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*Submitted through Federal eRulemaking Portal and mailed electronically to
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Docket No. FWS-R6-ES-2024-0186*

Re: Comments on U.S. Fish and Wildlife Service's Proposed Revision of the
Protective Regulation Under Section 4(d), 91 Fed. Reg. 44780 (July 17, 2026)

Dear Director Nesvik and Dr. Cooley:

The U.S. Fish and Wildlife Service's ("the Service") revised proposed management rule for threatened grizzly bears in the lower-48 states would unacceptably weaken federal protections for grizzly bears just as the federal government has taken separate actions that jeopardize grizzly bear habitat, state persecution of the bear is manifest, and continued and growing threats to the species are documented by record-high grizzly bear mortality.¹ Stripped of its regulatory packaging, the proposal does not merely adjust the take exceptions available under section 4(d) of the Endangered Species Act ("ESA" or "Act"), 16 U.S.C. § 1533(d). It would effectively remove the Service's oversight over grizzly bear management in core recovery and connectivity areas essential to the grizzly bear's recovery, while turning authority over to states whose political branches have proven hostile to continued protection. Finalizing the proposed rule threatens to set back the progress toward grizzly bear recovery that has been achieved through decades of commitment by the federal government, private landowners, advocacy

¹ Grizzly Bear Listing on the List of Endangered and Threatened Wildlife with a Revised Section 4(d) Rule; Proposed Revision of the Protective Regulations Under Section 4(d), 91 Fed. Reg. 44780 (July 17, 2026) [hereinafter 2026 Proposed Rule].

organizations, and state wildlife professionals.

Center for Biological Diversity, Conservation Northwest, Friends of the Wild Swan, Nimiipuu Protecting the Environment, Park County Environmental Council, Sierra Club, and Swan View Coalition submit these comments to urge the Service to withdraw the proposed rule and retain existing protections for grizzly bears while their promising, yet fragile, recovery continues. These comments supplement prior comments submitted on the Service’s July 2025 proposed 4(d) rule.²

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² Grizzly Bear Listing on the List of Endangered Species and Threatened Wildlife with Revised Section 4(d) Rule, 90 Fed. Reg. 4234 (Jan. 15, 2025) [hereinafter 2025 Proposed Rule]. The groups incorporate by reference their prior comments on the 2025 Proposed Rule. The numbering for exhibits in these comments begins after Exhibits 1–78, previously submitted by Sierra Club and Center for Biological Diversity. Comments from Sierra Club and Ctr. for Biological Diversity (Comment ID FWS-R6-ES-2024-0186-75920) (May 16, 2025).

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BACKGROUND

I. FACTUAL BACKGROUND

The grizzly bear, *Ursus arctos horribilis*, once numbered approximately 50,000 individuals across the western United States.³ Grizzly bears roamed from the Great Plains to the Pacific coast, and from the Canadian border south to Mexico, inhabiting all but the hottest and most arid desert lands.⁴ As a keystone species, grizzly bears play a crucial role in the functioning of a wide variety of ecosystems.⁵

Since time immemorial, grizzly bears have held a significant place in Tribal tradition and customs. Grizzly bears hold deep cultural, spiritual, and ceremonial significance and are regarded as relatives, teachers, and symbols of strength, resilience, and stewardship. Tribes have long maintained cultural connections to grizzly bears through traditional knowledge, ceremonies, stories, and subsistence practices.⁶

Throughout the 19th and early 20th centuries, grizzlies were “shot, poisoned, and trapped wherever they were found,” eliminating them from more than ninety-eight percent of their range, demonstrated below in Figure 1, in the lower-48 by the 1930s and reducing their population to fewer than 1,000 individuals.⁷

³ See generally U.S. Fish & Wildlife Serv., *Species Status Assessment for the Grizzly Bear (Ursus arctos horribilis) in the Lower-48 States* (Oct. 28, 2024) [hereinafter 2024 SSA].

⁴ *Id.*

⁵ *Id.* at 41–47.

⁶ In recognition of this, in 2016, more than 170 First Nations and Tribes signed a treaty called “The Grizzly: A Treaty of Cooperation, Cultural Revitalization and Restoration.” See *The Grizzly: A Treaty of Cooperation, Cultural Revitalization, and Restoration Relationship to the Grizzly*, <https://static1.squarespace.com/static/67b5f4383ea5146b04ee16c4/t/6a01daaf46c902712d0c7e04/1778506415080/styg-piikani-nation-treaty-09-23-2016.pdf>.

⁷ 2024 SSA at 49–50.

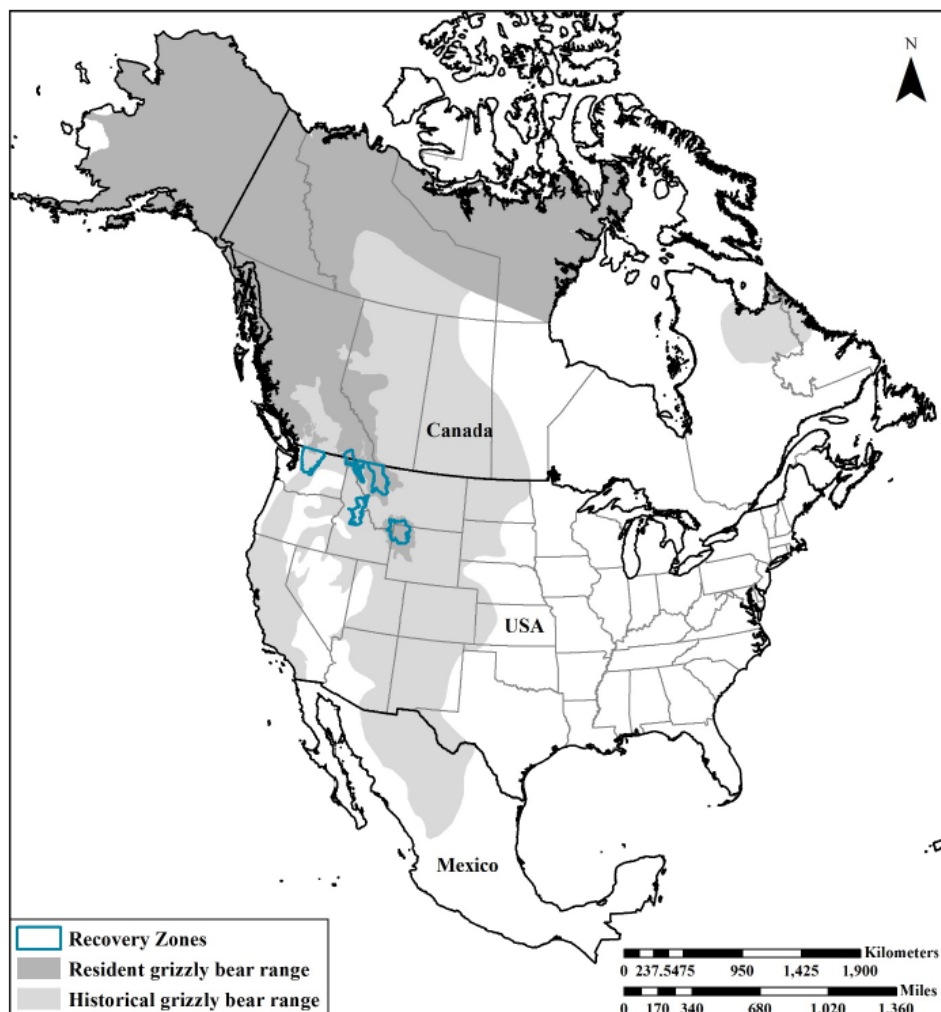


Figure 1. The Service recognizes the above historical and current estimated occupied grizzly bear range in North America and the six recovery zones for the grizzly bear in the lower-48 states.⁸

Grizzly bears persisted because they were listed as a threatened species in the lower-48 United States under the Endangered Species Act (“Act” or “ESA”) in 1975.⁹ Thanks to the Act’s protections, the lower-48’s grizzlies—and the landscape that sustains them—were never fully lost. The ESA has long been recognized as “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”¹⁰ Congress, recognizing extinction of various species “as a consequence of economic growth and development,” promulgated the statute in 1973

⁸ *Id.* at 6.

⁹ Amendment Listing the Grizzly Bear of the 48 Conterminous States as a Threatened Species, 40 Fed. Reg. 31734 (July 28, 1975).

¹⁰ *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).

as a means of protecting imperiled species and the ecosystems they depend on.¹¹ And it specifically sought to ensure that grizzly bears would not be “driven to extinction.”¹² The ESA represents a vital commitment “to halt and reverse the trend toward species extinction—whatever the cost.”¹³

In 1982, the U.S. Fish and Wildlife Service (“FWS” or “Service”) adopted its first recovery plan for grizzlies.¹⁴ The 1982 Recovery Plan required the Service to take four actions: (1) “[i]dentify grizzly bear population goals that represent species recovery in measurable and quantifiable terms for the several regions that were determined to have suitable habitat for such populations, and ... provide a data base that will allow informed decisions”; (2) “[i]dentify population and habitat limiting factors that account for current populations existing at levels requiring threatened status under [the] ESA”; (3) “[i]dentify specific management measures needed to remove population limiting factors that will allow the populations to increase or sustain themselves at levels identified in the recovery goals”; and (4) “[e]stablish recovery of at least three populations in three distinct grizzly bear ecosystems in order to delist the species in the conterminous 48 states.”¹⁵

The Service adopted a revised recovery plan in 1993.¹⁶ The Service’s revised approach was “directed at establishing viable populations in six to seven areas in parts of four to five States where the grizzly was known to or believed to exist when it was listed in 1975.”¹⁷ The 1993 Recovery Plan, however, failed to withstand judicial scrutiny because despite the Service’s prior finding that grizzly bears were imperiled by habitat loss, the plan lacked recovery criteria for grizzly habitat.¹⁸ The Service has not updated its recovery plan for grizzly bears since 1993.

The Service has attempted to delist the Yellowstone region’s isolated grizzly bear population twice. In 2007, the Service attempted to declare that the Greater Yellowstone’s grizzlies had achieved recovery and should be stripped of the ESA’s protections. A federal district court in Montana, however, vacated the Service’s

¹¹ 16 U.S.C. § 1531(a)(1); *Tenn. Valley Auth.*, 437 U.S. at 180–84.

¹² *Tenn. Valley Auth.*, 437 U.S. at 183–84 (emphasis omitted) (quoting 119 Cong. Rec. 42913 (1973))

¹³ *Id.* at 154.

¹⁴ U.S. Fish & Wildlife Serv., *Grizzly Bear Recovery Plan* (Jan. 29, 1982).

¹⁵ *Id.* at 1.

¹⁶ U.S. Fish & Wildlife Serv., *Grizzly Bear Recovery Plan* (Sept. 10, 1993).

¹⁷ *Id.* at ix.

¹⁸ *See Fund for Animals v. Babbitt*, 903 F. Supp. 96, 112–13 (D.D.C. 1995); 40 Fed. Reg. 31734.

decision based on the inadequacy of the regulatory scheme that had been developed for the population’s post-delisting management and the fact that the agency had arbitrarily discounted the threat posed by the decline of the whitebark pine, a key food source for bears in the region. The Ninth Circuit affirmed the district court’s vacatur of the Service’s delisting rule noting that “the Service cannot take a full-speed ahead, damn-the-torpedoes approach to delisting.”

In 2017, the Service made a second attempt at delisting the Yellowstone region’s grizzly bears.¹⁹ Again, a district court vacated the agency’s delisting rule, concluding that the Service acted arbitrarily and capriciously in delisting the grizzlies in the Yellowstone ecosystem without considering the impact on remaining bears within the lower-48 states.²⁰ On appeal, the Ninth Circuit affirmed, vacating the Service’s delisting rule on the basis that the rule lacked adequate protection of grizzlies’ long-term genetic health.²¹

In 2021, the State of Montana petitioned the Service to delist a Northern Continental Divide Ecosystem Distinct Population Segment under the Act.²² One month later, the State of Wyoming petitioned the Service to delist a Greater Yellowstone Ecosystem Distinct Population Segment.²³ The State of Idaho subsequently petitioned to delist the grizzly bear throughout the lower-48 states.²⁴ The Service appropriately rejected these petitions, finding delisting not warranted.²⁵

In rejecting petitions to delist the grizzly bear, the Service reviewed the best available science and determined that while grizzly bears in the Northern Rockies have made substantial progress toward recovery, significant human-caused perils—including genetic isolation, lethal state policies, encounters with humans, habitat fragmentation, and a changing climate—continue to jeopardize the species’ long-

¹⁹ 82 Fed. Reg. 30502.

²⁰ *Crow Indian Tribe v. United States* (“*Crow Indian Tribe I*”), 343 F. Supp. 3d 999, 1015 (D. Mont. 2018).

²¹ *Crow Indian Tribe v. United States* (“*Crow Indian Tribe II*”), 965 F.3d 662, 679–80 (9th Cir. 2020).

²² 2024 SSA at 76.

²³ *Id.*

²⁴ *Id.*

²⁵ See 88 Fed. Reg. 7658 (Feb. 6, 2023) (90-day finding on lower-48 states petition); 90 Fed. Reg. 3763 (Jan. 15, 2025) (12-month finding on Greater Yellowstone Ecosystem petition); 90 Fed. Reg. 3783 (Jan. 15, 2025) (12-month finding on Northern Continental Divide Ecosystem petition).

term recovery and survival.²⁶ Grizzly bear mortality data from across the Northern Rockies region demonstrates that grizzly bears are facing mounting threats throughout the region, even under the Service’s current management framework.²⁷

At the same time as human-bear conflicts are on the rise, meaningful efforts are underway to foster positive human-bear coexistence. Community led programs help protect livestock with electric fencing and range riders, remove attractants such as carcasses of deceased livestock, and bear-resistant trash management.²⁸

Grizzly bears also benefit local communities. Research on bear viewings in Yellowstone National Park demonstrates that grizzly bears provide substantial economic benefits through wildlife tourism. A study, in partnership with the U.S. Geological Survey and National Park Service found that one single grizzly bear sighting is worth approximately \$16 per visitor, generating an estimated nearly \$6.9 million annual revenue in an aggregate value, with the annual bear viewing valued at \$46,000 per grizzly.²⁹ These findings highlight that grizzly bears are important economic assets for local “gateway” communities to parks, in addition to regional communities that benefit from tourists spending money on lodging, food, transportation and recreation, financially providing a testament for coexistence.

Grizzly bears have made substantial progress toward recovery in the Northern Rockies, but significant human-caused perils continue to jeopardize the species’ long-term recovery and survival. Grizzly bear recovery will therefore require intentional conservation management efforts between subpopulations.

²⁶ See 2024 SSA; *see also infra* Discussion Part II.

²⁷ See *infra* Discussion Part II.B.2.

²⁸ See, e.g., Heart of the Rockies Initiative, *Impact Report 2025*, <https://heart-of-rockies.org/impact-report/>.

²⁹ Leslie Richardson & Aaron J. Enriquez, *Valuing Wildlife Sightings at the Species-Wide and Individual Animal Levels: An approach and application to Bear Viewing in Yellowstone National Park: Human Dimensions of Wildlife*, 30 *An International Journal* 2, at 201 (June 3, 2024), <https://doi.org/10.1080/10871209.2024.2353250>.

II. THE ENDANGERED SPECIES ACT FRAMEWORK

In 1973, spurred in part by dwindling grizzly bear numbers, Congress enacted the Endangered Species Act for the purpose of protecting and recovering threatened and endangered species and the ecosystems upon which they depend.³⁰

When determining “whether any species is an endangered species or a threatened species,” the Service is required to evaluate the five factors set forth in Section 4(a)(1) of the ESA:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.³¹

A species, including any subspecies or distinct population segment (“DPS”), may be listed as endangered or threatened because of these threats “throughout all or a significant portion of its range.”³² “[T]he ESA requires the Service to consider historical range in its ‘significant portion’ analysis,” rather than solely considering current, occupied range.³³

ESA section 4(d) requires the Secretary to issue regulations that are “necessary and advisable to provide for the conservation of [the threatened] species.”³⁴ “Conservation” is defined as “all methods and procedures necessary to bring any ... threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary,” including “regulated taking” only in “the extraordinary case where population pressures ... cannot otherwise be

³⁰ See 16 U.S.C. § 1531; see also *Tenn. Valley Auth.*, 437 U.S. at 183–84 (noting Congress’s determination that “the continental population of grizzly bears ... was surely threatened” and “once [the ESA] bill was enacted, the appropriate Secretary ... would have to take action to see that this situation is not permitted to worsen, and that these bears are not driven to extinction”) (quoting 119 Cong. Rec. 42913 (1973)) (cleaned up).

³¹ 16 U.S.C. § 1533(a)(1).

³² *Id.* § 1532(6), (16), (20) (definitions of “endangered,” “threatened,” and “species”).

³³ *Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 801 F. Supp. 3d 1151, 1181 (D. Mont. 2025)

³⁴ 16 U.S.C. § 1533(d).

relieved.”³⁵ By regulation, the Secretary may extend prohibitions that apply to endangered species to threatened species.³⁶ Grizzly bears have been protected under a 4(d) rule since 1975.³⁷ While the rule has been amended, the protections remain largely the same under the current version of the 4(d) rule which continues to prohibit taking of grizzly bears in the lower-48 states except for the removal of bears involved in conflict, take by governmental authorities for scientific or research purposes, and for grizzlies taken in self-defense.³⁸

The ESA also requires the Service to develop and implement recovery plans “for the conservation and survival of endangered species and threatened species,” and such plans must include, among other things, “a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species.”³⁹

III. THE GRIZZLY BEAR 4(d) RULE AND PROPOSED REVISIONS

As the Ninth Circuit noted, “[o]ne of the original goals and much lauded successes of the Endangered Species Act (‘ESA’) is the survival of the grizzly bear, an iconic symbol of the Rocky Mountain west.”⁴⁰ Pursuant to ESA section 4(d), the Service adopted regulations governing the management of grizzly bears in the lower-48 states.⁴¹ Since its adoption, the rule for grizzly bears has generally prohibited take of grizzly bears, subject to specific exceptions specified in the rule.⁴² The rule authorizes exceptions from the take prohibition for killing grizzly bears in self-defense and defense of others.⁴³ And it allows for agency removal of “nuisance bears” involved in conflicts, provided that: 1) steps are first taken to avoid conflicts; 2) lethal removal is authorized only where relocation is not reasonably possible; and

³⁵ *Id.* § 1532(3)

³⁶ *Id.* § 1533(d).

³⁷ 40 Fed. Reg. at 31734.

³⁸ 50 C.F.R. § 17.40(b)(1)(i)–(iv).

³⁹ 16 U.S.C. § 1533(f)(1), (f)(1)(B)(i).

⁴⁰ *Crow Indian Tribe II*, 965 F.3d at 669.

⁴¹ 40 Fed. Reg. at 31734.

⁴² 50 C.F.R. § 17.40(b).

⁴³ *Id.* § 17.40(b)(1)(i)(B).

3) lethal removal requires prior FWS authorization.⁴⁴

The Service proposed revisions to the grizzly bear 4(d) rule on January 15, 2025.⁴⁵ The proposal would have provided states, tribes, agencies, and private landowners more flexibility to address human-bear conflict—including through lethal removal—without requiring case-by-case federal authorization.⁴⁶ The Service proposed to except “authorized agency take outside of areas important for recovery or connectivity” from take prohibitions.⁴⁷ Additionally, the Service proposed to authorize individuals in some circumstances to lethally remove or otherwise take a grizzly bear involved in a conflict.⁴⁸ The Service solicited public comments on the proposed new management provisions, as well as potential additional exceptions for incidental take associated with regulated trapping and hunting of other species, and take from regulated state or tribal grizzly bear hunts.⁴⁹

Rather than finalize the 2025 Proposed Rule, on July 17, 2026, the Service published a revised proposed 4(d) rule for grizzly bears in the lower-48 states (“2026 Proposed Rule”). The revised proposal generally omits the specific management provisions and conditions for take exceptions contained in the 2025 Proposed Rule, and instead largely defers those details to future agreements between state and tribal authorities and the Service. The 2026 Proposed Rule’s foundation is a management-tier system through which the Service can hand day-to-day management of grizzly bear populations to the States and Tribes, and correspondingly withdraw meaningful federal take protection, on a population-by-population basis.⁵⁰

No Tier. In areas where Service-approved State or tribal management plans are not yet in place, the proposed rule would not assign a tier status. In these areas, the proposed rule would generally retain current take exceptions for agency removal of bears involved in conflicts, but would expand current take exceptions to allow individuals to engage in non-lethal “deterrence” to avoid human-bear conflicts or

⁴⁴ *Id.* § 17.40(b)(1)(i)(C); see U.S. Fish & Wildlife Serv., Grizzly Bear Recovery Program, *Grizzly Bear Conflict Response Protocol* (May 2020) (adapted from Interagency Grizzly Bear Guidelines (1986)), https://westernlandowners.org/wp-content/uploads/2022/03/05152020_Grizzly-Conflict-Response-Protocol-1.pdf (submitted as Ex. 79).

⁴⁵ 2025 Proposed Rule, 90 Fed. Reg. at 4234–76.

⁴⁶ *Id.* at 4272.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 4235.

⁵⁰ 2026 Proposed Rule, 91 Fed. Reg. at 44788–89.

discourage bears from using human-occupied areas.⁵¹ Additionally, it would authorize taking of grizzly bears incidental to the regulated trapping of other species, but only in “geographic areas and temporal periods” defined by the Service in a Technical Letter of Assistance (“TLA”).⁵² In preparing TLAs, “[t]he Service will consider the best available information,” including distribution and verified grizzly bear locations, known denning seasons and verified bear activity during denning seasons “and potential impacts to populations to define the geographic areas and temporal periods in the TLA.”⁵³

Tier 1. Areas for which management plans and recovery area conservation strategies are finalized and approved through a Memorandum of Understanding (“MOU”), but the population has not yet achieved demographic objectives, would qualify for Tier 1 status. In addition to the exceptions noted above, Tier 1 status would expand exceptions for trapping-related incidental take, which would be identified in the operative MOU rather than a TLA.⁵⁴

Tier 2. Tier 1 areas that are meeting demographic objectives identified in the conservation strategy would qualify for Tier 2 status, which contains the broadest take exceptions. In these areas, the revised proposed rule would authorize *all* take (intentional or incidental) by authorized agencies for management activities, limited only by MOUs and Federal, State, and Tribal law. The rule would also eliminate the requirement of prior FWS authorization for lethal control and relocation. And in these areas, all incidental take by individuals would be authorized, limited only by MOUs and federal, tribal, and state laws.⁵⁵

Unlike the 2025 Proposed Rule, the 2026 Proposed Rule does not expressly authorize individuals to kill depredating or food-conditioned bears in any tier. To the extent the Service intends to incorporate such provisions from its 2025 Proposed Rule when finalizing a management strategy, it is far from clear in this public comment process, and would raise serious concerns about adequate notice to comment on the cumulative impacts of take allowances.

⁵¹ *Id.* at 44785–86 (Table 1).

⁵² *Id.* at 44796

⁵³ *Id.*

⁵⁴ *Id.* at 44786 (Table 2), 44789.

⁵⁵ *Id.* at 44786 (Table 2).

DISCUSSION

I. THE PROPOSED RULE IS AN UNLAWFUL BACK-DOOR DELISTING OF CERTAIN GRIZZLY BEAR POPULATIONS.

Through the 2026 Proposed Rule, the Service seeks to accomplish what its prior failed delisting efforts could not, which is population-by-population transfer of management authority to states. While the Service attaches the regulatory “take exception” label to the weakened standards, the Service is candid about the Rule’s practical effect: in a Tier 2 area, “States and Tribes could assume most broad day-to-day management for grizzly bears according to applicable State and Tribal laws.”⁵⁶ The Ninth Circuit has twice rejected the Service’s attempts to transfer management of individual grizzly bear subpopulations to states,⁵⁷ and the proposed rule repeats, and indeed compounds, the errors that doomed the Service’s prior efforts. While the rule’s effect would be tantamount to population-level delisting, the rule does not comply with the ESA’s core requirements to ensure that species recovery is secure. Specifically, the proposal does not evaluate whether threats to grizzly bears and their habitat, together with inadequate regulatory mechanisms, warrant their continued protection, as the Endangered Species Act requires.⁵⁸

Under the 2026 Proposed Rule, once a population is designated Tier 2, federal take prohibitions and exceptions no longer depend on regulatory language or the Service’s case-by-case judgment; they depend on whatever states allow under as-yet undisclosed agreements with the Service and state law. The Service’s proposed definitions for the prerequisites to Tier 2 status confirm how little substance is formally required. A “Management Plan” is simply “a document developed by a Federal, State, or Tribal wildlife management agency detailing their agency’s grizzly bear management program,” and a “Conservation Strategy” is “an interagency document detailing the habitat and population management mechanisms” the agencies intend to use.⁵⁹ Neither definition requires that the plan or strategy be legally binding, judicially enforceable, or even durable against a change in state political leadership. The MOU that formalizes a Tier designation is itself nothing more than a “document” the agencies “may enter into,” revocable by the Service only through a discretionary after-the-fact review of annual reports.⁶⁰

⁵⁶ *Id.* at 44789.

⁵⁷ *See Greater Yellowstone Coal. II*, 665 F.3d at 1015; *Crow Indian Tribe II*, 965 F.3d at 662.

⁵⁸ 16 U.S.C. § 1533(a).

⁵⁹ 2026 Proposed Rule, 91 Fed. Reg. at 44794.

⁶⁰ *Id.*

Equally concerning, there is no guaranteed process for public participation in the finalization of a Management Plan, Conservation Strategy, or MOU.

This is not a set of “protective regulations” that the Service has determined are “necessary and advisable to provide for the conservation of” the species, as section 4(d) requires.⁶¹ Instead, it is a delegation of primary management to states—a transfer of authority the ESA contemplates only after the Service finds, through notice-and-comment rulemaking, that federal protections are no longer required.⁶² Delisting a species, requires the Service to determine that none of the five statutory factors any longer threatens the species: (A) destruction or curtailment of habitat or range; (B) overutilization; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.⁶³ Both listing and delisting determinations “must be made solely on the basis of the best available scientific and commercial information regarding a species’ status.”⁶⁴ And where, as here, the Service proposes to relax protections for a distinct population segment (“DPS”) within an already-listed species, it must also assess the impact of that action on the portion of the species that remains listed—the Service “cannot review a single segment with blinders on, ignoring the continuing status of the species’ remnant.”⁶⁵

None of the required delisting analysis appears in the proposed rule. The Service has not made, and does not purport to make, any findings that the section 4(a)(1) factors no longer warrant federal protection and recovery efforts for the grizzly bear populations that would move into Tier 2 management. It has not identified adequate regulatory mechanisms that could effectively substitute for federal take prohibitions. And it has not evaluated what a shift of a Tier 2 population’s management to the States would mean for the lower-48 listed entity as a whole or for the bears in ecosystems that remain more fully protected. The Service cannot obtain, through a 4(d) exception, a result that section 4(a) forbids it from reaching.

