

ENVIRONMENTAL ASSESSMENT

Project Name:	Amendment of ARM 36.11.432 and ARM 36.11.470
Proposed Implementation Date:	March 2016
Proponent:	Forest Management Bureau, Trust Land Management Division, Montana DNRC
Location:	Stillwater and Coal Creek State Forests
County:	Flathead and Lincoln

I. TYPE AND PURPOSE OF ACTION

The Trust Land Management Division of the Montana Department of Natural Resources and Conservation (DNRC) proposes to adopt amendments to the forest management rules addressing Grizzly Bear Management on Blocked Lands under the Montana Administrative Procedures Act (MAPA).

The amendment of ARM 36.11.432 and ARM 36.11.470 is reasonably necessary as a requirement of a settlement agreement approved October 9, 2015, in U.S. District Court, *Friends of the Wild Swan et al. v. S.M.R. Jewell, et al.*, Case No. CV-13-61-M-DWM. The judge approved a settlement agreement negotiated between the DNRC and the plaintiffs concerning the DNRC Habitat Conservation Plan (HCP). Included in the terms of the settlement agreement and court order was the requirement for DNRC to promulgate the conservation measures set forth in the settlement agreement into DNRC administrative rules within six months of the date of the entry of the order. Following this order, the department initiated the process of incorporating the settlement agreement into rules. The purpose of this EA is to address potential effects of changes associated with the amendments of the rules and ensure compliance with MAPA and MEPA procedural requirements.

The proposed amendments would establish security zones to minimize adverse impacts on grizzly bears when conducting forest management activities on the Stillwater and Coal Creek State Forests. These rules replace commitments GB-ST2, GB-ST3, and GB-ST5 (3.) and (4.) in the DNRC HCP.

II. PROJECT DEVELOPMENT

Environmental Assessment Development:

This environmental assessment tiers to, and adopts the original effects assessments contained in the Habitat Conservation Plan Final Environmental Impact Statement (HCP 2010) and relies on the findings contained in the HCP.

1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

Scoping

Date: February 1, 2016- March 2, 2016

Public Scoped:

- The scoping notice was posted on the DNRC Website: <http://dnrc.mt.gov/public-interest/public-notice>
- Statewide Scoping List (ver. 1/26/2016)
- Local Industry Professionals
- Legal Ads in the Daily Interlake and Flathead Beacon

Agencies Scoped:

- MT Fish, Wildlife, & Parks

Tribal Nations:

- Blackfeet Tribe of the Blackfeet Reservation
- Chippewa Cree Tribe of the Rocky Boy's Reservation
- Confederated Salish & Kootenai Tribes of the Flathead Reservation

- Crow Tribe of the Crow Reservation
- Fort Belknap Tribes of the Fort Belknap Reservation
- Fort Peck Tribes of the Fort Peck Reservation
- Little Shell Chippewa Tribe
- Northern Cheyenne Tribe of the Northern Cheyenne Reservation

Comments Received:

- How many: During the 30-day public comment period, DNRC received one letter and one email. The email was in support of the project.

Concerns and Results:

- The letter that was received contained many questions and concerns. Please refer to Attachment II, *Response to Public Comment*, on page 13 for a detailed analysis.

2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

United States Fish & Wildlife Service- DNRC is managing the habitats of threatened and endangered species on this project by implementing the Montana DNRC Forested Trust Lands HCP and the associated Incidental Take Permit that was issued by the United States Fish & Wildlife Service (USFWS) in February of 2012 under Section 10 of the Endangered Species Act. The HCP identifies specific conservation strategies for managing the habitats of grizzly bear, Canada lynx, and three fish species: bull trout, westslope cutthroat trout, and Columbia redband trout. These amendments comply with the HCP. The HCP can be found at <http://dnrc.mt.gov/divisions/trust/forest-management/hcp>

3. ALTERNATIVE DEVELOPMENT:

No Action Alternative – Under the No Action Alternative, the forest management rules would not be amended at this time. Prior to HCP lawsuit settlement, forest management activities were largely constrained across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block due to litigation in U.S. District Court.

Action Alternative – Under the Action Alternative, forest management amended rules would be formally adopted under MAPA procedures. Forest management rules would comply with the conservation measures set forth in the settlement agreement and court order.

