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August 4, 2026

Comments on: Endangered and Threatened Wildlife and Plants; 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). Federal Register Vol. 91, No. 136, 44780-44797, July 17, 2026.

Submitted to: <https://www.regulations.gov> FWS-R6-ES-2024-0186
Public Comments Processing, Attn: FWS-R6-ES-2024-0186, U.S. Fish and Wildlife Service,
MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

These comments are submitted on behalf of the Flathead-Lolo-Bitterroot Citizen Task Force. Our response to the text of the Proposed 4(d) Rule (PR) are sequential as per each page. Direct quotes from the PR are in italic Calibri font.

INTRODUCTION

The PR is unnecessary and creates several new layers of mortality and other non-lethal take and reduces acceptance and coexistence with grizzly bears. There are already several 4(d) exemptions for grizzly bears including the federal and state wildlife agencies, U.S. Department of Transportation, the state DOTs, Wildlife Services, BNSF Railway and others. There has been no cumulative effects analysis of these multiple sources of mortality and non-lethal take. Each are viewed in isolation. Adding broad allowances for grizzly bear mortality and other takes on top of all other sources of human-related take is a violation of the Endangered Species Act (ESA). Just like the redefined “harm” rule, the U.S. Fish & Wildlife Service (Service) is substituting political servitude for the best available science requirements of the ESA.

The Service proposes to authorize blanket exemptions to the take prohibitions of § 9 without identifying the impact on the species, specifying “reasonable and prudent” measures and “terms and conditions.” Generalized statements that these exemptions will be “*de minimus*” meet neither the substantive and

procedural requirements of the ESA nor the standards of proof and detailed examinations required under the ESA, the Administrative Procedures Act (APA) and the National Environmental Policy Act (NEPA).

The Service has concluded in the most recent Species Status Assessment (SSA) for Grizzly Bear (Service 2024) that management removals are a threat to the Lower 48 States Distinct Population Segment of grizzly bears. Adding several additional layers of take will exacerbate this threat, which is contrary to the plain language and intent of the ESA.

STATEMENT OF LAW

The grizzly bear was listed pursuant to the ESA (16 U.S.C. § 1531 et seq.) in the lower 48 states as a threatened species in 1975. 40 FR 31,734 (1975). A “threatened” species is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). The ESA provides for the “conservation of the ecosystems upon which threatened and endangered species depend.” Id. §1531(b) “Conservation” means “the use of all methods and procedures which are necessary to bring any ... species to the point at which the measures provided pursuant to this chapter are no longer necessary.” Id. § 1532(3).

The ESA requires that all federal agencies work toward recovery of listed species, and it contains both a procedural requirement and a substantive requirement for that purpose. Substantively, it requires that federal agencies ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species, or result in the adverse modification of critical habitat for such species. 16 U.S.C. § 1536(a)(2). To carry out the duty to avoid jeopardy and adverse modification of critical habitat, ESA § 7 sets forth a procedural requirement that directs an agency proposing an action (action agency) to consult with an expert agency, in this case, the Service, to evaluate the consequences of a proposed action on a listed species. 16 U.S.C. § 1536(a)(2).

If the Service concludes that the action will not result in jeopardy but may incidentally “take” or “harm” a protected species, the expert agency has authority to provide the action agency with an “incidental take statement.” This statement must specify the impact of such incidental taking on the species, set forth “reasonable and prudent measures” that the expert agency considers necessary to minimize such impact, and include the “terms and conditions” that the action agency must comply with to implement those measures. 16 U.S.C. § 1536(b)(4). If the action agency adopts such measures and implements their terms and conditions, the resulting level of incidental take authorized in the incidental take statement is excepted from the ESA’s ban on take. During this assessment process, the agencies must use the best available science.

The U.S. Court of Appeals for the Ninth Circuit holds that this regulatory language “admit[s] of no limitations” and that “there is little doubt that Congress intended to enact a broad definition of agency action in the ESA . . .” *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1054 (9th Cir. 1994). Thus, ESA consultation is required for individual projects as well as for the promulgation of land management plans and standards. Id.

The procedural consultation requirements in the ESA are judicially enforceable and strictly construed: If anything, the strict substantive provisions of the ESA justify more stringent enforcement of its procedural requirements [than the provisions of the National Environmental Policy Act], because the

procedural requirements are designed to ensure compliance with the substantive provisions. If a project or program is allowed to proceed without substantial compliance with those procedural requirements, there can be no assurance that a violation of the ESA's substantive provisions will not result. The latter, of course, is impermissible. *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985).

The term take under § 3 of the ESA means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct.” Under § 9, it does not matter how many total animals are taken or how many are injured, any unpermitted takings are illegal. *See, e.g., Animal Welfare Inst. v. Martin*, 588 F.Supp.2d 70, 98 (D.Me. 2008) (holding that “even if a lynx is harmlessly trapped, it has been subject to a prohibited take under the [ESA]”).

The most recent Species Status Assessment for grizzly bear (Service 2024) concluded: *After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that the grizzly bear DPS is at increased risk of extinction within the foreseeable future.*

We also call to the Service's attention its legal obligation to use the best available scientific information. Courts have found that when the agency does not have certain scientific information, it must rely on the best available scientific information, even if that information is an unpublished report.

Here, the Service has limited the scope of the analyses and largely ignored or understated emergent threats. Full analysis of threats that have emerged since the 1975 listing is required for adaptive management strategies. The Service's approach here is to wait until current threats reach critical thresholds before fully incorporating into the threat assessments. This violates the precautionary principle for management of threatened and endangered species.

On page 32 of its Proposed Delisting Rule, the Service admits it did not do a viability assessment. That is a major deficiency. At page 17 the SSA states: “*If conservation efforts decline, viability also decreases. If conservation efforts increase, viability improves.*” Conservation efforts are not projected to increase. In fact, conservation efforts are declining now and will decline further. The PR will reduce conservation effort by permitting excessive takings, habitat modification and failure to protect connectivity areas.

The PR is arbitrary, capricious and an abuse of agency discretion. There is no logical or rational connection between the facts and the proposed decision. The most recent SSA concluded that the grizzly bear remains at risk of becoming endangered throughout its range. The PR is administrative sleight of hand with the intent of establishing a regulatory framework similar to that which would exist post-delisting of grizzly bears without publishing a final delisting rule.

The PR represents the intent for excessive and unreasonable departures from the plain language and intent of the ESA. Taken in sum, along with other threats to the grizzly bear, these departures will reduce the probability of recovery which is contrary to ESA requirements. The permit structure in Tier 1 and Tier 2 is simply a get out of jail free card that allows excessive and cumulative taking of grizzly bears that would otherwise not be allowed.

PAGE BY PAGE COMMENTS

On page 44782 the PR states: *We may also except otherwise prohibited activities through a 4(d) rule itself, in which case threatened species permits will not be required for those activities.*

Unpermitted takings are a violation of ESA procedures. How is “may” defined? What activities specifically? What amount of take? The PR says these may be “*de minimus*” and through a § 10 programmatic plan. May? What plan?

In addition, the Service and project proponents can reduce the need for such permits by developing standardized conservation measures that avoid the risk of “take.”

This is totally hypothetical and conjecture.

While the two experimental populations will further the conservation of the species, both have been found to be not essential to the continued existence of the species, or nonessential. These designations include population-specific protective regulations under section 10(j) of the Act for two nonessential experimental populations (NEPs), the North Cascades and Bitterroot, that are not affected by this proposed rule.

This is contrary to the most recent SSA which states recovery of the Bitterroot population would greatly enhance long term survival and recovery of the species in the 48 states. Best available science states that the Bitterroot is required for grizzly bear recovery in the 48 states. The Service designated a Bitterroot Recovery Zone to achieve this purpose. In fact, § 10(j) does not apply to grizzly bears currently in the Greater Bitterroot Ecosystem (GBE) or who may immigrate into it in the future. In a letter to National Forests in Idaho, the Service (Bush and Swanson 1/21/20) wrote:

“In consultation with the Regional Solicitor's Office, we confirm that the current Endangered Species Act (ESA) section 10(j) rule for grizzly bears in the Bitterroot Grizzly Bear Experimental Population Area (BGBEPA), 50 CFR § 17.84(1), does not apply to grizzly bears that have dispersed into the BGBEPA on their own.”