⁶¹ 16 U.S.C. § 1533(d).

⁶² *Id.* § 1533(a)(1).

⁶³ *Id.*; 50 C.F.R. § 424.11(c)–(d); *Greater Yellowstone Coal. II*, 665 F.3d at 1024 (“Delisting requires a determination that none of the above five factors threatens or endangers the species.”).

⁶⁴ 16 U.S.C. § 1533(b)(1)(A); 50 C.F.R. § 424.11(b); *Greater Yellowstone Coal. II*, 665 F.3d at 1024.

⁶⁵ *Crow Indian Tribe II*, 965 F.3d at 673 (quoting *Humane Soc’y of the U.S. v. Zinke*, 865 F.3d 585, 601 (D.C. Cir. 2017)).

Avoiding these delisting requirements, the Service has nominally retained the grizzly bear’s “threatened” status,⁶⁶ but the action produces “de facto delisting” in substance.⁶⁷ Even while the species remains technically listed, population by population, it could be stripped of every meaningful protection the Act’s take prohibitions provide. Once a population’s management is handed to the States under Tier 2, the substantive protection that population receives is defined by state and tribal law, not by section 9 of the Act or regulation, and the Service’s role is reduced to reviewing annual reports and retaining a discretionary, after-the-fact power to revoke the designation.⁶⁸

The Service cannot defend this approach on the theory that a 4(d) rule requires a lesser showing than delisting. If anything, the proposed rule accomplishes more with less process than the delisting rules already invalidated twice by the Ninth Circuit. A delisting rule at least purports to make the section 4(a)(1) factor findings and must be subject to notice-and-comment review. The 2026 Proposed Rule does not undertake that analysis at all. It simply authorizes the Service, through a bilateral MOU process with no independent public comment on the specific Tier designation, to achieve the same practical outcome for individual populations. The Service cannot lawfully reach through the back door—one population at a time—a result that the front door of section 4(a) forbids.

II. GRIZZLY BEARS FACE CONTINUED AND MOUNTING THREATS TO THEIR RECOVERY AND SURVIVAL.

Although the effect of the proposed rule—transferring substantial grizzly bear management to the Northern Rockies’ states—is similar to delisting, the Service failed to conduct a five-factor analysis under ESA section 4(a)(1) to evaluate the ongoing threats to grizzly bears in the lower-48 states. Such an analysis demonstrates not only that threats persist, but also that in many cases they are growing. As described below, grizzly bears in the lower-48 states face threats to their recovery due to low effective population sizes and connectivity, excessive human-caused mortality, habitat degradation, and inadequate state and federal regulatory mechanisms. Indeed, recent federal actions and policy changes are

⁶⁶ The Service notes that it is “considering issuing separate final rules for our final determinations on the revision to the grizzly bear listing and the revision to the 4(d) rule.” 2026 Proposed Rule, 91 Fed. Reg. at 44780.

⁶⁷ *Crow Indian Tribe II*, 965 F.3d at 677 (quoting *Humane Soc’y*, 865 F.3d at 601–02).

⁶⁸ 2026 Proposed Rule, 91 Fed. Reg. at 44786–87, 44788–89. Note, however, that the obligation under ESA section 7, 16 U.S.C. § 1536, to consult with the Service on actions potentially affecting grizzly bears remains even under the 2026 Proposed Rule.

exacerbating an already-perilous situation for grizzly bears. Because a proper analysis of the statutory factors considering “the best available scientific and commercial information”⁶⁹—as set forth below—demonstrates that grizzly bears remain threatened, the Service’s proposal to transfer their management to states with little Service oversight would be arbitrary and unlawful.

A. Low Effective Population Sizes and Inadequate Natural Connectivity Impair Genetic Viability and Population Resilience.

Although grizzly bears in the lower-48 states have grown in numbers, some recovery areas (Bitterroot, North Cascades) remain unoccupied and most other sub-populations—in particular, small or isolated populations in the Cabinet-Yaak, Selkirk, and Greater Yellowstone ecosystems—still experience insufficient population sizes and/or genetic exchange to maintain long-term viability. As the Service has acknowledged, “[s]mall, isolated populations are vulnerable to extinction from demographic fluctuations resulting from environmental processes (e.g., poor food years, disease, human-caused mortality), and low genetic diversity due to genetic drift and inbreeding.”⁷⁰

Maintaining a sufficient pool of adaptive genetic variation requires a species to have a sufficiently large “effective population” size, which represents how large a population behaves in terms of its population genetics (as opposed to the population’s census size, which represents how large a population is in terms of the population’s demography).⁷¹ A population’s effective size is generally just a fraction of the total number of the population.⁷² For grizzly bears, the Service reported that the ratio of effective population to census population size ranges from 0.04 to 0.6 (or an effective population size of between four and sixty bears for a census population of 100 bears).⁷³ While it was previously believed that an effective population of 500 is sufficient for maintaining long-term genetic health (and avoiding extinction) of an

⁶⁹ 16 U.S.C. § 1533(b)(1)(A); 50 C.F.R. § 424.11(b); *Greater Yellowstone Coal. II*, 665 F.3d at 1024.

⁷⁰ 2024 SSA at 184.

⁷¹ *Id.* (“Effective population size (N_e) is the size at which a hypothetical population begins losing genetic diversity at the same rate as the observed population (Kamath et al. 2015, p. 5507).”).

⁷² See, e.g., *id.*; Richard Frankham et al., *Genetics in conservation management: Revised recommendations for the 50/500 rules, Red List criteria and population viability analyses*, 170 Biological Conservation, 56 (2014) (submitted as Ex. 80).

⁷³ 2024 SSA at 185.

isolated population,⁷⁴ the best available science now demonstrates that the smallest acceptable effective population size for long-term evolutionary potential is at least 1000.⁷⁵

Grizzly bear subpopulations in the Northern Rockies are insufficiently large to maintain long-term genetic viability, as confirmed by recent genetic data. The Species Status Assessment shows that while bears in the Northern Continental Divide Ecosystem (“NCDE”) have relatively high genetic diversity and population resiliency, bears in the nearby Cabinet-Yaak Ecosystem (“CYE”) and Selkirk Ecosystem (“SE”) have low and moderate genetic diversity and resiliency, respectively.⁷⁶ Because of their isolation from other subpopulations, bears in the Greater Yellowstone Ecosystem (“GYE”) have moderate genetic diversity.⁷⁷

Genetic exchange between subpopulations is essential for small populations to maintain genetic fitness.⁷⁸ The Service has recognized that insufficient connectivity between grizzly populations is a threat for the species since the time of the 1975 listing.⁷⁹ Further, as the Service recognized, “[a]lthough the 1993 Recovery Plan did not require connectivity for recovery of individual grizzly bear populations, the Recovery Plan calls for recovering *self-sustaining* populations.”⁸⁰ While grizzly bears within the separate recovery areas in the Northern Rockies are getting closer to connecting, there is inadequate natural movement of bears between the five recovery areas to provide sufficient resiliency and genetic exchange. Adequate regulatory mechanisms are needed to secure natural connectivity between the isolated populations and recovery areas.

Translocation of grizzly bears is inadequate to address these risks. First, for the populations to be “self-sustaining,” as the Recovery Plan requires, they cannot depend on perpetual human intervention for their survival. In addition, studies have found that translocated grizzly bears demonstrate high mortality and a high

⁷⁴ *Id.* at 184–85.

⁷⁵ Ex. 80, Frankham et al.; Russell Lande, *Mutation and conservation*, 9 Conservation Biology 4:782–791, 786 (1995) (finding effective populations of 5,000 are necessary for long-term genetic viability) (submitted as Ex. 81); Michael Lynch and Russell Lande, *The critical effective size for a genetically secure population*, 1 Animal Conservation 70–72, 72 (1998) (recommending “a target effective size in the range of 1000-5000) (submitted as Ex. 82).

⁷⁶ 2024 SSA at 13.

⁷⁷ *Id.*

⁷⁸ *Id.* at 183–84.

⁷⁹ 40 Fed. Reg. at 31734.

⁸⁰ 2024 SSA at 183 (emphasis added).

rate of return to the bear's original capture site.⁸¹ Further, the Service has recognized that “grizzly bears in the lower-48 States need multiple, resilient ecosystems distributed across a broad geographic range in order to achieve redundancy and withstand catastrophic events.”⁸² Particularly in the face of climate change and shifting food sources, conditions in which grizzly bears can safely disperse and move between recovery areas is essential for grizzly bears to adapt and achieve long-term resilience.⁸³

The best available science demonstrates that a metapopulation management strategy in the Northern Rockies, with sufficiently large and connected subpopulations, is critical for durable species recovery.⁸⁴ Unlike the Service's existing compartmentalized approach, a naturally functioning metapopulation is essential to allow geographically dispersed breeding subpopulations to interact and support species-level recovery across a large landscape.⁸⁵

B. Grizzly Bears in the Northern Rockies Are Threatened by Excessive Human-Caused Mortality.

Grizzly bears are experiencing back-to-back years of record and near-record high mortality across the Northern Rockies. In the Greater Yellowstone Ecosystem, the IGBC estimates that seventy-three grizzly bears died in 2025, nearly all human caused, exceeding the previous record of seventy-two grizzly bears in 2024.⁸⁶ Mortalities are rising in other ecosystems too. Montana Fish, Wildlife & Parks documented thirty-two grizzly bear mortalities statewide in 2025, up from twenty-

⁸¹ See, e.g., Bonnie M. Blanchard & Richard R. Knight, *Biological Consequences of Relocating Grizzly Bears in the Yellowstone Ecosystem*, J. of Wildlife Mgmt. 59(3):560–65 (1995) (submitted as Ex. 83).

⁸² 2024 SSA at 7.

⁸³ See *id.*

⁸⁴ E.g., I. Hanski & D. Simberloff, *The Metapopulation Approach, Its History, Conceptual Domain, and Application to Conservation* 5–26 in *Metapopulation Biology: Ecology, Genetics and Evolution* (1997), <https://doi.org/10.1016/B978-012323445-2/50003-1>.

⁸⁵ See Ctr. for Biological Diversity et al., *Petition to the United States Fish and Wildlife Service To Revise the 1993 Recovery Plan for grizzly bears in the U.S. Northern Rockies using a metapopulation approach for lasting and sustainable recovery*, 18–24 (Dec. 12, 2024) [hereinafter Recovery Plan Petition] (Ex. 1).

⁸⁶ U.S. Geological Surv., Interagency Grizzly Bear Study Team, *Yellowstone Grizzly Bear Investigations 2024: Annual Report of the Interagency Grizzly Bear Study Team*, 43 (2024) [hereinafter IGBST 2024 Annual Report] (submitted as Ex. 84).

nine reported mortalities in Montana in 2024.⁸⁷ Yet the true toll is likely far higher, since the best available science documents significant underreporting of grizzly bear mortalities. This risks that the mortality rate could exceed the ten percent threshold that experts consider sustainable for a species, such as the grizzly bear, with a low reproductive rate.⁸⁸

The long-term ecological driver of excessive grizzly bear mortality appears to be the collapse over the last two decades of key native food sources—in the GYE, whitebark pine seeds and cutthroat trout. Outside of the GYE, drought has led to a reduction in berry yield that one Montana grizzly bear specialist called “one of the worst natural food failure years on record.”⁸⁹ As a result, grizzly bears are forced to shift toward meat-seeking behavior that increases their odds of fatal encounters with livestock, hunters, and humans generally—a dynamic that the Interagency Grizzly Bear Study Team (“IGBST”) has insufficiently accounted for in its published analyses.⁹⁰ Vehicle strikes, self-defense and mistaken-identity killings, and poaching add to the death toll. Combined with state and federal policies that have resulted in the lethal removal of bears, this dynamic points to likely ongoing high grizzly bear mortality in the future.

The Service must consider this mortality trend as it considers the need for ongoing federal protections and strict take prohibitions.

⁸⁷ Mont. Fish, Wildlife & Parks, *Montana Grizzly Bear Mortalities* (submitted as Ex. 88). Neither Wyoming nor Idaho publish grizzly bear mortality data.

⁸⁸ David Mattson, *Sustainable grizzly bear mortality calculated from counts of females with cubs-of-the-year: An evaluation*, 81 Biological Conservation 103–111 (1997) (submitted as Ex. 85).

⁸⁹ Sage Marshall, *Montana Warns of Increased Bear Conflict, Citing One of the ‘Worst Natural Food Failures’ on Record*, Meateater (Aug. 5, 2026), <https://www.themeateater.com/conservation/wildlife-management/montana-warns-of-increased-bear-conflict-citing-one-of-the-worst-natural-food-failures-on-record> (submitted as Ex. 86).

⁹⁰ David Mattson, *Flawed Science: A Critique of Science Practices and Products by the Interagency Grizzly Bear Study Team 2006–2023*, The Grizzly Bear Recovery Project, 30 (2023) [hereinafter *Flawed Science*] (submitted as Ex. 87).

1. The Service must consider how climate change and changes to traditional food resources threaten grizzly bears.

Grizzly bears are not immune to the consequences of climate change.⁹¹ Reduced snowpack shortens the denning season for grizzly bears.⁹² Wildfires further degrade bear habitat and diminish food resources.⁹³ Climate change has contributed to changes in distribution and abundance of food sources, forcing grizzly bears to shift their diets which, in turn, has resulted in greater human-bear conflict and human-caused bear mortality.⁹⁴

The Service acknowledges that climate change will continue to impact grizzly bear food sources, and “[i]n years of natural food shortages, driven largely by drought, bears forage at lower elevations leading to an increase in human-bear interactions.”⁹⁵ During their non-denning period, grizzly bears require a high-calorie diet to satisfy nutritional requirements for feeding and breeding.⁹⁶ If food shortages exist, bears use hibernation as a coping strategy.⁹⁷

Traditional food sources, including bison and elk, however, have reduced over time.⁹⁸ Other food sources such as grasses and berries “are not reliable every year and can only support a small number of bears.”⁹⁹ “All foods are not equal insofar as digestible protein and energy are concerned.”¹⁰⁰ As a result of this reduction in food

⁹¹ 2024 SSA at 214–21.

⁹² *Id.* at 218.

⁹³ *Id.* at 219–20.

⁹⁴ *Id.* at 218–19.

⁹⁵ *Id.* at 219.

⁹⁶ *Id.* at 102.

⁹⁷ *Id.*

⁹⁸ *Id.* at 50.

⁹⁹ *Id.* at 50–51.

¹⁰⁰ David J. Mattson, Wyo. Wildlife Advoc., *Comments on the U.S. Fish & Wildlife Service Proposal to Remove Grizzly Bears in the Yellowstone Ecosystem from the List of Endangered and Threatened Wildlife Protected Under the U.S. Endangered Species Act*, 18 (May 5, 2016) [hereinafter Mattson 2016 Comments] (Ex. 19).

resources, “numerous large areas within the lower-48 States that historically supported grizzly bear populations are no longer suitable for grizzly bears.”¹⁰¹

The Service has long recognized that grizzly bears in the Greater Yellowstone Ecosystem have historically relied heavily on four primary, high-calorie food sources: whitebark pine seeds, army cutworm moths, winter-killed ungulates, and spawning cutthroat trout.¹⁰² In recent decades, however, there has been catastrophic whitebark pine mortality across the Yellowstone region as warmer climate conditions made the trees vulnerable to unprecedented attacks by the mountain pine beetle and an exotic disease called blister rust.¹⁰³ The recent demise of the whitebark pine tree in the Northern Rockies has posed a significant challenge for the region’s grizzly bears.¹⁰⁴

The Service previously acknowledged that “whitebark pine seeds are known to have an influence on grizzly bear mortality risk and reproduction.”¹⁰⁵ For example,

[d]uring years of low whitebark pine seed availability, we know grizzly bear-human conflicts may increase as bears use lower elevation, less secure habitat within their home ranges.... Approximately six more independent females and six more independent males die across the ecosystem in poor whitebark pine years These mortalities are primarily due to defense of life encounters and wildlife management agency removals of conflict bears.¹⁰⁶

In addition, “both litter size and the likelihood of producing a litter may decrease in

¹⁰¹ 2025 Proposed Rule, 90 Fed. Reg. at 4244; *see also* 2024 SSA at 198–99 (“Contraction of historical range could change the availability of highly energetic food resources ... [and] that could influence grizzly bear reproduction, survival, or mortality risk.”).

¹⁰² Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears from the Federal List of Endangered and Threatened Wildlife, 81 Fed. Reg. 13174, 13212 (Mar. 11, 2016).

¹⁰³ 2024 SSA at 201.

¹⁰⁴ 81 Fed. Reg. at 13212 (noting “whitebark pine seeds are known to have an influence on grizzly bear mortality risk and reproduction”).

¹⁰⁵ 82 Fed. Reg. at 30536.

¹⁰⁶ 81 Fed. Reg. at 13213; *see also id.* at 13214 (stating that “grizzly bear mortalities increase in poor compared to good whitebark pine years”).

years following poor whitebark pine years.”¹⁰⁷

Because of these significant impacts and the Service’s failure to adequately grapple with them, a district court in Montana vacated the Service’s 2007 attempt to delist the GYE grizzly bear.¹⁰⁸ The Ninth Circuit affirmed, explaining that the Service

failed to articulate a rational connection between the data in the record and its determination that whitebark pine declines were not a threat to the Yellowstone grizzly, given the lack of data indicating grizzly population stability in the face of such declines, and the substantial data indicating a direct correlation between whitebark pine seed availability and grizzly survival and reproduction.¹⁰⁹

The Ninth Circuit, noting that “the Service cannot take a full-speed ahead, damn-the-torpedoes approach to delisting,” sent the Service back to the drawing board to analyze the impacts of whitebark pine decline on the GYE grizzly bear before determining whether delisting was appropriate.¹¹⁰

In a second attempt to delist the Yellowstone region’s grizzly bears, the Service again disregarded information demonstrating an emerging threat to grizzly bears from their recent shift to a greater dependence on meat food resources following catastrophic declines in traditional foods, including whitebark pine seeds. Specifically, the agency overlooked whitebark pine feeding sites;¹¹¹ conflated whitebark pine tree cover with whitebark pine seed availability;¹¹² and failed to consider that a decrease and absence of whitebark pine seeds result in grizzly bears substituting meat as a food resource.¹¹³ “[G]eographic patterns of whitebark pine mortality, occurrence of important alternate foods, and increases in distribution had obvious implications for diet, behavior, habitat selection, and demography of GYE grizzly bears.”¹¹⁴ Yet, “a comprehensive analysis of spatially explicit interactions among all these factors was never undertaken by [Interagency Grizzly Bear Study

¹⁰⁷ *Id.* at 13213.

¹⁰⁸ *See Greater Yellowstone Coal. I*, 672 F. Supp. 2d at 1126–27.

¹⁰⁹ *Greater Yellowstone Coal. II*, 665 F.3d at 1020.

¹¹⁰ *Id.* at 1030.

¹¹¹ Ex. 19, Mattson 2016 Comments at 21.

¹¹² *Id.* at 22.

¹¹³ *Id.* at 25–26.

¹¹⁴ Ex. 87, Flawed Science at 20.

Team] scientists.”¹¹⁵ Again, the District Court of Montana vacated the agency’s delisting rule,¹¹⁶ and the Ninth Circuit affirmed.¹¹⁷

But even in its 2024 Species Status Assessment, the Service again relied on its flawed whitebark pine analysis from its 2007 and 2017 proposed delisting rules to reach the conclusion that declines in whitebark pine seed production are “not likely to become substantial impediments to the long-term viability of the GYE grizzly bear population,”¹¹⁸ while overlooking the significant mortality risks the whitebark decline poses. On this point, the Species Status Assessment selectively dismisses foundational scientific literature related to the importance of whitebark pine as a food source in the GYE. First, the Service asserted that Pease and Mattson (1999), a peer-reviewed publication that has helped shape grizzly bear conservation science for more than two decades, is methodologically flawed,¹¹⁹ but the Service failed to engage with the study’s underlying empirical observations of increased grizzly bear mortality in poor whitebark pine cone production years, which may have offset benefits from improvements in grizzly bear management.¹²⁰ Indeed, the Service confirmed this, finding that “grizzly bear mortalities increased in poor whitebark pine seed production years as compared to good whitebark pine seed production years.”¹²¹ But the Service rejected this observation as evidence that declining whitebark pine poses a threat to grizzly bears because increased mortality has not caused population-level declines.¹²² This logic appears to assume that the only threat from whitebark pine loss is contemporaneous population reduction. In fact, a population may absorb stress through behavioral compensation in the short term while experiencing elevated risk of long-term consequences.¹²³

The importance of whitebark pine to grizzly bears in the GYE is well documented. In the Species Status Assessment, the Service did not dispute, but nor does it engage with, findings in Mattson et al. (1992) and Felicetti et al. (2003) that whitebark pine seeds are a high-value, high-fat food resource actively selected by

¹¹⁵ *Id.*

¹¹⁶ *Crow Indian Tribe I*, 343 F. Supp. 3d at 1015.

¹¹⁷ *Crow Indian Tribe II*, 965 F.3d at 679–80.

¹¹⁸ 2024 SSA at 207.

¹¹⁹ 2024 SSA at 204–05.

¹²⁰ Craig M. Pease & David J. Mattson, *Demography of the Yellowstone Grizzly Bears*, 80 *Ecology* 957–75 (1999) (submitted as Ex. 89).

¹²¹ 2024 SSA at 204.

¹²² *Id.*

¹²³ *See* Ex. 19, Mattson 2016 Comments at 52–53.

bears during hyperphagia.¹²⁴ Instead, the Service glossed over the import of these findings by noting that “grizzly bears were finding alternate foods within their home range as whitebark pine seeds became less available over the past decade.”¹²⁵ This is a non-sequitur. The issue is not that grizzly bears might not find alternate foods; it is that alternative high-protein food sources are primarily meat-based and in conflict prone areas.¹²⁶ The Service has also attempted to downplay the significance of the decline in whitebark pine by stating that “[n]early one third of grizzly bears in the GYE do not have whitebark pine in their home range,”¹²⁷ thus implying that the food source is insignificant to bears through the GYE. This assertion is incorrect, because the literature demonstrates the importance of whitebark pine as a food source to bears whose home range includes it.

In the wake of changes in whitebark pine seed availability, scientists have documented the bears’ transition to a more meat-based diet, which leads bears to lower-elevation areas where they experience greater potential for human conflict and grizzly mortality.¹²⁸ Recent science reiterates the long-understood dynamic that the loss of these food sources forces grizzly bears to rely more heavily on ungulates and ungulate carcasses, which brings grizzly bears to areas where they will more frequently encounter humans and livestock.¹²⁹ For example, as female bears accompanied by cubs are being drawn to ungulate carcasses in the wake of whitebark pine decline—carcasses that are likely being fed upon by other bears or are attended to by armed humans—the risk of death to cubs and yearlings increases

¹²⁴ David J. Mattson et al., *Yellowstone grizzly bear mortality, human habituation, and whitebark pine seed crops*, 56 J. of Wildlife Mgmt. 432–42 (1992) (submitted as Ex. 90); Laura A. Felicetti et al., *Use of sulfur isotopes to determine the importance of whitebark pine nuts to Yellowstone grizzly bears*, 81 Canadian J. of Zoology 763–70 (2003) (submitted as Ex. 91).

¹²⁵ 2024 SSA at 203.

¹²⁶ *Id.* at 201 (“During years of low availability of whitebark pine seeds, human-grizzly bear conflicts tend to increase as bears use lower elevations for foraging, and those areas tend to be within less secure habitats.”).

¹²⁷ *Id.* at 206.

¹²⁸ 82 Fed. Reg. at 30537–38.

¹²⁹ See, e.g., Katherine A. Kurth et al., *A systematic review of the effects of climate variability and change on black and brown bear ecology and interactions with humans*, Biological Conservation 291 (2024) (submitted as Ex. 92); David J. Mattson, The Grizzly Bear Recovery Project, *The Grizzly Bear Promised Land: Past, Present & Future of Grizzly Bears in the Bitterroot, Clearwater, Salmon & Selway Country*, Report GBRP-2021-1 (2021) (submitted as Ex. 93).

dramatically. And federal agencies are actively taking steps to increase the risks of more human-bear encounters.¹³⁰

The Service's explanation that grizzlies do not roam beyond their fall ranges during low-cone production periods does not address the fact that the range includes both high elevation and low elevation landscapes, which condenses the range area that is available for food. In other words, without adequate food availability in high elevation the bears adapt to seeking food sources in the lower elevations in their range, introducing more bears in a smaller area.

Moreover, the Service's reliance on the grizzly bear's varied diets to negate the loss of whitebark pine both unreasonably relies on populations in different ecosystems and ignores declines in other important food sources in the GYE. The agency implies that because the NCDE grizzly population has grown in the absence of whitebark pine, the GYE population will adjust as well. It is ecologically nonsensical to conclude that the near-absence of whitebark pine in the diet of a grizzly bear population living in a completely different ecosystem—with a different variety of available foods, and a different variety of threats—means that the more recent crash in whitebark pine in Yellowstone will have no impact on that region's grizzly bears. If the Service plans to use the NCDE population as a control group for grizzly bears without whitebark pine cone seeds, it must consider all the factors that make NCDE grizzly bears distinct. Further, in the GYE, other important food sources have also declined. Yellowstone cutthroat trout have declined due to a number of factors, including drought conditions. Winter-killed ungulate carcasses are less prevalent as climate change has brought shorter, milder winters. And the Service suggests that climate change may also “affect army cutworm moths by changing the distribution of plants that the moths feed on or the flowering times of the plants.

The Service unreasonably minimizes food changes in other ecosystems as well. Contrary to the Service's suggestion that “[w]hen one important food resource declines, another is often available,”¹³¹ extreme heat and drought caused by climate change are also causing the loss of other food sources, including huckleberries.¹³² For grizzly bears in the Cabinet-Yaak and Selkirk, “[h]igher annual indices of berry

¹³⁰ See, e.g., Brett French, *New BLM Director Drops Fines for Violation of Food Storage Orders in Bear Country*, The Missoulian (July 29, 2026), https://missoulian.com/outdoors/article_4e6af727-b587-5f43-8651-e071f225fdcd.html (submitted as Ex. 94).

¹³¹ *Id.* at 219.

