



Comment on the Proposed Grizzly Bear Listing with a Revised 4(d) Rule, RIN 1018–BI14

Property and Environment Research Center, Rocky Mountain Elk Foundation,
Boone and Crockett Club, and Wyoming Wildlife Federation

May 16, 2025

The Property and Environment Research Center, Rocky Mountain Elk Foundation, Boone and Crockett Club, and Wyoming Wildlife Federation urge the Fish and Wildlife Service to improve and finalize the proposed revision to the 4(d) rule. We recognize that the Service is also likely to revisit its decision not to delist recovered populations of grizzly bears, as it should. However, that lengthy—and likely litigious—process will prolong what is necessary for the continued conservation of the grizzly bear and the states and landowners with whom they share the landscape.

Therefore, the Service should also promptly finalize an improved version of the 4(d) rule revision to empower states to manage recovered populations and provide incentives to recover other populations. This would give state agencies and private landowners meaningful preventive and defensive means, reduce conflict, and motivate continued recovery efforts. An effective 4(d) rule would follow the following basic framework:

Areas meeting recovery goals	Other recovery zones	Connectivity areas
Exempt from federal prohibitions to allow states to lead in management, with backstops against significant population decline.	Provide for states to take over management once populations hit recovery benchmarks.	Allow states to take bears involved in conflicts without federal approval

A Remarkable Recovery Effort Stymied by the Service's DPS Policy

The recovery of grizzly bear populations is one of the Endangered Species Act's signature success stories. From a mere 136 grizzly bears when they were listed as threatened in 1975, the Greater Yellowstone Ecosystem population has grown to more than 1,000 bears today and has expanded its

range to areas bears haven't been seen in a century.¹ Across the Northern Rockies, there are a minimum of 2,300 grizzly bears, up from approximately 700 in 1975.²

This recovery has been motivated by the Service's 1993 recovery plan, which established six grizzly bear recovery zones and set recovery targets for each.³ Under that plan, recovery would be judged on a population-by-population basis, with the ultimate goal of "delisting of each of the remaining populations by population as they achieve the recovery targets."⁴ The Service recognized that recovery would come at substantial cost, however, with \$26 million and 30-40 years needed to recover and delist all six populations.⁵

For thirty years, federal agencies, states, private landowners, and conservation groups have bought into the Service's recovery plan, investing more than \$130 million in recovery efforts.⁶ States have developed management plans to provide for the recovery of populations and for management after delisting. They, as well as tribes and private actors, have also supported recovery by funding research, conflict-mitigation, and habitat restoration in each recovery zone.⁷

These investments have paid off. The GYE and Northern Continental Divide Ecosystem populations long ago exceeded their recovery goals. The Cabinet-Yaak and Selkirk populations have seen progress, although they are still short of their recovery goals. And there has been some natural dispersal of bears into the Bitterroot Ecosystem.⁸

But now the Service proposes to abandon the recovery plan's commitments to recover and delist populations separately. In its place, it proposes an "all or nothing" approach to grizzly bear recovery that will ensure grizzly bears remain under restrictive federal management for generations.⁹ This about-face is driven by the Service's determination that GYE and NCDE bears have recovered too

¹ U.S. Fish and Wildlife Serv., [Grizzly Bear Listing with a Revised 4\(d\) Rule](#), 90 Fed. Reg. 4,234, 4,240 (Jan. 15, 2025). U.S. Fish and Wildlife Serv., [Delisting the Greater Yellowstone Ecosystem Grizzly Bear](#), 82 Fed. Reg. 30,502, 30,512 (June 30, 2017).

² 90 Fed. Reg. at 4,240. See Fish and Wildlife Serv., [Grizzly Bear \(*Ursus arctos horribilis*\)](#) (last visited May 16, 2025).

³ U.S. Fish and Wildlife Serv., [Grizzly Bear Recovery Plan](#) (1993).

⁴ *Id.* at ii.

⁵ *Id.*

⁶ Although required to report federal and state expenditures on endangered and threatened species annually, the Service has not done so since fiscal year 2020. Therefore, the amount invested in grizzly bear recovery likely exceeds \$130 million significantly. See U.S. Fish and Wildlife Serv., [Endangered and Threatened Species Expenditure Reports](#) (last visited May 16, 2025).

⁷ See U.S. Fish and Wildlife Serv., [Species Status Assessment for the Grizzly Bear](#) 78 (2024).

⁸ Like the BE, bears were extirpated in the sixth recovery zone, the North Cascades Ecosystem. But the Service has designated an experimental population to facilitate reintroduction to this area. See 90 Fed. Reg. at 4,237.