“Therefore, grizzly bears that are present in the BGBEPA are not covered by the 10(j) rule and are considered threatened under the ESA. This means that ESA section 7 consultation obligations apply to proposed federal agency actions that may affect grizzly bear in the BGBEPA, as with any grizzly bear in the lower 48 States.” (emphasis provided)

<https://www.mtpr.org/montana-news/2020-01-24/bitterroot-grizzlies-will-have-full-esa-protections-wildlife-officials-say>

There is a near-total consensus amongst bear biologists, population viability analysts and state and federal agencies with responsibilities for grizzly bear management that connectivity of the isolated recovery areas including the GBE will lower the chances of extinction and promote grizzly bear recovery. Those who have presented this metapopulation/single population approach to grizzly bear

recovery include Bader (1991), Metzgar and Bader (1992); Craighead and Vyse (1996); Bader (2000a, 2000b); Allendorf, Metzgar, Horejsi, Mattson and Craighead (2019); Costello, Montana Fish, Wildlife & Parks (2019); Montana Grizzly Bear Advisory Council (2020); Mattson (2021); Sells, et al. (2023); Bader and Sieracki (2024); Servheen (2024); Sells and Costello (2024).

Montana Fish, Wildlife & Parks (Costello 2019) stated that the establishment of a grizzly bear population in the GBE would substantially increase the long-term persistence of the species by having five sub-populations instead of four and would minimize the potential for the metapopulation to go extinct, even under extreme circumstances.

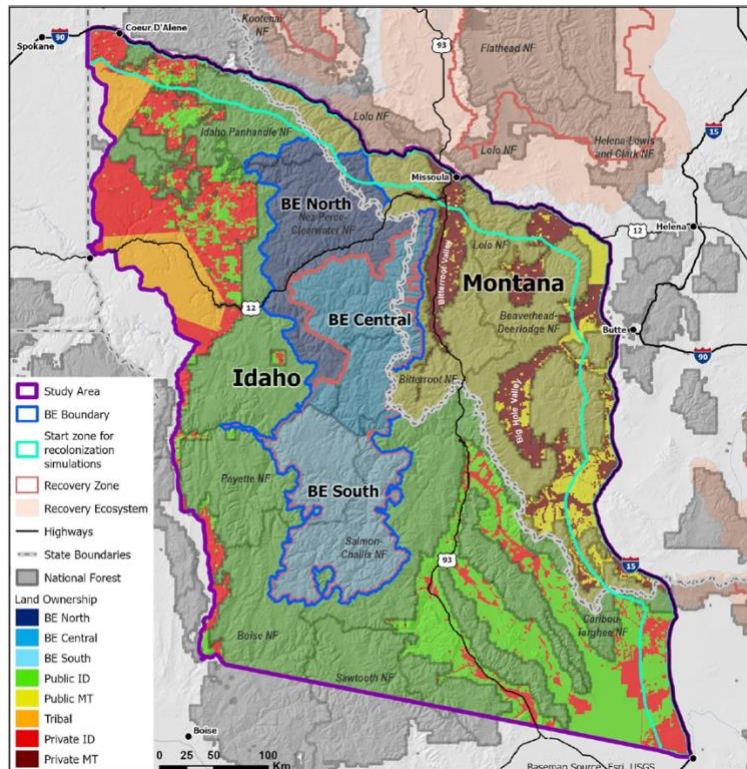


Figure 1. Study Area From Sells and Costello 2024.

Reintroducing grizzly bears to the GBE is premature. Grizzly bears that have naturally immigrated into the GBE are fully protected as a threatened species under the ESA.

Biologists with the U.S. Forest Service, Idaho Fish & Game, Montana Fish, Wildlife & Parks and the Service have verified numerous grizzly bear observations in the GBE and areas immediately adjacent. There are a minimum of 53 verified observations of grizzly bears. The Service has provided no scientific evidence whatsoever that all of these grizzly bears were transient and merely “passing through.”

Sells and Costello (2024) have a study area map of the GBE shown above. Within that area, there have been a minimum of 73 verified observations of grizzly bears

between 2013-2024. Within the boundary identified in the Service’s scoping documents for the Bitterroot Grizzly Bear DEIS and immediately adjacent there have been approximately 52 verified observations of grizzly bears since 1998 and at least more than 20 others if the Ninemile Demographic Connectivity Area is included (Jonkel 2022-2026).

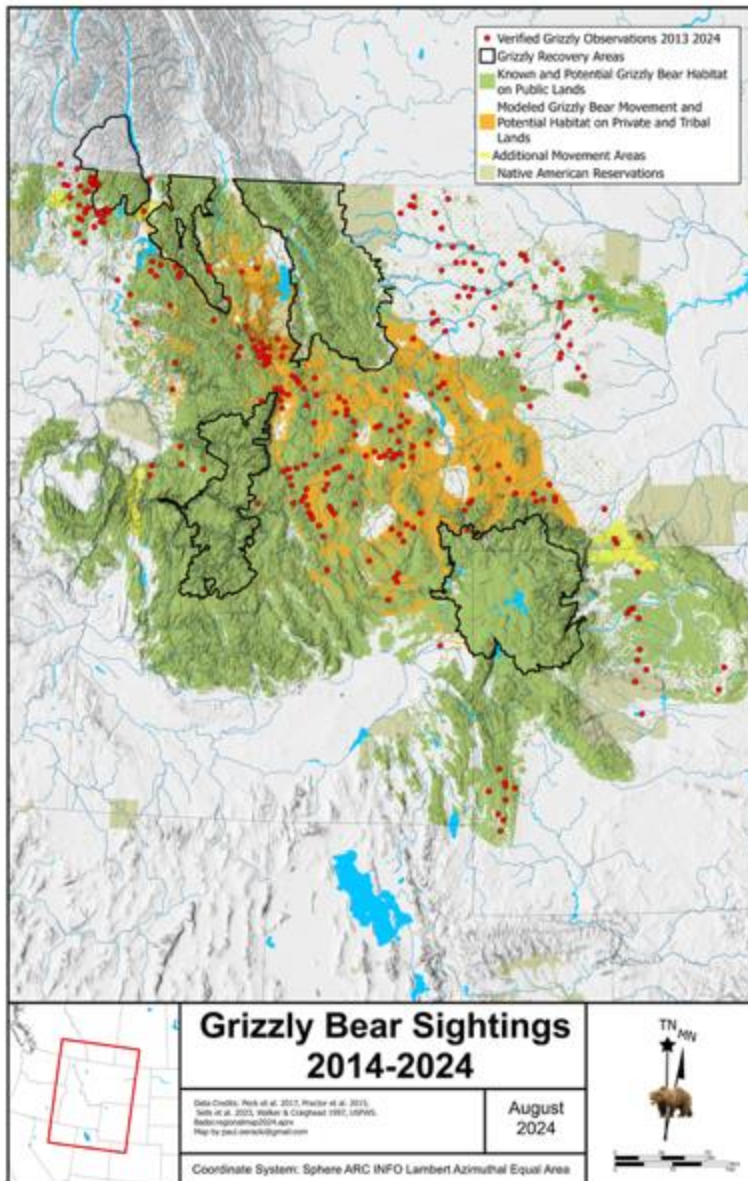


Figure 2. From Bader and Sieracki 2024. Data Sources: Montana Fish, Wildlife & Parks, Idaho Fish & Game, U.S. Forest Service, U.S. Fish & Wildlife Service.

With two exceptions, there is no biological evidence whatsoever these bears were just “moving through” on a temporary basis. The total number of bears is certainly greater because not all bears are observed and not all bear observations are reported and not all are verified. The sheer number of observations over a significant time period lends support to the existence of resident bears in the GBE.

The Service (2024) wrote: We now anticipate that a population of grizzly bears (defined as two or more breeding females or one female with two consecutive litters) may become established in the BE through natural recolonization in the next 15 to 30 years. The Service also wrote: The estimated occupied range for the NCDE grizzly bear population is less than 5 kilometers (3 miles) from the Bitterroot recovery zone. In fact, the estimated occupied area extends into the Bitterroot Mountains (Costello et al. 2025). Bader and Sieracki (2024) estimated that adult female grizzly bears may inhabit the GBE within 4-19 years based on scientifically derived parameters including dispersal rates, the expansion of the Occupied Habitat Area in the Northern

Continental Divide Ecosystem, predicted movement areas for female grizzly bears and the number of verified sightings in the GBE, the Ninemile Demographic Connectivity Area and Sapphire Mountains.