¹³² Janet S. Prevéy et al., *Climate Change Shifts in Habitat Suitability and Phenology of Huckleberry* (*Vaccinium membranaceum*), 280 *Ag. & Forest Meteorology* (2020) (submitted as Ex. 95).

production are associated with lower human-caused mortality.”¹³³ The availability of berries can “influence landscape distribution, range expansion, and connectivity of grizzly bear populations.”¹³⁴

Loss of berry yield can also increase the risk of human-grizzly bear encounters. For example, “[t]his year is panning out to be one of the worst natural food failure years on record” for bears.¹³⁵ And because of this low berry yield, “bears that should be foraging for berries in the mountains are getting into trouble around homes and communities looking for something to eat.”¹³⁶ As a result, specialists have been responding to more calls about human-bear conflicts.¹³⁷

The Service’s conclusion on the availability of food resources is wholly dependent on the bear’s “highly omnivorous and flexible diet” and its assertion “that grizzly bears can compensate for changes in the availability of food as long as there is sufficient habitat security.” Such a conclusion, however, fails to account for the recent shift in government actions and executive orders reducing secure core habitat.

Finally, the Service minimizes the future impact on grizzly bear food sources as climate change advances. In particular, studies project substantial and potentially irreversible loss of whitebark pine habitat across its range.¹³⁸ The Species Status Assessment acknowledges whitebark pine’s threatened status under the ESA and the role of climate change in its decline.¹³⁹ However, it does not seriously engage with what continued and accelerating whitebark pine habitat loss means for grizzly bear populations over the next several decades. Nor does the

¹³³ Justin E. Teisberg, *Huckleberry Habitat and Its Influence on Two Small Populations of Grizzly Bears* (*Ursus arctos*), *Ecology & Evolution*, 2 (Apr. 21, 2025) (submitted as Ex. 96).

¹³⁴ *Id.*

¹³⁵ Press Release, Mont. Fish, Wildlife & Parks, *Berry Crops Are Struggling, Bear Conflicts Are on the Rise* (July 29, 2026), <https://fwp.mt.gov/homepage/news/2026/july/0729-misbehaving-bears> (quoting Jamie Jonkel, FWP’s bear conflict specialist) (submitted as Ex. 97).

¹³⁶ *Id.*

¹³⁷ Mont. Pub. Radio, *Bear Conflicts Ramp up as Montana’s Huckleberry Crop Dwindles* (Aug. 6, 2026), <https://www.mtpr.org/montana-news/2026-08-06/bear-conflicts-ramp-up-as-montanas-huckleberry-crop-dwindles> (submitted as Ex. 98).

¹³⁸ *E.g.* Polly C. Buotte et al., *Climate influences on whitebark pine mortality from mountain pine beetle in the Greater Yellowstone Ecosystem*, 26 *Ecological Applications* 2507–2524 (2016) (submitted as Ex. 99).

¹³⁹ 2024 SSA at 201, 219.

Service contemplate a scenario with sustained poor whitebark pine seed conditions and how that could compound cumulative stressors to grizzly bears. A status assessment that focuses primarily on past population trends while minimizing prospective risk under climate change scenarios does not provide decision-makers with a complete picture. The grizzly bear is a long-lived species with slow demographic recovery. Decisions made today based on retrospective data will inadequately shape population viability for generations.

In sum, the Service's assumptions about the impacts on grizzly bears from climate change and loss of whitebark pine seeds remain inaccurate. As the Service finalizes a 4(d) rule, it should not repeat—for the third time—the same flawed refrains. Instead, in finalizing a management strategy, the agency should follow the best available science and meaningfully consider the threats of climate change and reductions in food resources on grizzly bears.

2. Grizzly bears face excessive mortality from livestock grazing.

Livestock grazing, especially on public land, is a leading cause of grizzly bear mortality in the GYE and NCDE. Conflicts with livestock and associated human interactions often lead to these grizzly bears being relocated or killed by federal agency personnel, state agency personnel, or livestock owners and their staff under the existing 4(d) rule.¹⁴⁰ The most recent data from 2024 demonstrates that, in the GYE, the highest cause of grizzly bear mortality—twenty-eight of the seventy (forty percent) human-caused mortalities—is management removals in response to

¹⁴⁰ See, e.g., Adrian Treves et al., *Predator control should not be a shot in the dark*, 14 Front. Ecol. & Env't 380 (2016) (large number of predators killed by government agencies and by private citizens over livestock conflicts) (submitted as Ex. 100); Lily M. van Eeden et al., *Carnivore conservation needs evidence-based livestock protection*, 16 PLoS Biol e2005577 (2018) (predation on livestock often leads to killing of carnivores) (submitted as Ex. 101); Bruce N. McLellan et al., *Rates and Causes of Grizzly Bear Mortality in the Interior Mountains of Western North America*, in *Proceedings of a Conference on the Biology and Management of Species and Habitats at Risk* 673 (Kamloops, B.C. 1999) (grizzly bears being shot for killing livestock was a major mortality factor) (submitted as Ex. 102).

livestock depredations.¹⁴¹ Some areas experiencing the highest levels of livestock-related mortality are outside the GYE's demographic monitoring area.¹⁴²

Conflicts with livestock have also led to illegal killing of grizzly bears.¹⁴³ Such poaching is often referred to as “shoot, shovel, and shut up.”¹⁴⁴ And more often than not, the Department of Justice declines to prosecute grizzly bear poachers.¹⁴⁵

Livestock grazing may also displace native wildlife such as elk and deer due to competition with cattle.¹⁴⁶ Replacing elk and deer—natural food sources for carnivores such as grizzly bears—with cattle can increase the carnivores' predation upon livestock.

There are many commonsense proactive approaches to preventing conflicts with livestock, including nonlethal deterrents such as range riders, livestock guardian dogs, fladry, rubber bullets, and more. However, even when such deterrents are not being used, federal or state agency personnel are often willing to kill grizzly bears that prey upon or come into contact with livestock.

The killing of grizzly bears due to management conflicts with livestock is likely to get worse very soon. On October 22, 2025, Agriculture Secretary Brooke Rollins and Interior Secretary Doug Burgum announced via press release a “Plan

¹⁴¹ See Ex. 84, IGBST 2024 Annual Report at 43.

¹⁴² See, e.g., WyoFile, *Grizzlies killed record high number of cattle in Wyoming, 2024 data shows* (March 26, 2025) (noting nineteen removals of grizzly bears outside of demographic monitoring area in Wyoming in 2024) (submitted as Ex. 103); see also WyoFile, *Yellowstone grizzly range contracts by 4%, while 'Northern Continental Divide' bears gain 12% more ground* (Dec. 18, 2025) (noting that three in four Yellowstone-area grizzly bear deaths in 2025 were inside the demographic monitoring area) (submitted as Ex. 104).

¹⁴³ See, e.g., Bozeman Daily Chronicle, *Documents show shepherd shot grizzly bear* (Apr. 11, 2014) (discussing how the Service determined a shepherd illegally killed a grizzly bear in the Gravelly Mountains after the bear killed three sheep) (submitted as Ex. 105).

¹⁴⁴ See High Country News, *How grizzly bear poachers are getting away with it* (Dec. 20, 2023) (submitted as Ex. 106).

¹⁴⁵ See, e.g., *id.*

¹⁴⁶ See, e.g., Kelley M. Stewart et al., *Temporospatial Distributions of Elk, Mule Deer, and Cattle: Resource Partitioning and Competitive Displacement*, 83 J. Mammalogy 229 (2002) (submitted as Ex. 107).

for American Ranchers and Consumers,” later coined the “Grazing Action Plan.”¹⁴⁷ The Plan, linked through the press release, includes a suite of actions to prioritize restocking cattle into vacant allotments on federal lands while simultaneously deregulating grazing.¹⁴⁸ The Plan also calls for “endangered species reforms.”¹⁴⁹ The Plan stated that it would be “launched” via a Memorandum of Understanding.¹⁵⁰ As promised, on March 31, 2026, Interior Secretary Burgum and Agriculture Secretary Rollins signed a MOU between DOI, BLM, USDA, and the Forest Service outlining cooperation to implement the Grazing Action Plan.¹⁵¹ Through this MOU, the Agencies agreed to promote the availability of vacant allotments for livestock grazing across twenty-four million acres of federal land and to expedite processes for permitting grazing, including deregulation.¹⁵² On the same day the MOU was signed, BLM took steps to implement it, issuing a press release and map advertising hundreds of vacant allotments as “public lands available for ... grazing.”¹⁵³ That map was updated soon after to include vacant allotments available for grazing on Forest Service lands.¹⁵⁴ The Interior Department and U.S. Department of Agriculture’s “web-based map tool” displays approximately 100 vacant allotments that overlap grizzly bear habitat in Idaho, Montana, and Wyoming as potential opportunities for grazing under the Grazing Action Plan.¹⁵⁵

The Plan’s directives and intentions to significantly increase and expand livestock grazing are likely to lead to more livestock conflicts with grizzly bears. Some of the vacant allotments that the Plan seeks to open to livestock use have not

¹⁴⁷ U.S. Dep’t of Agric., *Press Release: Secretary Rollins Announces Plan for American Ranchers and Consumers* (Oct. 22, 2025) (submitted as Ex. 108).

¹⁴⁸ U.S. Dep’t of Agric., *USDA Plan to Fortify the American Beef Industry* (Oct. 22, 2025) [hereinafter USDA Plan] (submitted as Ex. 109).

¹⁴⁹ *Id.* at 1.

¹⁵⁰ *Id.* at 2.

¹⁵¹ MOU Between the U.S. Dep’t of the Interior, Bureau of Land Mgmt. and U.S. Dep’t of Agric., Forest Serv., *Advancing Grazing on Forest Service and BLM Lands* (Mar. 31, 2026) (submitted as Ex. 110).

¹⁵² *Id.* at 2–3; see also Ex. 109, USDA Plan at 2 (“There are roughly 29,000 grazing allotments nationwide—about 10% (24 million acres) are currently vacant.”).

¹⁵³ U.S. Dep’t of the Interior, Bureau of Land Mgmt., *Press Release: BLM launches new web tool to expand grazing opportunities and support healthier public lands* (Mar. 31, 2026) (submitted as Ex. 111).

¹⁵⁴ U.S. Dep’t of the Interior, Bureau of Land Mgmt., *Map: Federal Grazing Lands Potentially Available*, <https://experience.arcgis.com/experience/0a208d6eac6144969213c68519a8cfd>.

¹⁵⁵ *Id.*

been grazed by cattle for years and may now be used by grizzly bears. Thus, restocking vacant allotments with livestock is likely to increase conflicts between grizzly bears and livestock and remove and fragment habitat being used by these grizzly bears.¹⁵⁶ Fragmented habitat leading to grizzly bears being displaced can negatively impact their feeding, breeding, and sheltering.¹⁵⁷ Fragmented habitat also impairs connectivity needed for genetic health and range expansion.¹⁵⁸

Current and potentially increasing grazing on public lands can create “sink habitat” for grizzly bears. Any final 4(d) rule must require that livestock producers use nonlethal deterrents before requesting the relocation or lethal removal of any grizzly bears that come into conflict with livestock. Further, any final rule must not give livestock owners or their workers permission—or allow for permits by livestock owners—to kill grizzly bears.

3. Grizzly bears are threatened by regulated trapping and hunting of other species.

Grizzly bears also face mortality and injury risks from incidental trapping and killings due to mistaken identity,¹⁵⁹ which would worsen under the 2026 Proposed Rule.

Recreational trapping and snaring for other species, particularly wolves and coyotes, pose threats to grizzly bears because traps and snares are inherently non-selective and often placed in areas where grizzly bear habitat overlaps with target-species habitat. Baits and scented lures commonly used by trappers attract grizzly bears as well as wolves, resulting in harm to bears. Trapping experts, agency personnel, and researchers recognize that devices set for wolves, coyotes, martens, and other furbearers can capture, injure, or kill grizzly bears, and that recent expansions of trapping opportunities in Montana, Idaho, and Wyoming increase this

¹⁵⁶ See, e.g., U.S. Fish and Wildlife Serv., *Biological Opinion for the Effects to the Grizzly Bear from the Upper Green River Area Rangeland Project*, 39 (Apr. 29, 2019) (stating grazing displaces grizzly bears from habitat as a result of humans and other activities associated with livestock grazing) (submitted as Ex. 112).

¹⁵⁷ See, e.g., *id.* at 39, 47.

¹⁵⁸ See, e.g., Sarah N. Sells et al., *Predicted connectivity pathways between grizzly bear ecosystems in Western Montana*, 284 *Biological Conservation* (2023) (submitted as Ex. 113).

¹⁵⁹ These issues are summarized here and described in greater detail *infra*, Discussion, Section V.E.

risk.¹⁶⁰ As federal district courts in Montana and Idaho have found, current state trapping regulations do not adequately minimize harm to grizzly bears from regulated trapping of other species, both within core recovery areas and potential connectivity areas.

Grizzly bears also face excessive mortality from black bear hunters who mistake grizzly bears and kill them in lieu of their target species. As discussed below, grizzly bear mortality from mistaken identity is significant.¹⁶¹ The risk is especially acute in Wyoming and Idaho, which allow black bear hunting using bait or hounds. Both practices can attract grizzlies, where their habitat overlaps with black bears, provoke conflict, and make accurate species identification more difficult. Although hunter-identification programs can reduce some risk, they do not eliminate it, and recent mortality data show that grizzlies continue to be killed by black bear hunters who misidentify their target. Mistaken-identity killing remains significant human-caused mortality threat to grizzly bears.

4. Actual mortality numbers are undercounted, and may lead to an unsustainable mortality rate.

“Known and probable” mortality tallies compiled from field reports, verified carcasses, and confirmed removals significantly undercount actual grizzly bear deaths. Acknowledging this, the Service extrapolates unknown mortalities using the methodology recommended in Cherry et al. (2002).¹⁶² However, more recent studies have documented a larger gap between reported and unreported mortalities than reported by Cherry et al. (2002). McLellan et al. (2018), working in the Flathead Valley of British Columbia, compared kill ratios of collared and uncollared bears, and estimated that eighty-eight percent of human-caused mortalities not attributable to permitted hunting went entirely unrecorded in the government database, driven by remote terrain, absent cell coverage, and negligible enforcement presence—conditions that recur across much of grizzly range in the lower-48 states.¹⁶³ Most recently, Lamb et al. (2023), drawing on GPS-collar data from seventy-six grizzly bears monitored in the Elk Valley of southeast British Columbia,

¹⁶⁰ See Comments from Sierra Club and Ctr. for Biological Diversity 61–74 (May 16, 2025).

¹⁶¹ *Infra* Section V.E.

¹⁶² SSA at 85; see Steve Cherry et al., *Estimating total human-caused mortality from reported mortality using data from radio-instrumented grizzly bears*, 13 *Ursus* 175–184 (2002), <https://pubs.usgs.gov/publication/1008616> [hereinafter Cherry et al.] (submitted as Ex. 114).

¹⁶³ Bruce McLellan et al., *Estimating unrecorded human-caused mortalities of grizzly bears in the Flathead Valley, British Columbia, Canada*, *PeerJ*, 6, e5781 (2018), <https://peerj.com/articles/5781/> (submitted as Ex. 115).

estimated that human-caused mortality due to collisions and conflicts with people is underreported in government databases by sixty-five percent.¹⁶⁴ In the authors' words, "for every recorded mortality, there are ~2 that go unreported."¹⁶⁵ There is no reason to believe that such high levels of unreported grizzly mortalities do not also occur in the U.S.

Indeed, Cherry et al. (2002) itself included an important caveat that the Service must heed in estimating mortality. "The assumption of a constant reporting rate for radio-collared bears over time was important in ... application of the method to the count data. This assumption could be violated if, for example, the probability of a death being reported depended on the cause of death and these causes changed over time," citing "some evidence that reporting rates have declined in recent years."¹⁶⁶ As Mattson (2023) notes, the increasing mortality of grizzly bears by lethal encounters with elk hunters in remote areas likely means that reporting rates are lower now than the Cherry et al. (2002) estimate on which the Service and IGBST still rely.

This literature establishes that the Service's mortality estimates are very likely too low, and risk systematically overestimating the population's resilience to human-caused mortality. At a minimum, the Service must consider and explain whether these studies warrant upward-revised mortality estimates when it proposes more liberal grizzly take and state reporting of such take as in the 2026 Proposed Rule.

C. Grizzly Bears Face Increasing Threats Due to Habitat Degradation and Fragmentation.

The Service and numerous studies have repeatedly recognized that large areas of habitat free from human influence, including roads, are crucial to the survival and recovery of grizzly bears. Yet threats to grizzly bear habitat continue to increase, including because of rising road densities, Forest Plan provisions that are inadequate to protect grizzly bears, flawed management practices, and individual projects that will result in new roads and otherwise harm grizzly bear habitat. These habitat pressures on federal land are in addition to the many pressures on private and state land, including home development and the rapid conversion of rural private land to residential development. Since 2000, one million acres of

¹⁶⁴ Clayton Lamb et al., *Unsecured attractants, collisions, and high mortality strain coexistence between grizzly bears and people in the Elk Valley, southeast British Columbia*. Conservation Science and Practice, 5(10), e1301 (2023), <https://doi.org/10.1111/csp2.13012> (submitted as Ex. 116).

¹⁶⁵ *Id.*

¹⁶⁶ Ex. 114, Cherry et al. at 180.

undeveloped land have been converted to housing.¹⁶⁷ With an increased population in Idaho, Wyoming and Montana, there have been additional unmanaged recreation pressure on public lands, and increases in human-caused grizzly mortality. If finalized, the Service's new proposed 4(d) provisions would compound the dangers that grizzly bears face, including threats from dwindling habitat. The Service must consider the 2026 Proposed Rule's cumulative impacts on grizzly bears in combination with the other habitat threats that grizzly bears face.

1. Habitat Isolated from Human Impact is Crucial to Grizzly Bear Recovery.

The 2026 Proposed Rule would weaken protections for the grizzly bear even while it faces ongoing and increasing threats to its habitat. In the 2025 Proposed Rule, the Service correctly recognized that the “most crucial element in grizzly bear recovery is habitat that is diverse, provides a wide range of foods, and is isolated from development and human activities, where human-bear interactions, which often result in higher bear mortalities, are minimal.”¹⁶⁸ Protecting grizzly bears, therefore, also means protecting the ecosystems they call home.¹⁶⁹

The Service's 2024 SSA stressed the importance to grizzly bears of sufficient habitat free from human influence. There, the Service concluded that, in addition to excessive human-caused mortality, the “primary stressor[] affecting grizzly bears at both the individual and ecosystem levels” is “human-caused mortality and human activity that reduces the quality and quantity of habitats.”¹⁷⁰ The Service explained: “Human activities are the primary factor impacting habitat security (i.e., habitat that is relatively undisturbed by human influence) and the ability of bears to find and access foods, mates, cover, and den sites.”¹⁷¹

Human-bear interactions are exacerbated by the expansion of human infrastructure and activities into bear habitats.¹⁷² Grizzly bear habitat can be fragmented by human activities, including road building and development.¹⁷³

¹⁶⁷ Headwaters Economics, Montana Losing Open Space (Jan. 10. 2024), <https://headwaterseconomics.org/economic-development/montana-home-construction/>.

¹⁶⁸ 2025 Proposed Rule, 90 Fed. Reg. at 4256; *see also id.* at 4244 (“The most crucial element in grizzly bear recovery is habitat security”).

¹⁶⁹ 2024 SSA at 51.

¹⁷⁰ *Id.* at 41; *see also* 2025 Proposed Rule, 90 Fed. Reg. at 4249 (stating the same).

¹⁷¹ 2024 SSA at 41.

¹⁷² *Id.* at 112.

¹⁷³ *Id.* at 141.

“[H]abitat fragmentation and isolation can increase vulnerability to threats, such as decreased demographic or genetic connectivity.”¹⁷⁴ Grizzly bears roam widely within their home ranges, and habitat degradation, improper storage of human foods, and close proximity to threatening human activities in any portion of their home range puts them at risk.¹⁷⁵

Habitat security “is primarily influenced by motorized access management.”¹⁷⁶ Roads and motorized uses pose imminent threats to grizzly bear habitat.¹⁷⁷ Both the existence of roads and their use displace grizzly bears, and roads further increase the risk of bear mortality as a result of poaching and human conflicts.¹⁷⁸ Motorized access in grizzly bear habitat can “indirectly influence grizzly bears by reducing the availability of habitat security or directly by disturbing, displacing, or killing individual bears through increased noise, activity, presence, vehicle strikes, or other activities.”¹⁷⁹ Displacement occurs because grizzly bears form “negative association[s] with roads aris[ing] from the fear of vehicles, vehicle noise, and other human-related activities around roads[,]” as well as “from human scent along roads, and hunting and shooting along or from roads.”¹⁸⁰ As a result, grizzly bears avoid roads, adjusting “their habitat use patterns” according to the density of roads in an area.¹⁸¹ Crucially, a well-documented body of scientific research demonstrates that this impact extends to low-use roads and roads that are closed entirely. Even where “roads were closed to public travel,” researchers have documented bear “avoidance of high total road densities areas[.]”¹⁸² Based on this evidence, the Service has previously acknowledged that “[g]rizzly bears ... learn to avoid the disturbance generated by roads and may not choose to use these habitats even long after road closures.”¹⁸³

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 205.

¹⁷⁶ 2025 Proposed Rule, 90 Fed. Reg. at 4244 (citations omitted).

¹⁷⁷ 2024 SSA at 51.

¹⁷⁸ *Id.* at 113.

¹⁷⁹ *Id.* at 121.

¹⁸⁰ U.S. Fish & Wildlife Serv., *Revised Biological Opinion for the Flathead National Forest* III-55 (Feb. 16, 2022) [hereinafter Flathead BiOp] (Ex. 2).

¹⁸¹ *Id.* at III-30.

¹⁸² Mace & Waller, *Final Report: Grizzly Bear Ecology in the Swan Mountains, Montana*, 72–73 (1997) [hereinafter Mace & Waller] (Ex. 3).

¹⁸³ Ex. 2, Flathead BiOp at III-55.

High road densities especially harm female grizzly bears “by significantly disrupting normal behavioral patterns, including breeding, feeding, or sheltering.”¹⁸⁴ In particular, they impair female grizzly bears’ “inherent reproductive potential” because displacement and disturbance mean females “may fail to breed at their potential frequency or they would fail to complete gestation due to decreased fitness.”¹⁸⁵ Thus, according to seminal research by biologists Richard Mace and Timothy Manley in the Flathead National Forest, “if unroaded habitats are reduced in quantity or size, the number of adult females will eventually decline,” harming the grizzly bear population as a whole.¹⁸⁶

The adequacy of grizzly bear habitat is so closely tied to road density that the Service has used road density as a surrogate for measuring impacts constituting “take” of the species.¹⁸⁷ For the Flathead National Forest, this includes monitoring and limiting separate levels of open motorized route density and total motorized route density in recognition of the fact that even roads closed to motorized use during the grizzly bear’s non-denning season must be limited to safeguard grizzly-bear habitat.¹⁸⁸ This approach is rooted in Mace and Manley’s research, which found that adult grizzly bears used habitats less than expected when open-road densities exceeded one mile per square mile, while habitat use by all sex and age classes of grizzly bears was less than expected when total-road densities exceeded two miles per square mile.¹⁸⁹ Mace and Manley also observed that female grizzly bears tended to use habitat more than 0.5 miles from roads or trails more than expected.¹⁹⁰

Limiting motorized access in grizzly bear habitat also includes maintaining areas of unroaded “secure habitat”—usually defined to include areas 500 meters as the minimum distance from motorized roads or trails.¹⁹¹ Studies on grizzly bear habitat require that unroaded areas meet minimum size requirements before they

¹⁸⁴ *Id.* at III-96.

¹⁸⁵ *Id.*

¹⁸⁶ Mace & Manley, *South Fork Flathead River Grizzly Bear Project*, 26 (Apr. 1993) [hereinafter Mace & Manley] (Ex. 4).

¹⁸⁷ Ex. 2, Flathead BiOp at III-97.

¹⁸⁸ *Id.*

¹⁸⁹ Ex. 4, Mace & Manley at 19, 25.

¹⁹⁰ *Id.* at 17–19; Ex. 2, Flathead BiOp at III-56.

¹⁹¹ U.S. Fish and Wildlife Service, *Revised Biological Opinion for Amendment 40 to the Bitterroot National Forest*, 12 (Apr. 24, 2025) [hereinafter Revised Bitterroot BiOp] (submitted as Ex. 117).

may be counted as “secure.” Minimum area for secure habitat is based on the average daily feeding radius of individual grizzly bears.¹⁹²

The best available science demonstrates that grizzly bears need large areas of secure habitat. Research by Mace et al. (1996) in the NCDE showed greater use in undisturbed patches of secure habitat larger than 2,500 acres in size.¹⁹³ Michael Proctor et al. recommended maintaining unroaded secure habitat in minimum sizes of ten square kilometers (more than 2,471 acres).¹⁹⁴ Gibeau et al. recommended minimum land sizes of more than nine square kilometers (about 2,224 acres).¹⁹⁵ Wayne Wakkinen and Wayne Kasworm’s attempt to identify minimum secure habitat polygon sizes for grizzly bears in the Selkirk and Cabinet-Yaak Ecosystems was hampered by small sample sizes, but they nevertheless concluded that “if a minimum size occurs, it is likely between 2 [square miles (1,280 acres)] and 8 [square miles (5,120 acres)],” and further noted that—even then—“narrow strips of core habitat that may fit some minimum size criteria likely will not provide effective core habitat for bears.”¹⁹⁶

As the Service acknowledges, “[b]oth road density and the proportion of secure habitat contribute[] different yet important components influencing survival.” The U.S. District Court for the District of Montana has concluded that the best available science, from Schwartz et al., shows that “using the secure habitat metric alone is insufficient because it ignores whether bears can safely move between pockets of secure habitat.” In other words, to effectively provide secure grizzly bear habitat, road densities must be limited outside of secure habitat. And large tracts of contiguous, unroaded land must be preserved as secure habitat.

¹⁹² See, e.g., Michael L. Gibeau et al., *Managing for Grizzly Bear Security Areas in Banff National Park and the Central Canadian Rocky Mountains*, 1 (2001) [hereinafter Gibeau] (Ex. 6).

¹⁹³ U.S. Fish and Wildlife Service, *Biological Opinion on the Effects of Continued Implementation of the Bitterroot National Forest Plan, Travel Management Plan, and Proposed Elk Amendment on Grizzly Bears*, 12 (July 8, 2021) (Ex. 5), ; Richard Mace et al., *Relationships Among Grizzly Bears, Roads and Habitat on the Swan Mountains, Montana* (1996) (submitted as Ex. 118).

