

Yellowstone Ecosystem Subcommittee Conservation Strategy Meeting Minutes

**Friday, Oct. 28, 2016 , 1:00-3:00**

**Conference Call**

Members present:

Mary Erickson, Custer Gallatin National Forest

Melany Glossa, Beaverhead-Deerlodge National Forest

Dan Wenk, Yellowstone National Park

Brian Nesvik, Wyoming Game and Fish Department

Tricia O'Connor, Bridger-Teton National Forest

Frank van Manen, USGS Interagency Grizzly Bear Study Team

Sue Consolo-Murphy, Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway

Leander Watson, Shoshone Bannock tribes

Delissa Minnick, BLM – Wyoming

Jeff Gould, Acting, Idaho Department of Fish and Game

Jodi Bush, USFWS, MT

Sam Sheppard, FWP, MT

Ken McDonald, FWP, MT

Jennifer Fortin-Noreus, USFWS

Jim White, ID Department of Fish and Game

Garth Smelser, Caribou-Targhee National Forest

Loren Grosskopf, Wyoming County Commissioners Association - Park Co

Joe Alexander, Shoshone National Forest

Tom Rice, Montana Association of Counties - Beaverhead County

David Vela, Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway

Rick Hotaling, BLM, MT

Lee Miller, Fremont County Commissioner, ID

**Welcome and Introductions: Mary Erickson**

- Introductions and roll call

**Mary: Kickoff**

The principle purpose of this call was to continue to work on some of the language that was still being negotiated between FWS and the three states around Appendix C. We understood there were discussions at higher levels in the organizations. We acknowledge that at some point the language for App. C, as all language in the Conservation Strategy, would have to come back to the YES committee for review and a vote.

We recognize the delisting process is totally the purview of Fish and Wildlife Service and they determine when they are ready to proceed with delisting. Our charge is to work as a committee in an interagency fashion on the Conservation Strategy. That Strategy is the post

delisting management framework that would be in place if and when the Yellowstone grizzly bear is delisted. The YES committee strives for consensus, but we operate by majority vote. The challenge is that in the CS, we can reach a vote but we can't move forward with the CS as part of the delisting strategy process without agreement from all the signatory agencies, that is, the land agencies and the three states.

You all should have gotten a proposal from the three states, all the other appendices, and some language and information from FWS with concerns and alternative language around App C.

In parts of the dialogue we need today there is an impasse or at least two different proposals. In the Forest Service, our regional and national office agreed the FS is not prepared to vote on this today. We have a call on Monday to discuss. Hopefully at the end of our conversations we will need to schedule another check in voting call in a timely way. Any other agencies want to weigh in?

Rick Hotaling, BLM MT-We feel the same, just got it today and need time to review

Delissa Minnick, BLM WY-same-need additional time

Dan Wenk-we would prefer to have a discussion on the proposals here today and then discuss within the NPS.

Mary-process suggested for the call today is that we work through the other Appendices, trying to reach agreement and a vote. At our last meeting we agreed on all other Chapters of the Conservation Strategy.

Jennifer Fortine Noreaus

**Appendix D** captures the detail of what is being done in Chapter 3 for monitoring and protocols. Appendix reflects these changes. There are a few changes on cutthroat trout surveys that they no longer do.

NPS-we submitted some information that didn't get changed in the appendix

Jennifer-my apologies, I sent out the wrong version. Changes: mesh netting no longer done; hydro acoustic technology replaces sonar; changes to which streams are surveyed; spawning stream surveys were deleted; hydro acoustic section was deleted.

Mary-Jennifer will resend out to the committee so Park can do one last check.

Jennifer

**Appendix E**-details on measurement on baseline and protocol-updated tables.

Lisa Landenburger-numbers based on corrections, and route densities monitoring protocol

Dan Wenk-would like to go through the tables to validate

Jennifer

**Appendix F**-updated on removing monitoring items we removed from the strategy-no longer monitoring hunter numbers, spring carcass surveys, private land status.

Ken McDonald-I wonder about even leaving this in the document because the day it's put in, it will be out of date. If we do leave it in, get rid of all of the footnotes because it's the situation today but will change.