At page 44783 it states *Section 7 consultation is required for Federal actions that “may affect” a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule.*

However, by exempting take through the PR and effectively gutting § 9 with the new “Harm” rule, consultations will not identify any significant take and will be essentially meaningless.

Similarly, if a Federal agency determines an action is “likely to adversely affect” a threatened species, the action will require formal consultation with the Service and the formulation of a biological opinion (50 CFR 402.14(a)), regardless of whether the action will result in “take” of the threatened species.

Again, under the new rule for “harm” there will be no “likely to adversely effect” from habitat destruction or modification so a “likely to adversely effect” determination would be unlikely. The ESA requires consideration and disclosure of other related actions that are likely to occur and the PR does not comply with that requirement or explain its ramifications.

In fact, the PR states: *When impacts associated with certain activities are not prohibited by a 4(d) rule (i.e., not “take”), the biological opinion will likely not include additional RPMs/TCs relative to those impacts.* Therefore, § 7 and Biological Opinions and § 9 are effectively rendered moot. Moreover, the PR states: *...the RPMs/TCs cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes (50 CFR 402.14(i)(2)). They should not prevent the action subject to consultation from proceeding as essentially proposed (89 FR 24268).*

The PR essentially admits the Service intends to render § 9 moot with this statement: *Although there are no specific habitat-based take exceptions in this rule, habitat management is a key aspect of grizzly bear conservation, and we plan to work with land management agencies (e.g., U.S. Forest Service) to streamline consultation obligations for habitat management.*

Under §9, it does not matter how many total animals are taken or how many are injured, any unpermitted takings are illegal. *See, e.g., Animal Welfare Inst. v. Martin*, 588 F.Supp.2d 70, 98 (D.Me. 2008) (holding that “even if a lynx is harmlessly trapped, it has been subject to a prohibited take under the [ESA]”).

What specifically will be streamlined? How will it affect the species? The PR states there will be a biological opinion “template.” Is this a simple checklist? The ESA requires full disclosure and analysis of the impact of such actions.

The ESA’s fundamental purposes are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

Several sections pertain to the conservation of habitat including § 7, § 9, and §10 as well as court rulings pertaining to habitat connectivity.

Also on page 44783, the PR states: *...any grizzly bears found in the experimental population areas would be assumed to be members of nonexperimental populations and would be managed under this proposed grizzly bear section 4(d) rule (50 CFR 17.40(b)).*

This is totally contrary to the law and the Service's letter.

If there is an initial release of one or more grizzly bears into an NEP area in the United States, any grizzly bears in that NEP area would be assumed to be members of the experimental population and would be treated as part of the experimental population while they are present within the NEP area.

This would be an illegal down listing of bears with threatened status without revealing the impact on individual bears and the species as a whole. Under § 10(j) an "experiment" can be declared a failure and all bears removed from the experimental population area. According to the SSA, this could significantly diminish the prospects for survival and recovery of the lower 48 Distinct Population Segment.

The provision that would downgrade the status of all grizzly bears in the GBE present and future upon the reintroduction of just one grizzly bear is political chicanery. This would reclassify an entire class of bears, which is effectively delisting without a final delisting rule.

The Service has determined that § 10(j) does not apply to bears that have reached the GBE on their own. These bears are part of the single DPS in the Northern Rockies. The Service may not carve out an experimental population that is part of a threatened population no more than it could carve off part of the NCDE or GYE and designate it as experimental. Under § 10(j), a reintroduced population of a listed species may only be designated as "experimental" when, and at such times as, the population is "wholly separate geographically" from non-experimental (natural/wild) populations of the same species. "...when, and at such times as" the population is in the wild; if natural expansion causes the groups to overlap or merge physically, the strict 10(j) experimental status and its flexible management rules may no longer apply where the overlap occurs (Fed. Reg. 50 CFR Part 222; 2016). It is believed that all grizzly bears in the GBE have come from the NCDE, SE, CYE or GYE, all of which have threatened status. At least one bear has moved from the CYE to the GBE and back to the CYE and another travelled from the NCDE to the GBE and back to the NCDE.

On page 44784 the PR states: *The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that are intended to incentivize conservation actions or actions that are not expected to rise to the level that would have a negative impact (i.e., would have only de minimis impacts) on the species' conservation.*

"*De minimus*" has not been defined or quantified. By exempting so many forms of take, the Service is artificially lowering the amount of "take" in order to mask the true level of excessive take from all sources. Therefore, bears removed from a sub-population, including breeding age females, may not be counted as a mortality for that sub-population, obscuring the biological and demographic impacts.

On page 44784 the PR states that it exempts *Incidental take associated with regulated trapping of other species* (see comments below).

The PR states *Because consultation obligations and processes under section 7(a)(2) are unaffected by 4(d) rules, we plan to work with land management agencies (e.g., U.S. Forest Service) to streamline and improve consistency in the consultation obligations for habitat management activities independently of this rule.*

How will this process be streamlined? What will the effect of streamlining have on performing due diligence and complying with the best available science mandate and other ESA procedural requirements?

At page 44785 the PR states *To further the conservation of the species, we propose not to apply the exceptions at 50 CFR 17.31(b), and apply multiple species-specific exceptions.*

What species are excepted and what are the exceptions?

The PR states an exception is *incidental take from regulated trapping of other species; and additional exceptions for authorized agencies for management activities and incidental take under Tier 1 and Tier 2.*

The full extents of the exceptions are not revealed. The PR simply says that agencies and other entities will be entitled to additional exceptions if they fall under Tier 1 and Tier 2. It seems to be a reward system whereby if they have a plan on paper, they can take more grizzly bears than would otherwise be allowed. Is there an offset that has been quantified and verified? Even if an agency or entity has no MOU, TLA or Conservation Plan which may include an HCP under § 10, they can receive a permit under § 17.32.

At page 44786 the PR states *In geographic areas and temporal periods defined in a TLA from the Service, incidental take associated with regulated trapping of other species is excepted, provided those activities are conducted in accordance with Federal, State, and Tribal laws and regulations. Annual reports are due to the Service on or by February 15. Without a TLA from the Service, or an MOU with the Service that documents additional Tier 1 or Tier 2 exceptions (see Table 2, below), incidental take from regulated trapping of other species would not be excepted under this 4(d) rule.*

This does not provide sufficient information. What if state regulations allow illegal takings as the former wolf trapping regulations in Montana and Idaho did? What are the temporal parameters? What is the expected level of take? An annual report isn't due until February 15 of the following year. This could mean the Service would not know the extent of incidental take until months after the takings occurred, meaning no remedial action could be taken such as halting the trapping season(s).

The State of Montana has settled through the legal process (*Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM*) what the denning seasons are for grizzly bears and the geographic scope of grizzly bear habitat—these may not be modified. These dates were scientifically derived from an extensive administrative record and expert testimony.

Table 2. repeats that incidental take associated with regulated trapping is excepted under both Tier 1 and Tier 2.

At page 44787 it states *Any person may conduct activities as authorized by a permit under § 17.32. We may under certain circumstances issue permits to carry out one or more otherwise prohibited activities, including those described above.*

What are the other activities not described?

The PR states *Designated agents may live-capture and tag, collar, transport, and release a grizzly bear consistent with this proposed grizzly bear 4(d) rule and the applicable TLA or applicable MOU if such action is necessary for scientific, genetic, or population augmentation purposes.*

What is the level of estimated take?

At page 44788 the PR states *Authorized agencies must submit an annual report to the Service documenting the location, date, and type of all take resulting in the capture, relocation, or mortality of a grizzly bear within a calendar year on or by February 15 of the subsequent year.*

Why the delay until the following year? All take should be reported immediately so that if excessive take from all sources occurs, remedial action can be taken in a timely fashion.

