expectation that hunting will occur as soon as delisting is finalized, and has shifted the focus of this conservation success story to hunting management rather than recovery. We recommend that the final rule recognize that the states will manage all sources of mortality to ensure agreed upon mortality thresholds are not exceeded.

Our states have many decades of proven experience at managing populations of a variety of wildlife populations, including grizzly bears, and have a proven track record of being able to sustainably manage wildlife populations. Existing individual state regulatory mechanisms, the tri-state MOA, and the Conservation Strategy will ensure that grizzly bears will similarly be sustainably managed. We recommend the USFWS more overtly recognize the track record and expertise of the states towards management and conservation of grizzly bears, and commitments to maintain that track record.



We recommend the following edits:

- Page 115/Page 119/Page 123—(*Delete or replace paragraphs regarding state regulatory mechanisms for hunting and discretionary mortality with the following or similar language.*)  
The three states classify bears to protect them from hunting except where their respective Commissions take additional action to open a hunting season. Should the states authorize grizzly bear hunting seasons after delisting, Wyoming, Montana, and Idaho have existing regulatory mechanisms to establish harvest limits (or otherwise control hunting activity), and to close seasons when such limits are reached. They also have existing regulatory mechanisms to restrict take of particular sex and age class in such seasons to ensure compliance with mortality limits (see *tri-state MOA, Attachment B*). The states also have existing regulatory mechanisms to end all discretionary mortality when mortality limits are reached. These existing regulatory mechanisms allow the three states to manage harvest mortality in conjunction with all sources of mortality within the DMA, consistent with Tables 1, 2, and 3 and the tri-state MOA. A state's application of existing regulatory mechanisms to any harvest season would vary based on circumstances specific to the hunt (e.g., geographic, demographic, or time factors).
- Page 23 (delete last paragraph as confusing reference to population monitoring in the habitat standards section)- ~~The primary factor affecting grizzly bears at both the individual and population level is excessive human caused mortality.....This requires ongoing monitoring of the grizzly bear population to understand if it is sufficiently resilient to allow for a conservative level of human caused mortality without causing a population decline.~~
- Page 109 – The only commercial or recreational take anticipated post-delisting is a limited, controlled hunt. The states have agreed to consider all forms of mortality, including hunting mortality, to ensure recovery criteria are not exceeded. In years where other forms of mortality are greater, the states would reduce or eliminate hunting.
- Page 110-111- *Move description of DMA and management objectives to section preceding specific factor analysis, as they apply throughout the rule and are not specific to Factor B; move discussion of mortality limits to introductory section, since hunting is just one type of mortality that will be managed in conjunction with all other sources of mortality.*
- Page 113 – (*The paragraph regarding trapping and hunting on the Wind River Reservation should be deleted; again, we urge the USFWS to focus the discussion of the delisting rule on agency commitments/regulatory mechanisms to consider and manage all sources of mortality so as not to exceed agreed upon mortality limits vs. focusing on a single source.*) ~~While we anticipate the States will desire to institute a carefully regulated hunt with ecosystem-wide coordinated total mortality limits, we do not expect grizzly bear trapping to occur due to public safety considerations and the precedent that there has never been public grizzly bear trapping in the modern era. Should the States of Montana, Idaho, or Wyoming authorize harvest of bears, they have existing regulatory mechanisms for establishing harvest limits for and closing seasons when these limits are met. do not permit public trapping of any bears currently, and there is no information to indicate they will begin. Public trapping is not identified as a possible management tool in any of their State management plans. The Eastern Shoshone and Northern Arapaho Tribes would regulate any harvest on the Wind River Reservation will be at the discretion of the Tribes and only be available to Tribal members (Title XVI Fish and Game Code, Eastern Shoshone and Northern Arapaho Tribes 2009, p. 9, restricting potential harvest to Tribal members). The National Park Service ~~will~~ does not allow harvest of grizzly bear ~~hunting~~ within National Park boundaries. Within the DMA (see Figure 2, above), the National Park Service, the MFWP, the WGFD, the IDFG, and the~~

Tribes of the Wind River Reservation (WRR) will manage total mortality to ensure all recovery criteria continue to be met.