Mary-it paints a picture of investments agencies are spending at the present time, but I don't know if it's necessary, besides showing partners and public how much time and funding we put in.

Jodi-speaks to level of commitment of the agencies

Brian-I agree with Ken-inaccurate, perceived as a commitment

Jeff Gould-agree, it is misleading

Jodi-we haven't gotten any public comments, but concerned how to remove it because it may be unclear why it was removed. We could clarify it so it wouldn't be misunderstood.

Ken-IGBC did a document on all expenditures for grizzly bear recovery. If you need something to show commitment, you could site that document or put in the delisting rule. I worry five years from now people will take this as absolute.

Ken McDonald

Motion to delete Appendix F from the Conservation Strategy

Brian Nesvik-second

Mary-if this information is of value in real time, we are going to be working on our action plans for the committee and could develop summaries.

Brian-each state has opportunities to do this post delisting

**Vote: opposed 2, motion carries**

Jennifer

**Appendix G**-lists lead agencies and roles for the strategy. I updated with things we are no longer doing such as habitat effectiveness, hunter numbers and private land status, spring carcass numbers, and added ungulate numbers for the Park Service and each of the states.

Kerry Gunther-one change-YNP doesn't do moth surveys

Jennifer-OK, done

Sam Sheppard

Motion to approve subject to one change to moth survey

Jeff Gould-second

**Vote: motion carries**

Jennifer

**Appendix H**-reflects changes made by WY, ID, MT to update their regulations and state laws to accurately reflect what's on the books. We added a very brief description in the tables so it wasn't just a number. It shows what regulations are in place under our five factor analysis to assess adequate regulatory mechanisms to maintain a recovered population post delisting.

Jeff Gould-thanks for all the work on updating it. There is a misspelled word in the ID state statutes, first code. I only other thing in the sections of other documents, we cite the Conservation Strategy, which is a little puzzling because this is the CS and we are referring back to it.

Jodi-Take it out

Mary

Motion we accept Appendix H with several small edits, dropping reference to CS, and spelling change.

Jodi-second

**Vote: motion carries**

**Mary**

**DECISIONS: Approved G and H; deleted F; D&E-Park Service will validate with Jennifer**

Brian Nesvik

Motion to approve D&E contingent upon a final vote from the Park Service at the next meeting

Dan Wenk-second

**Vote: motion carries**

Mary-at next meeting will ask Park Service if they are satisfied with the appendix edits; if so, vote carries; if not, discussion will open again.

Jeff Gould-we would also like to know if there are any additional changes or edits from other agencies on that appendix.

**Appendix C**

Mary-I suggest the states present their proposal and rational and have some dialogue; then Jodi present for FWS and dialogue, so we get a sense of what we need to do at our next call.

Brian Nesvik

It's important for all of us to reflect on the important work we have gotten through with the exception of one appendix, and was done because of a lot of hard work by a lot of folks. We are very close to the finish line, realizing there are some components we don't agree on.

The states' proposal recognizes the realities that if there were changes to population estimators, as well as other tools, techniques, and methods by which the grizzly bear population is monitored, there would be a need down the road for adaptive management and for all the partners involved to take a look at adjusting the way that we may be doing business today. There are two major components to the states' proposal as we see it. First of all, the involvement of this body, or what this body will become-YGCC. The states' proposal is based on a key requirement of the Endangered Species Act, and that is recovery.

We all need to remember that the YGCC, or the YES Committee was established by FWS and the purpose was to ensure that coordination and the future post delisting management objectives are coordinated for a delisted bear population based on the best available science. The YGC is unique; this is not a common practice with other species, so I would assert that, that in itself is a policy decision that goes above and beyond an extra layer of coordination that otherwise would not be present if there wasn't a YGCC. We feel strongly they should be involved in all further changes to techniques and tools, and demographics of this population. It's important to remember that in a post delisted population, the states are the entities responsible for management. One of the things in Jodi's email was an assertion that if the Service agreed to the states' language, it would be ceding their authority. While overseeing state management for a particular period of time after delisting is certainly within the Service's prerogative, but authority to manage these populations is squarely in the hands of the three states' Wildlife Management Agency. I would disagree with the ceding authority wording. It's important to note that when this body recommended delisting and when delisting occurred previously, and when the courts reviewed the delisting previously, recalibration was not an issue. I contend it wasn't an issue then and it's not a legal issue now. I would contend that the reason it is even being discussed is because there has been some work done by the study team dealing with a potential new population estimator that is not deemed currently to be the best available science.