III. IMPACTS ON THE PHYSICAL ENVIRONMENT

4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

5. WATER QUALITY, QUANTITY AND DISTRIBUTION:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

6. AIR QUALITY:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

7. VEGETATION COVER, QUANTITY AND QUALITY:

No Action Alternative – Under the No Action Alternative, very little forest management and associated influences on vegetative cover quantity and quality would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts to vegetation cover quantity and quality associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. Any impacts to habitats for terrestrial, avian and aquatic species that would be associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these

increased levels of forest management activities on habitat for terrestrial, avian and aquatic species would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management on any unique, endangered, fragile or limited resources (including listed endangered, threatened and sensitive species) would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities on any unique, endangered, fragile or limited resources (including listed endangered, threatened and sensitive species) would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

10. HISTORICAL AND ARCHAEOLOGICAL SITES:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

11. AESTHETICS:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

IV. IMPACTS ON THE HUMAN POPULATION
--

14. HUMAN HEALTH AND SAFETY:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

17. LOCAL AND STATE TAX BASE AND TAX REVENUES:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

18. DEMAND FOR GOVERNMENT SERVICES:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with

these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

22. SOCIAL STRUCTURES AND MORES:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

23. CULTURAL UNIQUENESS AND DIVERSITY:

No Action Alternative – Under the No Action Alternative, very little forest management, if any, would occur across 38,470 acres of grizzly bear security core in the DNRC Stillwater Block. The impacts associated with these levels of forest management would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

Action Alternative – Under the Action Alternative, more extensive and intensive forest management activities would occur on 16,463 acres previously enjoined under the HCP lawsuit. The impacts associated with these increased levels of forest management activities would fall within the range identified and disclosed in the HCP FEIS. No associated direct, indirect, or cumulative effects differing from those disclosed in the HCP FEIS would be anticipated.

24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:

Under the No Action Alternative, forest management activities were enjoined on 38,470 acres of grizzly bear security core in the DNRC Stillwater Block due to U.S. District Court order. Under this scenario the Sustainable Yield Calculation (SYC) from forested state trust lands was 55.5 million board feet (MMBF) per year.

Under the Action Alternative, the proposed amendment required in the HCP Settlement would be adopted. The implementation of the HCP Settlement would result in a SYC of 56.9 MMBF per year from forested state trust lands. This is an increase of approximately 1.4 MMBF per year or 2.5% over the No Action Alternative SYC. We would expect that gross revenues and net revenues from the sale of forest products from State Trust lands to increase by a comparable percentage.

The analysis utilized in the DNRC Forested Trust Lands HCP calculated the average annual direct forestry sector employment from timber harvest occurring on state trust land at 10 jobs per million board feet harvested. The Montana Wood Products Association reported in the publication “2015 Timber Industry in Focus” that the average annual wage for Montana Forest industry workers was \$49,300 per year. Using these figures the Action Alternative would result in an average annual increase of approximately 14 jobs and \$690,000 in wage income from direct forestry sector jobs over the No Action Alternative.

EA Checklist Prepared By:	Name: Jessica Brown Title: Forest Management Planner	Date: 3/3/16
--------------------------------------	---	---------------------

V. FINDING

25. ALTERNATIVE SELECTED:

The Montana Department of Natural Resources and Conservation has completed the environmental assessment (EA) for the proposed amendment of ARM 36.11.432 and ARM 36.11.470. After a thorough review of the EA, public comments, the project file, Department policies, standards, and guidelines, I have made the following decisions concerning this amendment:

The alternatives proposed for consideration in this EA were the No Action and Action Alternative. Under the Action Alternative, forest management amended rules would be formally adopted under MAPA procedures. Forest management rules would comply with the conservation measures set forth in the settlement agreement and court order.

The Action Alternative has been selected for the following reasons:

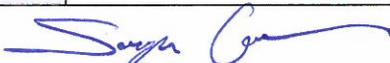
- The Action Alternative meets the project Purpose and Need listed under Section I. of the EA:
 - Promulgate the conservation measures set forth in the settlement agreement into DNRC administrative rules within six months of the date of the entry of the court order
 - Address potential effects of changes associated with the amendments of the rules and ensure compliance with MAPA and MEPA procedural requirements.
 - Establish security zones to minimize adverse impacts on grizzly bears when conducting forest management activities on the Stillwater and Coal Creek State Forests.
- The Action Alternative is consistent with State and local policies, laws, and regulations.
- The Action Alternative is required to meet the terms of the HCP Settlement and for compliance with the Federal District Court Order.