Page 115--*USFWS should delete the information in the bottom row of the Table, as it is confusing. (Also delete similar reference in Table 1 on page 55.)*

- Page 117-118 – *(Delete paragraphs regarding concept of background mortality based on 4-year average and mortality requirements as confusing. The concept of background mortality is not based on a prior definition or usage in the GYE DPS, and it lacks a basis in the ESA. The reference also confuses discretionary mortality with hunting mortality. USFWS may wish to refer to the tri-state MOA language for clear description of process for calculating allowable mortality.)*
- Page 118 - *(The example introduces confusion and inaccuracy to the agreed upon process for managing mortality. We recommend that entire paragraph on page 118 be deleted and as an alternative, we recommend the USFWS direct readers to the tri-state MOA where the process for estimating total allowable mortality is clearly described) As an example....*
- Page 126 – *(Clarify language to avoid incorrect implication that “hunting related” implies bear hunting; as noted on page 130, most if not all bear killings by hunters were in self-defense or camp protection.)* The main causes of human-caused mortality were human site conflicts, self-defense, and ~~vandal killings, and hunting-related~~, all of which can be partially mitigated for through management actions.
- Page 128 – ~~If we delist the GYE DPS, all three affected states and the Eastern Shoshone and Northern Arapaho Tribes will classify grizzly bear in the GYE as game animals, Grizzly bears in all three states are classified as a game animal,~~ which cannot be taken without authorization by State or Tribal wildlife agencies.
- Page 130 – *(Correct for accuracy; The elk reduction program applies to Grand Teton National Park and not the JDR. The state manages elk hunting in the JDR and there is no requirement to carry bear spray.)* Through its enabling legislation, the National Park Service authorizes an elk reduction program in ~~both Grand Teton National Park and the John D. Rockefeller Memorial Parkway~~. Elk hunters in Grand Teton National Park ~~and John D. Rockefeller Memorial Parkway~~ are required to carry bear spray in an accessible location, thus reducing the potential for an encounter that results in grizzly bear mortality. Outside of this National Park, carrying bear spray is strongly encouraged through hunter education programs and other information and education materials.
- Page 115 – *(The process for managing hunting mortalities described in this rule is inaccurate. The process is clearly described in the Tri-State MOA. Additionally, it must be clear that hunting mortality is but one type of discretionary mortality)* If state agencies decide to establish hunting seasons, ~~the following regulatory mechanisms must be in place by law and regulation for delisting to occur. The States will enact specific requirements that will serve as adequate regulatory mechanisms over human-caused mortality, including to ensure mortality from sport hunting is managed in conjunction with all sources of mortality so agreed upon mortality limits are not exceeded. These regulations must~~ may include:
  - ~~Suspending grizzly bear hunting in a hunting district inside the DMA if total mortality limits for any sex/age class are met at any time during the year season.~~

- In a given year, hunting discretionary mortality will only be allowed if total nondiscretionary mortality from the previous year does not meet or exceed total mortality limits for that year.
  - Page 122-123 – (See discussion on genetic management below; delete this sentence as it is inappropriate related to delisting) ~~The state of MT will manage discretionary mortality in the area between the GYE and NCDE in order to retain the opportunity for natural movements of bears between ecosystems.~~
- ~~Should WY/MT/ID fail to make changes necessary detailed above to support a recovered bear population, or deviate significantly from the changes in law and regulation described above in Tables 1-3, delisting could not occur.~~
- Page 121-122(3) – Summary of Factor B – ~~These three regulatory commitments will need to be in place prior to issuance of a final rule: (3) The State of Montana will manage discretionary mortality in the area between the GYE and the NCDE in order to retain the opportunity for natural movements of bears between ecosystems.~~
  - Page 123 – ~~Should Wyoming, Montana, and/or Idaho fail to make the changes necessary detailed above to support a recovered grizzly bear population, or deviate significantly from the changes in law and regulations...delisting could not occur.~~