¹⁹⁴ Michael F. Proctor et al., *Effects of Roads and Motorized Human Access on Grizzly Bear Populations in British Columbia and Alberta, Canada*, 1 (2020) (Ex. 7).

¹⁹⁵ Ex. 6, Gibeau at 1.

¹⁹⁶ Wayne L. Wakkinen & Wayne F. Kasworm, *Grizzly Bear and Road Density Relationships in the Selkirk and Cabinet-Yaak Recovery Zones*, 25 (1997) (Ex. 8).

2. The Service Must Consider Cumulative Impacts of Weakened Protections for Grizzly Bear Habitat in the NCDE.

The Service must consider the 2026 Proposed Rule's impacts cumulatively with impacts on grizzly bears from rising road densities in the NCDE. For example, the Service must consider the Forest Service's dilution of road-management protections in its 2018 management plan for the Flathead National Forest. Indeed, the U.S. District Court for the District of Montana has twice found the Service's analysis of the 2018 Flathead Plan's impacts on grizzly bears unlawful.¹⁹⁷

Under the 2018 Flathead Plan, "roads do not count towards total motorized route density as long as they meet the definition of impassable."¹⁹⁸ In turn, the plan allows the Forest Service to deem a road "impassable" even if only the "first 50 to 300 feet" of the road "has been treated to make it inaccessible to wheeled motorized vehicles during the non-denning season," and the plan further provides that "natural vegetation growth, ... scarified ground, fallen trees, boulders, or culvert or bridge removal" can be sufficient to meet this criterion.¹⁹⁹ Unlike the provisions it replaced, the Plan contains no requirement to treat the remainder of the road through recontouring, placement of debris, or revegetation with shrubs or trees.

The Plan's exclusion of so-called "impassable" roads from open- and total-road-density calculations will significantly harm grizzly bears in the Flathead National Forest by increasing the potential for motorized trespass on roads that are ostensibly impassable; by allowing the Forest Service to omit barriered roads from total-road-density calculations; and by encouraging increased roadbuilding in grizzly-bear habitat.

First, motorized vehicles in the Flathead National Forest's grizzly habitat regularly bypass the same minimal barriers the Forest Plan now deems sufficient to

¹⁹⁷ See *WildEarth Guardians v. Steele*, 545 F. Supp. 3d 855 (D. Mont. 2021), *aff'd in relevant part, vacated in part on other grounds, remanded sub nom. Swan View Coal. v. Steele*, No. 22-35137, 2023 WL 3918686 (9th Cir. June 9, 2023); *Swan View Coal. v. Haaland*, No. CV 22-96-M-DLC, 2024 WL 3219206 (D. Mont. June 28, 2024).

¹⁹⁸ U.S. Forest Service, *Flathead National Forest Land Management Plan*, 199 (Nov. 2018) (Ex. 9).

¹⁹⁹ *Id.*

render roads “impassable.”²⁰⁰ Thus, while the plan permits the Forest Service to remove so-called “impassable” roads from calculations of both open and total road density, such roads may nevertheless still receive motorized use—thereby adversely impacting grizzly bears and degrading the quality of their habitat throughout the Flathead National Forest.

Second, the Plan’s abandonment of prior road-reclamation requirements is also incompatible with established grizzly-bear science showing that the existence of roads degrades grizzly habitat and displaces bears even without motor-vehicle use.²⁰¹ Thus, though they are now excluded from the Forest Service’s road-density calculations, roads closed only by limited entrance barriers will continue to exist on the landscape and continue to displace grizzly bears.

And finally, by artificially undercounting open and total road density, the Forest Service may now undertake new road building in the Flathead National Forest without technically violating its road-density limitations—construction that would further displace grizzly bears across an even broader landscape. New roadbuilding is aided by the reduction ESA resources required to exempt existing roads from road-density limitations under the Plan. Simply put, it will be easier to build a new road in grizzly bear habitat when the agency does not have to undertake costly and time-consuming reclamation of an existing road as an offset measure, as it did under its prior Forest Plan management regime. This change represents a stark departure from the prior Plan’s requirement to treat the entire length of a reclaimed road—and to wait for such treatment to take effect—before

²⁰⁰ See Keith Hammer, *Road Hunt: A Survey of Road Closure Effectiveness*, 11 (May 2023) (Ex. 10) (finding that only 53 percent of road-closure devices were effective at preventing motorized use in Flathead National Forest’s Swan Valley Geographic Area in the summer of 2022); Rebekah Griffin, *Case Closed: Motorized Trespass and Administrative Activity on Closed Roads in the Upper Swan, Lower Swan, and Noisy Face Geographic Units*, 5 (Dec. 2004) (Ex. 11) (finding that 160 of 256 surveyed roads “displayed evidence of motorized travel over, through, or around the closure,” including 73 of the “permanent” barriers that are endorsed by the plan); Ex. 2, Flathead BiOp at III-47 (finding an eight percent failure rate for barriers and gates inspected in the Flathead in 2020).

²⁰¹ See Ex. 3, Mace & Waller at 72–73 (documenting grizzlies’ “avoidance of high total road densities areas” even where “roads were closed to public travel”); Ex. 2, Flathead BiOp at III-55 (noting that “[g]rizzly bears ... learn to avoid the disturbance generated by roads and may not choose to use these habitats even long after road closures”); Ex. 4, Mace & Manley at 25 (“Apparently, grizzly bears adjust their habitat use patterns in part to both precise open road densities and precise total road densities. Unless a road has completely revegetated, managers should assume that some level of human use is occurring along closed roads, and grizzly bears will respond to that use.”)

such a road could be removed from total-road-density calculations to facilitate new road construction.

In short, the Service must consider the cumulative impacts of the Proposed Rule's impacts on grizzly bears by acknowledging and considering that the Flathead National Forest's new management plan allows the Forest Service to substantially increase on-the-ground road densities in grizzly bear habitat, despite the undisputed harms to grizzly bears from increased road densities. The Forest Service has already signaled its intention to take advantage of this change by advancing and finalizing new logging projects that will increase roadbuilding in grizzly habitat, without conducting the statutorily required environmental assessments to ensure that such roadbuilding and associated motorized use will not jeopardize the continued existence of grizzly bears in the NCDE. The Fish and Wildlife Service must consider this harm when reviewing the Proposed Rule's impacts on grizzly bears.

3. The Service Must Consider Cumulative Impacts of Insufficient Grizzly Bear Habitat Protections in National Forest Plans, and Accompanying ESA Analyses, Outside of the NCDE.

The Forest Service continues to try to weaken federal grizzly bear habitat protections by eliminating or undermining prior protections, including limitations on road densities, in grizzly bear habitat within national forests outside of the NCDE. In addition, the Fish and Wildlife Service has issued inadequate ESA analyses, in consultations covering Forest Service actions and forest plans outside of the NCDE, that fail to follow the best available science on secure habitat size and are otherwise fundamentally flawed. These agency actions are incompatible with the best available science (discussed above) demonstrating the importance of limiting open- and total-road densities and motorized use in grizzly bear habitat and documenting grizzly bears' need for unroaded "secure habitat" in minimum patches thousands of acres in size. As with the problems with plan for the Flathead National Forest discussed above, this continued trend of eroding and insufficient grizzly bear habitat protections threatens to degrade the few remaining areas providing for grizzly bear habitat or degrade habitat that is important for future grizzly bear connectivity, impeding or even reversing progress toward recovery.

To begin with, the U.S. District Court for the District of Montana recently vacated the open road density portions of the Forest Service's Programmatic Amendment 40 to the Bitterroot National Forest's management plan, which lifted the Forest's prior restrictions on open-road density.²⁰² Although the court vacated Amendment 40, both Amendment 40 and the Fish and Wildlife Service's BiOp for

²⁰² *Friends of the Bitterroot v. Burgum*, No. CV 24-169-M-DLC, Dkt. No. 51(D. Mont. July 14, 2026).

the amendment are emblematic of the agencies' repeated actions resulting in degraded grizzly bear habitat. But for the vacatur, the amendment would have eliminated a standard that required the Forest Service to manage open-road densities such that they did not exceed either one or two miles per square mile, depending on preexisting road conditions.²⁰³ By eliminating open-road density limitations, the amendment would have allowed the Forest Service to substantially degrade grizzly-bear habitat in the Bitterroot Ecosystem, which is vital for connectivity between the NCDE and the genetically isolated GYE.

In its 2025 Revised BiOp for this Bitterroot Plan amendment, the Fish and Wildlife Service used secure habitat as the sole means of measuring Amendment 40's impacts on grizzly bears.²⁰⁴ Yet the Fish and Wildlife Service artificially inflated calculations of secure habitat by counting as "secure habitat" unroaded areas as small as one acre in size—approximately .0015 square miles.²⁰⁵ The Service also artificially inflated secure habitat by including in "secure habitat" impassable roads, failing to meaningfully consider impacts on grizzly bears from these roads, and failing to meaningfully consider impacts from illegal motorized use in secure habitat.²⁰⁶ In other words, the habitat that the Service claimed was "secure" was not actually protective of grizzly bears and would have allowed the Forest Service to carve up the large areas of undisturbed habitat that grizzly bears need to recover and survive. The Service additionally refused to consider impacts from roads and motorized use outside of grizzly bear secure habitat, despite the best available science requiring consideration of both road densities and secure habitat.²⁰⁷

The District of Montana correctly rejected the Fish and Wildlife Service's approach, concluding that the one-acre patch size violated the ESA's best available science requirement and concluding that the other above-described problems rendered the BiOp arbitrary.²⁰⁸ In particular, the court concluded that the best available science (discussed above) "suggests that grizzly bears consistently require secure patches thousands of acres in size," far larger than the miniscule one acre used by the Service.²⁰⁹ In concluding that the Service's failure to meaningfully

²⁰³ See U.S. Forest Service, *Decision Notice: Programmatic Amendment for Elk Habitat, Old Growth, Snags and Course Woody Debris Objectives—Bitterroot Forest Plan*, 10 (Sept. 2023) (Ex. 12) (eliminating elk-habitat-effectiveness standard).

²⁰⁴ See *Friends of the Bitterroot*, 2026 WL 1660439, at *7.

²⁰⁵ *Id.*

²⁰⁶ See *id.* at *8.

²⁰⁷ See *id.* at *9.

²⁰⁸ *Id.* at *7–9.

²⁰⁹ *Id.* at *8.

consider illegal motorized use was arbitrary, the court also noted that the Revised BiOp recited boilerplate assertions that impacts to grizzly bears are “uncertain” and “unknown”—and noted that “[t]his Court has repeatedly rejected similar boilerplate explanations as insufficient under the ESA.”²¹⁰ The court also found the Service’s failure to consider increasing road densities outside of secure habitat to be especially concerning given that “road densities in the Bitterroot National Forest already exceed those generally deemed acceptable for grizzly bears.”²¹¹

This amendment to the Bitterroot National Forest’s plan was not the only time the Service has used wholly inadequate, small patch sizes to define “secure habitat.” For example, the Service used a ten-acre patch size to define “secure habitat” in the Custer-Gallatin National Forest, in the GYE—in the BiOps for both the Forest Plan and for the “South Plateau Landscape Area Treatment Project.”²¹² In fact, the ten-acre patch size has been used in the GYE since 2003, when it was apparently first included in the Interagency Grizzly Bear Conservation Strategy for the GYE.²¹³ The District of Montana correctly rejected the ten-acre patch size as contrary to the ESA’s best available science requirement, explaining that “[w]hile grizzly bears in different Ecosystems may have different habitat needs ..., the 10-acre patch size here remains untethered to any identified grizzly bear survival metric.”²¹⁴ As with the one-acre patch size used in conjunction with Amendment 40 to the Bitterroot National Forest plan, this ten-acre patch size also would have allowed the Forest Service to build roads carving up the large areas of undisturbed habitat that grizzly bears require.

The Service also used an insufficient ten-acre patch size in its BiOps for both the Beaverhead-Deerlodge National Forest plan and the “Greenhorn Vegetation Project” in the forest.²¹⁵ The District of Montana recently preliminarily enjoined implementation of the project, concluding that the plaintiffs were likely to succeed

²¹⁰ *Id.*; see also, e.g., *Swan View Coal. v. Haaland*, 2024 WL 3219206 at *11 (“This Court has squarely rejected the ‘boilerplate’ assertion that unauthorized motorized access is unpredictable and, therefore, its effects on grizzly bears are unknowable.”).

²¹¹ *Friends of the Bitterroot*, 2026 WL 1660439, at *9.

²¹² *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 811 F. Supp. 3d 1206, 1224–25 (2025).

²¹³ See *id.* at 1225–26.

²¹⁴ *Id.* at 1227; see also *id.* at 1228 (“In relying on a 10-acre patch size to define grizzly bear secure habitat in the absence of any scientific evidence showing that such acreage provides adequate habitat, the Fish and Wildlife Service’s failed to use the ‘best available science’ in violation of the ESA.”).

²¹⁵ See *All. for the Wild Rockies v. Carlton*, No. CV 25-49-M-KLD, 2026 WL 2150553, at *1, 4 (D. Mont. July 27, 2026).

on the merits of their claim that the ten-acre patch size violated the ESA’s best available science requirement.²¹⁶ In doing so, the court noted that the agencies were “apparently unable to provide a reference that details the science underpinning the 10-acre patch size.”²¹⁷

The Forest Service also weakened grizzly bear habitat protections when revising the land management plan for the Nez Perce-Clearwater National Forest. First, the Nez Perce-Clearwater Plan eliminates prior restrictions on road-miles accessible to public motorized use, which the Fish and Wildlife Service admits could “lead to the unintended fragmentation of secure habitat in both large and small blocks that are ... important for continued grizzly bear connectivity and movements.”²¹⁸ Second, as with the other Forest Service and the Fish and Wildlife Service actions and analyses discussed above, the Plan allows the Forest Service to degrade “secure habitat” throughout vast areas of the Forest by permitting the Forest Service to count roadless areas as small as ten acres in size—approximately .015 square miles—as “secure” grizzly bear habitat in contravention of best-available science.²¹⁹ These changes thus allow the Forest Service to remove and undermine road-management requirements that previously protected grizzly bear habitat in the Nez Perce-Clearwater National Forest.

In addition, as confirmed by the U.S. District Court for the District of Montana, the Fish and Wildlife Service violated the ESA by failing to rationally consider motorized trespass in calculations of road density and secure core habitat when examining impacts to grizzly bears from the forest plan for the Helena-Lewis and Clark National Forest.²²⁰

The Fish and Wildlife Service must account for the Forest Service’s insufficient and weakened grizzly bear habitat protections in forest plans throughout the Northern Rockies region, as well as the Fish and Wildlife Service’s own insufficient ESA analyses accompanying many of the Forest Service actions. Based on current trends, grizzly bears face increasing threats to their habitat from the Forest Service’s actions and the Fish and Wildlife Service’s analyses. Finalizing a 4(d) rule that further reduces restrictions on grizzly bear “take” would only add to the increasing threats grizzly bears face in this region and negatively impact grizzly conservation and recovery.

²¹⁶ *Id.* at *3–5, *8.

²¹⁷ *Id.* at *5.

²¹⁸ U.S. Dep’t of the Interior, U.S. Fish & Wildlife Serv., *Biological Opinion for the Nez Perce-Clearwater National Forests Land and Resource Management Plan*, 143 (Jan. 10, 2025) (submitted as Ex. 120).

²¹⁹ *Id.* at 121–22 (defining “secure habitat”).

²²⁰ *All. for the Wild Rockies v. Marten*, 685 F.Supp.3d 971, 984–87 (D. Mont. 2023).

4. The Service Must Consider Cumulative Impacts of Other Forest Service Management Practices that Increase Threats in Grizzly Bear Habitat.

Other recent Forest Service practices have similarly increased risks to grizzly bears and their habitat on national forest lands. In particular, the agency has increased its use of condition-based (or adaptive) management projects. This approach circumvents the environmental review framework by postponing site-specific analysis until the Forest Service implements the project, which effectively excludes the public from site-specific decisions, reduces transparency and informed decision making, and removes incentives for the agency to avoid harming resources.²²¹ This has occurred, for example, with the South Plateau Project immediately outside West Yellowstone and on the northwest border of Yellowstone National Park. The U.S. District Court for the District of Montana described the use of condition-based management for that project as follows:

[T]he Forest Service has identified areas as preliminarily suitable for treatment actions within the Project area without identifying the precise location and size of the treatment units or the location and configuration of associated roads. Rather, the Decision Notice and Final EA assess the potential maximum effects of possible treatments and outline several design features that future treatment activities must comply with before they may proceed.²²²

The court concluded that this condition-based approach resulted in the Fish and Wildlife Service, in its BiOp for the project, arbitrarily “fail[ing] to consider the potential impact to secure habitat if actual road placement differs in any way from the Forest Service’s projections.”²²³ The court explained that the “worst-case scenario here is *not* that the Project may have 56.8 total miles of temporary roads,

²²¹ See U.S. Dep’t of Agric., U.S. Forest Serv., *Condition-Based Management* (Jan. 2022) (submitted as Ex. 121); *N. Cascades Conserv. Council v. U.S. Forest Serv.*, 136 F.4th 816, 829 (9th Cir. 2025) (“Condition-based management involves developing proposed treatments based on pre-identified management requirements but deferring specific decisions about which treatments will be applied in particular locations until the Forest Service conducts pre-implementation field reviews.”).

²²² *Ctr. for Biological Diversity*, 811 F. Supp. 3d at 1214 (citations and internal punctuation omitted).

²²³ *Id.* at 1229. Instead of identifying the precise location of roads that would be built for the project, the Forest Service analyzed the “worst case scenario” of all roads being in existence at one time and mapping their probable location. *Id.* at 1216.

but that those temporary roads may be located in such a way as to eviscerate secure habitat”—and that the Fish and Wildlife Service’s “failure to consider that possibility is arbitrary and capricious.”²²⁴ Similarly, the court held that the Forest Service violated NEPA by failing to evaluate the effect on grizzly bear secure habitat from the precise location of project roads.²²⁵ Ultimately, the court vacated the project because the agencies’ errors “undermine the ability to use a condition-based management approach,” which was the “very foundation of the Project.”²²⁶

Also, the State of Montana and the U.S. Forest Service entered into a shared stewardship agreement in June 2025, which is meant to “increase[s] the pace and scale” of logging projects across Montana.²²⁷ The agreement requires implementation of a 200,000-acre (or more) project in northwest Montana in 2026, and numerous other projects over the next five years, ultimately reducing habitat for grizzly bears.²²⁸

5. The Service Must Consider Cumulative Impacts of Individual Projects that Will Degrade Grizzly Bear Habitat.

Beyond the forest plan actions and projects discussed above, the Forest Service is also advancing several individual projects that would allow for logging and mining in important grizzly bear habitat. These projects reflect a pattern by the federal government to reduce protections and degrade habitat for grizzly bears.

For example, in the Bitterroot Ecosystem, the Forest Service recently approved the “Bitterroot Front” project, a logging project across 143,345 acres of the Bitterroot National Forest.²²⁹ “The project area is contained within the Bitterroot Grizzly Bear Experimental Population Area and is adjacent to the Bitterroot Grizzly Bear Recovery Area. Grizzly bears may be present as transient individuals.”²³⁰ The project would allow for logging within roadless and old-growth

²²⁴ *Id.* at 1229.

²²⁵ *Id.* at 1217.

²²⁶ *Id.* at 1231.

²²⁷ *See Agreement for Shared Stewardship Between the State of Montana and the U.S. Department of Agriculture Forest Service*, 1 (June 2025) (submitted as Ex. 122).

²²⁸ *Id.* at 3–4.

²²⁹ U.S. Dep’t of Agric. Forest Serv., *Bitterroot Front Project Final Environmental Assessment*, 3 (May 2026) (submitted as Ex. 123).

²³⁰ *Id.* at 131.

forests.²³¹ Additionally, the project, which violates the ESA, would allow for road construction and the use of approximately 27 miles of temporary roads.²³²

The Forest Service has also approved or proposed several additional projects in the Bitterroot National Forest that could degrade habitat important to grizzly bear connectivity, as described in the attached declaration from Michele Dieterich.²³³ For example, in August 2025, the Forest Service approved the 2,376 acre “Soda Baker” project, which will include 1,998 acres of mechanical fuels thinning and will last up to ten years.²³⁴ The project area includes areas where grizzly bears may be present based on grizzly bear observations from 2012 to 2022—and would use approximately thirty-four miles of closed roads for treatment access.²³⁵ And in January 2023, the Forest Service approved the “Mud Creek” project, which encompasses 48,486 acres in the Bitterroot National Forest and would involve commercially logging 13,700 acres.²³⁶ Grizzly bears may be present in the project area, and the project will add 46.11 miles of roads.²³⁷

The Forest Service has also proposed to log 9,975 acres in the Lolo National Forest and Ninemile Demographic Connectivity Area.²³⁸ “The project was originally scoped in 2016 and a Decision Notice[] [was] signed by the Lolo Forest Supervisor in 2020.”²³⁹ In 2020, however, litigation commenced over the project.²⁴⁰ The U.S. District Court for the District of Montana found that the project violated the ESA and National Forest Management Act and remanded the decision notice back to the agency to “reinitiate[e] consultation relative to impacts on grizzly bears for both the

²³¹ *Id.* at 30, 32.

²³² *Id.* at 33; Ctr. for Biological Diversity et al., *Notice of Intent to Sue for Violations of the ESA Relating to the Bitterroot Front Project* (June 16, 2026) (submitted as Ex. 124).

²³³ Dieterich Decl., *Friends of the Bitterroot*, No. CV 24-169-M-DLC, Dkt. No. 39-1 (Feb. 5, 2026) (submitted as Ex. 125).

²³⁴ *Id.* ¶ 11.

²³⁵ *Id.*

²³⁶ *Id.* ¶ 13.

²³⁷ *Id.*

²³⁸ U.S. Dep’t of Agric. Forest Serv., *Soldier Butler Project Supplemental Environmental Assessment*, 1 (May 2025) (submitted as Ex. 126).

²³⁹ U.S. Forest Serv., *Soldier Butler Supplemental EA Comment Period Cover Letter* 1 (May 7, 2025) (submitted as Ex. 127).

²⁴⁰ *Id.*

Lolo Forest Plan and the Project.”²⁴¹ The Forest Service’s Supplemental Environmental Assessment fails to adequately assess the impacts of the project on grizzly bears.²⁴² The Forest Service has not yet announced a timeline for its final decision for this project.²⁴³

At the same time as the Forest Service eliminates road-density limitations and advances more harmful roadbuilding projects, courts have repeatedly concluded that the Forest Service—with the support of the Fish and Wildlife Service—is failing to adequately address impacts to grizzly bears. In November 2025, for example, the U.S. District Court for the District of Montana enjoined the “Knotty Pine” project, a logging project in the Kootenai National Forest, holding that the Fish and Wildlife Service’s BiOp for the project violated the ESA by failing to meaningfully consider impacts to grizzly bears from unauthorized motorized use on project roads—a problem that, as noted above, the court has repeatedly faulted the Fish and Wildlife Service for.²⁴⁴ In a separate proceeding, the same court similarly held that the Forest Service violated NEPA by failing to factor motorized trespass into road-density calculations when examining a logging project’s impacts to grizzly bears in the Kootenai National Forest—a decision that was affirmed by the Ninth Circuit, which held that the Forest Service failed to take a “hard look” at unauthorized road use.²⁴⁵

Further, in October 2025, the Forest Service approved Montanore Minerals Corporation’s “Libby Exploration Project,” a 16-year industrial mining project that would further harm important grizzly bear habitat in the Kootenai National

²⁴¹ *Id.*

²⁴² See Ex. 126, *Soldier Butler Project Supplemental Environmental Assessment*.

²⁴³ See U.S. Dep’t of Agric. Forest Serv., *Soldier-Butler Project*, <https://www.fs.usda.gov/r01/lolo/projects/50777> (last visited Aug. 3, 2026).

²⁴⁴ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, No. CV 22-91-M-DLC, 2025 WL 3268655 at *1, 9–10 (D. Mont. Nov. 24, 2025); see also *Friends of the Bitterroot*, 2026 WL 1660439, at *8 (noting that “[t]his Court has repeatedly rejected” “boilerplate explanations,” such as that impacts to grizzly bears from unauthorized motorized use are “uncertain” and “unknown,” “as insufficient under the ESA”).

²⁴⁵ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, No. CV 22-114-M-DWM, 2023 WL 5310633 (D. Mont. Aug. 17, 2023), *aff’d in part, rev’d in part*, *Ctr. for Biological Diversity v. Benson*, 2025 WL 586358 at *4 (9th Cir. 2025) (Ex. 13).

Forest.²⁴⁶ The project would disrupt 269 acres of grizzly bear core habitat.²⁴⁷ The forest plan standard for the relevant bear management unit requires core habitat to be greater than or equal to sixty percent of the total acres in the unit, and the Forest Service listed current conditions for core habitat at sixty percent—the lowest possible compliance percentage.²⁴⁸ The Forest Service’s biological assessment suffered from numerous flaws, including that, in calculating core habitat, the Forest Service failed to rationally consider the size of core habitat that grizzly bears require and failed to consider the impacts of unauthorized motorized use. In addition, the Forest Service failed to address the Montanore project’s effects on grizzly bear connectivity—even though the Cabinet population of grizzly bears is isolated and only precariously connected to the Yaak population to the north, and the 2024 SSA specifically identified the southeastern front of the Cabinet Mountains (not far from the project location) as an important and high-value connectivity pathway for Cabinet-Yaak grizzly bears to connect with other ecosystems, such as the NCDE.²⁴⁹

In addition, the proposed Sheep Creek mine would sit upstream of the Bitterroot River and has raised concerns about degradation of grizzly bear habitat.²⁵⁰ And in the GYE, the Forest Service is advancing the “Bear Palmer Forest Health Project,” which would result in 4,401 acres of commercial logging, including clear-cutting, and roadbuilding, on the north boundary of Yellowstone National Park near Jardine, Montana.²⁵¹

These projects are only a few examples that demonstrate federal agencies’ broader actions to reduce grizzly bear habitat connectivity and habitat quality, including the amount of secure-core habitat for grizzly bears. As each of these project areas become further degraded, it is less likely that grizzly bears will occupy the habitat in the future. As discussed above, rising road densities is a primary threat to grizzly bears. Grizzly bears require large areas of undisturbed habitat and habitat connectivity, and yet these latest proposals from the Forest Service reflect

²⁴⁶ See U.S. Forest Serv., *Decision Notice and Finding of No Significant Impact for the Libby Exploration Project*, 1 (Oct. 2025) (submitted as Ex. 128).

