

- Texas Trading and Transportation Services, LLC, dba TTMS Group, together with Montana Grain Growers Association (TTMS Group)
- UP
- USDA

Testimony at the June 10, 2015 hearing was received from:

- AAR
- ARC
- BNSF
- Canadian National Railway Company (CN)
- Canadian Pacific Railway Company (CP)
- CSXT
- Michigan Agri-Business Association <sup>23</sup>
- Montana Department of Agriculture
- NGFA
- NSR
- SMART-TD
- Transportation Research Board of the National Academy of Sciences
- TTMS Group
- UP
- USDA

Supplemental comments were received from:

- AAR
- ARC (joined by the same parties that joined its opening comment)
- NSR

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R6-ES-2016-0042;  
FXES1113090000-167-FF09E42000]

RIN 1018-BA41

#### 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; 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, proposed rule to revise the List of Endangered and Threatened Wildlife, under the authority of the Endangered Species Act, by removing the Greater Yellowstone Ecosystem population of grizzly bears (*Ursus arctos horribilis*). In our proposed rule, we emphasized that the governments of Montana, Wyoming, and Idaho needed to promulgate

regulations managing human-caused mortality of grizzly bears before we would proceed with a final rule. Montana, Wyoming, and Idaho recently finalized such mechanisms. We are also announcing the receipt of five independent peer reviews of the proposed rule. We are reopening the comment period for the proposed rule to allow all interested parties an additional opportunity to comment on the proposed rule 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 preparing the final rule.

**DATES:** We will consider comments received or postmarked on or before October 7, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. 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>. In the search box, enter the docket number for the proposed rule, which is FWS-R6-ES-2016-0042. Then click on the Search button. On the resulting page, you may submit a comment by clicking on "Comment Now!" Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use that 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 or a petition), 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 request that you send comments only by the methods described above. 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 below in **SUPPLEMENTARY INFORMATION** for more information).

**Document availability:** You may obtain the information and documents associated with this reopened public

comment period and described below in **SUPPLEMENTARY INFORMATION** at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2016-0042, from the Service's Mountain Prairie Region Grizzly Bear Web site <https://www.fws.gov/mountain-prairie/es/grizzlybear.php>, or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

#### FOR FURTHER INFORMATION CONTACT:

Wayne Kasworm, Acting Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406-243-4903. For Tribal inquiries, contact Ivy Allen, Native American Liaison, U.S. Fish and Wildlife Service; telephone: 303-236-4575. 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, proposed rule (81 FR 13174) to remove the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) from the List of Endangered and Threatened Wildlife. We specifically seek comments on the proposed rule in light of five peer reviews and recently finalized State regulatory mechanisms. The State regulations describe Wyoming, Montana, and Idaho's approach to managing human-caused mortality should we delist the grizzly bear in the GYE. The State regulatory mechanisms include Montana's Grizzly Bear Hunting Regulations, Chapter 67 of the Wyoming Game and Fish Commission regulations, Idaho's Fish and Game Commission Proclamation, and the Memorandum of Agreement Regarding the Management and Allocation of Discretionary Mortality of Grizzly Bears in the Greater Yellowstone Ecosystem (Tri-State MOA). Copies of Grizzly Bear Montana Hunting Regulations, Chapter 67 of the Wyoming Game and Fish Commission regulations, Idaho's Fish and Game Commission Proclamation, and the Tri-State MOA are available on the Internet at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2016-0042 or at <https://www.fws.gov/mountain-prairie/es/grizzlybear.php>; or upon request from the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**). We will consider information and recommendations from all interested parties.

<sup>23</sup> Written testimony only.

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 email 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 Web site. 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> under Docket No. FWS-R6-ES-2016-0042, or by appointment, during normal business hours, at the Grizzly Bear Recovery

Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

On March 11, 2016, we published a proposed rule to revise the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h), under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), by removing the Greater Yellowstone Ecosystem (GYE) population of grizzly bears (*Ursus arctos horribilis*) (81 FR 13174). In the proposed rule, we explained that State regulations addressing human-caused grizzly bear mortality in Montana, Wyoming, and Idaho must include five elements to maintain a recovered population of grizzly bears in the GYE:

1. Suspension of 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. Suspension of grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1, 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 in this document, below).

3. Prohibition of recreational harvest of female grizzly bears with young.

4. In a given year, allowance of discretionary mortality only if nondiscretionary 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.

5. Provisions to ensure that 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 ensure that long-term mortality levels remain within prescribed limits inside the DMA.

TABLE 1<sup>1</sup>—TOTAL MORTALITY<sup>2</sup> LIMITS FOR GRIZZLY BEARS INSIDE THE DEMOGRAPHIC MONITORING AREA

[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 the population estimate is fewer than 674, the total mortality rate for independent females and dependent young must be less than 7.6 percent. If population size is estimated at fewer than 600 in any year, no discretionary mortality will occur unless necessary for human safety.<sup>3</sup>]

|                                                                                                | Total grizzly bear population estimate |         |      |
|------------------------------------------------------------------------------------------------|----------------------------------------|---------|------|
|                                                                                                | ≤674                                   | 675–747 | >747 |
| Mortality limit % for independent FEMALES (≥2 years) (using model-averaged Chao2 method) ..... | ≤7.6%                                  | 9%      | 10%  |
| Mortality limit % for independent MALES (≥2 years) (using model-averaged Chao2 method) .....   | 15%                                    | 20%     | 22%  |
| Mortality limit % for DEPENDENT YOUNG (using model-averaged Chao2 method) .....                | ≤7.6%                                  | 9%      | 10%  |

<sup>1</sup> Similar to table 1 in proposed rule (81 FR 13174, March 11, 2016).

