



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



In Reply Refer To:
FWS/AES/077665

Director Hank Worsch
Montana Fish, Wildlife and Parks
P.O. Box 200701
Helena, Montana 59620-0801

Dear Director Worsch,

The U.S. Fish and Wildlife Service (Service) and Montana Fish, Wildlife and Parks (MFWP) share common goals to provide for the stewardship of wildlife and contribute to the quality of life for the citizens of Montana and the United States. As part of those goals, we have been working together on grizzly bear conservation and recovery for many decades and look forward to working with you in the continued recovery of this species.

However, Montana Senate Bill 98 (SB 98) conflicts with the Endangered Species Act (ESA) and is inconsistent with commitments made by the State of Montana on how grizzly bears would be managed if they were to be delisted. We are also concerned that other recently passed legislation targeting wolves and black bears has the potential to increase grizzly bear mortality and human safety. These legislative actions, collectively or individually, relate to the ESA requirement that we consider “the inadequacy of existing regulatory mechanisms” when we determine whether to list or delist a species or population (Sec 4(a)(1)(D)).

SB 98 amended Montana Code to legalize the taking of a grizzly bear in the act of depredating on livestock. This is contrary to our existing 4(d) rule (50 C.F.R. § 17.40), that allows for the taking of a grizzly bear only “in self-defense or in defense of others.” Further, per the 4(d) rule, “nuisance bears shall only be taken by authorized state, federal, or tribal agencies.” The amended state law could lead members of the public to wrongly believe that killing a grizzly bear when it is killing or threatening to kill livestock is legal, when in fact it is illegal under the ESA and individuals taking a bear under these circumstances would be subject to possible civil and criminal penalties. To bring Montana code into alignment with federal regulations, the language that allows the taking of a grizzly bear to protect livestock would need to be removed from the law or language would need to be added to the law to clarify that the taking of a grizzly bear by a private individual to protect livestock would only be lawful after the grizzly bear has been delisted federally.

Montana has committed to comply with population standards and objectives in the Conservation Strategy for the Grizzly Bear in the Northern Continental Divide Conservation Ecosystem (NCDE) upon delisting, as outlined in Administrative Rule of Montana 12.9.1403 (2018), which functions as the primary regulatory mechanism assuring that this population would remain secure

without the protections afforded by the ESA once delisted. However, the amendment to 87-6-106 brought about by SB 98 is inconsistent with these commitments because there is no population trigger for halting discretionary mortality provided for in the amendment to 87-6-106, and there is no method to notify Montana citizens that the mortality threshold has been met and that taking of grizzly bears should stop except in self-defense or in defense of others. To anticipate compliance with the terms of any future delisting, Montana law ought to provide a mechanism to end this type of mortality when the mortality threshold for any sex or age class (as set forth in ARM 12.9.1403) has been met.

We are also concerned that other recently passed legislation allowing wolf snaring and trapping and allowing the use of dogs to pursue black bears in occupied grizzly bear range will invite conflicts between hunters and grizzly bears, including potential injuries and mortalities for grizzly bears and risks to human safety. The current 2023 Montana legislative session presents a good opportunity to address these issues.

In addition, the Service has submitted comments on the draft MFWP Grizzly Bear Management Plan, and we look forward to addressing any concerns we may have once you have reviewed those comments.

As I know we both appreciate, there are many instances of good coordination between the Service and MFWP. These include the Service funding to USDA Wildlife Services to address grizzly bear conflicts with livestock producers in Montana as well as adding additional Service grizzly bear conflict specialists to address human/grizzly bear conflicts. I hope that Montana will also continue to look for resources to address human/grizzly bear conflicts.

Finally, I hope that MFWP would continue to work with the Montana Department of Transportation to identify funding through the Federal Highway Administration for wildlife crossings that could be so helpful along the I-90 corridor and elsewhere.

If you have additional questions or require further clarification on this topic, please contact Matt Hogan at matt_hogan@fws.gov or (303) 236-4571.

Sincerely,

Martha Williams
Director