



**Public Comment on Endangered and Threatened Wildlife and Plants:
Initiation of 5-Year Status Review of Grizzly Bear (*Ursus arctos horribilis*)
FWS-R6-ES-2019-N144, FXES1114060000-201-FF06E00000**

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Summary

- The best scientific and commercial data available indicate that the Greater Yellowstone Ecosystem grizzly population is not endangered or threatened. Delisting the population would recognize the significant efforts of federal biologists, states, tribes, conservation groups, and private landowners to recover the grizzly and allow for continued conservation efforts without the potential deterrent of federal regulation.
- If the entire species remains listed, a tailored 4(d) rule could provide incentives for states, landowners, and others to continue recovery efforts for populations at or near their ecosystem's carrying capacity. With a tailored 4(d) rule, the Fish and Wildlife Service could provide nearly the same level of regulatory relief for states and landowners that would come from delisting. Given the need for state and landowner cooperation to establish migratory corridors between populations, such goodwill is essential to the species' recovery.

Introduction

The Property and Environment Research Center (PERC) respectfully submits this comment to the Fish and Wildlife Service regarding the initiation of a 5-year status review of the Grizzly bear (*Ursus arctos horribilis*) in the conterminous United States, currently listed as a threatened species under the Endangered Species Act. PERC is a nonprofit conservation research institute located in Bozeman, Montana that explores market-based solutions to environmental problems. Founded in 1980, PERC's mission is to improve environmental quality through markets, entrepreneurship, and property rights. PERC's staff and associated scholars conduct original research that applies free market principles to resolving environmental disputes in a cooperative manner. This comment draws on recent PERC research on grizzly bear recovery and management, including testimony before the House Natural Resources Committee and a brief filed with the U.S. Court of Appeals for the Ninth Circuit.¹

¹ U.S. House Natural Resources Committee: Waters, Oceans, and Wildlife Subcommittee. *Hearing on H.R. 2532, the Tribal Heritage and Grizzly Bear Protection Act*. [Prepared Statement of Jonathan Wood](#). (May 15, 2019); [Brief of](#)

This comment focuses on the Greater Yellowstone Ecosystem grizzly population and addresses the five factors considered during a Fish and Wildlife Service listing evaluation. The agency determined in a 2017 final rule and reaffirmed in a 2018 regulatory review that “the GYE grizzly bear population has recovered to the point at which protection under the [Endangered Species Act] is no longer required. The best scientific and commercial data available indicate that the GYE grizzly bear [distinct population segment] is not endangered or threatened throughout all or a significant portion of its range.”² Delisting the GYE population would recognize the significant efforts by federal biologists, states, tribes, conservation groups, and private citizens to recover the population and allow for continued conservation efforts without the potential deterrent of federal regulation.

Even if the grizzly were considered on a species-wide basis, rather than as several distinct population segments (the approach that the Fish and Wildlife Service has taken in previous delisting efforts and that this comment assumes the agency will take again), the Greater Yellowstone Ecosystem and Northern Continental Divide Ecosystem grizzlies would merit a change in status. A tailored 4(d) regulation could provide incentives for states, landowners, and others to continue recovery efforts for these populations. With such a rule, the Fish and Wildlife Service could provide nearly the same level of regulatory relief for landowners that would come from delisting but with significantly less litigation risk. A tailored 4(d) rule, therefore, could maintain protections for vulnerable populations while also providing stakeholders with incentives to continue recovery efforts for the GYE and NCDE populations.

1. Is there a present or threatened destruction, modification, or curtailment of the species’ habitat or range?

Grizzly habitat in the Greater Yellowstone Ecosystem is stable. The Fish and Wildlife Service’s 2018 report on the Grizzly Bear Recovery Program notes that “[s]ecure habitat levels have been maintained since 1998.”³ The species’ range has gradually expanded over recent decades, and the agency expects the GYE and NCDE populations to connect “in the near future.”⁴ Since 2006, the distance between the two populations has shrunk from 76 to 47 miles. In addition, the three recovery criteria related to GYE population targets have been met, including mortality rates for females, independent males, and young bears that are all under recovery thresholds.⁵

The GYE grizzly’s population increase and range expansion have led to more conflicts with livestock. While some grazing allotments in the ecosystem have been bought out or semi-retired through efforts like the National Wildlife Federation’s Wildlife Conflict Resolution Program, grizzly

[Amici Curiae](#), *Crow Indian Tribe v. United States*. Pacific Legal Foundation and the Property and Environment Research Center. (May 30, 2019).