TAKE FROM TRAPPING OF OTHER SPECIES

(11) Incidental Take Associated With Regulated Trapping of Other Species (See (b)(3)(xiii) Below)

We propose to except incidental take associated with regulated trapping of other species under the following conditions: (1) take occurs in geographic areas and temporal periods as defined in a TLA from the Service; and (2) the trapping of other species is conducted in accordance with Federal, State, and Tribal laws and regulations. The TLA from the Service would define the geographic areas and temporal periods for which this exception would apply. The Service would 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. This will provide flexibility to ensure that 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. As a result, we expect that any incidental take due to regulated trapping of other species to be de minimis. Without a TLA from the Service, or an MOU with the Service that documents additional Tier 1 or Tier 2 exceptions (see Additional exceptions for management activities and incidental take under Tier 1 and Tier 2), incidental take from regulated trapping of other species would not be excepted under this 4(d) rule.

This provision is vaguely defined and lacks specificity. It indicates that geography and dates could vary from year to year. This issue was litigated for wolf trapping and a specific geography and dates were set for Montana (*Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM*) and also in Idaho (*Center for Biological Diversity et al. v. State of Idaho Case No. 1:21-cv-00479-CWD*). Grizzly bears are known to occur in areas where the state and federal governments claim they are not.

An injunction was issued in *Flathead-Lolo-Bitterroot Citizen Task Force* and upheld by the 9th Circuit Court of Appeals and remains in place. This was based on an extensive administrative record and expert testimony and the established facts that grizzly bear take related to trapping of wolves are not “*de minimus*” and in fact numerous grizzly bears have been caught in traps set for wolves and coyotes and have resulted in death and severe injuries that impede the animals’ ability to forage, hunt, travel, evade predation and dig suitable dens. Grizzlies have also been caught in snares set for wolves in Idaho and two were killed and another likely would have died if not shot by a hunter in a case of mistaken identity.

At least 27 grizzly bears have been reported caught in traps and snares set for wolves and coyotes in Montana (Declaration of Ken McDonald, Montana Fish, Wildlife & Parks *Flathead-Lolo-Bitterroot Citizen Task Force et al. v. State of Montana. CV 23-101-M-DWM*). These are just the reported incidents.

Grizzly bears can be attracted to scents and baits from long distances up to a mile or more (Declarations of David J. Mattson, Katherine C. Kendall, Brian L. Horejsi, Barrie K. Gilbert, Frank L. Craighead, Expert Reports of David J. Mattson, Brian L. Horejsi, Frank L. Craighead, Diane K. Boyd, Katherine C. Kendall, Timothy Manley. *Flathead-Lolo-Bitterroot Citizen Task Force et al. v. State of Montana. CV 23-101-M-DWM.*)

Figure 3. Non-Target Injuries from Traps (from Lamb et al. 2022)



These photos adapted from Lamb et al. (2022) are examples of grizzly bears that lost digits because of injuries from non-target capture by leg-hold and body-gripping traps set to capture other species.



Figure 3. Adult Female Grizzly Bear Missing Lower Part of Left front Leg. Timothy Manley photo. Figure 4. Adult Male Grizzly Bear With Left Front Paw Missing Toes and Claws. Timothy Manley photo.

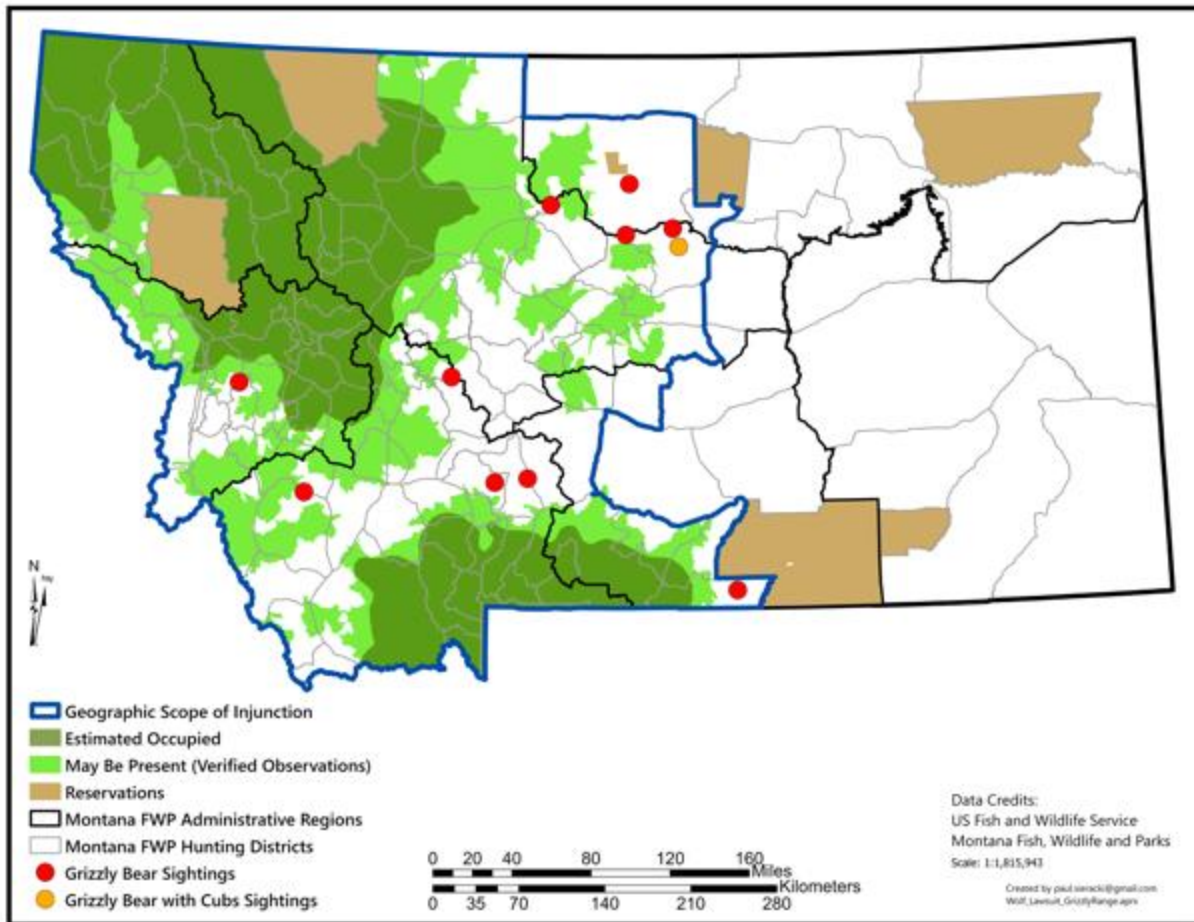


Figure 5. Geographic Scope of Injunction. Flathead-Lolo-Bitterroot Citizen task Force, et al. v. State of Montana.



Figure 6. Adult Male Grizzly Bear With Right Front Paw Missing Toes and Claws. Timothy Manley photo.



It is my opinion that the injuries I and my former colleagues observed were much more likely than not caused by traps due to the type of injuries we noted, which are not consistent with the types of injuries bears suffer in the wild. I agree with the declarations filed by David Mattson, Brian Horejsi and Barrie Gilbert that these types of injuries do not appear to be fight-related or natural injuries. Rather, they were almost certainly mechanically caused. — Expert Report of Timothy Manley Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM.

Figure 7. X-ray of Adult Male Grizzly Bear With Left and Rights Paws Missing Toes and Claws. Timothy Manley.



Figure 8. Geographic Scope of Injunction Center for Biological Diversity et al. v. State of Idaho.

If just one grizzly bear were to be incidentally taken during the allowable wolf trapping season or seasons for other species the seasons should be ended. Many other species are trapped and these seasons may overlap when grizzly bears are out of the den. How would denning seasons be determined? Where would the exceptions apply? This must be specifically defined in the Rule.

The Service seems to think that only trapping seasons for wolf are at issue. In fact, numerous grizzly bears have been caught in traps and snares set for coyotes and coyotes may be trapped year-round in Montana, Wyoming and Idaho. Grizzlies have been caught in coyote and bobcat traps and snares in Montana, and in coyote traps in Wyoming and Idaho.

I also had to drug and release two yearling grizzly bears that had been captured in leghold traps set for a coyote and a bobcat. — Expert report of Timothy Manley. Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM.



Figure 9. Yearling Grizzly Bear Caught in Trap Set for Bobcat. Timothy Manley photo.