### Recovery Criteria

The first criterion establishes a minimum population size of at least 500 animals and at least 48 females with cubs in the DMA. The States agree that this number is not a target, but a minimum. The minimum population size includes a conservative buffer in addition to the recommendations of Miller and Waits (2003) for a minimum population size of at least 400 bears to adequately mitigate the potential effects of genetic drift and inbreeding depression in light of the relative isolation of the GYE population. The proposed rule incorrectly states that 500 is a minimum required to maintain short-term genetic fitness, genetic health, or genetic integrity.

- Page 51 (also see page 192, last sentence) –
  - Page 51 -The three parameters that are measured have remained the same since 1993 plan: (1) minimum population size ~~for maintaining genetic integrity;~~
  - Page 192 – The recovery plan target for a minimum of 500 animals inside the DMA ~~to assure genetic health.....~~
- Page 52 – (*Delete reference from van Manen (2015, in litt.) regarding unoccupied suitable habitat which is a hypothetical statement*):
  - ~~A minimum population of at least 500 animals within the DMA will assure genetic health. Population size will be quantified by methods established in published peer-reviewed scientific literature and calculated by the IGBST using the most updated protocol, as posted on their website. This number will ensure that the short-term fitness of the population is not threatened by losses in genetic diversity in such an isolated population. Five hundred is the minimum population threshold. The goal is to maintain the population well above this threshold to ensure that genetic issues are not a detriment to the short-term genetic fitness of the GYE grizzly bear population. If the population declined to 500, more than one third of the sustainable habitat in the DMA would be unoccupied (van Manen 2015, in litt.), and, therefore, the grizzly bear population could not be considered demographically recovered.~~

- Page 192-193 – *Correct text to reflect that recovery criterion 1 has been met since 2003 (consistent with statement on page 53).*

### Genetic Management/Connectivity

Recently published information indicates the genetic variability and viability of the GYE DPS is strong, and lack of connectivity is not a threat to the existence of the GYE DPS (see pages 52-53 of the 2016 Draft Revision to the Conservation Strategy, citing Kamath et al. (2015), Luikart et al. (2010), and other literature. USFWS' analysis on pages 184 and 201 reflects the best available science and concludes genetic concerns are not a threat to the GYE DPS and that bear occupancy, or lack thereof, in peripheral areas is not biologically necessary to the GYE DPS. In addition, recovery criteria for the GYE DPS are conservative in recognition of the GYE DPS' relative isolation.

The proposed rule, however, includes several references to connectivity and genetic exchange that are inconsistent with best available science and fail to recognize the assumptions underlying conservative recovery criteria. These statements overstep USFWS' ESA authority. We recommend that USFWS rewrite the genetic connectivity section of this proposed rule to make it clear that the best available science indicates that genetic connectivity is not a threat to the long-term existence of the GYE grizzly bear. The final rule should clarify that genetic connectivity is not required for delisting, and that the genetic health of the GYE DPS is very strong.

Montana's state management plans and the 2016 draft revision to the Conservation Strategy state a long-term goal to allow the grizzly bear populations in southwest and western Montana to reconnect through the maintenance of non-conflict grizzly bears in areas between the ecosystems. The state of Montana has indicated that, while discretionary mortality may occur, it will manage discretionary mortality to retain the opportunity for natural movements of bears between ecosystems. However, it is inappropriate for USFWS to impose additional requirements as to connectivity for delisting the GYE DPS, where connectivity and genetic exchange do not threaten the population.

Specific recommended edits on this issue include:

- Page 69 – ~~there is currently no known connectivity between these two populations~~ There is no known movement of bears between these two populations, although there is anecdotal evidence of such movements.
- Page 70 – ~~.....Future connectivity is desirable, and will be actively managed for and Montana state management plans provide for maintaining presence of non-conflict bears in areas in between the NCDE and GYE populations. However, this connectivity is not necessary for long-term sustainability of the GYE DPS or the NCDE population.~~
- Page 121-122(3) – (delete) ~~These three regulatory commitments will need to be in place prior to issuance of a final rule: (3) The State of Montana will manage discretionary~~

mortality in the area between the GYE and the NCDE in order to retain the opportunity for natural movements of bears between ecosystems.