² 82 Fed. Reg. 30,502 (June 30, 2017); 83 Fed. Reg. 18,739 (April 30, 2018).

³ [“Grizzly Bear Recovery Program: 2018 Annual Report,”](#) 4. U.S. Fish and Wildlife Service.

⁴ *Id.* at 4.

⁵ *Id.* at 3-4.

conflicts have nevertheless surged.⁶ Montana has paid ranchers record amounts in compensation for livestock losses for three consecutive years, and in 2019, the number of grizzly-related losses nearly doubled losses caused by wolves.⁷ Since 2014, the number of state-compensated livestock losses in Montana has quadrupled, primarily driven by the expanding range of grizzlies.⁸ In Wyoming, the Department of Game and Fish has documented an increase of more than 50 percent in the distribution of grizzly bears since 2004, and from 2014 to 2018, grizzly bear management costs in the state grew from \$1.8 million to more than \$3 million.⁹

Continuing to list the GYE grizzly despite its secure habitat and expanding range—which has resulted in a significant increase in the number of bear conflicts with humans and livestock—threatens to undermine recovery efforts by and goodwill from states, landowners, and the other stakeholders who are essential to the species’ conservation.

2. Is the species subject to overutilization for commercial, recreational, scientific, or educational purposes?

The GYE grizzly is not at risk of overutilization, and recreational and related uses could in fact become important resources to drive continued recovery of the species. The Fish and Wildlife Service has documented that human-caused mortality rates are so low that they have not prevented the GYE grizzly from significantly increasing its range and numbers and do not pose a threat to the population now or in the foreseeable future.¹⁰

Delisting the GYE grizzly would make programs that can raise funds for conservation of the species more attractive to conservation groups and private landowners. For instance, in eastern Montana, American Prairie Reserve’s Cameras for Conservation program pays ranchers who document black bears, cougars, and other predators with camera traps.¹¹ Similarly, environmental groups have used compensation programs to compensate ranchers for livestock losses from wolves in the region to varying degrees of success over recent decades.¹² Such incentive-based schemes are not prohibited by the Endangered Species Act, but the law makes it more difficult to recruit landowners where

⁶ [“The National Wildlife Federation’s Grazing Agreements.”](#) Allotment Map. National Wildlife Federation.

⁷ [“State Pays Record Amount for Livestock Killed in 2019,”](#) by Shaylee Ragar. *Bozeman Daily Chronicle*. (Jan. 9, 2020).

⁸ [“Montana’s Livestock Compensation Funds Dwindle As Losses To Predators Grow,”](#) by Aaron Bolton. *Montana Public Radio*. (Feb. 19, 2020).

⁹ [“U.S. Fish and Wildlife Service Comprehensive Management System Annual Report.”](#) Wyoming Fish and Game Department. (2018).

¹⁰ 82 Fed. Reg. 30,533 (June 30, 2017).

¹¹ [“Wild Sky’s Cameras for Conservation.”](#) YouTube. American Prairie Reserve. (Aug. 5, 2016).

¹² [“Who Pays for Wolves? How Markets Helped Reduce Conflict Between Ranchers and Wolves,”](#) by Hank Fischer. *PERC Reports*. Vol. 19, No. 4. (Winter 2001).

listed species are concerned. Many landowners fear that their cooperation might ultimately expose them to intrusive federal regulation.¹³

Given that grizzlies are a fundamental piece of a substantial and growing wildlife-watching sector in the Greater Yellowstone Ecosystem, recreational interests have incentives to promote species recovery.¹⁴ As long as the GYE grizzly remains listed, however, property owners face burdensome regulations if grizzlies occupy or move across their land. Delisting would remove barriers that could hinder recreational uses or prevent migratory corridors from being established cooperatively.

