



# Animal Welfare Institute

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Grizzly Bear ARM  
Montana Fish and Wildlife Commission  
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*Submitted via email*

**Re: Proposed amendment to ARM 12.9.1403 pertaining to NCDE grizzly bear demographic objectives**

Dear Montana Fish and Wildlife Commission and Department of Fish, Wildlife & Parks:

Thank you for the opportunity to comment on Montana Fish, Wildlife & Parks' ("FWP") proposed amendments to section 12.9.1403 of the Administrative Rules of Montana ("ARM") regarding grizzly bear demographic objectives for the Northern Continental Divide Ecosystem ("NCDE").

In December, FWP and Governor Greg Gianforte petitioned the U.S. Fish and Wildlife Service ("USFWS") to remove grizzly bears in the NCDE from the federal list of threatened and endangered wildlife.<sup>1</sup> Now, FWP is proposing to amend section 12.9.1403 to clarify that, if NCDE grizzlies are delisted, any bears killed by hunters or any bears translocated out of the NCDE (e.g., to augment the long-isolated Greater Yellowstone Ecosystem ("GYE") grizzly bear population), would count against the mortality limits identified in ARM section 12.9.1403(3)(b) and the NCDE Conservation Strategy.<sup>2</sup>

As explained in more detail below, we offer brief comments on four points relevant to these proceedings. First, removing Endangered Species Act ("ESA") protections from NCDE grizzly

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<sup>1</sup> Governor Greg Gianforte and FWP, A Petition to Identify and Delist the Northern Continental Divide Distinct Population Segment of the Grizzly Bear (*Ursus arctos horribilis*) Under the Endangered Species Act (Dec. 17, 2021).

<sup>2</sup> NCDE Subcommittee. 2019. Conservation strategy for the grizzly bear in the Northern Continental Divide Ecosystem, 165.

bears at this time would be premature. Second, even if the population is delisted, authorizing the hunting of grizzlies would not serve any management or conservation purpose. Third, under subsection (5) of the proposed rule, hunting should be prohibited if mortality thresholds are either reached or exceeded in the previous year. Fourth, the proposed rule should commit to recalibrating mortality thresholds if the method used to estimate the NCDE grizzly population is replaced with a less conservative method in the future.

## **I. Delisting the NCDE Grizzly Population Would Be Premature**

Removing ESA protections from NCDE grizzly bears would be premature and dangerous. As recognized by the USFWS's latest five-year status review of the species, the NCDE population continues to face a multitude of threats, including habitat loss, human-bear conflicts, and the unpredictable effects of an expanding human population.<sup>3</sup> Further, by enacting a series of reckless bills designed to dramatically reduce the state's gray wolf population, Montana has demonstrated that it is not prepared to responsibly manage another large carnivore—grizzly bears—if they were to be delisted. As expressed in a statement authored by 35 state, federal, and tribal biologists who have worked to conserve grizzlies, wolves and other wildlife in Montana for more than 40 years, “It doesn't take a lot of imagination to realize that if grizzly bears were delisted and turned over to state management, that the Montana legislature and governor would do the same thing to grizzlies that they are currently doing to wolves—they would likely try to legislatively minimize grizzly numbers inside recovery zones and eliminate most grizzlies outside recovery zones.”<sup>4</sup>

## **II. Hunting Grizzly Bears Would Serve No Management or Conservation Purpose**

If NCDE bears were delisted, authorizing a trophy hunt would not serve any management purpose or achieve any conservation objectives. For example, it is unlikely that hunting grizzly bears would reduce human-grizzly bear conflicts. Researchers from around the world have studied the effects of hunting on a variety of bear species and consistently found that hunting does not reduce human-bear conflicts. Studies of grizzly bears in British Columbia, brown bears in Norway, American black bears in Wisconsin and Ontario, and Asiatic black bears in Japan, for instance, all found no correlation between the number of bears killed by hunters and the number of human-bear conflicts during that year or subsequent years.<sup>5</sup>

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<sup>3</sup> USFWS, Grizzly Bear in the Lower-48 States (*Ursus arctos horribilis*), 5-Year Status Review: Summary and Evaluation (March 2021), 22.

<sup>4</sup> Prominent Scientists Push Back Against Delisting Grizzly Bears: Op-Ed, Mountain Journal (Jan. 13, 2022), <https://mountainjournal.org/prominent-scientists-say-removing-grizzly-bears-from-federal-protection-in-west-is-bad-idea>.

<sup>5</sup> Artelle, K.A., et al. 2016. Ecology of conflict: marine food supply affects human-wildlife interactions on land. *Scientific Reports* 6, 25936; Sagør, J.T. et al. 1997. Compatibility of brown bear *Ursus arctos* and free-ranging sheep in Norway. *Biological Conservation* 91-95; Treves, A. et al. 2010. American black bear nuisance complaints and hunter take. *Ursus* 21(1):30-42., Obbard, M.E. et al. 2014. Relationships among food availability, harvest, and human-bear conflict at landscape scales in Ontario, Canada. *Ursus* 25(2):98-110., Huygens, O.C. et al. 2004. Relationships between Asiatic black bear kills and depredation costs in Nagano Prefecture, Japan. *Ursus* 15(2):197-202.