<sup>2</sup> *Total mortality*: Documented known and probable grizzly bear mortalities from all causes including but 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.

<sup>3</sup> The phrasing in the table header in the proposed rule erroneously noted that there would be no discretionary mortality at population levels fewer than or equal to 600 bears, as opposed to population levels fewer than 600 bears. We changed the phrasing here to match the phrasing in the rest of the proposed rule, the revised recovery criteria, and the draft conservation strategy.

We noted that regulatory mechanisms containing these provisions must be in place in each State for delisting to occur because the adequacy or inadequacy of those regulatory mechanisms help inform us whether a species, once delisted, will remain recovered. The ESA requires the Service to consider existing regulatory mechanisms when making listing determinations.

Montana, Wyoming, and Idaho recently finalized such regulatory mechanisms governing potential hunting seasons for grizzly bear. These three States also approved the 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. The three States approved the Tri-State MOA on the following

dates: Wyoming, on May 11, 2016; Montana, on July 13, 2016; and Idaho, on August 8, 2016.

#### Highlights of Recently Released State Grizzly Bear Management Regulations

Montana, Wyoming, and Idaho each used a different regulatory method, appropriate to their respective legal processes, 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 possible future grizzly bear hunting season on July 13, 2016 (Montana Fish and Wildlife Commission, 2016). Montana's Fish and Wildlife Commission also approved the Tri-State MOA (Wyoming Game and Fish Commission, Montana Fish and Wildlife

Commission, & Idaho Fish and Game Commission, 2016). Before adopting these regulations and the MOA, Montana released the drafts of these documents for public comment and review. The Montana Fish and Wildlife Commission adopted the hunting regulations and the MOA in the same manner that it adopts other regulations, with public notice and comment. In the Service Assessment below, we assume the MOA and hunting regulations are regulatory in nature.

On July 8, 2016, the Wyoming Game and Fish Commission approved a regulatory framework that “provides for the management of grizzly bears in Wyoming to ensure a recovered population” (Wyoming Game and Fish Commission, 2016). 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. In the Service Assessment, set forth below, we anticipate that, prior to publication of our final rule, 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 August 8, 2016 (Idaho Fish and Game Commission, 2016). Idaho Code Section 36–105 authorizes the Idaho Fish and Game Commission 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.” Since grizzly bears are classified as game animals in Idaho Administrative Code 13.01.06.100.01e, the Idaho Fish and Game Commission may use a proclamation to establish binding limits

on the take 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 State regulations and the Tri-State MOA can be found on the Internet at <http://www.regulations.gov> under Docket No. FWS–R6–ES–2016–0042 or <https://www.fws.gov/mountain-prairie/es/grizzlybear.php>; or upon request from the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

**TABLE 2—CROSS-REFERENCE BETWEEN THE REGULATORY REQUIREMENTS IN THE PROPOSED RULE TO REMOVE THE GREATER YELLOWSTONE ECOSYSTEM POPULATION OF GRIZZLY BEARS FROM LISTING UNDER THE ENDANGERED SPECIES ACT (81 FR 13174; MARCH 11, 2016) AND THE STATE GRIZZLY BEAR REGULATORY MECHANISMS**

| Required element described in the proposed rule                                                                                                                                                                                                                                                                                               | Montana (Tri-state memorandum of agreement (MOA) and Grizzly Bear hunting regulations)        | Wyoming (Chapter 67 of WY Game and Fish Commission regulations) | Idaho (ID Fish and Game Commission proclamation) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------|
| <i>Requirement 1:</i> Suspension of 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)(a)(i), section IV(2)(c)(i), section IV(4)(a), and section IV(6). | Section 4(c) .....                                              | Section 2.                                       |
| <i>Requirement 2:</i> Suspension of grizzly bear hunting inside the DMA if total mortality limits for any sex/age class (as per tables 1, 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 document).                                                             | Tri-State MOA: section IV(2)(c), section IV(4)(a), and section IV(6).                         | Section 4(d) .....                                              | Section 3 and section 5.                         |
| <i>Requirement 3:</i> Prohibition of recreational harvest of female grizzly bears with young.                                                                                                                                                                                                                                                 | Tri-State MOA: section IV(4)(b); Grizzly Bear Hunting Regulations, pp. 4 and 7.               | Section 4(e) .....                                              | Section 4.                                       |
| <i>Requirement 4:</i> In a given year, allowance of discretionary mortality only if non-discretionary mortality (e.g., mortality from illegal kills, self-defense, calculated unknown/unreported mortalities, natural mortalities, and other causes such as vehicle collisions) does not meet or exceed total mortality limits for that year. | Tri-State MOA: section IV(2)(c), section IV(4)(a), and section IV(6).                         | Section 4(d) and section 4(k).                                  | Section 5.                                       |
| <i>Requirement 5:</i> Provisions to ensure that 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 ensure 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's 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. 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 State regulations and our preliminary assessment that they provide adequate regulatory mechanisms such that we can conclude that the population no longer meets the definition of threatened under the Endangered Species Act.

### 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. We received submissions from five independent peer reviewers, and their input is available as described under **ADDRESSES**. 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.

We welcome any comments on the proposed rule in light of these reviews (see compiled reviews in Amec Foster Wheeler, 2016). Previously received public comments, and the data and information they provided, can be found at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2016-0042.

#### References Cited

A complete list of references cited is available: on the Internet at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2016-0042; from the Service's Mountain Prairie Region Grizzly Bear Web site <https://www.fws.gov/mountain-prairie/es/grizzlybear.php>; or upon request from the Grizzly Bear Recovery Office (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: August 16, 2016.

**James W. Kurth,**

*Acting Director, U.S. Fish and Wildlife Service.*

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