²⁴⁷ U.S. Forest Serv., Kootenai National Forest, *Biological Assessment of Federally Listed Terrestrial Wildlife Species for the Libby Exploration Project*, 56 (Dec. 2024) (submitted as Ex. 129).

²⁴⁸ *Id.* at 45, 61.

²⁴⁹ 2024 SSA at 56–57, 60, fig. 15, 193–194.

²⁵⁰ Mont. Pub. Radio, *Residents, lawmakers push back on proposed Ravalli County mine* (Dec. 9, 2025) (submitted as Ex. 130).

²⁵¹ U.S. Forest Serv., Bear Palmer, <https://www.fs.usda.gov/r01/custergallatin/projects/303884>.

exactly the opposite. As the Forest Service finalizes projects to degrade core grizzly bear habitat, it is of the utmost importance that the Fish and Wildlife Service consider this habitat degradation and fragmentation in finalizing its 4(d) rule.

D. Current State and Federal Regulatory Mechanisms are Inadequate to Protect Grizzly Bears.

Against this backdrop of continued and growing threats to grizzly bears, inadequate state regulatory mechanisms and compounding executive and administrative actions are also threatening grizzly bear recovery.²⁵² The Service may not authorize additional take exceptions without evaluating the sufficiency of current regulatory mechanisms, summarized here. And as discussed below, any final 4(d) rule should enhance regulatory mechanisms to ensure the grizzly bear's recovery.

As evidenced by their petitions to delist grizzly bear populations, Montana, Wyoming, and Idaho want to reduce protections for grizzly bears.²⁵³ The Northern Rockies states' delisting petitions and desire to take control of grizzly management are largely fueled by plans to allow legal trophy hunting. Montana, Wyoming, and Idaho have adopted state laws to allow for the killing and take of grizzly bears upon delisting.²⁵⁴

In its 2025 Proposed Rule, the Service properly recognized that the states currently lack adequate management frameworks to ensure mortality from legal hunting “is within sustainable thresholds independent of protections of the Act.”²⁵⁵ Specifically, the Service acknowledged that “[r]ecent legislation in Montana and Idaho expanding hunting and trapping tools available for wolves and black bears will likely increase incidental take of grizzly bears” and “measures to limit incidental take inside grizzly bear occupied range ... are minimal.”²⁵⁶ Further, such “[i]ncidental take of grizzly bears in these areas could reduce the potential for natural connectivity.”²⁵⁷ State management efforts, therefore, would be in contravention to the conservation measures the Service has deemed necessary and the best available science.

²⁵² See also *infra* Discussion Part VII.

²⁵³ 2024 SSA at 76.

²⁵⁴ See *infra* Discussion Part VII.A.

²⁵⁵ 2025 Proposed Rule, 90 Fed. Reg. at 4256.

²⁵⁶ *Id.* at 4255.

²⁵⁷ *Id.*

Further, recent federal actions are placing recovery and survival of grizzly bears at high risk.²⁵⁸ The Trump Administration is actively advancing a suite of regulatory changes that aim to undermine the framework for the Endangered Species Act.²⁵⁹ At the same time, the Forest Service is poised to repeal longstanding policies that have protected grizzly bear habitat for decades, while simultaneously fast-tracking logging projects that will carve up secure habitat for bears.²⁶⁰ And at the same time, the Administration is slashing the federal workforce and agency budgets that are key to grizzly bear recovery.²⁶¹

As Dr. Chris Servheen has observed,

[Policymakers] either need to keep grizzlies listed under the ESA forever while they push for the destruction of grizzly habitat, cut agency budgets and personnel and the destroy the laws that allowed us to recover them; *or* secure grizzly habitat, assure management agency funding and maintain our strong environmental laws before they try to delist them. They can have one or the other, but not both.²⁶²

Grizzly bears have not achieved durable recovery under the Service's existing regulatory framework.²⁶³ And despite the need for ongoing recovery mechanisms, each of these state and federal actions instead threaten substantial harm to grizzly bears by eliminating or bypassing habitat and mortality protections.

III. THE SERVICE MUST REVISE THE OUTDATED RECOVERY PLAN TO INFORM 4(D) PROTECTIONS.

If the Service wishes to modify its 4(d) management regulations for grizzly bears, it must first evaluate what is needed for complete grizzly bear recovery, documented in a revised recovery plan based on current scientific understanding. The Service authored its first recovery plan for grizzly bears in the lower-48 in 1982. In this first recovery plan, recovery efforts were primarily focused on three populations: grizzly bears in the Yellowstone, Northern Continental Divide, and

²⁵⁸ See *infra* Discussion Part VII.B.

²⁵⁹ See *id.*

²⁶⁰ See *id.*

²⁶¹ See *id.*

²⁶² Todd Wilkinson, *Broken Promises Could Derail Greater Yellowstone Grizzly Delisting*, *Yellowstonian* (Oct. 3, 2025) (quoting Chris Servheen) (submitted as Ex. 131).

²⁶³ See *generally* 2024 SSA.

Cabinet-Yaak Ecosystems. Admittedly, the 1982 Plan focused not on biology, but on practicalities of what could be achieved in those regions (stating that it was “impractical to assume that all six populations could be recovered”).²⁶⁴ The intent of the 1982 Plan was to provide a sequence of actions necessary for conservation and recovery the grizzly bear in selected areas of the lower-48.

The Service then updated its recovery plan for grizzly bears in the lower-48 states in 1993.²⁶⁵ The revisions included a broadening in the definition of priority areas with set recovery criteria. Recovery criteria include: a minimum number of females with cubs seen annually, distribution of family groups throughout the recovery zone, and a limit on human-caused mortality.²⁶⁶ While the revisions of the 1993 Recovery Plan expanded conservation efforts, it lacked a holistic, science-based vision for true biological recovery. The document has not been updated in over three decades, making the 1993 Recovery Plan not only outdated, but also scientifically flawed for lasting recovery efforts. As the Service considers changes to the grizzly bear 4(d) rule, it must first update its vision of grizzly bear recovery to match the best available science and then align management provisions with that recovery imperative.

The Service’s decades-old grizzly bear recovery plan omits strategies that focus on connectivity *between* recovery zones and only focuses on connectivity *within* each individual recovery zone, contrary to the best available science.²⁶⁷ Conservation organizations petitioned the Service to adopt science-based revisions to its outdated plan to include concrete measures necessary to promote a naturally connected metapopulation of grizzly bears in the Northern Rockies, supported by Dr. Chrisopher Servheen, former Grizzly Bear Coordinator of U.S. Fish and Wildlife Service and author of the original grizzly bear recovery plan.²⁶⁸ Instead of treating six ecosystems as “zoo” populations, the best available conservation biology demonstrates that lasting recovery depends on linkage between recovery areas for genetic diversity and long-term demographic resilience.

Dr. Servheen pointed out that the 1993 Plan focused on maintaining isolated populations which was reflective of the limited distribution and low abundance of grizzly bears during the early 1990’s. However, after three decades, science needs to be updated and treated as ‘dynamic’ data rather than ‘static’ data to reflect the importance of wholistic recovery instead of compartmentalized recovery for grizzly

²⁶⁴ U.S. Fish & Wildlife Serv., 1982 Grizzly Bear Recovery Plan, 2.

²⁶⁵ *See generally* U.S. Fish & Wildlife Serv., 1993 Grizzly Bear Recovery Plan.

²⁶⁶ *Id.* at ii.

²⁶⁷ *See* Ex. 1, Recovery Plan Petition.

²⁶⁸ *Id.*

bears. As he states, “the compartmentalized approach does not reflect the best available science applied to the Northern Rockies grizzly population as it exists today.”²⁶⁹

A comprehensive ‘metapopulation’ approach to grizzly conservation is essential to the species’ durable recovery in the Northern U.S. Rockies. Dr. Servheen explains that “metapopulation concept is well established as both a demographic and genetic approach in applied species conservation.”²⁷⁰ He states that:

[i]n a naturally functioning metapopulation, geographically dispersed breeding subpopulations interact and allow for species-level recovery across a large landscape. The naturally functioning metapopulation concept is particularly appropriate to the grizzly bear in the Northern U.S. Rockies because the historical relationship between grizzlies and humans resulted in gradual elimination of grizzlies from formerly contiguous habitats/populations and the creation of island populations of grizzlies in a sea of human activities.²⁷¹

In addition to the need for connected populations, the 1993 Recovery Plan must be updated to address the many threats that grizzly bears currently face, discussed above. Conservation Groups’ Petition highlights human-bear conflicts as a result of garbage, livestock, property damage, and Dr. Servheen’s Revisions suggest enhancing and expanding efforts to reduce human-bear conflict since they are virtually unaccounted for in the 1993 Recovery Plan.²⁷²

The 1993 Recovery Plan also incorporates inadequate and outdated recovery metrics for durable recovery in the Northern Rockies. The plan identified population and distribution targets for grizzly bears within individual recovery zones, but modern science shows that those are only two pieces of the puzzle for lasting recovery. While a ‘static’ population size is important, there must also be an emphasis on linkage zones that “facilitate the exchange of individuals and maintain demographic vigor and genetic diversity²⁷³.” The 1993 Recovery Plan lacks measurable standards for additional recovery factors such as demographic resilience, rates of connectivity, and occupancy rates within corridors. The 1993 Recovery Plan is not a reliable, relatable, or relevant document to measure durable recovery.

²⁶⁹ *Id.* at 18.

²⁷⁰ *Id.* at Ex. A at 7.

²⁷¹ *Id.*

²⁷² *See* Ex. 1, Recovery Plan Petition, Ex. A at 27–29.

²⁷³ *Id.* at 9.

Recovery Plan revisions are necessary to establish appropriate targets to improve the genetic diversity and demographic resiliency of the species, and ultimately to ensure its long-term survival in the face of current and growing threats. To heed the best available science, the Service must first adopt the revisions proposed in the December 2024 Recovery Plan Petition to guide its determination of management actions that are “necessary and advisable to provide for the conservation of” grizzlies in the Northern Rockies.²⁷⁴ The recommendations within the Petition and the proposed Revisions from Dr. Servheen should inform a new Recovery Plan, which must come before any final 4(d) rule.

IV. THE PROPOSED RULE UNLAWFULLY DEFERS CRUCIAL DETAILS TO UNDISCLOSED MOUS, CONSERVATION STRATEGIES, MANAGEMENT PLANS, AND TLAS.

The 2026 Proposed Rule violates the ESA and the Administrative Procedure Act (“APA”) by only seeking public comment on a general framework that lacks details to determine where, when, and how take of grizzly bears will be authorized. The 2026 Proposed Rule would allow states and the Service through private agreements to functionally rewrite the terms and content governing management of grizzly bears without transparency or opportunity for public comment. In other words, the actual regulatory action—the enactment of MOUs, TLAs, conservation strategies, and management plans—is deferred to a black box process at a later date, and therefore the public does not have adequate information to submit comments on these issues.

The APA requires federal agencies to provide “actual notice” of proposed rulemakings. The notice must include “either the terms or substance of the proposed rule or a description of the subjects and issues involved.”²⁷⁵ The agency’s “notice of the Proposed Rule must include sufficient detail on its content and basis in law and evidence to allow for meaningful and informed comment.”²⁷⁶ The agency’s duty to provide adequate notice includes “identify[ing] and mak[ing] available technical studies and data that it has employed in reaching the decisions to propose particular rules.”²⁷⁷ “An agency commits serious procedural error when it

²⁷⁴ 16 U.S.C. § 1533(d).

²⁷⁵ 5 U.S.C. § 553(b)(3).

²⁷⁶ *Cal. by and through Becerra v. U.S. Dep’t of the Interior*, 381 F. Supp. 3d 1153, 1173 (N.D. Cal. 2019) (quoting *Am. Med. Ass’n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995)).

²⁷⁷ *Kern Cnty. Farm Bureau v. Allen*, 450 F.3d 1072, 1076 (9th Cir. 2006) (citing *Solite Corp. v. U.S. Env’t Prot. Agency*, 952 F.2d 473, 484 (D.C. Cir. 1991)).

fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.”²⁷⁸

After the required notice is provided, the APA requires agencies to provide for an opportunity for meaningful public comment. Specifically, “the agency shall give interested persons an opportunity to participate in the rule making through the submission of written data, views, or arguments.”²⁷⁹ “It is a fundamental tenet of the APA that the public must be given some indication of what the agency proposes to do so that it might offer meaningful comment thereon.”²⁸⁰

Here, the Service violated the APA, and therefore also the ESA, by failing to provide the public with the operative documents authorizing take of grizzly bears in its notice of the 2026 Proposed Rule. First, the public cannot meaningfully comment on the proposed rule and whether state management is adequate without access to the MOUs and TLA that will govern state management. Second, the proposed rule is vague and does not specify which conservation strategies or management plans will be used to determine key details, including demographic objectives and mortality thresholds. Third, the proposed rule fails to account for whether or how the conservation strategies and management plans can be enforced. Fourth, the proposed rule does not specify a process for amending existing conservation strategies before or following a final 4(d) rule. And finally, the proposed rule lacks other important details, including the geographic boundaries for Tier 1 and Tier 2 areas and details on the Service’s enforcement mechanisms if state management leads to excessive take of grizzly bears.

The 2026 Proposed Rule would establish a tiered management framework authorizing differing levels of take.²⁸¹ The entire tiered approach hinges on MOUs with associated conservation strategies.²⁸² Similarly, the framework for certain deterrence and incidental take associated with the trapping of other species is prescribed by TLAs.²⁸³ And yet, commenters do not have access to the MOUs or TLAs and it is unclear whether or when drafts may be available for public comment.²⁸⁴ As of this date, they are not. The proposed rule fails to articulate any standards for the Service’s approval and renewal of MOUs. There are no details in the proposed rule outlining minimum standards for the MOUs and TLAs. This

²⁷⁸ *Id.*

²⁷⁹ 5 U.S.C. § 553(c).

²⁸⁰ *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1486 (9th Cir. 1992).

²⁸¹ *See* 2026 Proposed Rule, 91 Fed. Reg. at 44796–97.

²⁸² *See, e.g., id.* at 44796

²⁸³ *See id.* at 44796.

²⁸⁴ *See id.* at 44789.

leaves the public with only a skeletal framework, and none of the details, to fully engage during this public comment process.

In addition to the proposal's secrecy around MOUs and TLAs, the proposed rule relies heavily on references to undefined "conservation strateg[ies]" and "management plans."²⁸⁵ The conservation strategy and management plans, for example, will determine which tiered status applies to a particular geographic area,²⁸⁶ and will define the mortality thresholds that could authorize the Service to revoke Tier 2 status.²⁸⁷ But the proposed rule does not specify which conservation strategies or management plans apply. Rather, the proposed rule only includes vague definitions of "Management Plan" and "Conservation Strategy."²⁸⁸ Presumably, the Service intended to refer to the existing conservation strategies for the GYE²⁸⁹ and the NCDE²⁹⁰. But without adequate notice that these are in fact the conservation strategies contemplated by the Service in proposing this regulatory action, the public cannot fully engage in this comment process. Additionally, it is not clear whether these conservation strategies and management plans have been or will be updated to allow for adequate management under the proposed rule's framework. For example, Idaho's Grizzly Bear Management Plan is sorely outdated and not based on the best available science. The Service must revise existing conservation strategies and management plans to incorporate the best available science.

Further, the proposed rule fails to establish any parameters for enforcing conservation strategies and management plans. And as interagency documents, it is

²⁸⁵ See *id.* at 44794, 44796–97.

²⁸⁶ *Id.* at 44795–96.

²⁸⁷ *Id.* at 44797.

²⁸⁸ See *supra* Discussion Part I; 2026 Proposed Rule, 91 Fed. Reg. at 44794 (defining "Conservation Strategy" as "an interagency document detailing the habitat and population management mechanisms that will achieve and maintain demographic and habitat objectives"); *id.* (defining "Management Plan" as "a document developed by a Federal, State, or Tribal wildlife management agency detailing their agency's grizzly bear management program that will support the long-term viability of the species").

²⁸⁹ Interagency Grizzly Bear Study Team, *2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem* 1 (2016), <https://myfwp.mt.gov/getRepositoryFile?objectID=93283> [hereinafter 2016 GYE Conservation Strategy].

²⁹⁰ Interagency Grizzly Bear Study Team, *Conservation Strategy for the Grizzly Bear in the Northern Continental Divide Ecosystem* (2019), <https://myfwp.mt.gov/getRepositoryFile?objectID=93282> [hereinafter 2019 NCDE Conservation Strategy].

entirely unclear which agency—if any—would be responsible for enforcing the demographic and mortality criteria in the context of a final 4(d) rule.

It is also unclear whether the current conservation strategies will be amended before or following a final 4(d) rule. Historically, conservation strategies have been inconsistently noticed for public comment.²⁹¹ As a result, there is a potential scenario where the conservation strategies could be amended following a finalized 4(d) rule to significantly reduce mortality thresholds or female-with-young occupancy standards, thus allowing for the increased take of grizzly bears under the proposed rule. This is a significant loophole in the Service's proposed rule that demands more public scrutiny.

Finally, the proposed rule lacks other crucial details, including: the geographic boundaries for Tier 1 and Tier 2 areas; draft management plans; terms and conditions for take; and details on the Service's enforcement mechanisms if state management leads to excessive take of grizzly bears. The absence of this information is in direct contravention to the APA standards for a proposed rule. Even as a threshold matter, the public cannot comment on which geographic areas are in Tier 1 and Tier 2 respectively. But maps defining the geographic scope of the tiered management framework are not available. Instead, the proposed rule only suggests that completed TLAs, MOUs, and maps of the geographic areas assigned to Tiers 1 and 2 “would be available” on the Service's website.²⁹²

In sum, the proposed rule violates the APA and the ESA by withholding the operative documents and information that will determine the authorized take of grizzly bears. Before finalizing a rule, the Service must publish a revised notice and opportunity for public comment with key details, including, at minimum: geographic boundaries for Tiers 1 and 2; standards for conservation strategies, including demographic objectives, mortality thresholds, and female-with-young occupancy standards; standards for revising conservation strategies; standards for the Service's approval and renewal of MOUs and TLAs; the terms and conditions for take; and enforcement criteria for MOUs, TLAs, conservation strategies, and management plans.

V. THE PROPOSED RULE IS NOT “NECESSARY AND ADVISABLE” FOR CONSERVATION.

The Service has failed to demonstrate that the 2026 Proposed Rule provisions are “necessary and advisable to provide for the conservation of” grizzly bears in the lower-48 states. The “necessary and advisable” standard grants the agency significant flexibility to tailor species-specific protections, but that discretion is

²⁹¹ *See, e.g., id.* at 12.

²⁹² 2026 Proposed Rule, 91 Fed. Reg. at 44789.

constrained by the statutory definition of “conservation” in 16 U.S.C. § 1532(3), which requires that regulations be directed toward bringing the species to the point where ESA protections are no longer needed. Federal courts have confirmed statutory constraints on the Service’s discretion in developing 4(d) regulations. The agency must demonstrate that any exceptions from take prohibits serve a conservation purpose.²⁹³ Further, a 4(d) rule that permits regulated taking of a threatened species without a finding that population pressures cannot otherwise be relieved does not satisfy the statutory definition of “conservation” and therefore cannot be “necessary and advisable.”²⁹⁴ The Service must make a “necessary and advisable” determination for each prohibition or exception.²⁹⁵

Even under the current 4(d) rule, the grizzly bear faces threats to its survival and recovery.²⁹⁶ Under these circumstances, the Service cannot demonstrate that increased mortality, displacement, capture, relocation, and incidental take, particularly in connectivity areas, under the 2026 Proposed Rule, advances long-term grizzly bear recovery. As discussed below, any 4(d) rule must provide for adequate transparency and public review, assurances against excessive take, and enhanced regulatory mechanisms to ensure the grizzly bear’s recovery.

A. Current Conservation Strategies Are Inadequate to Define and Sustain Recovery.

The 2026 Proposed Rule improperly relies on inadequate conservation strategies to serve as a backstop to prevent excessive take of grizzly bears. The proposed rule defines “Conservation Strategy” as “an interagency document detailing the habitat and population management mechanisms that will achieve and maintain demographic and habitat objectives.”²⁹⁷ The rule, however, egregiously omits any specific references to the conservation strategies the Service plans to rely on under its 4(d) management framework. In addition to the process issues, the existing conservation strategies for the GYE and NCDE are flawed. And the public has not yet had the opportunity to fully review the proposed conservation strategy for the CYE and SE.

²⁹³ *Sierra Club v. Clark*, 755 F.2d 608, 613–15 (8th Cir. 1985).

²⁹⁴ *Id.*

²⁹⁵ *Kan. Nat. Res. Coal. v. U.S. Fish & Wildlife Serv.*, 780 F. Supp. 3d 650, 655 (W.D. Tex. 2025); *see also Ctr. for Biological Diversity v. Burgum*, 807 F. Supp. 3d 1234, 1263–64 (D. Or. 2025), *appeal dismissed sub nom. Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, No. 26-718, 2026 WL 961946 (9th Cir. Mar. 4, 2026) (applying “necessary and advisable” standard to each exception).

²⁹⁶ *See supra*, Discussion Section II.

²⁹⁷ *Id.* at 44794.

1. The proposed rule fails to establish a process guaranteeing public input on revised conservation strategies.

The 2026 Proposed Rule's reliance on conservation strategies is unlawful and inadequate because it fails to identify which strategies will govern tier designations, explain how those strategies may be revised, or guarantee meaningful public participation before they determine the scope of grizzly bear take.

The framework for the proposed revised 4(d) rule requires conservation strategies to be finalized to determine whether a geographic area is managed by Tier 1 or Tier 2. Despite underpinning the entire structure for the tiered management approach, the proposed rule does not prescribe baseline requirements or processes for conservation strategies. At least three fundamental issues are unclear from the text of the proposed rule: (1) which conservation strategies apply; (2) whether conservation strategies will be updated or revised before or after the 4(d) rule is finalized; and (3) whether the process for updating or revising conservation strategies will allow for public comment.

First, the proposed rule does not clearly define which conservation strategies are at issue. It appears, but is not entirely clear, that the definition of "Conservation Strategy" in the proposal would capture existing conservation strategies for the Greater Yellowstone Ecosystem ("GYE") and Northern Continental Divide Ecosystem ("NCDE") because they are "interagency document[s] detailing the habitat and population management mechanisms."²⁹⁸ But this definition does not *necessarily* reference existing strategies. By not clearly articulating which conservation strategies apply under the proposed management regime, the Service has failed to provide the public with sufficient notice to comment on the proposed rule.²⁹⁹

Second, the proposed rule does not detail any process for updating, revising, or enacting conservation strategies. Notably, conservation strategies are not defined in the text of the Act nor its regulations. Rather, grizzly bear conservation strategies were developed in accordance with the Recovery Plan's directive that such strategies should be developed for each ecosystem before delisting in accordance with post-delisting monitoring requirements under Section 4(g) of the Act. The Service's reliance on conservation strategies in this proposed rule, therefore, is yet another signal of how this proposal, in practice, is a backdoor

²⁹⁸ See 2026 Proposed Rule, 91 Fed. Reg. at 44794; *see generally* 2016 GYE Conservation Strategy; 2019 NCDE Conservation Strategy.

²⁹⁹ See *supra* Discussion Part IV.

delisting effort.³⁰⁰ In finalizing the proposed rule, the Service should articulate clear standards for the adoption and revision of conservation strategies to ensure consistency across ecosystems and meaningful notice for the public.

And finally, the proposed rule fails to establish requirements for public comment on conservation strategies in any revision or adoption process. The existing conservation strategies offered inconsistent levels of public comment. The GYE conservation strategy allows for some level of public engagement. The conservation strategy “will be evaluated by the management agencies every five years, allowing public comment in the updating process.”³⁰¹ In contrast “[t]he NCDE Grizzly Bear Conservation Strategy is not a decision document that requires public review and input.”³⁰² Given these inconsistencies for existing conservation strategies, the Service should allow for public comment periods on the substance of any conservation strategy contemplated by the proposed rule before finalizing a 4(d) management plan.

2. Existing conservation strategies for the GYE and NCDE are inadequate to ensure grizzly bear recovery under the proposed rule.

Even setting aside the significant procedural concerns, and assuming existing conservation strategies would apply under the proposed rule, those strategies raise significant substantive concerns. Existing conservation strategies need to be updated to reflect the best available science and cannot support weakened take protections as contemplated by the 2026 Proposed Rule.

The GYE Conservation Strategy “was developed to be the document guiding management and monitoring of the GYE grizzly bear population and its habitat upon recovery and delisting.”³⁰³ The purpose of the conservation strategy is to: (1) “describe and summarize the coordinated efforts to manage the grizzly bear population and its habitat to ensure continued conservation in the GYE”; (2) “specify the population, habitat, and conflict bear standards to maintain a recovered grizzly bear population for the foreseeable future”; (3) “document the regulatory mechanisms and legal authorities, policies, management, and monitoring programs that exist to maintain the recovered grizzly bear population”; and (4) “document the commitment[s] of the participating agencies.”³⁰⁴

³⁰⁰ *See id.*

³⁰¹ 2016 GYE Conservation Strategy at 2.

³⁰² 2019 NCDE Conservation Strategy at 12.

³⁰³ 2016 GYE Conservation Strategy at 1.

³⁰⁴ *Id.* at 2.

The GYE Conservation Strategy is flawed for several reasons. First, it fails to meaningfully consider key issues including connectivity; preventing conflicts between grizzly bears and hunters; monitoring if mortality limits are exceeded; and monitoring for violation of habitat standards.³⁰⁵ Further, the mortality limits in the GYE Conservation Strategy are too liberal to support the recovery of the species.³⁰⁶ The Conservation Strategy also fails to ensure adequate habitat standards. In fact, the GYE Conservation Strategy relies on a ten-acre patch size for secure habitat—a standard that courts have found to be inadequate to protect grizzly bears.³⁰⁷ In sum, the GYE Conservation Strategy does not include protective provisions to support grizzly bear recovery.

In 2019, the IGBC finalized a conservation strategy for the NCDE.³⁰⁸ This strategy, too, is insufficient to promote the recovery of grizzly bears. First, the population modeling is flawed. The NCDE Conservation Strategy currently estimates the grizzly bear population as above its population objective, based on modeling taken nearly fifteen years ago, raising serious questions about accuracy.³⁰⁹ And this outdated and inaccurate population estimate has serious consequences. For example, it could allow active management to decrease the population, compounding significant concerns about allowances for intentional take if federal regulatory mechanisms to protect grizzly bears are weakened.³¹⁰ The NCDE Conservation Strategy's population monitoring and review provisions are also insufficient.³¹¹

³⁰⁵ See generally Sierra Club Comments on Draft 2016 Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Ecosystem (May 16, 2016) (submitted as Ex. 132).