26. SIGNIFICANCE OF POTENTIAL IMPACTS:

Upon review of the project and analysis herein, I find that none of the impacts are severe, enduring, geographically widespread, or frequent. Further, I find that the quantity and quality of the natural resources, including any that may be considered unique or fragile, will not be adversely affected to a significant degree. I find no precedent for the future actions that would cause significant impacts, and I find no conflict with local, State, or federal laws, requirements, or formal plans.

27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:

EIS
 More Detailed EA
 No Further Analysis

EA Checklist Approved By:	Name: Sonya Germann
	Title: Forest Management Bureau Chief
Signature: 	Date: 3-7-16

List of Preparers

Jessica Brown, MT DNRC, Forest Management Bureau- Forest Management Planner- Project Leader
 Ross Baty, MT DNRC, Forest Management Bureau- Wildlife Biologist
 Gary Frank, MT DNRC, Forest Management Bureau, Deputy Bureau Chief

References

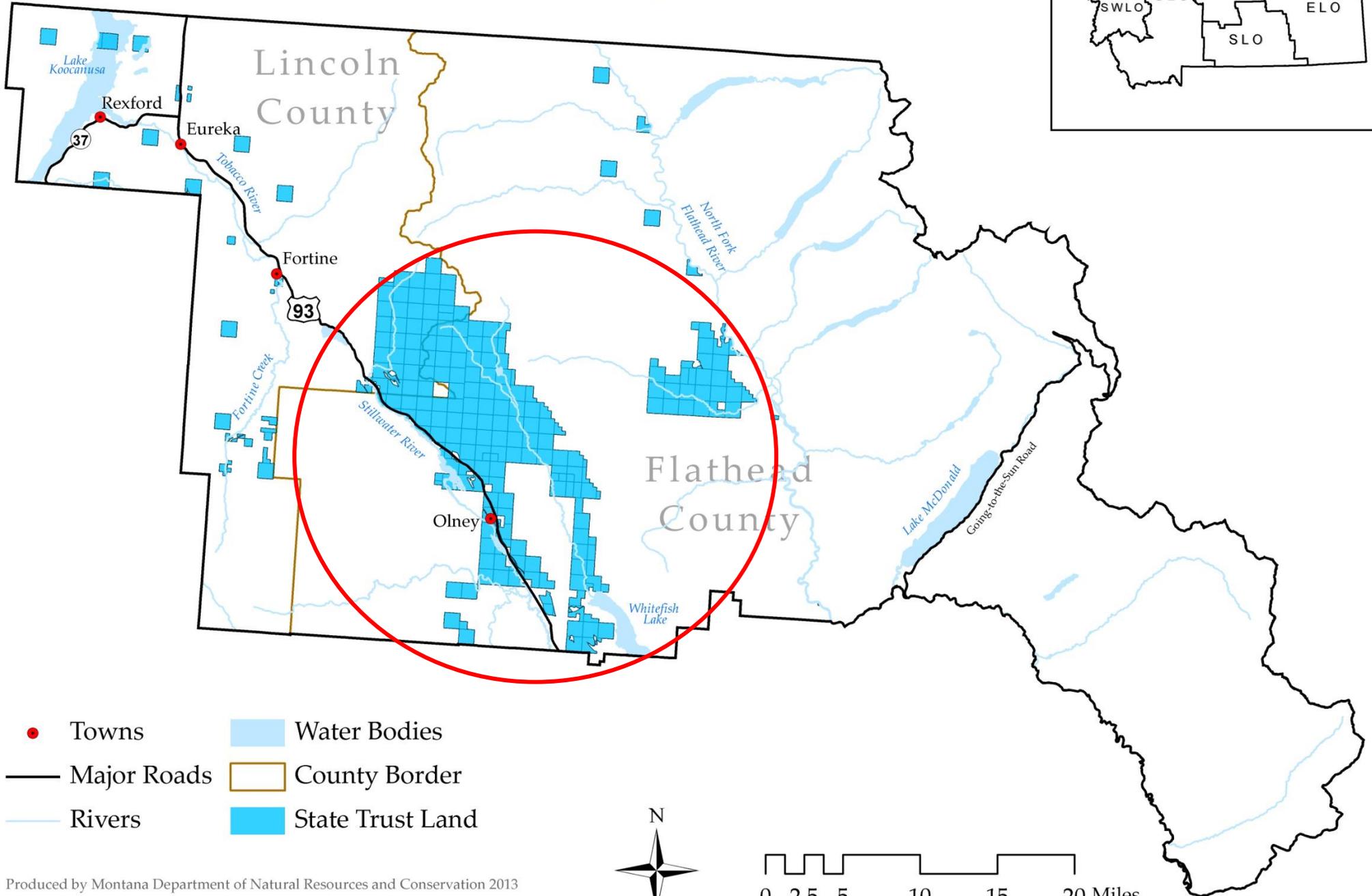
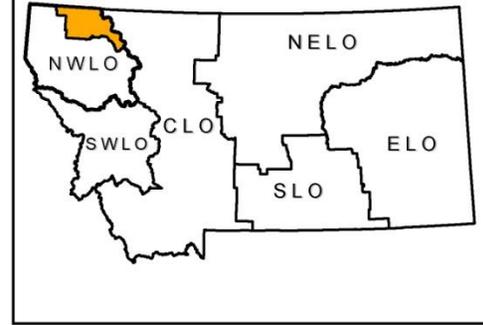
HCP 2010. Montana Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan: Final EIS, Volume II, Forest Management Bureau, Missoula, Montana.