- Page 153 – 154 (delete) ~~1—2 effective migrants from other pops every 10 years would maintain or enhance this level of genetic diversity and therefore assure genetic health in the long term.~~
- 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 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.
- Page 155 –~~We will~~ The USFWS encourages the management agencies to continue interagency efforts to provide and maintain movement opportunities for grizzly bears and reestablish natural connectivity and gene flow between the GYE grizzly bear DPS and other grizzly bear populations.
- Page 155 – (delete - *implies that connectivity to the north IS a relevant issue to the bear's long term persistence – inaccurate and inconsistent with other sections of the rule (see pages 184 and 201) )* ~~We do not consider connectivity to the east, west, or south a relevant issue to the GYE grizzly bear population's long term persistence because there are no extant populations in these directions to enhance the genetic diversity of the GYE population.~~

### Triggers

Interspersed throughout the proposed rule are subjective “triggers” for a status review and potential emergency listing, regardless of whether or not they correspond to a threat to the population. While USFWS has authority to initiate a status review and emergency listing, it would be arbitrary and capricious to initiate a status review based, not on criteria related to population threats under the ESA, but to conditions over which the USFWS has no authority.

We propose the following edits to clarify USFWS’ ESA authority:

- Page 120 (also page 122, 150, 212 ) – The Service may initiate a formal status review and could emergency relist the GYE population until the formal status review is complete....~~if there are any changes in federal, state, or tribal laws, rule, regulations, or management plans that depart significantly from the specifics of population or habitat management detailed in this proposed in this proposed rule and significantly increase the threat to the population~~ result in significant, documented declines in the population that threaten meeting recovery criteria for the GYE DPS.
- Page 187 – (*This same argument (not causing population decline) applies to all of the perceived threats, such as genetic connectivity, funding, changing of laws/rules/regs, etc. As there are mortality thresholds in place to prevent population declines, no potential threats should result in a population decline*) - There will always be threats in the GYE grizzly bear population that lead to human-caused mortality or displacement, but if these are not causing population to decline that threatens meeting recovery criteria for the GYE DPS, we cannot consider them substantial.
- Page 191 – There will always be threats to the GYE grizzly bear population, but if these are not causing ~~the a population to decline~~ a population to decline that threatens meeting recovery criteria, we do not consider them to threaten the long-term persistence of the population.

- Page 210 – *(Delete sentence as confusing; it implies funding levels, rather than population status, is the basis for review) A biology and monitoring review could occur if funding becomes inadequate to the implementation of the draft 2016 CS to such an extent that it compromised the recovered status of the GYE grizzly bear population.*
- Page 211 – The Service can initiate a status review independent of the IGBST or YGCC ....if substantial management changes occur significant enough to cause a significant decline in the population such that it poses a threat to meeting recovery criteria for the GYE DPS to raise concerns about population-level impacts.
- Page 212 – 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 not conduct a status review.
- *USFWS should also delete multiple references to status reviews, which appear to place undue emphasis on some of the individual factor analyses.*

### Miscellaneous-Edits

Based on Executive Orders and other Presidential direction for writing of rules, USFWS should follow its standard 5-criteria analysis. Instead of folding all human-caused mortality into the disease/predation criteria, it is more logical to place it in Criteria E to the extent the mortality does not involve overutilization. The final rule should also revise various places where the proposed rule uses passive voice, such as “will be managed”; the final rule should reflect the appropriate state or federal managing agencies (e.g., “the state agencies will manage...” or “federal agencies will monitor habitat conditions”).