A key study on incidental trap and snare catch of grizzly bears is Lamb et al. (2022) which found that many grizzly bears have been permanently maimed by traps set for marten. Montana trapping regulations for marten traps are less protective than those in British Columbia and trap size opening is much more likely to catch grizzly bears and especially cubs and subadults.

To prevent bears from having their feet caught in traps set for marten, Lamb et al. recommend that the elevated cubby boxes have openings large enough to pass a marten but too small for a bear to fit a whole foot through. By regulation, in southeast British Columbia this dimension is no larger than 3.5 inches (8.9cm). In Montana, there are no regulations or recommendations specific to preventing bycatch of grizzly bears. There is a non-binding recommendation that cubby boxes have a closed front with an opening of 2.5 x 2.5 inches to prevent bycatch of fisher but the regulations for ground sets allow openings up to 52 square inches which is many times the recommended opening.

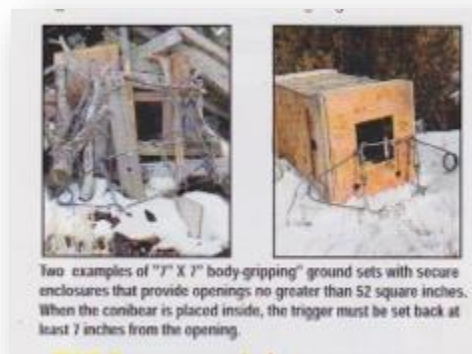


Figure 10. Montana Fish, Wildlife & Parks Trapping Brochure.

The administrative record and expert testimony in *Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana*. CV 23-101-M-DWM identified numerous grizzly bears trapped for research and management that were missing claws, toes and even lower limbs. These injuries were believed to be trap-related.

Conibear “body-gripping” traps are allowed in grizzly bear habitat if they have a jaw spread less than or equal to 5” and can be elevated at least 48” above the surface. These are well within the reach of even a subadult grizzly bear and wide enough to catch a front foot.

I and another biologist captured an adult male grizzly at a residence near Glen Lake that was missing an entire front foot and wrist. It is our belief that it had probably been caught in a neck snare set by a trapper in search of bobcats or coyotes. — Expert Report of Timothy J. Manley Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM.

Takings of grizzly bears have also been reported in States and Provinces adjacent to Montana and may have affected bears that live part time in Montana. A grizzly bear very close to the northwest Montana border had a snare embedded in its neck and would have died without intervention (pers. comm. with Wayne Kasworm, Service grizzly bear recovery manager).

At least five grizzly bears in southeast British Columbia are known to have been caught in foothold traps set for wolves, and several more bears in adjacent study areas were caught in traps as well. Further, a grizzly bear in Wyoming was caught in a snare set for wolves (Lamb et al. 2022). McLellan et al. (2018) reported one grizzly bear killed after being caught in a snare in an area close to Montana in British Columbia. In Wyoming, at least four grizzly bears have suffered injuries, including trail camera pictures in 2022 showing a grizzly with an amputated left foot and a female grizzly with cubs missing two toes on her left foot. In 2017 an adult grizzly was photographed with a conibear trap attached to its right front paw and in 2015 a grizzly cub was caught in a conibear trap set for marten. (wyominguntrapped.org).

Another issue is trap-checking requirements. To prevent serious injury or death to a grizzly bear, it must be released within 24 hours (Cattett et al. 2008, Proulx and Rodtka 2019). Thirty-six states have a 24-hour check requirement but Montana, Wyoming and Idaho are not among them. Wolf traps are required to be checked every 48 hours within Lynx Protection Zones but for all other species Montana Fish, Wildlife & Parks has no trap check requirements. Many traplines are only checked once a week meaning grizzly bear bycatch could go undetected for days and lead to mortality. Wyoming and Idaho have a 72-hour trap check requirement.

Professional organizations recommend a 24-hour trap and snare check. Hunter-Ed.com states: “*You must check your traps at least once a day. When you set traps, you make a commitment to check them every day until the traps are removed. This commitment does not change because of bad weather or other inconveniences. You should also check traps early each day to: Release non-target animals as soon as possible.*”

The Association of Fish and Wildlife Agencies Trapper Education Manual states: *“Make a commitment to check your traps at least once every day...” “trappers must check their sets every day...” “Regardless of the law, responsible trappers will visit their traps daily. It is good for animal welfare, and it will increase your success.”*

The American Society of Mammalogists state: *“The number of traps set at a particular time and location should not exceed the ability of the investigator to monitor them at reasonable intervals,”* and that *“Snares or spring foothold traps must be checked frequently (perhaps twice daily or more often depending on the target species and potential for capture of nontarget species.”*

The American Society of Veterinary Medicine states, *“AVMA recommends that traps be checked at least once every 24 hours...”*

Between 2012 and 2024, Montana Fish, Wildlife & Parks documented 1,191 non-target animals caught in traps, including furbearers, threatened and endangered species, non-game wildlife, deer, moose and elk, raptors, grizzlies, and a high number of mountain lions and domestic dogs.

Retired government trapper Carter Niemeyer (Wildlife Services, U.S. Fish & Wildlife Service) has testified that injuries caused by foothold traps and neck snares can vary from rapid mortality to injuries that kill or impair the animal after release, as well as lacerations and blunt force trauma. Traps and snares by their very nature and function cause compression or constriction injuries that can damage tissue, restrict vascular flow, and can have harmful effects beyond the extremity that is actually constricted. The physiological effects of stress, trauma, desperation, and shock can also cause death after release. Toxins can be released into the blood system after traps and snares are removed, resulting in organ damage and death. Other injuries from traps and snares include bone fractures, sprains, dislocations, tooth and gum damage from biting the traps and snares, hypothermia or hyperthermia, and dehydration. Bone fractures to the phalanges and legs can be debilitating and result in death (Declaration of Carter Niemeyer, p. 13; Expert Disclosure of Carter Niemeyer, p. 8, Deposition of Carter Niemeyer, 2023, 2024, *Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana CV 23-101-M-DWM*; Expert Disclosure, pgs. 11-12).

Thus, take is not limited to one point in time but can be an unlimited situation lasting over the lifetime of the animal.

Some forms of take would not be readily apparent even to trained individuals. These include capture myopathy and increased cortisol levels which would only be recognized through a detailed examination including blood and lab tests. Some fractures and other internal injuries would not be visible.

The physiological effects of stress, trauma, desperation, and shock can also cause death after release. Toxins can be released into the blood system after traps and snares are removed, resulting in organ damage and death. (Declaration of Carter Niemeyer, p. 13; Expert Disclosure of Carter Niemeyer, p. 8, Deposition of Carter Niemeyer, 2023, 2024, *Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana CV 23-101-M-DWM*; Expert Disclosure, pgs. 11-12).

Cattet et al. (2008) reported that one grizzly died of capture myopathy approximately 10 days after being captured by a leghold snare. Capture myopathy is a physical reaction to the stress and trauma associated with snaring. The Service (2021) reported the death of a subadult male grizzly from exertional myopathy after being trapped in 2019 (Status Assessment for Grizzly Bear at 151). Cattett et al. also found that 70% of grizzly bears captured by leg-hold snares had elevated levels of serum, indicating some level of trauma and muscle injury with reduced mobility for up to a month or more. Multiple captures have an effect on body condition with reduced potential for growth, reproduction and survival.

Mr. Niemeyer has found significant impacts on animals from trapping or snaring including the loss of digits in paws; neck snare injuries including “waterhead” injuries, meaning catastrophic edema; and neck snare injuries such as snares cutting through flesh, which causes bleeding and leads to eventual death of the animal. (Expert Disclosure, p. 12). The International Standards Technical Committee rated amputation of three or more digits and any amputation above the digits as Severe Trauma (cited in Lossa et al. 2007). A grizzly bear that has lost claws, toes or a front foot will have reduced capability of digging for food and for excavating a viable winter den. This can reduce health, reproduction and survival.