Attachment I

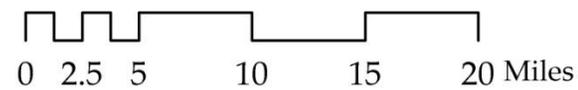
Area Maps

	Page #
• Vicinity Map_____	11
• Grizzly Bear Security Zones Map_____	12

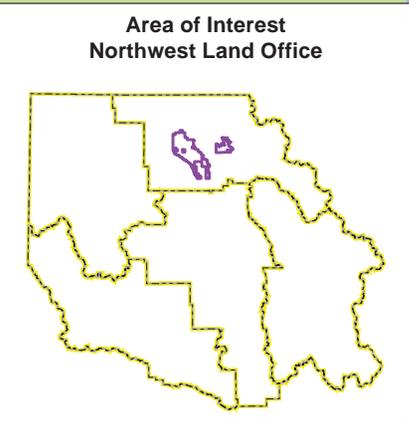
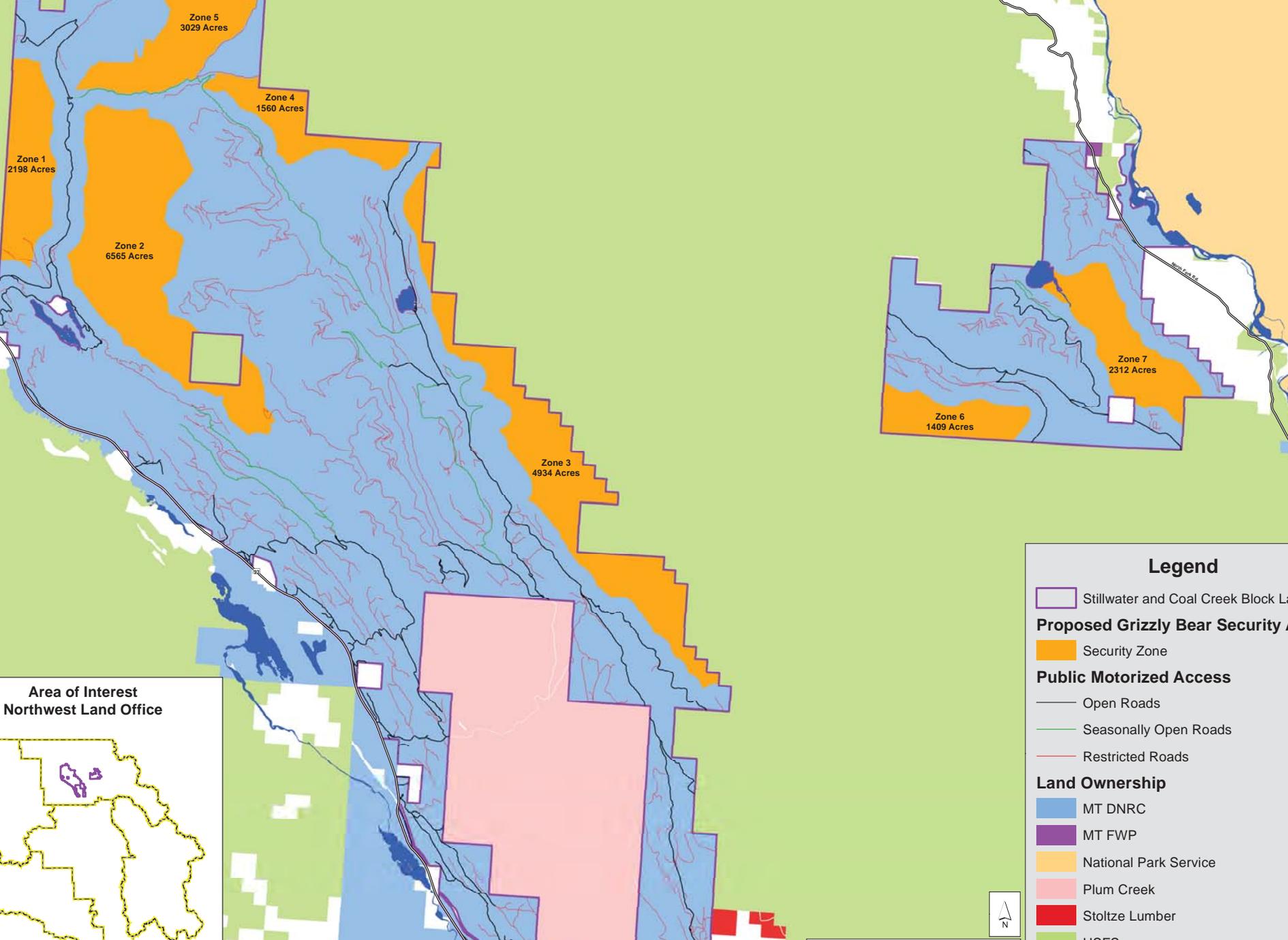
GRIZZLY BEAR SECURITY ZONES VICINITY MAP STILLWATER UNIT