Further, there is little evidence that sport hunting would reduce already extremely rare bear attacks on humans. A recent, comprehensive review of brown bear attacks worldwide found no significant difference in the number of attacks in countries where brown bear hunting is legal and those where it is not.<sup>6</sup> This suggests that hunting brown bears does not result in fewer attacks on humans. Importantly, the study also made clear that hunting itself can result in attacks: of the 664 attacks that were investigated, nearly a quarter (123) occurred while the humans were hunting, and of those, 27 occurred while humans were hunting brown bears.<sup>7</sup>

In addition, contrary to the claims in FWP’s southwestern and western grizzly bear management plans,<sup>8</sup> evidence suggests that hunting grizzly bears would not increase social tolerance or decrease poaching of the species. For example, scientists in Slovenia found no difference in attitudes toward brown bears among residents living where bear hunting was allowed and those living where it was not.<sup>9</sup> Surveys done by researchers in Wisconsin revealed that, following the first wolf hunting and trapping season held there in decades, there was an overall *decrease* in tolerance towards wolves among residents living in wolf range.<sup>10</sup> A study conducted in Norway and Sweden found that poaching, motivated by lack of social tolerance, was responsible for nearly half of the annual adult mortality of Eurasian lynx in those countries.<sup>11</sup> Poaching occurred even in areas where lynx could be legally hunted. The researchers found no significant relationship between the numbers of lynx poached, and the numbers of lynx allowed to be legally hunted, in any given area. As a result, they concluded, “There does not seem to be a simple relationship between an increased legal harvest and decreased poaching as is commonly expected.”<sup>12</sup>

### **III. Hunting Should Not Be Allowed if Mortality Thresholds Are Reached**

Proposed section 12.9.1403(5) should prohibit hunting in a given year if mortality thresholds the previous year were exceeded or reached. The proposed section currently reads, “Hunting will not be allowed in a year if mortality thresholds as described in (3)(b)(ii) or (iii) were exceeded in the

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<sup>6</sup> Bombieri, G. et al. 2019. Brown bear attacks on humans: a worldwide perspective. *Scientific Reports* 9, 8573.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> For example, the southwestern grizzly bear management plan states, “Hunting promotes acceptance and tolerance of this large and potentially life-threatening animal by some of the local public who are asked to live with grizzlies.” FWP, Grizzly Bear Management Plan for Southwestern Montana, Final Programmatic Environmental Impact Statement (Dec. 2013), 61. Similarly, the western grizzly bear management plan says, “FWP strongly believes that regulated harvest of predators builds tolerance by those most negatively impacted by their presence.” FWP, Grizzly Bear Management Plan for Western Montana, Final Programmatic Environmental Impact Statement 2006-2016 (Dec. 2006), 58.

<sup>9</sup> Kaczensky, P. et al. 2003. Public attitudes towards brown bears (*Ursus arctos*) in Slovenia. *Biological Conservation* 118:661-674.

<sup>10</sup> Hogberg, J. et al. 2015. Changes in attitudes toward wolves before and after an inaugural public hunting and trapping season: early evidence from Wisconsin’s wolf range. *Environmental Conservation* 43, 45-55.

<sup>11</sup> Andrén, H. et al. 2006. Survival rates and causes of mortality in Eurasian lynx (*Lynx lynx*) in multi-use landscapes. *Biological Conservation* 131, 1:23–32.

<sup>12</sup> *Id.* at 23.

previous year.”<sup>13</sup> The proposed language should be amended to read, “Hunting will not be allowed in a year if mortality thresholds as described in (3)(b)(ii) or (iii) were *reached or exceeded*.” This more cautious approach would better align with the commitment in Montana’s western grizzly bear management plan to take a conservative approach to managing any hunting of NCDE grizzly bears: “Harvest recommendations and/or programs will be conservatively applied, and only after the best available scientific data indicate that the population can sustain a predetermined level of take.”<sup>14</sup> It would also promote the ESA’s “policy of institutionalized caution, which is necessary to promote the ESA’s purpose of conservation.” *Crow Indian Tribe v. U.S.*, 343 F. Supp. 3d 999, 1015 (D. Mont.) (internal quotations and citations omitted) (citing 16 U.S.C. § 1531(a)(3), (b)), *aff’d*, 965 F. Supp. 3d 662 (9th Cir. 2018).

During the Montana Fish and Wildlife Commission’s April hearing, Wildlife Division Administrator Ken McDonald dismissed such a revision as unnecessary because, “It’s basically the difference of one bear.”<sup>15</sup> However, this explanation is simplistic. First, mortality thresholds could easily be exceeded by more than one bear. This spring, for example, 7 black bears were killed in Montana’s black bear management unit 510, which had a quota of only 5 bears.<sup>16</sup>

Second, when it comes to such a slow-reproducing species, every individual counts—particularly adult females. According to the U.S. Geological Survey (“USGS”), “Adult females are the most important segment of the grizzly bear populations because they are the reproductive engine.”<sup>17</sup> However, it can take up to 10 years for an adult female grizzly to replace herself in the population, due to the late age at which she will typically first start breeding (around 6 years old), her small litter size (on average, 2 cubs), and the relatively long period between litters (usually 3 years).<sup>18</sup> Although FWP’s western grizzly bear management plan indicates that the hunting of females accompanied by young would be prohibited, other adult females could be killed by hunters, and females with cubs could be killed unintentionally. FWP should take every precaution to avoid the excessive or unintentional killing grizzlies, and especially adult females—including by prohibiting hunting if mortality thresholds the previous year were reached.