The second component is a basis in recovery. The Conservation Strategy refers to recovery based on the recovery plan. The CS does not have a separate definition of recovery. The CS references the recovery plan and the three recovery criteria. To assert that somehow defining recovery and leaving that to the YGCC somehow cedes authority or deviates from the Act is misleading and not accurate. I think there are legal issues with being overly specific on how future recalibration will be administered. If there was a new population estimator based on information that is not the basis of the current population estimator, there's a potential that information was not collected back in 2002-2014. Speculating or dictating the manner in which recalibration would occur is problematic. At the end of the day, the Act requires that the states manage a recovered, viable population. The states have demonstrated a very clear track record in managing large carnivores extremely effectively and in a manner that has provided all users

opportunity that is far above what it was in the past. I would contend that populations of large carnivores are healthier than ever before.

The other thing we need to remember is the Service has a low bar to relist. If they believe the recovery criteria are being violated, they have the authority to emergency relist with no strings, parameters, and a very low bar.

The states are very excited about approving this strategy and moving forward; however, we need to remember the charge and purview of this committee is not to make a decision on delisting of grizzly bears. The purview of this committee is to develop a CS that will define coordination and management recommendations in a post delisted population. The decision on whether this bear population is delisted or not lies solely with the United States Fish and Wildlife Service, and we have long held on this committee that that is not our role or responsibility. We certainly made recommendations, but at the end of the day, we need to make the decision on this CS based on the best available science, based on what's best for the bear and not predicated at all in what we speculate may or may not happen with listing or delisting. The states want to be able to defend this CS as well as the delisting rule if it happens, and we want to do that and feel proud and look forward to that in the future. I recommend we follow the recommendations of the three state directors and move forward and approve this language.

Jeff Gould

In short, we're saying recalibration is not a requirement of delisting; it's not a biological necessity for recovery. We've made great efforts to update the strategy and retain that spirit of changes are made on best available science, peer review and committee support. The states developed a tri-state MOU to collaborate among the three states and federal partner. We feel the new language recognizes the need for data comparability and also honors our process on any kind of changes that would be contemplated in the future with the CS.

Jodi Bush

I want to echo some of the things Brian said. The amount of effort made in the involvement by the agencies and partners. I hope we don't lose sight of that. The success of moving this species toward recovery is tremendous. I think we're really close and we would love to move on.

This issue of recalibration we think is important. The CS is fundamental and foundational and the management conditions within are part and parcel of what we are resting our decision on. We fully expect to be challenged as we move on. Because of that we need to know we've got a solid record going forward, which we know we can defend ourselves on. We need to make sure we've addressed comments that were brought up that make biological sense. One of the comments from one of our peer reviewers was that recalibration language was absolutely necessary. We agree and that is why we've pushed so hard for this language and if folks have looked at that language, we are very close. One issue is we think the states' language is a little too ambiguous to discuss what's going to happen if a new population estimator is adopted.

Two, we feel if we are leaving that decision to the YGCC, which we won't be party to, we feel that abrogates our responsibilities to define recovery to another entity, whether or not you agree with that, that's how we feel. We feel like we cannot defend that going forward. There were a couple comment about we didn't bring up recalibration previously. The situation was different then. We do have a peer review comment to address and other litigation that brought up these kinds of issues that set the precedent for us that we need to address. We do think it's important to wrap this up; we're so close. I think our language is flexible to meet what the states want and what we need to move forward.

Mary-Jodi and Brian, can you succinctly describe what is different between your two proposals without advocating one way or another?

Jodi-For us the perspective is in our edit we very clearly identify what the standards are: population objective, confidence in mortality limits based on population estimator. We don't defer to the YGCC.