One of the most important factors in determining the extent to which a trapped or snared animal is injured is the amount of time it spends in a trap or snare, according to Niemeyer. Skin, blood, and nerve tissue can be damaged the longer an animal is in a trap or snare. Another important factor is ambient temperature. When temperatures are below freezing, traps and snares are more likely to cause severe and irreparable harm to skin, bone, and vascular and nerve tissue at and below the constriction caused by a trap or snare. Upon release, the loss of function in an animal’s extremities will limit their ability to hunt, travel, and escape predation (such as the ability to climb a tree). An animal could also simply freeze to death. For these reasons, in his experience, researchers work hard to limit the time a bird or animal is restrained in a trap; researchers use frequent trap/snare checks or electronic monitors to minimize injury (Niemeyer Expert Disclosure, p.13). Animals caught in freezing weather have cold transferred into the foot by metal traps. Constriction injuries cut blood flow into the foot, and the feet will freeze very quickly. Freezing feet is an irreparable injury (Niemeyer, Expert Disclosure, p. 13).

Once again, the Service would rely on an annual report not due until February 15 of the following year. This delay would prevent remedial action such as season closing that would limit take that is in excess of “*de minimus*.”

REPORTING ACCURACY

The Service appears to believe that take of grizzly bears occurs only to the extent that these takes are detected and reported. The best available science shows that reported mortality is far lower than the actual number of mortalities. McLellan et al. (2018) found just 12% of unpermitted grizzly bear mortalities are reported to authorities. Costello (2016) estimated just 19% were reported while Lamb et

al. (2022) estimated just 32%. The average of these three published studies is about 21% or just one in five.

As a practical matter, only 12% of unpermitted grizzly bear killings are actually reported (McLellan, et al. 2018). This data shows that trappers who find grizzly bears in their traps are highly unlikely to call a government agent. Rather than immobilization drugs, trappers are most likely carrying firearms to dispatch grizzly bears in their traps so they can safely remove the traps. (2nd Declaration of David J. Mattson, Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana CV 23-101-M-DWM).

Non-lethal takes also have a low reporting rate. Most injuries are not detected unless the grizzly bear is subsequently trapped for research or management or photographed.

Montana FWP (2019) acknowledges that their data “leads to an undercount of the incidents of nontarget captures.” Thus, the total amount of actual take far exceeds “de minimus” amounts.

Mr. Niemeyer testified that “Based on my conversations with various members of the trapping community, many trappers will not report incidental captures out of fear that these reports will result in increased regulation of trapping activities” (Declaration, p.17; Expert Disclosure, p. 11, Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM).

In a case dealing with illegal taking of lynx in Idaho, Service biologists estimated that “for every reported incidental take of lynx, one incidental take remains unreported due to the fact that many trappers will not report bycatch of threatened and endangered species.” *Center for Biology Diversity v. C.L. Otter et al.*, 2016 WL 233193 (D. Id., Jan. 8, 2016).

In such cases the captured animal may be shot and killed and the carcass disposed meaning this lethal take would never be discovered. In fact, most trap-related injuries remain undetected unless the bear is subsequently trapped for research or management (Lamb et al. 2022). There are reasons to believe it may be even higher for grizzly bears, which have far higher numbers and in a far larger geographic area than lynx. Cattet et al. (2008) cited explanations for why mortalities may not be detected, including that scavengers or predators consume carcasses, animals die in concealed places, carcasses decompose quickly, radio transmitters malfunction, or animals fitted with radio transmitters emigrate from the study area.

Other reasons include that radio collars may be removed by poachers and discarded where they won’t be discovered such as in water. Take of grizzly bears beyond the undersized recovery areas may not be discovered since these areas are not routinely monitored and few bears are radio-collared. Many are not known to managers and their disappearance would not be realized.

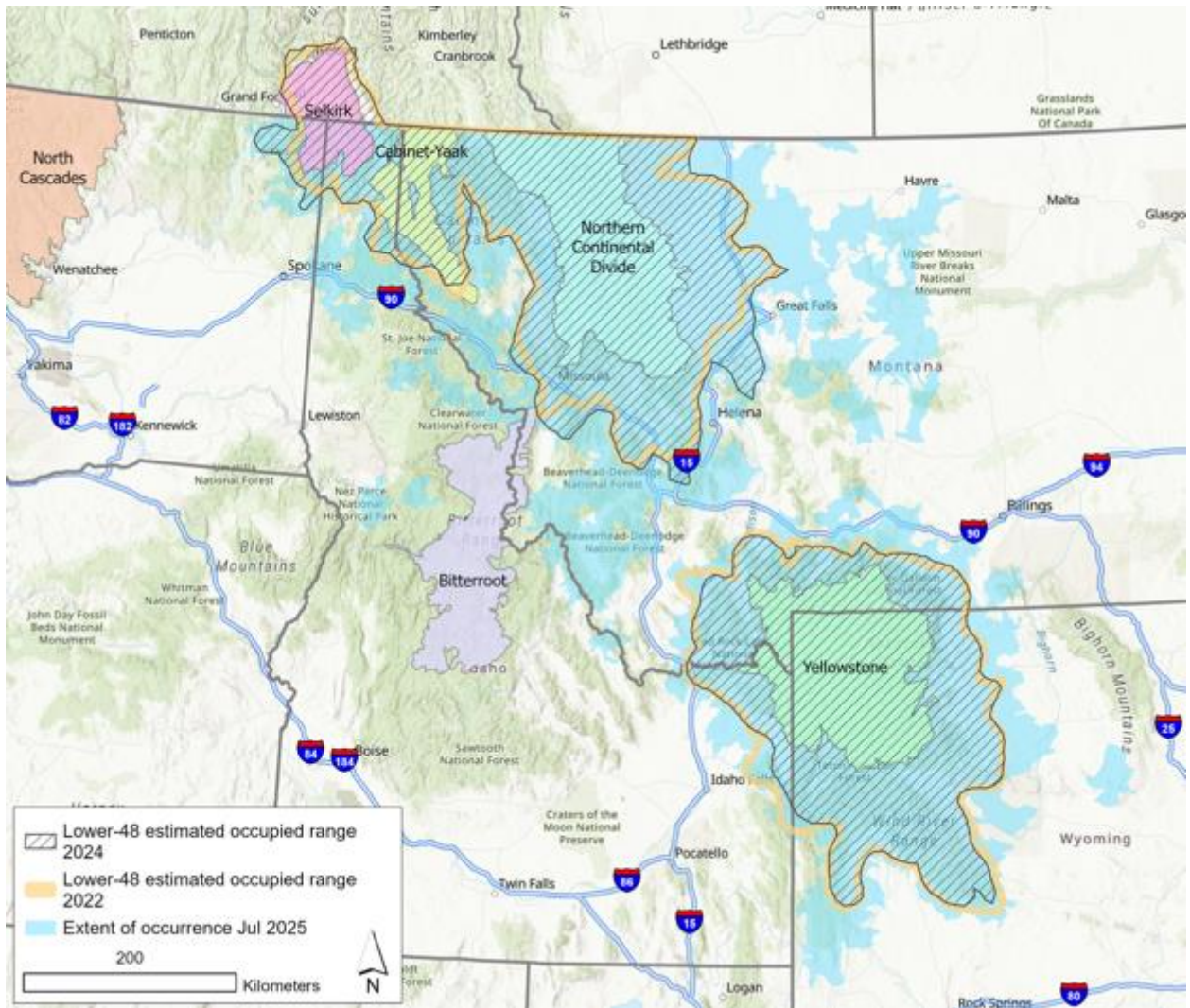


Figure 11. Source: Costello, et al. 2025.

With respect to wolf trapping alone, Kareiva, et al. (2022) concludes that, in part because of a lack of data transparency, and also because some traps may be lost or are not checked, it is hard to quantify the full extent of nontarget animals' deaths that occur in traps set for wolves.

In a 2024 letter to the Montana Fish & Wildlife Commission, Christopher Servheen, the Service's former National Grizzly Bear Recovery Coordinator wrote that between 2018 and March 2022, Montana FWP has documented "... at least 306 records of non-target captures of animals in foothold traps, snares, and conibear traps. These are likely only a small portion of the actual number of such non-target captures that occurred during this 5-year period ... This information clearly shows that traps and snares are a danger to non-target wildlife... The Non-target Animal Captures included 91 mountain lions, 123 domestic dogs (49 severely injured and 4 had died), 5 fishers, 5 wolverines, 6 bobcats, 9 otters, and 11 deer along with numerous other species like black bears, grizzly bears, bald and golden eagles, moose, and a great horned owl."