#### **IV. The Rule Should Include a Commitment to Recalibration**

Section 12.9.1403 should also include a commitment to recalibrate the mortality thresholds delineated in subsection (3)(b) if FWP or other bear management agencies replace the current method of estimating the NCDE grizzly population with a less conservative model that could

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<sup>13</sup> FWP and Montana Fish and Wildlife Commission, Notice of Public Hearing on Proposed Amendment, ARM Notice No. 12-586 (July 8, 2022), 1137.

<sup>14</sup> FWP, Grizzly Bear Management Plan for Western Montana, Final Programmatic Environmental Impact Statement 2006-2016 (Dec. 2006), 57.

<sup>15</sup> Montana Fish and Wildlife Commission Hearing (April 18, 2021), <https://fwp.mt.gov/about-fwp/news/commission-agendas/2022/april-18-work-session-agenda>.

<sup>16</sup> FWP, Black Bear Harvest Quota Status, <https://myfwp.mt.gov/fwpPub/speciesHuntingGuide?wmrSpeciesCd=BB>.

<sup>17</sup> USGS, Northern Rocky Mountain Science Center (Sept. 21, 2016), [https://www.usgs.gov/news/both-gender-and-movement-important-genetic-diversity-grizzly-bears?qt-news\\_science\\_products=1](https://www.usgs.gov/news/both-gender-and-movement-important-genetic-diversity-grizzly-bears?qt-news_science_products=1).

<sup>18</sup> FWS, Species Status Assessment for the Grizzly Bear (*Ursus arctos horribilis*) in the Lower-48 States, Version 1.2 (Jan. 21, 2022) 45, Table 6.

produce a higher estimate. This was a central issue in the litigation regarding the most recent effort to delist the GYE grizzly population. *See Crow Indian Tribe v. U.S.*, 343 F. Supp. 3d 999, 1015 (D. Mont.), *aff'd in relevant part*, 965 F. Supp. 3d 662 (9th Cir. 2018). In that case, due to pressure from the states, the USFWS had removed from the GYE Conservation Strategy a commitment to recalibrate discretionary mortality limits if a new population model was used to replace the relatively conservative “Chao2” estimator. *Crow Indian Tribe*, 343 F. Supp. at 1017. The Plaintiff conservation organizations argued that doing so was problematic because “if a new model estimates 1000 bears where Chao2 found 700, the states will be able to treat the jump in population as they would treat it on paper—as if 300 new individuals had moved into the Greater Yellowstone Ecosystem.” *Id.* As a result, the Court held that the failure to address recalibration violated both the ESA and Administrative Procedure Act. *Id.* at 1018.

The same concern exists here. Biologists use specific methods to estimate the NCDE grizzly bear population:

In the NCDE, the population trend is estimated using two methods: (1) a deterministic projections from vital rates; and (2) individual-based, stochastic population modeling (Costello *et al.* 2016b, p. 69). The population estimate is based on a genetic capture/recapture study conducted in 2004 (Kendall *et al.* 2009, entire) and subsequent estimates of population trend (Costello *et al.* 2016b, p. 16).<sup>19</sup>

Using those methods, bear managers estimated that, as of 2020, there were about 1,092 grizzlies throughout the NCDE.<sup>20</sup> And based on these methods, the proposed rule commits to managing mortalities such that there is a probability of at least 90 percent that the grizzly population within the NCDE demographic monitoring area remains above 800 bears. *See* ARM § 12.9.1403(3). If, however, less conservative methods are used in the future, and the population estimate were to suddenly increase to 1,392, it would be as if 300 new bears had just moved into the NCDE. This would be problematic because many more bears could suddenly be killed while still maintaining a 90 percent probability that there were at least 800 left. To avoid this result, the rule should contain a provision that commits to recalibrating those threshold mortality limits commensurate with any change in the population estimator used.

## V. Conclusion

For the reasons described above, we urge the Commission and FWP not to move forward with seeking to delist or authorizing the hunting of the NCDE grizzly bear population. In addition, we recommend the above two changes to section 12.9.1403 to enable FWP to more cautiously and accurately manage bears in this ecosystem.

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<sup>19</sup> FWS, Species Status Assessment for the Grizzly Bear (*Ursus arctos horribilis*) in the Lower-48 States, Version 1.2 (Jan. 21, 2022) 59.

<sup>20</sup> *Id.* at 61.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Zack Strong". The signature is fluid and cursive, with the first name "Zack" being more prominent than the last name "Strong".

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