Brian-Fundamentally the difference in ours is based in a scientifically established set of recovery criteria that are defined in the Conservation Strategy that are not tied to the population estimator. The recovery criteria were developed based on a genetically and biological viable population irrespective of a particular technique that was used to count the number of bears that were in the system.

Mary-The language in both has come so close in talking about the need for recalibration as population estimators change. Is the fundamental disagreement that we are managing for a stable population or managing for a population that could be smaller, as long as it meets recovery criteria?

Brian-That does define a good part of it; that's not all of it though.

Ken McDonald-There are a couple key things said there. Jodie pointed out that everybody agrees that the population has recovered. If they get delisted, recovery doesn't change, recovered is recovered. Once they are delisted, Fish and Wildlife no longer has authority. Their email says they are reserving the right to redefine recovery in the future, which isn't in the authority of the FWS.

Dan Wenk-I'm wondering if the issue in the two approaches is the issue of a stable population. It seems inherent in one approach the recalibration is one of the tools that would lead to a stable population at the time of delisting an inherent to the other proposal is that the recovered population number, whether you recalibrate or not, is the number that the states would manage to.

Brian-Part of the issue is exactly what stability is. That's where those specific numbers came from that were defined around some confidence issues, because stability in a wildlife population varies. Leaving that to interpretation is problematic, so deviating from the

requirements of the Endangered Species Act, as far as what a recovered bear population is very problematic, legally and the rights of the states to manage wildlife within their borders that's not threatened or endangered.

Dan Wenk-The question we're asking that we think is fundamental, if a new method of counting is used and it finds the population is much higher, the recovered population should go up as well.

Mary-The crux of it is really around transparency and objective of the population at the time of delisting and what is the commitment to the public for managing the population into the future.

Loren-As a commissioner we've all learned we're not allowed to bind boards to future actions passed on what ifs. We make our decisions based on what's standing in front of us right now. It's the job of the YGCC to make those decisions if necessary in the future. FWS has the ability in the future to relist.

Jodi-You are right, we may always relist the species if it warrants, but we can't rely on that when we delist and we've lost that in court. All we're trying to do here is put language in place that clarifies how, if a population estimator is changed, we can make sure that it's changed in a way that doesn't impact our recovery goals.

Loren-What you've done though is take the responsibility away from the YES committee by your comment and it's back to the FWS. This whole document I thought is how the YES committee and the states are going to manage the population going forward after recovery. It seems you're leaving the YES committee or YGCC out.

Jodi-I don't follow that at all. What we're doing in here is making it clear that when the YGCC does recalibration that they use appropriate ways of measuring those demographic objectives and standards.

Leander-The tribes will more than likely agree with Jodi that they would like to see something stated in there that the USFWS will still be part of managing the grizzly bears.

Mary-We're not putting this forward for a vote today. We've talked about the collective work everyone has done over the last six of eight months on the conservation strategy and the delisting rule. We're very close, but this is a fundamental difference that we're looking at here. It is appropriate to put this forward to a vote, but if we don't have agreement on a way to bridge this we don't have something to move forward with. We will schedule our next call where we will call for a vote. So hopefully each internal entity will look it over and discuss. We would assume that there may be more conversation between the states and FWS to get to something we can endorse.



We will need to decide on how we put it out for a vote-either yes or no, or can live with it. I am assuming we need to regroup next week for the vote. I'll put forward Friday, Nov. 4 at 10:00 for an hour with the same conference call line, to vote and close the loop on Appendix D&E.

We still plan to post the Conservation Strategy in its entirety on the IGBC website by Nov. 10<sup>th</sup>, and have the potential for signature at the November meeting.

Jeff Gould-Jodi mentioned there were a few issues to clean up, including recalibration, so I was curious if we get an idea of what those issues are and is there a scheduling outline?

Jodi-The biggest issue is the time for internal review and how much time can we expect people to have over the holidays to get this done. We're still responding to comments that's taking up a bit of time. We may reach out to the YES committee on things they might have more or better information on.

Meeting is adjourned.