- Towns
- Major Roads
- Rivers
- Water Bodies
- County Border
- State Trust Land



Attachment 1-A- DNRC Stillwater Grizzly Bear Security Zones Under the Settlement Agreement



Legend

- Stillwater and Coal Creek Block Lands
- Proposed Grizzly Bear Security Areas**
 - Security Zone
- Public Motorized Access**
 - Open Roads
 - Seasonally Open Roads
 - Restricted Roads
- Land Ownership**
 - MT DNRC
 - MT FWP
 - National Park Service
 - Plum Creek
 - Stoltze Lumber
 - USFS

Attachment II

Response to Public Comment

Pages 14-18

The following are fourteen comments received by the DNRC during scoping for this environmental assessment.

Comment #1 FH Stoltze

In short, I am quite honestly astonished that a negotiated settlement, devoid of any public or scientific review, is somehow considered a better and more scientifically defensible management strategy for grizzly bear habitat than was the 10 year, multi-million dollar habitat conservation plan development, analysis and review process.

Response:

DNRC makes no claim of the outcome of the HCP lawsuit and subsequent settlement agreement being “better” or more scientifically based than the original management grizzly bear subzone approach contained in the HCP. DNRC followed strict procedural requirements of the Federal Ninth Circuit Court of Appeals for addressing communications and negotiations associated with the settlement agreement. Such negotiations in federal court do not require or even admit general public involvement. Put simply, violating these procedures would have placed DNRC in contempt. Given the lengthy duration of the lawsuit, DNRC responsibly opted to get resolution on 6 projects enjoined by the lawsuit and agree to a workable agreement that will provide long term certainty for management of state trust lands and the grizzly bear.

Comment #2 FH Stoltze

The 10 year HCP process engaged the wildlife managers with the most experience both in managing grizzly bears and grizzly bear habitat specifically on the State forest. The decision to adopt the management strategies included in the HCP was based on sound science and significant agency, peer and public review and input. So much so that the management concepts and strategies included in the HCP are the basis for future management strategy of grizzly bear habitat post delisting as detailed in the draft NCDE Grizzly Bear Conservation Strategy.

Response:

It is true that the original Stillwater Block Transportation Plan and Management Subzone strategy was proposed as part of DNRC’s contribution to the Draft NCDE Grizzly Bear Conservation Strategy, as was the Swan Valley Grizzly Bear Conservation Strategy, which is similar in concept. It is also true that some additional management flexibility for forest management activities is being contemplated by other agencies signatory to the strategy. It is currently uncertain as to what measures will ultimately be contained in the final strategy for these other agencies. However, per the settlement agreement, DNRC has submitted the conservation measures within the settlement agreement to be adopted into the final strategy.