3. Is disease or predation a factor?

Disease and natural predation have never been considered significant threats to the species, as outlined by the Fish and Wildlife Service's 2017 final rule regarding the GYE grizzly.¹⁵

4. Are there inadequate existing regulatory mechanisms in place outside the Endangered Species Act, taking into account the efforts by the states and other organizations to protect the species or habitat?

Potential Tailored 4(d) Regulations

The Greater Yellowstone Ecosystem and Northern Continental Divide Ecosystem grizzlies would merit a change in status even if the grizzly were considered on a species-wide basis, rather than as separate distinct population segments. As these populations have grown and threats to them have been reduced, the management needs have changed. If the agency maintains the grizzly's species-wide listing, tailoring 4(d) regulations to individual populations would reduce conflict and incentivize further recovery efforts.

In 2019, the Fish and Wildlife Service revised its regulations governing the prohibitions that apply to threatened species.¹⁶ As the Service noted at the time, "reduc[ing] regulation" as species recover provides "[p]rivate landowners and other stakeholders . . . an incentive to work on recovery

¹³ See, e.g., ["Cooperative Conservation: Determinants of Landowner Engagement in Conserving Endangered Species,"](#) by Megan E. Hansen et al. The Center for Growth and Opportunity. Policy Paper 2018.003. (Nov. 2018) and ["Public Perceptions Regarding the Utah Prairie Dog and Its Management: Implications for Species Recovery,"](#) by R. Dwayne Elmore and Terry A. Messmer. Utah State University Berryman Institute Publication No. 23. (2006).

¹⁴ ["The New Grizzly Hunters: Creative Conservationists Search for Innovative Ways to Pay for the Natural Amenities They Value,"](#) by Todd Wilkinson. *PERC Reports*. Vol. 37, No. 2. (Winter 2018).

¹⁵ 82 Fed. Reg. 30,533-30,535 (June 30, 2017).

¹⁶ 84 Fed. Reg. 44,753 (Aug. 27, 2019).



actions.”¹⁷ This is because the approach aligns the incentives of landowners with the interests of rare species—in other words, landowners benefit as species’ prospects improve and vice versa.¹⁸

The same is true for populations within species. The agency recently proposed a rule for the American burying beetle that would vary the regulations based on the health of different populations.¹⁹ For the beetle’s Southern Plains population, the healthiest population of that species, the proposed rule would generally not regulate incidental take on private lands. For the New England and Northern Plains species, which are smaller, incidental take caused by soil-disturbing activity is regulated except that resulting from normal ranching and grazing activities.

A similar approach could be beneficial for the grizzly. For populations at or near their ecosystem’s carrying capacity, the Fish and Wildlife Service could cede authority to manage take to the states as a reward for the roles played by states, private landowners, and other stakeholders in recovering those populations. The agency could also incentivize recovery of other populations by developing criteria for ceding authority over other populations to states as they recover. Indeed, given the need for state and landowner cooperation to establish migratory corridors between populations, such goodwill is essential to the species’ recovery.²⁰

State Management Mechanisms

If the GYE grizzly is delisted, it is imperative that state governments have adequate regulatory mechanisms in place to protect the financial investment American taxpayers have made in recovering the population. The long-standing engagement of state wildlife agencies in the Grizzly Bear Recovery Program positions them to assume this responsibility. Confidence will increase in states’ ability to manage grizzly bears if states can demonstrate their ability to cover the costs of grizzly bear conservation, especially if federal responsibility and funding for the species recedes.

A reasonable estimate is that American taxpayers have invested tens of millions of dollars to recover the GYE population of grizzlies. This investment has been drawn from no less than eight state, tribal, and federal agencies. To take just one example, in 2015 the State of Wyoming spent more than \$2 million on grizzly bear research, conflict mitigation, and public education.²¹ State investments in grizzly bear recovery are part of larger agency capabilities. The wildlife agencies of Wyoming, Montana, and Idaho collectively have more than 1,500 employees and decades of experience conserving multiple, wide-ranging species, including large carnivores. In the case of gray

¹⁷ *Id.* at 44,757.