³⁰⁶ *Id.* at 8–10.

³⁰⁷ See, e.g., *Ctr. for Biological Diversity v. U.S. Forest Serv.*, No. CV 23-110-M-DWM, 2025 WL 3549515, at *13 (D. Mont. Dec. 11, 2025).

³⁰⁸ See generally 2019 NCDE Conservation Strategy.

³⁰⁹ *Id.* at 35.

³¹⁰ See generally *Ctr. for Biological Diversity Comments on NCDE Grizzly Bear Demographic Objectives* (Oct. 25, 2018) (submitted as Ex. 133); *Sierra Club Comments on Grizzly Bear Demographic Objectives for the NCDE* (Oct. 26, 2018) (submitted as Ex. 134); *The Humane Soc'y of the U.S. Comments on Grizzly Bear Demographic Objectives for the NCDE* (Oct. 26, 2018) (submitted as Ex. 135); *Swan View Coal. Comments on NCDE Conservation Strategy* (July 30, 2013) (submitted as Ex. 136).

³¹¹ Ex. 136, *Swan View Coal. Comments on NCDE Conservation Strategy* at 19–20.

The NCDE Conservation Strategy fails to consider population in the context of natural connectivity. Regardless of the current population size, grizzly bears in the NCDE have not expanded to connect with other grizzly bears in the lower-48 states. This connectivity is critical for grizzly bear recovery.³¹² Further, the Conservation Strategy generally limits demographic objectives to grizzly bears occupying the Demographic Monitoring Area (“DMA”), without establishing protection for grizzly bears living outside of the DMA. This too raises serious concerns about management removals and hunting of grizzly bears.

Finally, the NCDE Conservation Strategy failed to contemplate anthropogenic impacts on grizzly bears. For example, it failed to assess the impacts of road density and motorized use on grizzly bears in establishing habitat security criteria.³¹³ The Conservation Strategy also fails to establish sufficient hunting, trapping, and other intentional mortality controls.³¹⁴ Finally, the NCDE Conservation Strategy fails to grapple with the impacts of climate change on grizzly bears.³¹⁵ Ultimately, the NCDE Conservation Strategy is inadequate to sustain grizzly bear recovery.

3. The proposed rule does not contemplate a process for ecosystems without a conservation strategy.

The 2026 Proposed Rule is also deficient because it does not articulate a procedure for developing conservation strategies in other ecosystems, nor how the Service will review and engage the public with new strategies within the framework of a 4(d) management plan.

This deficiency is illustrated by recent events. The Interagency Grizzly Bear Committee only recently—within days of this proposed rule being published in the Federal Register—announced a thirty-day opportunity to provide public comment on a draft conservation strategy for the Selkirk-Cabinet Yaak.³¹⁶ The announcement for the proposed strategy noted that “[u]ltimately, the states of Idaho, Montana, and Washington will have a Tri-State Memorandum of Agreement describing the individual agency commitments for implementation of demographic

³¹² See *id.* at 14–15.

³¹³ See *id.* at 5–6.

³¹⁴ *Id.* at 21–24.

³¹⁵ *Id.* at 25.

³¹⁶ *Selkirk-Cabinet Yaak Grizzly Bear Conservation Strategy – Draft* (July 2026), <https://igbconline.org/wp-content/uploads/2026/07/202607-SCY-Conservation-Strategy.pdf>.

objectives and criteria, conflicting management, and monitoring.”³¹⁷ The overlapping comment period with the proposed rule raises questions about whether the Interagency Grizzly Bear Committee is rushing to advance a strategy before the Service finalizes a 4(d) rule.

Ultimately, the Service’s final rule must specify the application of the conservation strategies in each ecosystem in each tier, including how mortality thresholds will be managed and enforced inside and outside the demographic monitoring areas in each ecosystem. In any revision or new adoptions of conservation strategies, the Service must require conservation strategies to rely on the best available science.

B. The Proposed Rule Could Allow Unlimited Mortality in Crucial Connectivity Corridors and Other Important Habitat Outside of the Current Areas of Demographic Monitoring.

The Service fails to explain how the 2026 Proposed Rule’s likely allowance of unlimited grizzly bear mortality in connectivity corridors and other important habitat are “necessary and advisable” for grizzly bear recovery under ESA section 4(d).³¹⁸ Nor could the Service provide such an explanation. Instead of providing mechanisms to promote connectivity between ecosystems to ensure grizzly bear recovery, as the Service must do, the 2026 Proposed Rule’s likely allowance of unlimited mortality in important connectivity pathways and other important habitat would have devastating effects on the ability of grizzly bears to ever effectively connect between the ecosystems and repopulate the unoccupied recovery areas that are vital to grizzly bear survival and recovery.

As discussed above, two grizzly bear recovery areas (the Bitterroot and North Cascades Ecosystems) remain unoccupied and most other sub-populations—in particular, small or isolated populations in the Cabinet-Yaak, Selkirk, and Greater Yellowstone Ecosystems—still experience insufficient population sizes and genetic exchange to maintain long-term viability. Natural connectivity to the Cabinet-Yaak, Selkirk, and Greater Yellowstone Ecosystems—and to repopulate the Bitterroot and North Cascades Ecosystems—is crucial for the genetic diversity and viability of grizzly bears overall and in these ecosystems. Instead of fostering connectivity, the Service’s 2026 Proposed Rule could allow unlimited grizzly bear mortality in important connectivity corridors and other important habitat outside of the areas where demographic recovery criteria are currently monitored—thus forever foreclosing the possibility of natural connectivity.

³¹⁷ Interagency Grizzly Bear Committee, *Feedback Opportunity Due 8/24: Draft Selkirk - Cabinet Yaak Conservation Strategy* (July 22, 2026), <https://igbconline.org/selkirk-cabinet-yaak-draft-conservation-strategy-feedback-opportunity/>.

³¹⁸ 16 U.S.C. § 1533(d).

The Service has recognized that natural connectivity is critically important to the genetic diversity and viability of grizzly bears, particularly in fragmented habitats.³¹⁹ Grizzly bears are less resilient if they live in isolated populations that cannot be recolonized by a neighboring population.³²⁰ Genetic exchange is also essential for the species' long-term survival.³²¹ The Service has recognized that “grizzly bears in the lower-48 States need multiple, resilient ecosystems distributed across a broad range in order to be redundant and withstand catastrophic events. Additionally, grizzly bears in the lower-48 States need genetic and ecological diversity to preserve variation and the ability to adapt to changing conditions.”³²² Although grizzly bears in the NCDE have high genetic diversity, grizzly bears in the CYE have low genetic diversity, and grizzlies in the GYE and SE have moderate genetic diversity.³²³

The Service's 2026 Proposed Rule irrationally fails even to mention connectivity, much less grapple with the devastating effects that the proposed new Tiers 1 and 2 could have on grizzly bear connectivity between ecosystems. The Proposed Rule's tiered management structure risks allowing mortality to accumulate in areas important for grizzly bear connectivity, range expansion, recolonization, and recovery of smaller or extirpated ecosystems.

The Proposed Rule requires that mortality thresholds for Tier 1 and Tier 2 areas be established through “conservation strategies.”³²⁴ As discussed above, the new Proposed Rule leaves critical details to future TLAs and MOUs, including geographic boundaries for the Tier 1 and Tier 2 areas and the details and standards for conservation strategies that apply in specific areas with Tier 1 and 2 status, including mortality thresholds. In particular, it is unclear under the Proposed Rule what (if any) mortality thresholds would apply in areas with Tier 1 or 2 status outside the current recovery zones, including in important connectivity areas and other important habitat outside of the areas where demographic recovery criteria are currently monitored. Without these details, it is impossible to determine the full extent of the proposal's possible impacts on grizzly bear connectivity.

³¹⁹ 2024 SSA at 184–85.

³²⁰ *Id.*

³²¹ *Id.*; see also *Crow Indian Tribe II*, 965 F.3d at 680 (concluding that adequate measures to ensure long-term genetic health are necessary).

³²² 2024 SSA at 7.

³²³ *Id.* at 13.

³²⁴ 2026 Proposed Rule, 91 Fed. Reg. at 44794 (proposed 50 C.F.R. § 17.40(b)(1)'s definitions of “conservation strategy” and “mortality threshold”).

Further, the states have long downplayed the importance of natural connectivity and recovery areas (see Montana’s, Idaho’s, and Wyoming’s petitions for delisting). Thus, it is unlikely that any Tier 1 and 2 designations would properly identify or protect all important connectivity pathways, including through enforceable mortality thresholds in those areas.

To the extent that important connectivity pathways would have Tier 1 or 2 status but not have mortality thresholds established through the best available science, this approach could have devastating impacts on these pathways. This could happen if, for example, “conservation strategies” under the Proposed Rule are synonymous with the current conservation strategies for each ecosystem and if mortality thresholds would continue to only apply in the current recovery zones and areas where demographic recovery criteria are currently monitored (including the DMAs for the GYE and NCDE³²⁵—but Tier 1 or 2 boundaries extended beyond these areas with mortality thresholds. There is no doubt that grizzly bears reside beyond the current recovery zones and areas where demographic monitoring occurs. The Service’s current estimated “occupied range” for grizzly bears extends beyond the recovery zones and areas of demographic monitoring,³²⁶ and even that estimated “occupied range” fails to account for many areas that are actually occupied by grizzly bears (*i.e.*, all areas of verified grizzly bear observations).³²⁷ Further, the potential connectivity pathways for grizzly bears extend beyond the recovery zones and areas with demographic monitoring.³²⁸ In other words, demographic monitoring and mortality thresholds do not currently apply across all of grizzly bears’ current range and potential important connectivity pathways. And the Service’s Proposed Rule would apparently allow unlimited take of grizzly bears in areas where mortality thresholds do not apply, which could include many areas where grizzly bears currently reside and in important connectivity areas.

³²⁵ The SSA explains that the “DMA is the area in which the population is annually surveyed for and estimated for the GYE and within which the mortality limits apply for the GYE and NCDE”—and that “[f]or the other ecosystems, the mortality limits in the Recovery Plan apply within a 10-mile buffer around the recovery zone.” 2024 SSA at 56.

³²⁶ See *id.* at 62, Fig. 17 (map of recovery zones, DMAs, and estimated range).

³²⁷ See *id.* at 189, Fig. 31 (map of estimated range and “verified grizzly bear outlier observations between the ecosystems”).

³²⁸ Compare *id.* at 60, Fig. 15 (map of predicted female grizzly bear connectivity pathways) with *id.* at 62, Fig. 17 (map of recovery zones, DMAs, and estimated range). Connectivity was one of several factors considered in defining the NCDE DMA boundary, *id.* at 56, but important connectivity pathways border and extend beyond the NCDE DMA boundary, as shown by the two maps cited in this footnote.

In particular, outside of areas with mortality thresholds, the proposed Tier 2 would apparently allow unlimited management-related take and “incidental take” under applicable Federal, State, or Tribal laws and regulations.³²⁹ Likewise, outside of areas with mortality thresholds, the proposed Tier 1 would allow unlimited “incidental take” associated with trapping of other species under applicable Federal, State, or Tribal law and regulations.³³⁰ Thus, for the take allowed under each of these tiers in areas with no mortality thresholds (which could correspond to important connectivity pathways, including areas outside of recovery zones and areas outside of where demographic monitoring currently occurs), there would apparently be no cap on total mortality, incidental mortality, management removals, or cumulative mortality.

To make matters worse, the Proposed Rule contains insufficient checks for revoking states’ Tier 1 and Tier 2 status if excessive take occurs in connectivity areas. The Proposed Rule provides the Service “may revoke” Tier 1 status if “substantial grizzly bear mortality associated with incidental take or management actions occurs in areas within the occupied range but where specific mortality thresholds do not exist.”³³¹ But the proposal does not define “substantial,” establish prospective limits for connectivity areas, or ensure that take stops before population-level harm occurs in connectivity areas. Further, as noted above, the Service’s “occupied range” fails to account for many areas that are actually occupied by grizzly bears or where they reside (*i.e.*, all areas of verified grizzly bear observations)³³²—meaning that the option to revoke Tier 1 status would not apply in all areas where grizzly bears actually reside and where no specific mortality thresholds exist. In addition, removal of Tier 1 status is at the Service’s discretion rather than automatic, given that the Service “may revoke” Tier 1 status. The Service could fail to exercise that discretion even with excessive take is occurring in important connectivity areas. The Proposed Rule also allows the Service to revoke Tier 1 status if changes to laws, rules, regulations, or management plans or practices “depart significantly from objectives detailed in a conservation

³²⁹ 2026 Proposed Rule, 91 Fed. Reg. at 44797 (proposed 50 C.F.R. § 17.40(b)(3)(xiv)(D)).

³³⁰ *Id.* at 44796 (proposed 50 C.F.R. § 17.40(b)(3)(xiv)(C)).

³³¹ *Id.* at 44797 (proposed 50 C.F.R. § 17.40(b)(3)(xiv)(C)(4)(b)).

³³² *See* 2024 SSA at 189, Fig. 31 (map of estimated range and “verified grizzly bear outlier observations between the ecosystems”). The Proposed Rule’s definition of “occupied range” states that occupied range “does not include occasional forays outside the estimated range or low-density peripheral areas and therefore does not represent the total known extent of occurrences.” 2026 Proposed Rule, 91 Fed. Reg. at 44794–95 (proposed 50 C.F.R. § 17.40(b)(1)’s definition of “occupied range”).

strategy.”³³³ On its face, however, this provision would not apply to connectivity areas not covered in a conservation strategy. Further, the proposal does not define “depart significantly,” and this option to revoke Tier 1 status is also at the Service’s discretion.

Glaringly, putting aside the above problems with the relevant Tier 1 revocation language, the Proposed Rule contains no similar ability for the Service to revoke Tier 2 status when “substantial grizzly bear mortality associated with incidental take or management actions occurs in areas within the occupied range but where specific mortality thresholds do not exist.” Instead, the Proposed Rule only allows the Service to revoke Tier 2 designations if populations fall below certain demographic objectives and certain mortality thresholds—and if changes in laws, rules, regulations, or management plans or practices (or other circumstances) “depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy.”³³⁴ These provisions would apparently not allow the Service to withdraw Tier 2 status for connectivity areas with no mortality thresholds or demographic objectives. And as with Tier 1 revocation, Tier 2 revocation is only at the Service’s discretion, rather than automatic.

Finally, the proposed regulatory language allowing the Service to “initiate a review” of states’ Tier 1 or 2 status is also ineffective to prevent excessive take in important connectivity corridors.³³⁵ Under this language, the Service “will” initiate a review—which “may result” in the Service revoking tier status—if states fail to meet the conditions for Tier 1 or 2 status.³³⁶ And the Service “may” also initiate a review if changes in laws, rules, regulations, plans or practices, “or other circumstances depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy.”³³⁷ This language too provides cold comfort if excessive take occurs in important connectivity areas, since revocation is again at the discretion of the Service. And this language too, on its face, does not speak to the ability to revoke tier status when excessive take occurs in connectivity areas, including areas with no mortality thresholds or demographic objectives.

³³³ *Id.* at 44797 (proposed 50 C.F.R. § 17.40(b)(3)(xiv)(C)(4)(a)).

³³⁴ *Id.* at 44797 (proposed 50 C.F.R. § 17.40(b)(3)(xiv)(D)(4)).

³³⁵ *Id.* at 44796 (proposed 50 C.F.R. § 17.40(b)(3)(xiv)(B)).

³³⁶ *Id.*

³³⁷ *Id.*

Due to all of the above problems allowing excessive take in important connectivity pathways, the Service must not finalize the Proposed Rule.

C. The Proposed Rule Could Authorize Excessive Take Associated with Management Activities.

The 2026 Proposed Rule affords states significant discretion to relocate or kill bears for the purpose of vaguely defined “management activities” to deter human-bear conflicts. This proposal fails under the “necessary and advisable” standard for several reasons. First, the definition of “management activities” lacks proper guardrails to prevent excessive take. Second, the definition of “grizzly bear involved in conflict” is overly broad. Third, the proposed rule allows for too much discretion in eliminating conflict sources. Fourth, management activities in Tier 2 would no longer require prior Service authorization for lethal control and relocation. And finally, the proposed rule lacks enforceable mortality limits to prevent excessive take.

The 2026 Proposed Rule includes an ambiguous framework for excepted take for “management activities” by authorized agencies, potentially resulting in excessive mortality from these activities. The proposal allows for take of grizzly bears “to avoid human-bear conflicts, prevent habituation, improve grizzly bear survival, release or relocate non-targets, or aid in law enforcement investigations.”³³⁸ For example, the authorized agencies can preemptively relocate grizzly bears to prevent “imminent” conflict.³³⁹ Given that nearly all details are deferred to MOUs with state management agencies, it is concerning that the proposed rule provides this expansive authority for states to take grizzly bears for management activities.

Additionally, the definition of “grizzly bears involved in conflict” is overly broad and could lead to excessive grizzly bear mortality. The proposed rule includes a laundry list of ways that grizzly bears can be involved in conflict, including

a grizzly bear that has caused substantial property damage, obtained anthropogenic foods not associated with bear-baiting (e.g., pet food, livestock feed, garbage), killed or injured lawfully present livestock, domestic animals in proximity to human-occupied areas, or working dogs, damaged beehives, breached an intact structure or electrified perimeter to obtain fruit or crops (e.g., greenhouse, garden, orchard, field, stackyard or grain bin), shown repeated and persistent signs of habituation in proximity to human-occupied areas (e.g., has been repeatedly hazed or

³³⁸ *Id.* at 44796.

³³⁹ *Id.*

previously relocated), exhibited aggressive behavior (i.e., not acting in defense of offspring or food or in response to a surprise encounter), or has been involved in a human-grizzly encounter resulting in human injury or loss of human life.³⁴⁰

This sweeping definition broadens the scope of when management activities that take grizzly bears are permissible.

Further, the proposed rule allows for significant and unwarranted discretion by state agencies in conducting management activities. For example, the proposed rule only requires authorized agencies to “eliminate potential sources of conflict[] *when applicable and reasonably possible*.”³⁴¹ This discretion is particularly concerning when management authorities are being handed over to states that have been hostile to grizzly bear recovery and could lead to unnecessary mortality from lethal removals.³⁴²

For geographic areas in Tier 2, where conservation strategies and management plans are finalized and demographic objectives have been achieved, grizzly bear management would largely shift to state or tribal agencies through a MOU. In Tier 2 jurisdictions, the proposed rule improperly authorizes *all* take—intentional or incidental—by authorized agencies for management activities, limited only by yet to be disclosed MOUs.³⁴³ And even more concerning, Tier 2 eliminates prior Service authorization for lethal control and relocation.³⁴⁴

Fortunately—at least for now—it appears that the proposed rule does not authorize individuals to kill depredating or food-conditioned bears. Instead, lethal conflict control remains an authorized agency function and generally requires the Service’s authorization unless Tier 2 exceptions apply.³⁴⁵

Finally, the proposed rule lacks enforceable mortality limits for take. The proposed rule only references “mortality thresholds detailed in a conservation strategy.”³⁴⁶ As noted above, however, the conservation strategies, and the

³⁴⁰ *Id.* at 44794.

³⁴¹ *Id.* at 44796 (emphasis added).

³⁴² *See infra* Discussion Part VII.A.

³⁴³ 2026 Proposed Rule, 91 Fed. Reg. at 44796–97.

³⁴⁴ *Id.* at 44792.

³⁴⁵ *Id.* at 44796–97.

³⁴⁶ *Id.*

associated mortality thresholds, are not defined in this rulemaking process.³⁴⁷ And there are no defined mechanisms for the Service to enforce those mortality thresholds articulated in non-binding conservation strategies.³⁴⁸

As the Service finalizes a 4(d) rule, it must rectify these errors in the proposed rule and clarify the definitions of “management activities” and “grizzly bear involved in conflict.” The Service must provide guardrails to avoid handing over nearly limitless management authorities to states hostile to grizzly bear recovery. And finally, the Service must establish enforcement mechanisms to ensure that mortality thresholds are enforceable.

D. The Proposed Rule Could Authorize Excessive Take for “Deterrence.”

The Service’s proposal to broadly except “deterrence” activities is similarly problematic. The Service proposes to except “[t]ake in the form of harassment ... for individuals to conduct deterrence of grizzly bears for the purposes of avoiding human-bear conflicts or to discourage bears from using areas near homes and other human-occupied areas.”³⁴⁹ The Service justifies excepting deterrence take on the ground that “[d]eterrence ... of depredating or food-conditioned grizzly bears mitigates risks to human safety and livestock” and that “[t]his approach has been implemented by wildlife agencies for decades.”³⁵⁰ But the proposed exception is not limited to wildlife agencies or their trained personnel; it extends to any individual member of the public. At the same time, the proposed exception uses vague terms that, if finalized, would fail to reliably confine the amount of take that may occur under it.

The exception applies to deterrence undertaken “to discourage bears from using areas near homes and other human-occupied areas.”³⁵¹ The proposed rule defines “human-occupied areas” as “any structures or areas currently used or inhabited by humans (e.g., homes, residential areas, occupied campgrounds or trailheads, job sites),”³⁵² but nowhere defines how “near” such an area a bear must be before an individual may lawfully harass it. Without a distance or proximity standard, the exception could be read to permit deterrence of any bear an individual

³⁴⁷ See *supra* Discussion Parts IV, V.A.

³⁴⁸ See *id.*

³⁴⁹ 2026 Proposed Rule, 91 Fed. Reg. at 44796.

³⁵⁰ *Id.* at 44784.

³⁵¹ *Id.* at 44796.

³⁵² *Id.* at 44794.

subjectively believes is “near” a home, trailhead, or job site—a standard with no outer limit.

The rule would authorize “intentional, nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property,”³⁵³ but “close proximity” and “annoy” are also undefined. Further, “annoy” sets an exceptionally low and subjective threshold for lawful harassment.

Additionally, the proposal’s list of “[a]cceptable deterrence techniques” is troublingly open-ended.³⁵⁴ The preamble states that deterrence “may include, but is not limited to, auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, bear spray, or soft projectiles fired from non-powder-activated launchers intended to break on contact.”³⁵⁵ In addition to being open-ended, this list also includes “vehicle threat pressure”—an undefined term that, without specification of permissible speed, distance, or approach, carries a meaningful risk of vehicle strikes resulting in death or serious injury to a grizzly bear, an outcome the exception is supposed to guard against.³⁵⁶

The exception’s sole outer limit is that “any person using deterrence methodologies must not intentionally cause lasting bodily injury or mortality to the grizzly bear.”³⁵⁷ An intent-based standard is difficult to enforce after the fact and creates an incentive structure under which an individual who uses an inherently risky, undefined technique—for example, “vehicle threat pressure”—can avoid liability for a resulting mortality or injury simply by disclaiming intent. An alternative standard prohibiting techniques that pose a foreseeable or unreasonable risk of injury would be more likely to actually constrain individual conduct.

In addition to being vague, the proposed deterrence exception lacks accountability mechanisms. Individuals exercising the deterrence exception are not required to obtain a permit, prior authorization, or training or certification. The appropriateness of techniques is thus left to the individual’s untrained judgment.

Further, the absence of a general reporting requirement prevents the service from verifying that take under this exception remains de minimis. The only

³⁵³ *Id.*; see also *id.* at 44787.

³⁵⁴ *Id.* at 44787.

³⁵⁵ *Id.* (emphasis added).

³⁵⁶ See *id.* at 44787, 44796 (prohibiting only *intentional* infliction of lasting bodily injury or mortality).

³⁵⁷ *Id.* at 44786 (emphasis added); see also *id.* at 44787, 44796.

individuals whose take the Service can readily track are those whose deterrence results in a reportable mortality or lasting bodily injury.³⁵⁸ Because the vast majority of “haze, disrupt, or annoy” incidents will not rise to that level, the Service will have no data on how frequently, where, or against which bears this exception is actually being used. This is particularly significant given that the proposed rule separately defines “[h]abituation” as “the decrease of an animal’s flight response following repeated exposure to inconsequential stimuli.”³⁵⁹ Repeated, uncoordinated individual “deterrence” of the same bear or population could itself contribute to the human-bear conflict dynamics the rule is designed to prevent, yet the rule includes no mechanism to detect or limit that cumulative effect. Without reporting, the Service’s de minimis premise cannot be verified, contrary to the Service’s stated commitment to base this and future actions “on the best scientific and commercial data available.”³⁶⁰

Absent adequate specificity that could limit take associated with individual deterrence actions, or accountability to track them, the Service cannot legitimately justify the deterrence exception as necessary and advisable for conservation and recovery or de minimis.

E. The Proposed Rule Could Authorize Excessive Incidental Take.

FWS’s proposal to authorize take of grizzly bears incidental to the trapping and hunting of other species would violate ESA Section 4(d) because it is inconsistent with grizzly bear conservation and recovery. Without adequate and enforceable standards and mortality limits applicable to these activities, the Service cannot reasonably determine that they will not result in excessive take that jeopardizes grizzly bear recovery.

1. Trapping-Related Incidental Take Could Result in Excessive Harm, Including Mortality, and Impair Connectivity Between Recovery Areas.

The Service should not create a recreational-trapping exception from take prohibitions for grizzly bears because such a broad exception is not “necessary and advisable to provide for the conservation” of the species.³⁶¹ Because traps and snares are imprecise tools, they pose a substantial risk to non-target species, including grizzly bears. Incidental take from trapping is a known, foreseeable, and avoidable source of grizzly bear capture, injury, and mortality, and it is especially

³⁵⁸ *Id.* at 44786, 44796

³⁵⁹ *Id.* at 44794.

³⁶⁰ *Id.* at 44781.

³⁶¹ 16 U.S.C. § 1533(d).

harmful in occupied habitat, recovery areas, and connectivity areas even if such trapping is nominally consistent with State or Tribal trapping rules that purport to “minimize” grizzly bear take.

The trapping of grizzly bears threatens populations in recovery zones and also undermines attempts to achieve connectivity between populations.³⁶² Indeed, the Service acknowledged in its 2025 Proposed Rule that “[i]ncidental take of grizzly bears in [connectivity] areas could reduce the potential for natural connectivity between the populations in the GYE, NCDE, CYE, SE, and BE, which could harm the long-term genetic health of grizzly bears.”³⁶³ As the Service recognized, natural connectivity that facilitates gene flow between sub-populations is essential for the recovery and long-term health of the species.³⁶⁴ Trapping within connectivity areas impedes potential gene flow and is thus undermines grizzly bear recovery.