The agencies also recommend the following edits on miscellaneous issues:

- Page 23 – This requires ongoing monitoring of the grizzly bear population to understand if it is sufficiently resilient to allow for a conservative level of human-caused mortality without causing decline, and to ensure ongoing management and conservation actions are maintaining recovery thresholds.
- Page 41 - *USFWS should either delete or provide a reference for its assertion that “traditional food sources such as bison and elk have been dramatically reduced and replaced with domestic livestock attractants such as cattle, sheep, chickens, goats, pigs and beehives.”*
- Page 53- *USFWS should clarify the purpose and science that informs the 90% confidence interval (612–735) related to Recovery Criterion 3.*
- Page 54 – *Clarify the reference to the population estimate at the time of grizzly bear delisting in 2007 (683). The 2007 delisting decision indicated a population estimate around 570. We assume that USFWS retroactively applied an estimate of 683 based on current vital rates, but USFWS should clarify the origin of this estimate.*
- Page 55-*Correct reference in Demographic Recovery Criteria #3 to “747” (not 757).*

- Page 55 – ~~The Conservation Strategy is the management plan that institutionalizes the successful program that resulted in recovery of the GYE population~~ is the post-delisting management plan that will ensure recovery is sustained.
- Page 58 – *(clarify that states have provided a majority of the management while the bear has been listed):* The draft 2016 Conservation Strategy details a regulatory framework and authority for Federal and State agencies to ~~take over management~~ continue management and conservation of the GYE grizzly bear population after delisting ~~from the Service.~~
- Page 101/147 – *Correct references to Montana’s state plan (2015); Montana replaced its 2002 plan with a revised plan in 2015.*
- Page 111—*(Edit to eliminate confusion between recovery criteria determined by USFWS and population management objectives agreed-upon by various agencies).* Accordingly, the agencies implementing the CS have decided ~~that agreed to manage the population in the DMA will be managed around the long term average around the 95% confidence interval of the estimated 2002-2014 population estimate using Chao2.~~
- Page 131 - *USFWS should either delete or provide a reference for its assertion that mandatory food storage orders reduce human bear conflicts and consequently bear mortalities.*
- Page 133 – *Edit to reflect that wildlife management agencies and land management agencies will continue to coordinate regarding nuisance wildlife as they do for other non-listed species, and that prescriptive references for coordination on an incident-by-incident basis regarding removal and relocation, are outside USFWS’ authority for a non-listed species:*
  - Page 133-134-~~(delete) Upon delisting, State, Tribal, and National Park Service bear managers would continue to coordinate and consult with each other and other relevant Federal agencies (i.e., Forest Service, BLM) about nuisance bear relocation and removal decisions, but coordination with the Service during each incident would not be required (50 CFR 17.40).~~
- Page 147 – *Delete or correct reference to state wildlife agency plans, which may encourage but do not mandate activities by federal or state land management agencies:*
  - Page 147-~~The three State grizzly bear management plans direct State land management agencies to maintain or improve habitats that are important to grizzly bears and to monitor population criteria outside of the PCA.~~
- Page 157—*Delete assertion that availability of ungulates is threatened by Brucellosis and resulting management practices consequential to bison removal, CWD and competition with other top predators. This assertion is confusing as ensuing language states this is not a concern. If USFWS makes such an assertion in the final rule, it should provide a factual reference.*
- Page 190 – *“Because the signatory agencies to the 2016 CS are the same agencies that have been managing grizzly bear habitat, the GYE population and monitoring for the past 30 years, the transition from state to federal management will be minimal.” USFWS should emphasize that is not relying on unsubstantiated future promises for post-delisting management. The same agencies that will manage the population and habitat after delisting are the same agencies who have proven their expertise and commitment in achieving recovery.*

## Conclusion

The States are fully committed to the continued management of a recovered grizzly bear population in the GYE. This population has met or exceeded all recovery criteria for at least 12 years and has continued to grow in size and distribution. Delisting will celebrate this tremendous conservation success story and we strongly support the Service's proposal to move forward with establishing this DPS and removing it from the list of threatened and endangered species under the ESA.