Comment #3 FH Stoltze

The environmental analysis for the proposed rulemaking must disclose specifically how the new strategy provides greater security and long term sustainability of grizzly bear populations and habitat than was provided for in the previous rule and accompany Habitat Conservation Plan. Specifically, how will setting aside security core without any ability to respond to vegetation changes, broad scale wildfire, insect and disease and climate change provide better long term security than the previous strategy which would have allowed for adaptive management and intervention to ensure long term habitat viability?

Response:

The MEPA analysis will adequately disclose the effects of the proposed action on affected wildlife species. An in-depth assessment of grizzly bear population sustainability is beyond the scope of this analysis. There are clearly management benefits to being able to have motorized access within any given landscape. However, natural disturbances that sustain and renew important habitat attributes for grizzly bears have been occurring on the landscapes of western Montana for thousands of years. Further, many sites within subject security zone blocks have recently experienced stand –replacing wildfire already and numerous avalanche chutes are present that receive considerable disturbance annually. Management is not precluded from the security zones – rather it is restricted to the denning period (November 16th to March 31st) below elevations of 6,300 feet. DNRC recognizes that these restrictions reduce the agency’s opportunity to manage as extensively and intensively in these areas

than would have been allowed under the HCP Conservation Strategies for the Stillwater Block. However, management opportunity under the settlement agreement is still more than what was allowed under the injunction.

Comment #4 FH Stoltze

How will the new strategy of no-management security core zones address the habitat challenges associated with high elevation vegetation changes? The HCP EIS clearly states that most grizzly bear foraging habitat is found in early seral habitats. Without the ability to manipulate vegetation types through timber harvest, what will be the strategy for ensuring the existence of early seral habitat within the 22,000 acres of security zone? Will fire management strategies in these areas be modified? If so, what is the associated affect and potential risk to the trust assets outside of the security zone, especially if the Managed natural fire is the preferred habitat management tool? Where will DNRC find the funding to manage habitat with the security zones, especially with no projected financial return to the trust?

Response:

To reiterate, management will not be precluded from the security zones, but will be limited to those periods and elevations outlined in the settlement agreement and mentioned above. As previously stated, natural disturbances that sustain and renew important habitat attributes for grizzly bears have been occurring on the landscapes of western Montana for thousands of years. Further, many sites within subject security zone blocks have recently experienced stand-replacing wildfire already and numerous avalanche chutes are present that receive considerable disturbance annually, which provide excellent habitat. Managed natural fire has not been proposed by DNRC as a preferred habitat management tool. Natural disturbances including insects, disease, wind, and fire will continue on these lands with or without additional management and disturbance caused by DNRC forest management activities. Early seral plant communities are likely to remain well represented in the foreseeable future on the Stillwater Block because: 1) DNRC can continue to conduct forest management activities across all other lands neighboring the security zones, 2) DNRC retains some ability to manage within the security zones according to the timing and elevation parameters per the settlement agreement, and 3) uncontrollable natural disturbances will continue to periodically influence on both security zone and non-security zone lands across the landscape. More importantly, it is very unlikely that these types would be limiting for grizzly bears on the Stillwater Block given the scale of grizzly bear home ranges commonly observed in western Montana.

Comment #5 FH Stoltze

What will happen when the security zones no longer provide adequate useable grizzly bear habitat? The Mount Marston fire of 2015 came very close to burning into the adjoining security zone on the Stillwater forest. Should that area have burned with the same high fire intensity as was seen on similar habitat types in Montana this summer, very little useable grizzly bear habitat would have remained and the State would have had no options for mitigation for that habitat loss. Will the State be held accountable to provide "replacement" security areas?

Response:

With or without large scale natural or man-caused disturbance events in security zone areas, they will continue to provide secure places for bears to live and forage. As such there is no provision in the settlement agreement for "replacement security areas," nor is there a need for them. With disturbances of this type, early seral plant communities are established, which can provide excellent foraging habitat for grizzly bears. After just several growing seasons, particularly in brushy areas, hiding cover can also re-establish. Numerous large fires have burned near Glacier National Park and on state Trust lands in this area during the last two decades, and many have recovered and have produced excellent habitat for grizzly bears. To our knowledge, bear numbers in relation to Glacier National Park and surrounding areas remain strong. The absence of roads and motorized access is the driver for providing safe, quiet environments for bears.

