

(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)

@fws.gov>

(b)(6), (b)(7)(C)

### declination (2016R00349)

2 messages

(b)(6), (b)(7)(C)

@usdoj.gov>

Tue, Jan 3, 2017 at 11:24 AM

To: (b)(6), (b)(7)(C) @usdoj.gov>

Cc: "(b)(6), (b)(7)(C) @fws.gov>, (b)(6), (b)(7)(C) @usdoj.gov>

(b)(6), (b)(7)(C)

I would like to decline prosecution of (b)(6), (b)(7)(C). This case arose in McLeod (near Big Timber) on April 21, 2016, after (b)(6), (b)(7)(C) shot a grizzly bear on his property at about 4:00 a.m. (b)(6), (b)(7)(C) claimed that he went to check on cattle at about 3:00 a.m. and the bear ran toward him. (b)(6), (b)(7)(C) shot the bear twice before heading back to his home to alert (b)(6), (b)(7)(C) about the bear. They then went back to the cattle area. According to (b)(6), (b)(7)(C) he shot the bear a third time as it was beginning to stand behind (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) story seems suspect in numerous respects. In particular, his story is inconsistent regarding where in the bear's body he shot the bear. He also gives an implausible story about where on the property the bear was shot. Nevertheless, I do not believe the evidence is sufficient to support a finding that we can reasonably expect to prove the case beyond a reasonable doubt. See U.S.A.M. 9-27.300. The primary difficulty we would encounter is proving that (b)(6), (b)(7)(C) knew he was shooting a grizzly bear. Although the Ninth Circuit has held that a defendant does not need to know an animal's biological identity, see *United States v. McKittrick*, 142 F.3d 1170, 1177 (9<sup>th</sup> Cir. 1998), DOJ policy states that we cannot rely upon that decision in requesting a jury instruction that does not contain the knowledge requirement. Because this incident took place during the early hours of the day (sunrise occurred at 6:47), I do not believe that we can disprove (b)(6), (b)(7)(C) contention that he did not know he had shot a grizzly until after he inspected the carcass.

I have informed U.S. Fish and Wildlife Service Special Agent Shawn (b)(6), (b)(7)(C) of my decision. He indicated that although he does not find (b)(6), (b)(7)(C) account credible, he concurs in my assessment that we do not possess sufficient evidence to prove (b)(6), (b)(7)(C) knew he was shooting a grizzly bear.

Thank you,

## Chad C. Spraker

Assistant U.S. Attorney

U.S. Attorney's Office - District of Montana  
901 Front Street, Ste. 1100 | Helena, MT 59626

(b)(6), (b)(7)(C)

✉ Chad.Spraker@usdoj.gov

Thaggard, Joseph (USAMT) <Joseph.Thaggard@usdoj.gov>  
To: "Spraker, Chad (USAMT)" <Chad.Spraker@usdoj.gov>  
Cc: (b)(6), (b)(7)(C) @fws.gov>, "Potter, Cassie (USAMT)" <Cassie.Potter@usdoj.gov>

Tue, Jan 3, 2017 at 1:01 PM

Attachment #: 1  
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