⁹ See *id.* at 4,245.

much to be delisted. The Service interprets its DPS Policy to prevent it from delisting these populations because their ranges have expanded and, now, nearly touch.¹⁰

This flawed decision shows that the Service should revise its DPS policy to avoid penalizing recovery.¹¹ Those revisions should include 1) making the distinctness factor inapplicable to the recognition of a recovered DPS; 2) revising the distinctness factor so that populations don't lose their DPS states through range expansion, which only penalizes recovery; and 3) evaluate the significance of international borders for cross-boundary species ecologically instead of administratively. In the case of grizzlies below the 49th Parallel, the flaws in the DPS policy artificially magnify concerns about bears below the line, disregard the distinctiveness of the recovery areas as originally defined, and ignore Congressional direction to apply DPS policy only when needed to encourage genetic diversity.

But fixing these flaws in the DPS policy may take years and will undoubtedly be challenged by litigious activists. Therefore, it is essential that the Service take immediate steps to reward recovery where grizzly bear populations have met recovery goals, to encourage further recovery efforts for other populations, and to reduce conflict.

The Service should improve and finalize the proposed revisions to the 4(d) rule

To advance the long-term conservation of the grizzly bear, the Service should improve and promptly finalize revisions to the 4(d) rule.¹² Under Section 4(d), Congress gave the Service broad authority to tailor regulations to the unique circumstances of each threatened species.¹³ Revising the 4(d) rule provides a clear path to reduce conflict, promote recovery, and provide for meaningful state management of recovered populations while the Service reconsiders the proposed DPS or revises the DPS policy.

The Service's intent in its proposed revisions to the 4(d) rule was to provide "management agencies and landowners more tools and flexibility to deal with human/bear conflicts," which the Service recognizes is "an essential part of grizzly bear recovery."¹⁴ However, the proposal falls short. It makes no

¹⁰ See U.S. Fish and Wildlife Serv., [12-Month Finding for the Greater Yellowstone Ecosystem of the Grizzly Bear](#), 90 Fed. Reg. 3,763 (Jan. 15, 2025); U.S. Fish and Wildlife Serv., [12-Month Finding for the Northern Continental Divide Ecosystem of the Grizzly Bear](#), 90 Fed. Reg. 3,783 (Jan. 15, 2025).

¹¹ See U.S. Fish and Wildlife Service et al., [Policy Regarding the Recognition of Distinct Vertebrate Population Segments](#), 61 Fed. Reg. 4,722 (Feb. 7, 1996).

¹² 90 Fed. Reg. at 4,270–76. The Service has proposed to revise the existing 4(d) rule rather than issue a new one for the proposed distinct population segment. *Id.* at 4,270. Therefore, that revision is not contingent on the Service's decision about the proposed DPS.

¹³ 16 U.S.C. § 1533(d). See H.R. Rep. No. 93-412 (1973) ("Once an animal is on the threatened list, the Secretary has almost an infinite number of options available to him . . .").

¹⁴ See U.S. Fish and Wildlife Serv., Press Release, [USFWS Proposes Update to Grizzly Bear ESA Listing & Management](#) (Jan. 8, 2025) (quoting former Director Martha Williams).

distinction between areas that have met recovery goals and those that have not.¹⁵ And, while it provides the Service flexibility to authorize state or private activities, it provides little direct flexibility to state wildlife agencies or landowners.¹⁶

The 4(d) should be revised to empower states and landowners based on recovery progress. State agencies should be able to act on their own expertise in recovery zones that have met recovery goals. And they should be given a path to state management as other populations achieve their goals. This would reward states and other stakeholders for their role in grizzly bear recovery, would empower states to demonstrate their ability to manage grizzly bears upon delisting, and would be a hedge against the risk that litigation will continue to block any progress in recognizing this remarkable ESA success story.¹⁷

Allow states to manage areas where grizzly bears are recovered

Because the GYE and NCDE populations have met their recovery goals, the 4(d) rule should allow states to manage the areas in and around these recovery zones.¹⁸ This could be done by exempting these areas from the rule's prohibition on take. Under this approach, states would be empowered to regulate take under their own laws, regulations, and policies, rather than requiring federal approval for states' management decisions.¹⁹ This would, in effect, give states much of the management authority they have sought through their delisting petitions.²⁰ Considering that the Service denied those petitions on a technicality, exempting these populations from federal take regulation would be a proper reward for the recovery of these populations.