Comment #6 FH Stoltze

The HCP analysis concludes that the effects of climate change on grizzly bear habitats are uncertain. However, one of the benefits of the strategies included in the HCP was the ability to implement adaptive management that

would allow for response to climate changes. Under the security zone concept that no longer exist. What are the impacts to bear habitat under a static security zone strategy and a changing climate?

Response:

Any constraint associated with applying adaptive management strategies on HCP lands would only be present on the established 22,007 acres of security zone lands. This represents approximately 4% of the 550,000-acres covered under the DNRC HCP. It is difficult to imagine what actual climate-related circumstances might arise in the future; however, any potential necessary adjustments that might be identified could very likely be accommodated on lands outside of those identified as security zones. As stated above, activities during the denning period under elevations of 6,300 feet would remain allowed in security zones. In a circumstance where an environment may get warmer and possibly drier, it is difficult to envision a circumstance where maintaining secure areas for bears would be harmful for them.

Comment #7 FH Stoltze

Portions of the proposed rule are vague and present significant uncertainty on the interpretation. Specifically rule: *(vii) minimize the duration and administrative activities near security zones to the extent practicable*. What is the definition of “near”? ½ mile? 1 mile? Depending on interpretation, this could greatly expand the impact well beyond the 22,000 acre security area. A one mile buffer would increase the impacted area by a minimum of 17,500 additional acres. What is the effect is the effect of this unknown sized buffer on the ability to manage the adjoining trust lands? There is no descriptions of the time period for the restriction, so as drafted this means that All administrative activities will be minimized year round? What about the use of roads that are “near” security zones?

Response:

This stated clause originated from an existing Forest Management Rule applicable to the Stillwater Block (ARM 36.11.432(f)). This requirement is not new. There are no additional zones or buffers established by this clause, and the set of allowable activities outside of security zone lines is clearly established in the settlement agreement. This language will be evaluated and implemented at the project level. Harvest units adjacent to security zones will be prioritized for treatment and duration of activities minimized to the extent practicable. Allowable uses of all roads will be governed by the Stillwater Block Transportation Plan.

Comment #8 FH Stoltze

The fiscal impact to the school trust of this rule change must be fully analyzed and disclosed.

Response:

Under the Federal District Court order resulting from the HCP lawsuit DNRC was enjoined from most timber harvest activities on approximately 38,479 acres of grizzly bear security core in the Stillwater State Forest. The Sustainable Yield Calculation (SYC) under the injunction scenario was 55.5 MMBF/year. The settlement agreement entered into with the plaintiffs, and subsequently ordered by the court, allows for more extensive and intensive timber harvest on 16,463 acres that were previously subject to the injunction. The SYC under the HCP settlement agreement is 56.9 MMBF/year. This is an increase of approximately 1.4 MMBF or 2.5% over the existing situation under the injunction. We expect that the potential gross and net revenues from the sale of forest products from state trust lands to increase by a comparable percentage.

Comment #9 FH Stoltze

Are the acres encumbered by security zones equally distributed by trust? How are trusts that bear a disproportionate percentage of the burden of the security zones acres compensated for the economic loss associated with setting these acres aside from management?

Response:

The predominant share of lands within the security zones are owned by the Common Schools trust (~85%). A sizable portion of this land is unmanageable due to low timber volume, topography, rocky outcrops, and other natural impediments. Management is allowed yet restricted within the security zones as mentioned in earlier responses. Compared to the injunction, DNRC is able to increase the amount of timber it can harvest on an annual basis under the settlement agreement. Therefore, DNRC

expects a long term net revenue increase for the Common Schools through adoption of the settlement agreement compared to what was possible under the injunction.

Comment #10 FH Stoltze

There was substantial economic analysis done as a part of the justification for implementing the HCP. Much of that justification was based on a higher annual sustained yield directly tied to more acres available for management on the Stillwater and Coal Creek forest. How does this change in management opportunities on the Stillwater and Coal Creek forest affect the economic analysis? Will the decision on implementation of the HCP be reconsidered given this new information?