The SSA also states: *Wolf trapping and snaring and black bear hunting have the potential to incidentally take grizzly bears. Recent legislation in Montana and Idaho expanding hunting and trapping tools available for wolves and black bears will likely increase incidental take of grizzly bears ... However, there may be some mortalities that go unreported due to unknown mortalities/injuries resulting from grizzly bears breaking away from the site with the snare and/or trap still attached.*

In fact, this has been documented numerous times including the examples from above and those shown below from Montana, Idaho and Wyoming.

► Grizzly bear claws and toes remain in a foot-hold trap in Montana. The bear carried the trap long enough with its claws twisted by the trap that two toes became necrotic and fell off. This illustrates the damage that traps can cause bears that escape wearing such traps.



Credit: J. Jonkel

32 The Wildlife Professional, May/June 2022



Credit: W. Kasworm

◄ A grizzly bear was caught in a neck snare set for wolves in 2020. The bear chewed the cable that attached the snare to a tree and escaped with the snare tightly fettered around its neck. The snare cable was deeply embedded into the neck of the bear and would likely never come off. This grizzly bear was subsequently shot by a black bear hunter in Idaho who mistook it for a black bear. The hunter followed the law and reported this mistaken identification kill to authorities. Most animals that escape wearing snares or foot-hold traps are never found or reported, however. A second grizzly bear was caught in another neck snare set for wolves in northern Idaho in 2020, but that bear died in the snare.

According to Wayne Kasworm, U.S. Fish & Wildlife Service Cabinet-Yaak and Selkirk Grizzly Bear Recovery Coordinator, the grizzly bear in the photo above would have eventually died from the snare if it had not been shot.



Figure 12. Adult Female Grizzly Bear Missing Left Front Foot in Wyoming.

Many furbearers are trapped using body-gripping traps designed to kill the target species quickly. Body-gripping traps, especially those set for marten and weasel, are a threat to grizzly bears and can cause serious injury, including amputation of feet and toes, bone loss, and death. A study in British Columbia (Lamb et al. 2022) found that $\approx$ 7% of all grizzlies in their study sample had missing toes on front paws.

In Montana, snares for most species are required to break loose with more than 350 pounds (approx. 159kg) of dead pull strength, while for wolves this requirement is 1,000 pounds (Montana Department of Fish, Wildlife & Parks 2022).

However, Lamb, et al. (2022) found that on average an adult grizzly bear has about 342 pounds (155kg) of dead pull strength, not enough to break free. Cubs and sub-adults with less pull strength are particularly vulnerable. While bears can generate more pull strength with a running start up to 20 feet, this heightens the risk of severe injury and damage to or loss of traps. Lamb et al. also tested traps and could only free trapped adult grizzly bear feet about 20% of the time.

In addition to physical injury, trapped grizzly bears are also vulnerable to being killed by other grizzly bears. Lamb et al. reported that one cub was killed while its mother was trapped, and two female grizzly bears were killed while in traps. A female grizzly bear was killed by a male bear while caught in a wolf trap in Glacier National Park (Kunkel, pers. comm.; Declaration of Ken McDonald, Montana Fish, Wildlife & Parks *Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana. CV 23-101-M-DWM*).

The known and unknown takes associated with trapping for other species is well beyond *de minimus* and thus these activities may not be exempted under the provisions of the PR.

Also, at page 44788 the PR states *Under this 4(d) rule, we also propose to provide Federal, State, and Tribal agencies, or authorized agencies, a path to gain additional exceptions for management activities and incidental take. This tiered approach incentivizes authorized agencies to proactively develop adequate regulatory mechanisms in geographic areas where they currently do not exist to obtain additional exceptions, which may increase their management flexibilities and reduced permitting requirements for the associated*

activities.

What are the management activities? Why would additional take be allowed and excepted? How much take? Why would reduced or no permitting be allowed and what impact would this have on the species? Existing, not the promise of future adequate regulatory mechanisms, are required for the conservation of the species.

The PR speculates that additional take allowance *may also enhance social tolerance for grizzly bears—an important consideration as grizzly bears expand into new areas.*

How so? No examples or rationale are presented. Speculation is not the best available science. When bears expand into new areas, the full protection of the ESA goes with them. How would additional take be justified? What impact would it have on required connectivity?

At page 44788 the PR states *Tier 1 allows additional take exceptions where a conservation strategy exists and a Federal, State, or Tribal grizzly bear management plan is in place, but the associated population has yet to achieve the demographic objectives defined in the associated conservation strategy.*

How much additional take? Where and under what circumstances? This take exemption applies even in areas that have not met demographic and population objectives. What impact would additional take have on the ability to reach objectives? Then if objectives are met, additional take is allowed under Tier 1 and Tier 2 which may cause decline to where the objectives are not met. It's a revolving door where recovery is never achieved or maintained.

Tier 2 excepts additional management activities and all incidental take in the relevant Federal, States, or Tribal jurisdiction, such that the authorized agency has additional management flexibilities.

This means that additional take that is not trap related may occur and be exempted including habitat modification and destruction, roadbuilding, etc. These are inadequate regulatory mechanisms that will prevent legal delisting of the species.

At page 44789 the PR states *Obtaining the additional exceptions under Tier 1 and Tier 2 requires that the authorized agencies complete an MOU with the Service. Where necessary, MOUs would replace the current TLAs that we provide to authorized agencies and could be updated throughout the year.*

This indicates additional take may allowed throughout the year. Moreover, exceptions can be granted merely upon an agency sending a written request for an MOU.

...we do not expect take to rise to a level that would have a negative impact (i.e., would

have only de minimis impacts) on the species' conservation.

This is an unsupported statement absent any analysis.

These additional exceptions would increase management flexibilities, such that States and Tribes could assume most broad day-to-day management for grizzly bears according to applicable State and Tribal laws. This approach allows States and Tribes to gain additional management flexibilities, which may enhance social tolerance for grizzly bears...

The speculation that this may enhance social tolerance is guesswork and unproven. The PR repeats its unproven assertion that additional take would not have a negative effect.

The PR at page 44790 admits that *We have not quantified the impacts of the implementation of the 4(d) rule...*

And, Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirements. Consequently, it is our position that only Federal action agencies would be directly regulated during section 7 consultations (regardless of what is prohibited in 4(d) rules).

The Secretary of the Interior, in his recent announcement of the PR, said that day to day management of grizzly bears is being turned over to the states. If a state action threatens to harm a listed species on non-federal land, the state must apply for an Incidental Take Permit under §10 of the ESA, which indirectly triggers a federal consultation review.

Conservation Strategy—This is an interagency document describing the habitat and population management mechanisms that will achieve and maintain demographic and habitat objectives; it will remain in place after grizzly bears are no longer listed under the Act; and it will demonstrate the adequacy, continuity, and continued agency application of population and habitat management regulatory mechanisms in order to maintain populations. These documents are prepared by Federal, State, and Tribal agencies engaged in grizzly bear management within a given geographic area as part of their grizzly bear recovery efforts and are not a requirement of the proposed 4(d).

This is contradictory. The PR states a Conservation Strategy is a requirement to obtain additional take under Tier 1 and Tier 2.

At page 44792 the PR states *Take of Orphaned Cubs—Take associated with orphaned cubs must have prior authorization from the Service except in areas where the Tier 2 set forth under paragraph (b)(3)(xiv)(D) applies.*

This means Tier 2 exempts even more take.

In preparing reports and collecting information, the PR states *Estimated Completion Time per Response: Varies from 30 to 60 minutes, depending on activity.*

This is an inadequate time period for collecting information regarding the take of a listed species.

We are analyzing this proposed rule in accordance with NEPA criteria, the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR part 46), and the Department of the Interior Manual (516 DM 1).

As written, the PR does not comply with NEPA. There are no alternatives, it is not based on the best available science and does not reveal reasonably foreseeable impacts or the cumulative impact of related proposals for redefining harm and allowing exemptions under § 9, including the proposed rule to rescind the Roadless Area Conservation Rule.