The only way to properly minimize the potential for capture, injury, and mortality of grizzly bears is to prohibit trapping and snaring in grizzly bear habitat during the non-denning season, which should be defined as February 16 through December 31. Thus, federal courts in both Idaho and Montana have enjoined state-authorized trapping in grizzly bear habitat, including both occupied areas and potential connectivity areas, during the non-denning period.³⁶⁵

The 2026 Proposed Rule lacks enforceable substantive and procedural safeguards to prevent harm to grizzly bear survival and recovery from trapping. Outside of Tier 1 and Tier 2 areas, the 2026 Proposed Rule would authorize incidental take associated with regulated trapping of other species “[i]n geographic areas and temporal periods defined in a TLA from the Service.”³⁶⁶ The rule defines

³⁶² A more complete discussion of the harm to grizzly bears from recreational trapping is included in the May 16, 2025, Comments from Sierra Club and Ctr. for Biological Diversity 61–73 (May 16, 2025).

³⁶³ 2025 Proposed Rule, 90 Fed. Reg. at 4255.

³⁶⁴ 2024 SSA at 11; *see also* *Crow Indian Tribe I*, 343 F. Supp. 3d at 1004 (“[T]he long-term health of the Greater Yellowstone grizzly depends on the introduction of new genetic material.”), *affirmed by Crow Indian Tribe II*, 965 F.3d at 679 (“[A] lack of genetic diversity continues to threaten the Yellowstone Grizzly.”).

³⁶⁵ *Ctr. for Biological Diversity v. Little*, 724 F. Supp. 3d 1113 (D. Idaho 2024), *reconsideration denied*, No. 1:21-CV-00479-CWD, 2025 WL 733014 (D. Idaho Feb. 4, 2025); *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 703 F. Supp. 3d 1229 (D. Mont. 2023), *aff’d in part, vacated in part, remanded*, 98 F.4th 1180 (9th Cir. 2024), and *amended*, No. CV 23-101-M-DWM, 2024 WL 3965061 (D. Mont. Aug. 27, 2024).

³⁶⁶ 2026 Proposed Rule, 91 Fed. Reg. at 44796.

TLA in bare terms as a “letter issued by the Service describing and clarifying terms and conditions for take by authorized agencies.”³⁶⁷ The rule’s conditions for trapping authorizations do not provide much additional guidance. Although the preamble to the 2026 Proposed Rule states that, outside of Tier 1 and Tier 2 areas, “this exception for regulated trapping of other species applies only in geographic areas where bears are not known to occur or during temporal periods when bears are likely to be denning,”³⁶⁸ the proposed regulatory language is less clear. The rule provides only that:

The Service will consider the best available information, including but not limited to, current distributions, verified locations outside of current distributions, known denning seasons within a given geographic area, verified grizzly bear activity outside of the den during denning seasons, and potential impacts to populations to define the geographic areas and temporal periods in the TLA.”³⁶⁹

In other words, the only guarantees the Proposed Rule offers on trapping outside of areas with tiered status is that the Service will consider information that it considers “the best available,” and issue letters, presumably without prior public review, describing permissible trapping terms. The proposal does not disclose “geographic areas and temporal periods” in which trapping would be authorized, let alone demonstrate that these limitations and potentially others are protective of grizzly bears. Under these circumstances, the Service cannot meet its burden to demonstrate that the proposed trapping take exception outside of Tier 1 and Tier 2 areas is “necessary and advisable” for grizzly bear conservation.

Within Tier 1 and Tier 2 areas, the 2026 Proposed Rule provides even fewer safeguards against harm to grizzly bears from regulated trapping of other species. In these areas, all trapping-related incidental take is authorized provided that the relevant state or tribe enters into an MOU with the Service that “documents the Service’s determination that an associated conservation strategy and Federal, State, or Tribal management plan meet the relevant criteria for a management tier (including appropriate population management mechanisms in accordance with this rule).”³⁷⁰ The only condition placed on such trapping is that it must be “conducted in accordance with Federal, State, or Tribal laws and regulations.”³⁷¹ As noted, federal courts have already rejected state claims that their trapping laws and regulations

³⁶⁷ *Id.* at 44795.

³⁶⁸ *Id.* at 44788.

³⁶⁹ *Id.* at 44796.

³⁷⁰ *Id.*

³⁷¹ *Id.*

are sufficient to protect grizzly bears from trapping-related harm.³⁷² Yet the 2026 Proposed Rule suggests an attempt to bypass the court-ordered protections. And further, state laws could become even less protective of grizzly bears without triggering any mandatory revocation of their trapping-related take authority. The proposed rule provides only that the Service *may* revoke Tier 1 or 2 status, even if state laws or policies significantly worsen or mortality thresholds are exceeded.³⁷³

Regardless of tier classification, trapping-related incidental take should be authorized, if at all, only pursuant to an incidental take permit (“ITP”) under ESA Section 10(a), which would provide significantly greater assurance that grizzly bear recovery would not be needlessly set back by reckless recreational trapping.³⁷⁴ Importantly, an ITP may only be issued if the Service finds that the taking would “not appreciably reduce the likelihood of the survival and recovery of the species” and that “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.”³⁷⁵ The ITP is subject to public review and comment,³⁷⁶ ESA Section 7 consultation,³⁷⁷ and environmental review under the National Environmental Policy Act.³⁷⁸ These substantive and procedural safeguards are important to minimize the harm to protected species such as the grizzly bear. Yet the 2026 Proposed Rule would bypass the ITP process in lieu of TLAs and MOUs negotiated and issued without any public participation or clear substantive standards.

The Service should withdraw its proposal for a broad recreational-trapping exception because it lacks substantive and procedural safeguards essential to sustain grizzly bear recovery, and therefore it is not “necessary and advisable to provide for the conservation” of the species.³⁷⁹

³⁷² See *Ctr. for Biological Diversity*, 724 F. Supp. 3d at 1135 (finding that “a reasonably certain risk exists that a taking of a grizzly bear will occur even when traps and snares are lawfully set pursuant to Idaho’s laws and rules”); *Flathead-Lolo-Bitterroot Citizen Task Force*, 703 F. Supp. 3d at 1243 (finding that “future takes of grizzly bears in legal wolf and coyote traps are reasonably certain under the State’s current regulatory scheme”).

³⁷³ 2026 Proposed Rule, 91 Fed. Reg. at 44797.

³⁷⁴ 16 U.S.C. § 1539(a).

³⁷⁵ *Id.* § 1539(a)(2)(B).

³⁷⁶ *Id.*

³⁷⁷ *Klamath-Siskiyou Wildlands Ctr. v. Nat’l Oceanic & Atmospheric Admin.*, 99 F. Supp. 3d 1033, 1040 (N.D. Cal. 2015).

³⁷⁸ *Id.* at 1060–61.

³⁷⁹ 16 U.S.C. § 1533(d).

2. The Proposed Rule Could Authorize Excessive Mistaken-Identity Take.

The 2026 Proposed Rule also lacks a conservation rationale for excepting avoidable take of grizzly bears incidental to black bear hunting in Tier 2 areas, where all incidental take is excepted. Black bear hunting in grizzly bear habitat leads to mistaken-identity killings and increased human-bear conflict, sometimes resulting in self-defense killings. Two practices in particular—black bear hunting with hounds and black bear hunting over bait—create unacceptable grizzly bear mortality risks. Thus, at a minimum, the Service should enact permanent prohibition on these practices within grizzly bear habitat and range, and identify other approaches such as enhanced hunter education to lessen mistaken-identity mortalities. The Service’s proposal to instead authorize this source of mortality in Tier 2 areas could lessen hunter incentives to scrupulously identify their target and avoid killing grizzly bears, and thus increase mistaken-identity mortalities.

The Service acknowledges that “grizzly bears killed due to mistaken-identity is a form of illegal take.”³⁸⁰ Particularly in Idaho and Wyoming, which allow black-bear hunting using bait, mistaken identity killing is a significant source of human-caused mortality for grizzly bears, including parts of the GYE, CYE, and SE.³⁸¹ Additionally, black bear hunting using hounds results in unmanageable grizzly bear harassment and deaths. As grizzly bear ranges expand, there could be an increase in mistaken-identity killings or measures of self-defense in areas where black and grizzly bears coexist.

State bear-identification courses are essential to mitigating mistaken-identity grizzly bear deaths, but they are an imperfect solution. Even state fish and game staff have mistaken grizzly bears for black bears, resulting in the killing of a grizzly bear.³⁸² Beginning in 2025, Idaho Fish and Game have imposed bear-identification and test requirements as the range of grizzly bears, which overlaps

³⁸⁰ 2024 SSA at 155.

³⁸¹ *Id.*

³⁸² Maggie Hudlow, *Black Bear Hunter Accidentally Shoots Grizzly after IDFG Staff Misidentification*, MeatEater (June 19, 2024), <https://www.themeateater.com/conservation/wildlife-management/black-bear-hunter-accidentally-shoots-grizzly-in-unexpected-area>; Vinny Saglimbeni & Cristian Garza, *Grizzly bear mistakenly shot, killed by hunter in North Idaho*, KREM2 (May 13, 2025), <https://www.krem.com/article/news/local/idaho/grizzly-bear-mistakenly-shot-killed-north-idaho-bonner-county-panhandle-region-priest-river/293-90f7b544-4379-42be-abbc-2b0d00144c9a>.

with black bear habitat, continues to expand.³⁸³ Idaho acknowledges the difficulties in properly distinguishing black bears from grizzly bears, noting that “[s]ize and color of bears are not reliable indicators of species.”³⁸⁴ Thus, the state’s Identification guide has tips on how to differentiate black bears and grizzly bears with identification techniques including their shoulder, face/snout, ears, claws, and tracks.³⁸⁵ As grizzly bear ranges expand, there could be an increase in mistaken-identity killings or measures of self-defense in areas where black and grizzly bears coexist.

Montana also requires bear-identification tests for hunters. As Montana Fish, Wildlife and Park advises hunters, the same areas that provide habitat for the grizzly bear also provide habitat for the black bear.³⁸⁶ The state’s materials note that “not all grizzlies are ‘grizzled’ and not all black bears are black”; with specifications around hunting that misidentification can happen if the light is poor, the vegetation is dense, or when the hunter has only gotten a glimpse of the moving animal.³⁸⁷

Despite a significant overlap in black bear habitat and grizzly bear habitat in Wyoming, an identification test is only voluntary for hunters via the Wyoming Game and Fish Bear Exam,³⁸⁸ as compared to Idaho and Montana where an identification test is mandatory. Moreover, these tests are insufficient, consisting of fifteen photos of black or grizzly bears accompanied by questions and may be retaken an unlimited number of times to achieve a passing grade.³⁸⁹

Mistaken identity leads to excessive grizzly bear mortality. Between 2002–2023 there were four mistaken-identity killings in the CYE and the SE.³⁹⁰ During this same period, in the GYE there were twenty-seven mistaken-identity mortalities

³⁸³ Idaho Fish & Game, *Bear Identification and Test Requirement*, <https://idfg.idaho.gov/hunt/bear-identification>.

³⁸⁴ Idaho Fish & Game, *Grizzly Bear Mistakenly Shot and Killed by a Hunter in Bonner County in North Idaho* (May 12, 2025) (Ex. 39).

³⁸⁵ Idaho Fish & Game, *Bear Identification Guide*, https://idfg.idaho.gov/sites/default/files/bear-identification-guide_0.pdf.

³⁸⁶ Mont. Dep’t of Fish, Wildlife & Parks, *Bear Identification Course* (submitted as Ex. 137).

³⁸⁷ *Id.*

³⁸⁸ *Wyoming Game and Fish Bear Exam*, <https://wgfapps.wyo.gov/bearexam/default>.

³⁸⁹ Mont. Dep’t of Fish, Wildlife & Parks, *Bear Identification Test, Montana Fish, Wildlife & Parks*, <https://myfwp.mt.gov/fwpub/testStart.action?testid=559639>.

³⁹⁰ 2024 SSA at 158.

caused by black bear hunters and in the NCDE there were eighteen.³⁹¹ Wyoming confirmed at least sixteen instances of black bear hunters killing grizzly bears in mistaken-identity incidents occurring between 2000–2017.³⁹² Idaho confirmed at least three instances of mistaken-identity killings between 2023–2024.³⁹³ Montana confirmed at least three mistaken-identity killings between 2020–2023.³⁹⁴ In 2026 alone, there have been two documented mistaken identity killings of grizzly bears in Montana. According to the Montana Grizzly Bear Mortalities Dashboard, a male grizzly was killed on May 15, 2026 in Lincoln County, and another grizzly was killed less than one month later in Flathead County, both as a result of mistaken identity.³⁹⁵ For 2026, Montana reports four additional grizzly bear mortalities that are either “under investigation” or “undetermined.”³⁹⁶

Hound hunting of black bears in grizzly bear habitat increases conflicts. Grizzly bears chased by hounds will not run from hounds. Instead, they will usually stand and fight.³⁹⁷ This could result in hounds being killed or injured by the agitated grizzly, which could prompt hunters to kill or injure grizzly bears.³⁹⁸

³⁹¹ *Id.* at 165–66.

³⁹² WY Mistaken Identity (Ex. 36).

³⁹³ ID Mistaken Identity (Ex. 37).

³⁹⁴ MT Mistaken Identity (Ex. 38).

³⁹⁵ Mont. Dep’t of Fish, Wildlife & Parks, *Montana Grizzly Bear Mortalities* (2026), <https://experience.arcgis.com/experience/d5a01c397e7a4c8187ebfbbf75578c4c/page/Page?views=Table>.

³⁹⁶ *Id.* As of 2026, Montana is the only state in the Northern Rockies with a public tracking dashboard that explicitly categorizes human-caused mortalities. Where mistaken identity poses a threat to a species, take of other species that resembles the protected species may be prohibited. 16 U.S.C. § 1533(e). Mistaken identity take must be considered in any event. *Id.*

³⁹⁷ Nat’l Park Serv., *Characteristics of Bears in Yellowstone* (last updated Oct. 23, 2017), <https://www.nps.gov/articles/yell-wildlife-bear-differences.htm>.

³⁹⁸ Ex. 1, Recovery Plan Petition: Servheen Report at 27; *see, e.g.*, Ken Cole, *Island Park Grizzly that Attacked Hound Hunter Found Alive and Well with Her Three Cubs*, *The Wildlife News* (July 14, 2009), <https://www.thewildlifeneeds.com/2009/07/14/island-park-grizzly-that-attacked-hound-hunter-found-alive-and-well-with-her-3-cubs/>.

Additionally, this could also lead to an increase in self-defense killings.³⁹⁹ Hounds may also chase agitated grizzly bears onto private lands, creating a situation where bears could injure or alarm landowners that are not involved in bear hunting.⁴⁰⁰ Self-reporting of such incidents is likely low, because killing grizzly bears to protect hounds is illegal while grizzlies are protected under the ESA.⁴⁰¹

As the Service acknowledges, “recent legislation in Montana and Idaho expanding hunting and trapping tools available for wolves and black bears could reduce the probability of natural connectivity between the GYE and NCDE populations,” impacting the ability of the species to achieve durable recovery.⁴⁰² Because of the risks to grizzly bears from black bear hunting over bait and with hounds, the Service should enact permanent prohibition on these practices in grizzly bear habitat and range. The Service’s contrary approach—authorizing all incidental take, including avoidable hunting-related take, in Tier 2 areas—would impede the survival and recovery of grizzly bears and should be rejected.

F. The Service Must Reject Any Grizzly Bear Sport Hunting.

While the 2026 Proposed Rule does not directly authorize any sport hunting of grizzly bears, the Service must provide assurance that states cannot implement a hunt in Tier 1 or 2 areas under the umbrella of other take exceptions, because the Service could not legitimately justify such hunting as “necessary and advisable” for grizzly bear conservation.⁴⁰³ As previously explained: (1) the ESA does not permit sport hunting absent population pressures, which are not present throughout any part of the grizzly bear’s range in the Northern Rockies; (2) sport hunting of grizzly bears in connectivity areas would undermine grizzly bear recovery by reducing the possibility of natural movements of bears between the recovery areas that are necessary for the species’ demographic and genetic health and resiliency; and (3) the

³⁹⁹ See, e.g., Idaho Fish & Game, *Hunter shoots grizzly bear in self-defense on the Caribou-Targhee National Forest* (Oct. 20, 2025), <https://idfg.idaho.gov/article/hunter-shoots-grizzly-bear-self-defense-caribou-targhee-national-forest-0>; Dac Collins, *Black Bear Hunter Kills a Charging Grizzly with His Rifle at 5 Yards*, Outdoor Life (May 19, 2026), <https://www.outdoorlife.com/survival/idaho-hunter-shoots-grizzly-self-defense/>.

⁴⁰⁰ Ex. 1, Recovery Plan Petition: Servheen Report at 27.

⁴⁰¹ Mark Heinz, *Montana Outfitter Kills Grizzly, Fails To Report It And Faces \$10,000 Fine*, Cowboy State Daily (Aug. 13, 2025), <https://cowboystatedaily.com/2025/08/13/montana-outfitter-kills-grizzly-fails-to-report-it-and-faces-10-000-fine/>.

⁴⁰² 2024 SSA at 190.

⁴⁰³ 16 U.S.C. § 1533(d).

best-available science shows that hunting could cause population-level impacts on grizzly bears.⁴⁰⁴ The comments below expand on the best-available science.

Grizzly bears' slow reproductive rate makes populations especially vulnerable to potential population declines from hunting. "Grizzly bears have one of the slowest reproductive rates among terrestrial mammals," with late age of first reproduction, small litter sizes, and long inter-birth intervals.⁴⁰⁵ It may take a female grizzly bear ten to fifteen years to replace herself in a population, making them highly sensitive to increased mortality.⁴⁰⁶ Thus, bears lost to hunting are not readily replaced through reproduction.⁴⁰⁷

Reproductive rate is not the only factor diminishing grizzly bear populations' resilience to hunting mortality. "Large size has often been linked to elevated extinction risk in mammals because larger species tend to exist at lower average population densities, the intrinsic rate of population increase declines with body mass, and larger species are disproportionately exploited by humans."⁴⁰⁸ Further, for large mammals such as grizzlies, "extinction risk begins to be compounded by the cumulative effects of multiple threatening factors. For example, forest fragmentation elevates the sensitivity to hunting pressure of populations of medium- and large-sized vertebrates, and larger body sizes demand larger home ranges, bringing individuals into increasing contact with people in fragmented habitats."⁴⁰⁹

Further, grizzly bear mortality due to hunting would add to other sources of mortality, which already are excessive. Dr. David Mattson thoroughly documented this in his study, *Efficacies & Effects of Sport Hunting Grizzlies* (2020).⁴¹⁰ In addition, it has been documented that hunting adult male grizzly bears results in sexual segregation of grizzly populations and resulting reduced reproduction and

⁴⁰⁴ See May 2025 Comments at 51–54.

⁴⁰⁵ 2024 SSA at 44.

⁴⁰⁶ *Id.* at 32; 2025 Proposed Rule, 90 Fed. Reg. at 4239 (citations omitted).

⁴⁰⁷ Marcel Cardillo et al., *Multiple Causes of High Extinction Risk in Large Mammal Species*, Science vol. 309, 1240 (Aug. 19, 2005) (submitted as Ex. 138) ("[S]pecies with low population densities or slow life histories, which tend to be of larger size, are the most vulnerable to population declines caused by hunting.") (citations omitted).

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* (citations omitted).

⁴¹⁰ See Ex. 30.

survival of cubs.⁴¹¹ This in turn “can result in lowered population growth and population declines and can even lead to rapid population extinctions when numbers are very small.”⁴¹² Troublingly, “even ostensibly protected populations where females reside in parks ... can decline ... and go extinct if trophy hunting of males outside of parks results in segregation and reduced reproduction within parks.”⁴¹³

In addition, as prior comments have fully explained, there is no evidence that a normally managed bear sport hunt would reduce human/bear conflicts. In addition to literature already provided, this fact has been documented by Northrup *et al.* (2023).⁴¹⁴

Finally, the Service must expressly prohibit sport hunting in any new final 4(d) rule to prevent state legislatures or wildlife agencies from authorizing hunts in Tier 2 areas.

VI. THE PROPOSED RULE FAILS TO ENSURE ADEQUATE REGULATORY MECHANISMS.

The 2026 Proposed Rule would shift significant authority to states that have a track record of reckless, anti-science management of wildlife at a time when the federal government is actively advancing policies that will make it more difficult for grizzly bears to recover. The proposed rule purports to “incentivize[] authorized agencies to proactively develop adequate regulatory mechanisms,”⁴¹⁵ but such an incentive is cold comfort when existing regulatory mechanisms are inadequate to protect grizzly bears.⁴¹⁶ In any final 4(d) rule, the Service must adopt specific protections for grizzly bears, especially for connectivity areas, and areas for potential reintroduction or recolonization of bears.

⁴¹¹ See R.B. Wielgus et al., *Estimating effects of adult male mortality on grizzly bear population growth and persistence using matrix models*, Biological Conservation 98, 299 (2001) (submitted as Ex. 139).

⁴¹² *Id.*

⁴¹³ *Id.* (citations omitted).

⁴¹⁴ Joseph M. Northrup et al., *Experimental test of the efficacy of hunting for controlling human-wildlife conflict*, Journal of Wildlife Management 87:e22363 (2023) (submitted as Ex. 140).

⁴¹⁵ 2026 Proposed Rule, 91 Fed. Reg. at 44788.

⁴¹⁶ See *supra* Discussion Section II.D.

A. State Regulatory Mechanisms are Inadequate.

Grizzly bear management cannot be left to Montana, Wyoming, and Idaho. These states have actively sought to delist grizzly bears, claiming that federal protection is no longer necessary. Montana, Wyoming, and Idaho have adopted laws and regulations that would authorize greater lethal control, hunting, trapping, and management discretion if federal protections are reduced. The Service has previously acknowledged the inadequacy of state regulatory mechanisms. Yet the framework for the proposed rule assumes adequate state protections and future management plans, while failing to ensure that state laws will prevent excessive take of grizzly bears.

Absent federal protection, grizzlies would be subjected to anti-science state policies that allow for excessive killing and take of grizzly bears. Montana, Wyoming, and Idaho have established their intentions to reduce protection for grizzly bears.⁴¹⁷ Under a Tri-State Memorandum between Montana, Wyoming, and Idaho, the States may allow the hunting of sixty-nine grizzly bears within the DMA and an unknown number of bears outside the DMA.⁴¹⁸ State law in Wyoming and Idaho designates grizzly bears as trophy game.⁴¹⁹ In Wyoming, upon delisting, the Game and Fish Commission can establish a hunting season for grizzly bears in accordance with the Tri-State Memorandum.⁴²⁰ In Idaho, upon delisting a grizzly bear can be killed for “molesting or attacking livestock or domestic animals.”⁴²¹ Montana enacted legislation to authorize livestock producers to kill grizzly bears “threatening” livestock without a permit upon delisting.⁴²² But the Montana statute fails to define the meaning of “threatening” livestock, opening the door for significant issues of interpretation.⁴²³ The Northern Rockies states have also

⁴¹⁷ See 2024 SSA at 76.

⁴¹⁸ *Tri-State Memorandum of Agreement Regarding the Management, Genetic Health, and Allocation of Discretionary Mortality of Grizzly Bears in the Greater Yellowstone Ecosystem Among Wyoming Game and Fish Commission, Wyoming Game and Fish Department, Montana Fish and Wildlife Commission, Montana Fish, Wildlife, and Parks, Idaho Fish and Game Commission, and Idaho Department of Fish and Game* (Ex. 20).

⁴¹⁹ Idaho Code § 36-202(h); Wyo. Stat. Ann. § 23-1-101(a)(xii)(A).

⁴²⁰ 040-67 Wyo. Code R. § 67-4.

⁴²¹ Idaho Code § 36-1107(e).

⁴²² Mont. Code. Ann. § 87-5-301(4).

⁴²³ See *id.*

allowed wolf trapping and snaring in grizzly bear habitat, as well as hound hunting and baiting of black bears, which are proven to place grizzlies at risk.⁴²⁴

Elected leaders in Montana, Wyoming, and Idaho have made public statements that signal that a relaxed federal regulatory regime will undoubtedly lead to even higher numbers of grizzly bear mortalities under state management.⁴²⁵ State management efforts, therefore, would be in contravention to the conservation measures the Service has deemed necessary and the best available science.⁴²⁶

Even while grizzly bears remain listed under the ESA, the Service recognized potential harms from the states' regulatory frameworks. For example, the Service has noted that states currently lack adequate management frameworks to ensure mortality from legal hunting "is within sustainable thresholds independent of protections of the Act."⁴²⁷ Even in the 2025 proposed rule, the Service recognized that "[r]ecent legislation in Montana and Idaho expanding hunting and trapping tools available for wolves and black bears will likely increase incidental take of grizzly bears" and "measures to limit incidental take inside grizzly bear occupied range ... are minimal."⁴²⁸ Further, such "[i]ncidental take of grizzly bears in these

⁴²⁴ See, e.g., *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180 (9th Cir. 2024); *Ctr. for Biological Diversity*, 724 F. Supp. 3d 1113; see also *supra* Discussion Part V.E.

⁴²⁵ See, e.g., Press Release, Governor Gianforte, Governor Gordon Celebrate Successful Grizzly Bear Translocations (Aug. 2, 2024), https://news.mt.gov/Governors-Office/Governor_Gianforte_Governor_Gordon_Celebrate_Successful_Grizzly_Bear_Translocations (quoting Montana Governor Greg Gianforte) (claiming the "grizzly bear has more than recovered" and calling for state management); Press Release, Wyo. Fish & Game Dep't, Governor Gordon Submits Petition to Remove Greater-Yellowstone Grizzlies from the Endangered Species List (Jan. 11, 2022), <https://wgfd.wyo.gov/News/Governor-Gordon-Submits-Petition-To-Remove-Greater> (quoting Wyoming Governor Mark Gordon) ("The states have applied the best-available population models" and there is "no biological or legal reason" to keep grizzly bears listed); Press Release, Idaho Off. of the Governor, Gov. Little Comments on Biden Administration's Refusal to Return Grizzlies to State Management (Jan. 8, 2025), <https://gov.idaho.gov/pressrelease/gov-little-comments-on-biden-administrations-refusal-to-return-grizzlies-to-state-management/> (quoting Idaho Governor Brad Little) (claiming "grizzlies have reached and exceeded recovery criteria years ago").

⁴²⁶ See generally 2024 SSA.

⁴²⁷ 2025 Proposed Rule, 90 Fed. Reg. at 4256.