Response:

Under the Federal District Court order resulting from the HCP lawsuit DNRC was enjoined from most timber harvest activities on approximately 38,479 acres of grizzly bear security core in the Stillwater State Forest. The Sustainable Yield Calculation (SYC) under the injunction scenario was 55.5 MMBF/year. The settlement agreement entered into with the plaintiffs, and subsequently ordered by the court, allowed for more extensive and intensive timber harvest on 16,463 acres that were previously subject to the injunction. The SYC under the HCP settlement agreement is 56.9 MMBF/year. This is an increase of approximately 1.4 MMBF or 2.5% over the existing situation under the injunction. We expect that the potential gross and net revenues from the sale of forest products from state trust lands to increase by a comparable percentage. The analysis utilized in the DNRC Forested Trust Lands HCP calculated the average annual direct forestry sector employment from timber harvest occurring on state trust land at 10 jobs per million board feet harvested. The Montana Wood Products Association reported in the publication "2015 Timber Industry in Focus" that the average annual wage for Montana Forest industry workers was \$49,300 per year. Using these figures the Action Alternative would result in an average annual increase of approximately 14 jobs and an additional \$690,000 in wage income from direct forestry sector jobs over the No Action Alternative. DNRC plans to continue implementing the HCP and the HCP settlement agreement. The decision to enter into and implement the HCP for forested state trust lands has not changed given this information.

Comment #11 FH Stoltze

I question the value of completing the MEPA process on this action as the decision has already been made. There are no alternatives. There is really not even any no-action alternative as the action is dictated by the court. Clearly the damage is done, however, the impacts of this decision need to be fully disclosed to the public and trust beneficiaries.

Response:

We agree that the applicability of MEPA in this case appears unusual, however, we concur that it is important to disclose impacts of this important decision.

Comment #12 FH Stoltze

It is necessary for DNRC to consider the impact of this decision on the implementation of the Draft NCDE Grizzly Bear Conservation Strategy. At a minimum this decision should include the opportunity to revisit the management strategies for bear habitat should the grizzly bear be delisted. I urge the DNRC to work with the drafters of the Strategy to retain the adaptive and more flexible management strategies included in the draft Conservation strategy for the management of the Stillwater and Coal Creek State forests in the future.

Response:

DNRC's adoption of the HCP lawsuit settlement agreement will have minimal influence on implementation of the NCDE Conservation Strategy, and it would only slightly adjust the level and intensity of management allowed on 22,007 acres of grizzly bear habitat on DNRC lands in the entirety of the NCDE. No other agencies would be affected by this action. Currently, DNRC's ability to alter strategies once bears are de-listed is influenced by the HCP. As such under that plan, strategies were negotiated to remain in effect for the duration of the incidental take permit. There is currently language contained in the draft NCDE Conservation Strategy (pp. 103-106) that clarifies how, and under what circumstances, changes would be allowed and adopted in the strategy over time with review by the NCDE Coordinating Committee.

Comment #13 FH Stoltze

The DNRC must re-examine the value of the HCP and the benefits to the trust beneficiaries of this agreement. Clearly neither the HCP nor the partnership with the USFWS provided any certainty to the DNRC or protection from litigation over the management of T&E species. With this decision by the DNRC, the very reasons the HCP was adopted have been marginalized. The precedent set by negotiation a settlement on this issue, in my opinion, is very dangerous and has placed the DNRC in a tenuous position for future challenges and lawsuits.

Response:

We appreciate your point of view, but disagree with your stated opinion. Given the circumstances under which DNRC found itself in the Ninth Circuit Court of Appeals, the agency, through long and careful analysis and examination, opted in good faith to reach a settlement agreement with the plaintiffs. As trust administrators, the agency viewed this as the most reasonable path forward in order to secure long term revenue and legal assurances for the beneficiaries. Through this process, DNRC was faced with evaluating three important considerations. First, proceeding into the Ninth Circuit was impossible to do so as Intervenor-Defendants without the USFWS, as they planned to dismiss their motion. Second risking review on appeal would have been irresponsible given the likelihood of the injunction becoming permanent as one of the possible outcomes. Third, the other points in the case on which the DNRC and USFWS won (4 out of 5 points), could possibly have been overturned upon additional review, which could have further amplified losses in management flexibility and reduced revenue generation potential for trust beneficiaries.

Comment #14 Friends of the Wild Swan

Friends of the Wild Swan support the amendments of ARM 36.11.432 and ARM 36.11.470 to codify the establishment of security zones to minimize impacts to grizzly bears from forest management activities on the Stillwater and Coal Creek State Forest. We believe that these measures are essential to the conservation of the grizzly bear on school trust lands in the Northern Continental Divide Ecosystem and will benefit other wildlife and fish.

Response:

Thank you for your comments supporting the proposed ARM amendments.