David Willms of the National Wildlife Federation has written that exempting populations that have met their recovery goals from a 4(d) rule's prohibitions would give "states the opportunity to prove, prior to delisting, the effectiveness of their management plan, and adapt if warranted."²¹ It also acts as "an insurance policy against delisting litigation. If a state has assumed full management authority of a species pursuant to a 4(d) rule, it would likely retain management through the judicial process related to a delisting rule."²² Willms is not alone in advocating this approach to 4(d) rules. We, other conservation organizations, and the Service's own biologists have advocated that the Service limit or

¹⁵ See 90 Fed. Reg. at 4,275 (regulating all recovery zones the same).

¹⁶ See, e.g., *id.* (authorizing states to lethally remove a bear involved in a conflict "with authorization from the Service").

¹⁷ See David Willms, *Unlocking the Full Power of Section 4(d) to Facilitate Collaboration and Greater Species Recovery*, in *The Codex of the Endangered Species Act*, vol. II (2023). A copy of this publication is attached to this comment for ease of reference.

¹⁸ The recovered GYE and NCDE populations have expanded beyond the boundaries of their respective recovery zones as well as their demographic monitoring areas. Therefore, these exemptions should not be limited to the recovery zones but include the surrounding areas occupied by these populations..

¹⁹ See Willms, *supra* n. 17, at 44–45.

²⁰ Exempting an area from regulation under the 4(d) rule is not the same as delisting because Section 7 would still apply and require federal agencies to ensure their actions would not jeopardize the species. 16 U.S.C. § 1536(a).

²¹ Willms, *supra* n. 17, at 42.

²² *Id.* See *id.* at 45 (applying this idea to grizzly bears).

forgo regulation of improving or recovered populations of threatened species.²³

The primary objection to state management of recovered populations is the fear that the populations will decline and recovery progress be lost. But there is no reason to expect this result. Indeed, no species that has recovered and been returned to state management has seen its fortunes reverse and been relisted.²⁴ The Service could further protect against this unlikely risk by incorporating metrics in the 4(d) rule that could trigger a return to federal management, such as population or mortality triggers.²⁵ The final rule could, for instance, provide that the GYE and NCDE populations would be regulated the same as other populations in the unlikely event that they no longer meet the recovery goals established in the recovery plan for each population.²⁶

States have indicated that regulated hunting may be part of their management of recovered grizzly bear populations, as it is for many other species of wildlife.²⁷ Exempting these populations from the 4(d) rule's prohibitions would give state wildlife agencies the ability to regulate hunting. Here, too, the Service could incorporate safeguards to ensure that hunting is consistent with the species' conservation. It might temporarily prohibit hunting to allow states to demonstrate their ability to manage the species first. Or it could prohibit hunting if the population decreased by, for instance, 10%.

Provide a Path to State Management for Other Recovery Zones

The final rule should also provide a path for states to manage other grizzly bear populations as they progress to recovery, to encourage recovery efforts and to avoid a repeat of the conflict that has arisen for the GYE and NCDE populations. The Cabinet-Yaak (CYE), Selkirk (SE), Bitterroot (BE), and North Cascade Ecosystems (NCE) have not met their recovery goals. Two of these populations have made substantial progress. The CYE population has a minimum of 70 bears compared to a population goal of 100.²⁸ The SE population has a minimum of 51 bears compared to a goal of 90.²⁹ The other two recovery zones have no established population, although the Service has designated experimental

²³ See PERC, [A Field Guide for Wildlife Recovery: The Endangered Species Act's Elusive Search to Recover Species—and What to Do About It](#) 18–21 (2023); Alejandro Camacho, et al., Six Priority Recommendations for Improving Conservation Under the ESA, 51 Env't. L. Rep. 10,785, 10,788, 10,789–90 (2021) (listing tailoring 4(d) rules to account for whether species are improving or declining as the #1 reform identified in a dialogue among the conservation community hosted by UC Irvine School of Law and the Environmental Policy Innovation Center); Paul Henson, et al., [Improving Implementation of the Endangered Species Act: Finding Common Ground Through Common Sense](#), 68 Bioscience 861 (2018) (article by three Service biologists urging the Service to decline to regulate take or narrowly regulate take under 4(d) except where species face imminent extinction risk).

²⁴ See *A Field Guide for Wildlife Recovery*, *supra* n. 23, at 17.

²⁵ See Willms, *supra* n. 17 at 41–42, 45.

²⁶ This example uses total population as the metric for evaluating recovery progress. But the Service could use any metric consistent with the recovery plan. In setting metrics, however, the Service should prioritize objective and easily measured goals, to avoid future conflict over implementation of the 4(d) rule.

²⁷ See, e.g., Montana Fish, Wildlife, & Parks, [Montana Grizzly Bear Management Plan 2024](#) (2024).