⁴²⁸ *Id.* at 4255.

areas could reduce the potential for natural connectivity.”⁴²⁹ Ultimately, this led the Service to conclude that if left to the states, there would be a “lack of regulatory mechanisms to address the threats” to grizzly bears.⁴³⁰

Now, in its revised proposal, the Service has developed a framework that relies on state laws and regulations to ensure the continued survival and recovery of grizzly bears. For example, in Tier 2, “[e]xcepted deterrence techniques for authorized agencies will be determined by the applicable Federal, State, or Tribal laws and regulations,” and “[t]ake associated with management activities by authorized agencies is excepted under applicable Federal, State, and Tribal laws.”⁴³¹ In both Tiers 1 and 2, “[i]ncidental take associated with regulated trapping of other species is excepted, provided trapping is conducted in accordance with Federal, State, or Tribal laws and regulations.”⁴³²

Further, the proposed rule relies on future management strategies and conservation strategies to fill these regulatory gaps.⁴³³ But the proposed rule fails to establish any baseline requirements for those management plans and conservation strategies. Nor does the proposed rule include any contingencies if state laws and regulations fail to prevent excessive take.

In sum, the proposed rule fails to account for the Northern Rockies states’ interest in delisting grizzly bears and the adopted laws that would authorize lethal control, hunting, trapping, and management discretion upon the reduction of federal protections. Instead, the proposed rule establishes a framework that transfers authority to the States without guardrails or minimum requirements to prevent excessive take of grizzly bears.

B. Federal Regulatory Mechanisms are Inadequate.

Even if the Northern Rockies states had adequate regulatory mechanisms in place to support the recovery of grizzly bears (they do not and are unlikely to ever), the proposed rule comes at a time when other federal actions are placing the survival of grizzly bears at risk. Prior comments addressed some of these federal actions, but since then more information has become available about each of these actions, which could further slow or reverse progress toward grizzly bear recovery. These actions include: the Service’s efforts to rescind the definition of “harm” under

⁴²⁹ *Id.*

⁴³⁰ *Id.* at 4269.

⁴³¹ 2026 Proposed Rule, 91 Fed. Reg. at 44786.

⁴³² *Id.*

⁴³³ *See id.* at 44792.

the ESA; the Service’s proposed changes to regulations governing ESA Section 7 consultation; a proposal to repeal the Roadless Rule; changes to the Forest Service’s NEPA regulations; a pending proposal to repeal the Forest Service’s Travel Management Rule; new “emergency” designations; fast-tracked logging projects; and reductions in the federal workforce. Each of these federal actions highlight the need for a strong 4(d) rule.

1. Regulatory Changes to the ESA Create Uncertainty.

For more than fifty years, the Endangered Species Act has served as the last line of defense for countless species and habitats. The ESA seeks to “halt and reverse the trend toward species extinction, whatever the cost.”⁴³⁴ But now, at a time when species including grizzly bears are facing increasing threats, the Trump Administration is taking major steps to gut the ESA by finalizing rules to change the regulatory definition of “harm” to exclude habitat.⁴³⁵ The Service has also recently finalized rules to give outsized weight to “economic considerations” instead of science when deciding to protect species and critical habitat,⁴³⁶ and repealed the “Blanket 4(d) Rule,” which provided that species listed as threatened are subject to the same protections as species listed as endangered.⁴³⁷ Proposed changes to regulations governing Section 7 of the Act’s consultation procedures are expected to be finalized in the coming months.⁴³⁸ Each of these changes to the regulatory framework for the ESA underscore the need for a strong 4(d) rule to protect grizzly bears.

The Service’s repeal of the regulatory definition of “harm” under the ESA could impact the recovery of grizzly bears. The final rule will have an immediate impact on federal projects and incidental take permit applications for non-federal projects where take is anticipated and directly caused by habitat destruction or degradation.⁴³⁹ The final rule will also create regulatory confusion and uncertainty. Notably, the final rule contravenes the plain text of the ESA, which prohibits take through habitat destruction. This regulatory action is also contrary to a landmark

⁴³⁴ *Tenn. Valley Auth.*, 437 U.S. at 184.

⁴³⁵ Rescinding the Definition of “Harm” Under the Endangered Species Act, 91 Fed. Reg. 43300 (July 14, 2026).

⁴³⁶ Regulations for Designating Critical Habitat, 91 Fed. Reg. 45662 (July 21, 2026).

⁴³⁷ Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 91 Fed. Reg. 45723 (July 21, 2026).

⁴³⁸ See Proposed Rule for Endangered and Threatened Wildlife and Plants: Interagency Cooperation Regulations, 90 Fed. Reg. 52600 (Nov. 21, 2025).

⁴³⁹ See *generally* Comments Regarding Rescinding the Definition of “Harm” Under the Endangered Species Act (May 19, 2025) (submitted as Ex. 141).

U.S. Supreme Court opinion upholding the definition of “harm” and thirty years’ worth of judicial precedent consistent with that ruling.⁴⁴⁰ Although the rule is currently being challenged,⁴⁴¹ in the interim, the uncertain regulatory regime could impact grizzly bear habitat.

Further, the recently finalized “Critical Habitat Exclusion Rule” and “Blanket 4(d) Rule,” demonstrate the Service’s continued efforts to erode the ESA, stripping protections for threatened species and prioritizing industry interests over the best available science. These rulemakings come amid a series of unprecedented attacks on the ESA and threatened species.⁴⁴²

And as noted in previous comments, the Service’s proposed changes to regulations governing ESA Section 7 consultation would compound these harms by encouraging the agencies to limit the scope of their consideration of a proposed action’s impacts on ESA-protected species to those it deems “reasonably certain to occur.”⁴⁴³ These proposed changes are not only in contravention to decades of precedent, but also the purpose of the Act. The proposed changes could weaken grizzly bear habitat protections through significant agency discretion.

In finalizing a 4(d) rule, the Service must grapple with, and account for, all new threats grizzly bears will face under the Administration’s new ESA regulatory scheme.

2. Forest Service Policies and Projects Degrade Grizzly Bear Habitat.

In addition to regulatory threats from the Fish and Wildlife Service, the Forest Service is actively advancing policies and projects that will increase threats to important grizzly bear habitat. These efforts include: the proposed repeal of the Roadless Area Conservation Rule; changes to the Forest Service’s regulations under the National Environmental Policy Act; efforts to increase motorized use on public lands; the potential repeal of the Travel Management Rule; manufactured

⁴⁴⁰ *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 697–700 (1995) (upholding the “harm” definition’s inclusion of habitat destruction after looking to the ordinary meaning of “harm,” the purpose of the ESA, and multiple indications of congressional intent).

⁴⁴¹ *Ctr. for Biological Diversity v. Burgum*, No. 2:26-cv-02474, Dkt. No. 1 (W.D. Wash. July 14, 2026) (submitted as Ex. 142).

⁴⁴² See, e.g., Maxine Joselow, *The ‘God Squad’ Waives Environmental Rules for Offshore Drilling*, The New York Times (Mar. 31, 2026), <https://www.nytimes.com/2026/03/31/climate/god-squad-whales-gulf.html> (submitted as Ex. 143).

⁴⁴³ 90 Fed. Reg. at 52606–07.

emergencies to bypass environmental analyses; and other practices to fast-track logging projects.

The proposed rollback of the Roadless Rule⁴⁴⁴ would jeopardize nearly fifty-eight million acres of undeveloped national forests across the country, including crucial grizzly bear habitat in the Northern Rockies. For decades the Roadless Rule prevented roads, logging, oil and gas drilling, and other industrial activities from fragmenting core and connecting grizzly bear habitat. As prior comments have noted, eliminating these protections will result in further threats for grizzly bears by shrinking and carving up secure habitat, increasing deadly encounters with humans, making food sources more difficult to reach.

Earlier this year, the Forest Service finalized its new NEPA regulations, abandoning its commitment to public review of projects when the agency determines that a project will not have significant environmental impacts.⁴⁴⁵ The final rule impermissibly expands the use of categorical exclusions, inappropriately excluding public comments.⁴⁴⁶ And it arbitrarily weakens opportunities for public input throughout the NEPA process.⁴⁴⁷ By limiting opportunities for public scrutiny in the environmental review process, the Forest Service will almost certainly overlook risks to important grizzly bear habitat.

Further, the Trump Administration is actively advancing policies to increase motorized use in important grizzly bear habitat. President Trump recently repealed two executive orders that protected public lands from motorized use.⁴⁴⁸ And reports suggest that this is only the start of a suite of efforts to increase motorized use on public lands.⁴⁴⁹ The Forest Service is poised to repeal the Travel Management Rule,⁴⁵⁰ which has protected National Forest lands from motorized use unless the agency first conducts an analysis concluding that certain areas should be open.⁴⁵¹

⁴⁴⁴ Roadless Area Conservation; Notice of Intent to Prepare an Environmental Impact Statement, 90 Fed. Reg. 42179 (Aug. 29, 2025).

⁴⁴⁵ See National Environmental Policy Act, 91 Fed. Reg. 17062 (Apr. 3, 2026).

⁴⁴⁶ See *id.* at 17095–106.

⁴⁴⁷ See *generally id.* at 17062.

⁴⁴⁸ Exec. Order No. 14408.

⁴⁴⁹ See Lisa Friedman, *U.S. Forest Service to Open Millions of Acres to Off-Road Vehicles*, The New York Times (June 5, 2026), <https://www.nytimes.com/2026/06/05/climate/national-forests-off-road-vehicles-public-lands-trump.html> (submitted as Ex. 144).

⁴⁵⁰ 36 C.F.R. Part 212.

⁴⁵¹ See 36 C.F.R. § 212.55.

These efforts will expose grizzly bears to increased motorized use, a known threat to their existence.⁴⁵²

Finally, the Forest Service has taken multiple steps to fast-track logging projects and management regimes that circumvent environmental review. These actions reflect a pattern by the federal government to reduce protections and habitat connectivity for grizzly bears.

The Trump Administration has displayed a concerted effort to eliminate statutorily required environmental reviews. On March 1, 2025, the President issued an Executive Order expediting the Service’s review of the impacts of logging projects on endangered and threatened species.⁴⁵³ Later that month, the President issued another Executive Order seeking to fast-track mineral production by expediting permitting, approval, and the Service’s associated review of impacts on grizzly bears.⁴⁵⁴

Further, the Trump Administration is taking many of these actions under the guise of manufactured “emergencies.” In April 2025, the Secretary of Agriculture designated an “emergency situation” across 112,646,000 acres (fifty-nine percent) of the National Forest System.⁴⁵⁵ The Secretary attributed the purported “crisis” to many of the factors that the agency has long accounted for in forest management: “uncharacteristically severe wildfires, insect and disease outbreaks, invasive species, and other stressors ... combined with overgrown forests, a growing number of homes in the wildland-urban interface, and more than a century of rigorous fire suppression.”⁴⁵⁶ In declaring this “crisis,” the Secretary invoked her authority under the Infrastructure Investment and Jobs Act.⁴⁵⁷ Now, the Forest Service is seeking to use the emergency designation to sidestep ESA Section 7 requirements for a timber project.⁴⁵⁸ And in June 2026, the Forest Service proposed “emergency salvage

⁴⁵² *See supra* Discussion Part II.C.

⁴⁵³ Exec. Order No. 14225.

⁴⁵⁴ Exec. Order No. 14241.

⁴⁵⁵ U.S. Dep’t of Agric., Secretary’s Memorandum 1078-006, Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands, 2 (Apr. 3, 2025).

⁴⁵⁶ *Id.*

⁴⁵⁷ 16 U.S.C. § 6592.

⁴⁵⁸ *See Swan View Coal. v. Schultz*, No. 9:26-cv-0081-KLD, Dkt. No. 1 (D. Mont. June 5, 2026).

efforts,” with implementation starting before required environmental analyses are finalized.⁴⁵⁹

Other recent U.S. Forest Service practices have increased risks for grizzly bears and their habitat on national forest plans.⁴⁶⁰ In June 2025, the State of Montana and the Forest Service entered into a shared stewardship agreement to “increase the pace and scale” of logging projects across Montana.⁴⁶¹ The Forest Service is also rapidly advancing projects that would allow for mining and logging in important grizzly bear habitat.⁴⁶² And the Forest Service continues to degrade grizzly bear habitat protections by eliminating or undermining prior limitations on road densities in grizzly bear habitat with National Forests.⁴⁶³ Grizzlies have not achieved durable recovery under the Service’s existing regulatory framework.⁴⁶⁴ And despite the need for ongoing recovery mechanisms, each of these federal actions instead threaten substantial harm to grizzly bears by eliminating or bypassing habitat protections.

⁴⁵⁹ See U.S. Dep’t of Agric., *2026 Blowdown Emergency: Public Notice and Opportunity for Comment*, 1 (June 22, 2026), <https://www.fs.usda.gov/r01/nezperce-clearwater/projects/328084>.

⁴⁶⁰ See U.S. Dep’t of Agric., U.S. Forest Serv., *Condition-Based Management* (Jan. 2022), https://www.fs.usda.gov/sites/default/files/2022-04/%27CBM_FAQs_24JAN22%27%20of%20%27AR-%20Project%20Development%27.pdf. But see 2024 SSA at 108 (noting that the Service has previously recognized the importance of the Roadless Rule and wilderness areas to enhance secure habitat for grizzly bears).

⁴⁶¹ See *Agreement for Shared Stewardship Between the State of Montana and the U.S. Department of Agriculture Forest Service*, 1 (June 2025), <https://www.fs.usda.gov/sites/default/files/shared-stewardship-agreement-montana-20250620.pdf>.

⁴⁶² See, e.g., U.S. Dep’t of Agric. Forest Serv., *Bitterroot Front Project Draft Environmental Assessment* (Aug. 2023), <https://www.fs.usda.gov/r01/bitterroot/projects/303881>; U.S. Dep’t of Agric. Forest Serv., *Soldier Butler Project Supplemental Environmental Assessment* (May 2025), <https://www.fs.usda.gov/r01/lolo/projects/284171>.

⁴⁶³ See, e.g., Dep’t of the Interior, U.S. Fish & Wildlife Serv., *Biological Opinion for the Nez Perce-Clearwater National Forests Land and Resource Management Plan* (Jan. 10, 2025), https://www.fs.usda.gov/sites/nfs/files/legacy-media/nezperce-clearwater/2025LMP_FWS_FinalBO.pdf; see also *supra* Discussion Part II.C.

⁴⁶⁴ See generally 2024 SSA.

3. Federal Workforce Reductions Are Compounding Threats from Regulatory Changes.

As the Trump Administration has taken steps to weaken the ESA, and expedite projects that destroy grizzly bear habitat, it has also fired the federal workers responsible for protecting the threatened species and managing their ecosystems. As noted in prior comments, federal workers play critical roles in protecting endangered and threatened species, including grizzly bears.

The reductions include staff who enforce protections under the ESA, scientists, researchers, and other workers who review projects for consistency with recovery standards.⁴⁶⁵ The federal workforce has dramatically reduced in size since January 2025. Between March 2024 and September 2025, public land agencies noted a twenty percent reduction in workforce attributed to “layoffs, buyouts, and hiring freezes.”⁴⁶⁶ In February 2025, approximately 2,700 employees resigned from the U.S. Department of the Interior.⁴⁶⁷ Although later required by a federal court to reinstate the employees, the Department terminated 1,712 staff for being within their probation periods—staff who have worked in their current role for less than one or two years.⁴⁶⁸ Prior to a federal court granting a preliminary injunction, the Department intended to fire more staff who serve critical roles in protecting endangered and threatened species across the country during the government shutdown.⁴⁶⁹ According to the Department’s Chief Human Capital Officer, the Department intended to terminate employment for at least one employee responsible for investigating wildlife crimes, fifty-seven staff in Regions 5, 7, and 9 of the National Park Service, three staff in the National Park Service’s

⁴⁶⁵ Heather Richards, *Interior’s ‘Fork in the Road’ Resignations: 2,700 People*, E&E News (Feb. 14, 2025), <https://subscriber.politicopro.com/article/eenews/2025/02/14/interiors-share-of-fork-in-the-road-resignations-2-700-people-00204403> [hereinafter Resignations] (submitted as Ex. 145).

⁴⁶⁶ Mark Haggerty, *How the Government Shutdown Affects Public Land Employees and Communities*, Ctr. for Am. Progress (Oct. 15, 2025), <https://www.americanprogress.org/article/how-the-government-shutdown-affects-public-land-employees-and-communities/> (submitted as Ex. 146).

⁴⁶⁷ Ex. 145, Resignations.

⁴⁶⁸ Michael Doyle, *Federal Agencies Recount How Many Workers Got Cut*, Greenwire (Mar. 18, 2025), <https://subscriber.politicopro.com/article/eenews/2025/03/18/federal-agencies-recount-how-many-workers-got-cut-00233580> (submitted as Ex. 147); Decl. of Mark D. Green at 2–3, *Maryland v. U.S. Dep’t of Agric.*, No. 25-cv-00748-JKB, Dkt. No. 52-1 (D. Md. Mar. 17, 2025) (submitted as Ex. 148).

⁴⁶⁹ See *Am. Fed’n of State Cnty. & Mun. Emps. v. U.S. Off. of Mgmt. & Budget*, No. 25-CV-08302-SI, 2025 WL 3018250, at *27 (N.D. Cal. Oct. 28, 2025).

Environmental Quality Division, and eight employees in the Fish and Wildlife Service's Ecological Services Division.⁴⁷⁰

These cuts have also impacted the Interagency Grizzly Bear Study Team within the U.S. Geological Survey, which conducts crucial research on grizzly bears.⁴⁷¹ “Without the study team documenting the impacts on bears and informing responsive interagency management, Greater Yellowstone grizzlies will be at grave risk of sliding backward to again face the pit of minimal numbers and then imminent extinction.”⁴⁷² Despite the importance of the IGBST's research to help support the recovery of grizzly bears, under this administration, the Study Team's funding and staff have been in jeopardy.⁴⁷³ Efforts to dismantle the IGBST are so alarming that “42 retired or active biologists with over 1,351 years of collective experience managing Montana's natural resources” sent a letter to U.S. Senators Steve Daines and Tim Sheehy, and Congressman Ryan Zinke and Congressman Troy Downing urging them to protect the Northern Rocky Mountain Science Center from attacks by the Department of Government Efficiency.⁴⁷⁴

The dramatic and sudden reduction of the federal workforce and significant cuts to federal agency budgets will have detrimental effects on the scientific expertise needed to support grizzly bear recovery for decades to come.⁴⁷⁵

As the Service finalizes a 4(d) rule, it must consider the compounding impacts of the significant loss in federal resources—including personnel and

⁴⁷⁰ Supplemental Decl. of Crystal Taylor, Defendants' Notice of Filing of Agency Declarations at App. A, 11–18, *Am. Fed'n of State Cnty. & Mun. Emps. v. U.S. Off. of Mgmt. & Budget*, No. 25-cv-08302-SI, Dkt. No. 71 (N.D. Cal. Oct. 20, 2025) (submitted as Ex. 149).

⁴⁷¹ Todd Wilkinson, *Is the Death of the Legendary Grizzly Bear Study Team Near—And What Does It Symbolize?*, *Yellowstonian* (Mar. 15, 2025) (submitted as Ex. 150).

⁴⁷² *Id.* (quoting Dr. Chris Servheen, former national grizzly bear recovery coordinator for the Service).

⁴⁷³ *Id.*

⁴⁷⁴ *42 Biologists with 1,350 Years of Experience Say DOGE Closure of Fed Science Center is Wrong*, *Yellowstonian* (Mar. 15, 2025), <https://yellowstonian.org/42-biologists-with-1350-years-of-experience-say-doge-closure-of-fed-science-center-is-wrong/> (submitted as Ex. 151).

⁴⁷⁵ See Hannah Natanson, *They Retired from the Government. Now They're Back, Protecting Forests Trump Abandoned*, *The Washington Post* (Nov. 20, 2025), <https://www.washingtonpost.com/politics/interactive/2025/forest-service-doge-trump-wyoming/> (submitted as Ex. 152).

appropriations—that have been crucial to the progress of grizzly bear recovery.

C. The 2026 Proposed Rule Contains Inadequate Provisions for Revocation of State Authority.

In light of these significant concerns regarding inadequate state regulatory mechanisms and compounding federal actions that are making it more difficult for grizzly bears to recover, it is concerning that the 2026 Proposed Rule not only hands over significant management authority to states, but also that the federal government’s authority to revoke state control are discretionary, reactive, and insufficient.

First, the revocation provisions for Tier 1 and Tier 2 status are discretionary. The Service only “retains the ability to revoke” Tier 1 or Tier 2 designations.⁴⁷⁶ The proposed rule does not mandate revocation of tiered designations that would allow for increased take of grizzly bears. In finalizing the proposed rule, the Service must consider binding guardrails to prevent further harm to the species. These must include, at a minimum, mortality caps, trapping restrictions, and other mandatory revocation triggers.

Second, the revocation authority is only reactive. The Service “retains the ability to revoke Tier 1 designations if changes in Federal, State, or Tribal laws, rules, regulations ... depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy.”⁴⁷⁷ And the Service “retains the ability to revoke a Tier 2 designation if ... any change in Federal, State, or Tribal laws, rules, regulations, ... depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy.”⁴⁷⁸ In other words, the Service will only revoke Tier 1 and Tier 2 designations *after* states change their laws.

Third, the proposed regulatory language does not define what it means to “depart significantly” from the potential to achieve demographic objectives or mortality thresholds. Vague language such as “departs significantly” cannot ensure that revocation of tier status occurs when relevant rules, laws, and regulations contravene the best available science or are otherwise insufficient to ensure grizzly bear recovery and survival.

⁴⁷⁶ 2026 Proposed Rule, 91 Fed. Reg. at 44789.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

The proposed rule's structure to revoke state management authorities is wholly insufficient to protect grizzly bears and support their recovery. Any final rule must include enforceable regulatory-mechanism criteria, including binding mortality caps, habitat-security standards, road-density limits, trapping restrictions, conflict-prevention requirements, public reporting, and mandatory revocation triggers.

D. The Final Rule Must Include Specific Protections for Connectivity Areas.

As discussed above, the Proposed Rule fails to even mention connectivity between the grizzly bear ecosystems, even though the Service has previously recognized that connectivity is crucial to grizzly bear recovery and survival. Instead of promoting natural connectivity, the Proposed Rule could allow devastating amounts of take in important grizzly bear connectivity pathways. Instead of including the proposed Tiers 1 and 2, any new final 4(d) rule for grizzly bears must include specific, affirmative protections for connectivity areas to promote natural connectivity.

To begin with, it is critical that the best available science be used to specifically identify key connectivity areas, including both current areas and future pathways, to ensure grizzlies are protected. The final rule should identify and map areas important for recovery and connectivity before any take exceptions are finalized. In addition, the Service must establish transparent criteria and allow for public notice and comment regarding any connectivity areas (or potential connectivity pathways) and any 4(d) provisions that could affect grizzly bear connectivity. Any final rule must establish enforceable, prospective mortality limits that apply across the listed grizzly bear entity, including in current and potential connectivity areas and important areas where no mortality thresholds and demographic monitoring currently exist or take place—with separate limits in current and future connectivity areas for females with cubs, independent females, dependent young, management removals, incidental take, and mistaken-identity kills. Further, the Service must prohibit discretionary mortality, trapping, snaring, baiting, hound hunting, and high-risk management removals in current or potential connectivity areas.

VII. THE PROPOSED RULE REQUIRES NEPA REVIEW AND AN ENVIRONMENTAL IMPACT STATEMENT.

The 2026 Proposed Rule is a “major Federal action[]” that will “significantly affect[] the quality of the human environment,” thus requiring the Service to complete an environmental impact statement under the National Environmental

Policy Act.⁴⁷⁹ The Service cannot evade its duties to consider the Proposed Rule’s environmental impacts under NEPA’s framework by relying on an inapplicable policy statement from 1983.⁴⁸⁰ This policy specifically exempts *listing* decisions under ESA Section 4(a) from NEPA environmental analysis, which includes “listings, delistings, reclassifications, and Critical Habitat designations.”⁴⁸¹ The policy’s environmental analysis exemption does not apply to 4(d) rulemaking that reduces existing protections for a species, as such action is neither a routine listing decision nor subject to a process that is functionally equivalent to NEPA.

NEPA “is the basic national charter for protection of the environment.”⁴⁸² NEPA requires all federal agencies proposing an action affecting the environment to “undertake a full and fair analysis,” constituting a “hard look at environmental consequences of their proposed actions.”⁴⁸³ This “hard look” review helps ensure “that environmental concerns [will] be integrated into the very process of agency decision-making.”⁴⁸⁴ Under NEPA, “major Federal actions significantly affecting the quality of the human environment” require the preparation of an environmental impact statement.⁴⁸⁵

The proposal constitutes a major federal action that would have significant impacts on the environment and the grizzly bear species as a whole by reducing existing protections for the species and its review process is not functionally equivalent to NEPA. Therefore, the Service must complete a NEPA analysis as required in 42 U.S.C. § 4332(2)(c).⁴⁸⁶ Based on the foregoing, the 2026 Proposed Rule is not exempt from a NEPA analysis, and the Service is required to take a hard look at its environmental impacts under the framework of NEPA.

⁴⁷⁹ 42 U.S.C. § 4332(2)(C).

⁴⁸⁰ 48 Fed. Reg. 49244 (Oct. 25, 1983).

⁴⁸¹ *Id*; see also *Pac. Legal Found. v. Andrus*, 657 F.2d 829 (6th Cir. 1981) (exempting a listing decision and holding a critical habitat designation may be exempt because it is the functional equivalent to a NEPA analysis).

⁴⁸² 40 C.F.R. § 1500.1(a).

⁴⁸³ *350 Montana v. Haaland*, 50 F.4th 1254, 1265 (9th Cir. 2022) (quotation and citation omitted); see also 36 C.F.R. § 220.7(b)(3)(i) (EA must “provide sufficient evidence and analysis” on “the environmental impacts of the proposed action ... to determine whether to prepare ... an EIS”).

⁴⁸⁴ *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).

⁴⁸⁵ 42 U.S.C. § 4332(2)(C).

⁴⁸⁶ *In re Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214 (D.D.C. 2011) (holding that the Service’s policy exempting NEPA review of listing rules under section 4(a) does not apply to section 4(d) rules).

CONCLUSION

The Service cannot lawfully or rationally finalize the 2026 Proposed Rule. Grizzly bears remain imperiled precisely because their long-term recovery depends on meaningful federal oversight, enforceable habitat and mortality protections, and natural connectivity across the Northern Rockies. The 2026 Proposed Rule would move in the opposite direction by relaxing federal take prohibitions before durable recovery has been achieved and by transferring broad management discretion to states and other authorities without adequate guardrails. The Service should therefore withdraw the proposal and recommit to a science-based recovery framework that advances—not undermines—the species' survival and recovery.

Sincerely,



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*On behalf of Center for Biological Diversity,
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