¹⁸ [“The Road to Recovery: How Restoring the Endangered Species Act’s Two-Step Process Can Prevent Extinction and Promote Recovery,”](#) by Jonathan Wood. PERC Policy Report (2018).

¹⁹ 84 Fed. Reg. 19,013 (May 3, 2019).

²⁰ See [“Grizzly Bear Recovery and Management,”](#) by Jonathan Wood. PERC. (May 15, 2019).

²¹ [“The Problem With Protecting Grizzly Bears,”](#) by Steven Rinella. *The New York Times*. (May 9, 2016).



wolves, the species has continued to exceed recovery goals in Wyoming, Montana, and Idaho following the removal of endangered species protections.²²

Hunting-related fees allow state agencies to meet many of the costs of wildlife conservation. The sales of hunting licenses, permits, and other permissions account for 78 percent of the budget of the Wyoming Game and Fish Department and 63 percent of the budget of Montana Fish, Wildlife, and Parks.²³ With no mechanisms for non-hunters to contribute to agency budgets in the way hunting fees do, it's no surprise that both states proposed regulated hunting of grizzly bears as part of their post-delisting management strategies.²⁴

Regulated and limited grizzly hunting would not make the GYE states outliers. Hunting is a tool used to manage grizzlies throughout much of their range, and the species is highly desired by hunters in the United States and abroad. For example, hunting is currently used as part of holistic grizzly bear conservation programs in Alaska and the Canadian territories of Nunavut and Yukon.

5. Are other natural or manmade factors affecting the species' continued existence?

The Fish and Wildlife Service has weighed various factors under this criterion, including genetic isolation; climate change; catastrophic fires, volcanoes, or earthquakes; and human attitudes toward the grizzly. The agency has determined that none of these factors pose a threat to the existence of the GYE grizzly bear now or in the foreseeable future.²⁵

Conclusion

In 2017, the Fish and Wildlife Service described the prospects of the grizzly thusly: "Ultimately, the future of the grizzly bear will be based on the people who live, work, and recreate in grizzly bear habitat and the willingness and ability of these people to learn to coexist with the grizzly bear and to accept this animal as a cohabitant of the land."²⁶ The agency has found that there is no biological reason to keep the GYE grizzly listed. Delisting the GYE population would recognize how states, tribes, conservation groups, and private landowners have already accepted the animal as a cohabitant of the land and worked extensively alongside the agency to recover the species. Delisting would also allow for continued conservation efforts, including establishing migratory corridors

²² "[Wyoming's Wolf Population Above Recovery Criteria for 16th Straight Year.](#)" Press Release. Wyoming Game and Fish Department. (April 11, 2018); "Wolf Conservation and Management Annual Report." Montana Fish, Wildlife, and Parks. (2017); "Wolf Statewide Report." Idaho Department of Fish and Game. (2016).

²³ "[Conserving Wildlife, Serving People.](#)" Informational Presentation. Wyoming Game and Fish Department. (2015); "The Department of Fish, Wildlife, and Parks: An Agency Profile Prepared by the Legislative Fiscal Division." Montana Legislative Fiscal Division. (Nov. 2018).

²⁴ "Grizzly Bear: Montana Hunting Regulations." Montana Fish, Wildlife, and Parks. (2016); [SF0093: Grizzly Bear Hunts](#). Wyoming State Legislature. (Feb. 15, 2019); "[Fish and Game Commission Approves Grizzly Bear Hunt.](#)" Press Release. Idaho Department of Fish and Game. (May 10, 2018).

²⁵ 82 Fed. Reg. 30,544 (June 30, 2017)

²⁶ *Id.* at 30,621.



between distinct populations, without the potential deterrent of federal regulation. Even if the entire species remains listed, a tailored 4(d) rule could provide incentives for states, landowners, and others to continue recovery efforts for populations at or near their ecosystem's carrying capacity. Given the need for state and landowner cooperation to conserve the grizzly, goodwill is essential to the species' continued recovery.