²⁸ The minimum population target is only one of the recovery targets for each population.

²⁹ The SE population spans the U.S.-Canadian border and the goal is based on bears on both sides of the border. However, there is not yet any method to integrate estimates of the U.S. and Canadian population and to address double counting risk. 90 Fed. Reg. at 4,241.

populations to facilitate potential reintroduction efforts.³⁰

For the Cabinet-Yaak (CYE), Selkirk (SE), and Bitterroot Ecosystems (BE), the rule should provide for states to take over management gradually as these populations progress to recovery goals. The Service could use population thresholds, number of females, mortality limits, or any other recovery goal (or a mix of them) as the trigger for authorizing greater state management. As an example using population thresholds, the rule could provide that, once the CYE population reaches 85, states would have authority to permit take, subject to a total cap on grizzly bear mortality. And once the population reached 100 (the recovery goal), the population would be exempt from federal prohibitions on take and returned to state management along the same terms as the GYE and NCDE population.

A precedent for a 4(d) rule that uses recovery objectives as a trigger for reduced regulation is the rule for the Mexican gray wolf experimental population.³¹ That rule was recently upheld against a challenge that the Service's use of recovery-objective triggers is unlawful, demonstrating that this approach is permissible under 4(d).³²

Using recovery goals as a trigger for gradually ceding management authority to states would create a clear incentive for states and other stakeholders to continue working on recovery for these populations. Providing such incentives is one of the primary goals of Section 4(d). Sen. John Tunney, the ESA's floor manager, explained during the congressional debates over the ESA that Section 4(d) was intended to "facilitate regulations that are tailored to the needs of the [threatened] animal" and that would "encourage [states] to use their discretion to promote the recovery of threatened species."³³ This approach would also avoid the risk that, when these populations reach their recovery goal, the Service will be blocked from recognizing that recovery and transferring management to states due to political and legal conflict. Repeating the decades of conflict that have followed the biological recovery of bears in the GYE is not in states, landowners, or—most importantly—grizzly bears' interests.

States should also be given more authority to manage bears in connectivity zones, for which the Service did not establish any recovery goals in the recovery plan. Overly onerous federal regulation of these areas would merely penalize states and other stakeholders for grizzly bears' expanded range. Because bears have been absent or infrequent visitors to connectivity areas, these areas also present unique conflict challenges.³⁴ To help address these conflicts, states should be allowed, without further federal

³⁰ *Id.* at 4,236–37.

³¹ See U.S. Fish & Wildlife Serv., *Revision to the Nonessential Experimental Population of the Mexican Wolf*, 87 Fed. Reg. 39,348 (July 1, 2022). Because the Mexican gray wolf is an experimental population, the rule is colloquially referred to as a 10j rule, which is the section that authorizes experimental population designations. However, under 10j, an experimental population is treated as threatened, meaning any regulation of it is pursuant to Section 4(d).

³² *Center for Biological Diversity v. Haaland*, 22-cv-00303, 2025 WL 981686 (D. Ariz. 2025).

³³ See Congressional Research Service, *A Legislative History of the Endangered Species Act of 1973, as Amended in 1976, 1977, 1978, 1979, and 1980*, at 358 (statement of Sen. Tunney).

³⁴ One of those conflicts is growing litigation by activist groups to restrict lawful hunting of non-listed species based on the unlikely possibility that a grizzly bear will be incidentally taken. To address this conflict, and respect the states' role as primary wildlife managers, the Service should clarify that the 4(d) rule does not restrict the state's ability to manage hunting of non-listed species.

authorization, to relocate bears and take bears involved in conflict, subject to limits on total take. Lethal take, except in the case of conflict, would continue to require federal authorization. While outside the 4(d) rule, the Service could also support and encourage relocation of bears to a different recovery zone than where the bear originated, to encourage genetic interchange.

The current and proposed rule also includes relatively strict regulation of bears in areas that are not important for recovery or connectivity. Instead, these areas should be exempt from the 4(d) rule and subject to state management. This would make it easier for states to manage conflict when bears show up in areas they haven't been seen in for decades and avoid the appearance that states are penalized for bears growing beyond the boundaries of recovery zones. And, again, the Service could work to support and encourage relocation as an alternative to lethal take in these areas, although that policy effort would be outside the 4(d) rule.

Conclusion

The shift to state management of recovered grizzly bear populations is years overdue and should not be delayed any further. The proposed 4(d) revision, with the improvements suggested in this comment, provide a clear and expeditious opportunity to quell conflict, reward recovery, and improve incentives for continued recovery of grizzly bears.