ADDITIONAL TAKE FROM STATE MANAGEMENT PROGRAMS **BEAR BAITING AND HUNTING WITH HOUNDS**

Black bear hunting with baits is allowed in Idaho and Wyoming. Hunting black bears with hounds is allowed in Montana and Idaho. In Idaho, at least two grizzly bears have been shot and killed over baits set for black bears including one in 2007 and one in 2024 and several more have been killed at black bear baits on National Forests in Wyoming. In recent years numerous other grizzly bears have been photographed or filmed in the Greater Bitterroot Ecosystem on game cameras at black bear bait sites.

Here are examples:

- May 5, 1996 a grizzly was killed at a black bear baiting site near Dubois, Wyoming.
- May 8, 2000 a male grizzly was killed at a bait site in Wyoming.
- April 24, 2001 a grizzly was killed by a bow hunter over bait in Rock Springs Canyon, Wyoming.
- May 26, 2003 a male grizzly was killed at a bait site near Owl Creek, Wyoming.
- May 1, 2004 grizzly shot and killed over bait near Grass Creek, Wyoming.
- May 10, 2004 a male grizzly was killed at a bait site near Sweeney Creek in Wyoming.
- May, 4, 2006 a male grizzly was killed at a bait site near the South Fork of Owl Creek in Wyoming.
- May 28, 2007 a grizzly was shot and killed over bait Dutch Joe Creek, Wyoming.

- September 3, 2007 a male grizzly was killed at a bait site in Kelly Creek, Idaho.
- 2010 (approximately) grizzly bear killed over a bait site in the North Fork Clearwater drainage, Idaho.
- September 2, 2015 a grizzly bear was photographed at a bait site near Wallace, Idaho.
- September 30, 2015 a radio-collared bear was killed over a bait site near Wallace, Idaho.
- September 2018 a grizzly bear crossed into Idaho from Montana and was captured at a bait site and relocated into Montana but later returned to the same bait site.
- June 2019 a grizzly was photographed at a bait site near Kelly Creek, Idaho
- June 23, 2019 a grizzly was photographed at a bait site near White Bird, Idaho.
- September 11, 2019 a grizzly was photographed at a bait site in Idaho.
- September 14-15, 2019 grizzly 927 was photographed at a bait site near Lolo Pass, Idaho.
- September 14-16, 2019 a possibly different grizzly (according to the Service and Montana Fish, Wildlife & Parks) was photographed at bait site near Lolo Pass, Idaho.
- September 4 and 16, 2019 a grizzly was photographed at a bait site near Newsome Creek, Idaho.
- May 14, 2022 a grizzly was filmed at a bait site in the North Fork of the Salmon River, Idaho.
- May 23, 2024 a grizzly was filmed on a game camera near a bait site in the North Fork of the Salmon River, Idaho.
- June 10, 2024 a grizzly was shot and killed at a bait site near St. Maries, Idaho.

There have likely been more on state, private or other federal lands where data are incomplete. Moreover, the reporting rate for grizzly bear mortality is very low. Many hunters are reluctant to report a mistaken identity killing of a grizzly bear for fear of being prosecuted.

Black bear hunters frequently place game cameras at black bear bait sites and monitor for activity.

Three grizzly bears are known to have been killed in the area south of the Selkirks and Cabinet-Yaak since 2007. Two of those bears have been killed at black bear bait sites. — Cabinet-Yaak and Selkirk Mountains Grizzly Bear Monitoring Update 11/8/2018.

Given the very low density of grizzly bears in the GBE in Idaho and the high value of each individual grizzly bear to recovery in this ecosystem, these numbers are highly significant.



Figure 13. Eight Different Grizzly Bears at Bait Sites in Idaho in the Greater Bitterroot Ecosystem. Two were killed.

A significant threat to grizzly bears attracted to baits set for black bears is being shot and killed in cases of mistaken identity. Other impacts include becoming food conditioned to human foods including meats, peanut butter, hot dogs and other attractants. Food-conditioned or “habituated” bears face far higher threats of lethal management removal.

Hunting with hounds exposes grizzly bears to being pursued — which is a taking — and also to being shot by mistaken identity. Chasing grizzly bears also constitutes harassment, which is also a taking.

Hound hunting of black bears where grizzly bears are present will result in unmanageable grizzly bear deaths. — Servheen, et al. (2025).

Servheen (2024) wrote: *Now, FWP and the Commission propose to open the Ninemile area to black bear hound hunting and chasing. Allowing hound hunting and chasing of black bears in this area will put grizzly bears at risk of mortality or injury due to conflicts with hound hunting of black bears which has a known serious conflict potential for grizzly bears. For FWP and the Commission to allow hound hunting and chasing in the Ninemile area violates the purpose and intent of the NCDE Conservation Strategy, which FWP is a signatory to.*

The Ninemile Demographic Connectivity Area is occupied grizzly bear habitat that is inhabited by females with cubs (Jonkel 2026). There have been more than 20 verified observations of grizzly bears in this area in recent years including female/cub groups.

Servheen and Smith (2024) wrote: *Hound hunting black bears anywhere in grizzly range is potentially deadly because the risk of encountering a grizzly instead of a black bear. When hound hunters encounter an agitated grizzly killing their dogs, they will likely want to try and protect their dogs by killing the grizzly, which is illegal. Reporting such encounters by hound hunters will be low because such encounters should result in increased limits on hound hunting.*

Grizzly bears are now found in most of western Montana therefore hound hunting of grizzly bears should be prohibited in all these areas. However, the Montana Fish and Wildlife Commission continues to allow black bear hunting in many areas where grizzlies are present despite repeated requests from many members of the public to curb this practice in grizzly habitat.

Dogs respond to the scents of both black bears and grizzly bears. A female grizzly with cubs may turn and fight and initiate a conflict between the armed hunter and the bears. A grizzly bear, including cubs, chased up a tree by hounds may be shot by mistaken identity.

Given the low density of grizzly bears in the GBE, the level of take associated with baiting and hound hunting is highly significant.

Due to the lack of specificity and vagueness in the PR, the public cannot know if the take associated with these permitted activities will be exempted by the final rule, including through Tier 1 and Tier 2.

TAKE FROM MANAGEMENT REMOVALS

The most recent SSA concluded that management removals are a threat to the entire grizzly bear DPS in the lower 48 states. This category of mortality has significantly increased in recent years in the NCDE and GYE.

A primary cause listed for management removals is conflict with livestock. In Montana, through August 4th, 37.5% of all mortalities were listed as removal due to conflict with livestock in 2026 and 31.3% in 2025. In the GYE 29.1% of all mortalities in 2025 were from removals due to conflict with livestock and overall mortality was a record high.

Despite these high numbers, the U.S. Forest Service recently proposed re-opening four retired grazing allotments previously bought out for conservation and increased the number of livestock allowed to graze on National Forests in Wyoming within grizzly bear habitat, including over 30,000 acres in the Gros Ventre Wilderness. <https://pinedaleroundup.com/stories/btnf-to-allow-cattle-grazing-on-vacant-elk-ridge-allotments,127740>

Increases have also occurred in the Upper Green River on the Bridger-Teton National Forest in Wyoming where dozens of grizzly bears have been killed by wildlife managers and there were over 900 confirmed conflicts between livestock and grizzly bears between 2010-2024.

A public announcement from Montana Fish, Wildlife & Parks (7/29/26) states: *“Uncontained garbage is by far our biggest issue, but over the last 20 years we have also seen a huge increase in chicken and small livestock related conflicts,” Jonkel said. “If you have backyard livestock like chickens or goats, it is critical that you have them secured with hot-ground/multi-wire electric fence and FWP can help if you have questions.”*

Numerous grizzly bears have been killed in defense of life incidents while gaining access to chickens including in the Six Mile area within the Ninemile Demographic Connectivity area in May of 2026.

Another leading source of management removals are bears that have become food-conditioned or “habituated.” These bears often lose their fear of humans and sometimes exhibit aggressive behavior. In the GYE, 25% of all mortalities were associated with bears who obtained garbage, exhibited aggressive behavior and became habituated to human presence in 2025.

HABITAT CONNECTIVITY

There is no assessment in the PR of the impact on habitat connectivity by exempting and increasing several forms of take. Connectivity of isolated grizzly bear populations has been required by several Court decisions (*Crow Indian Tribe v United States*, 965 F.3d 662 (9th Cir. 2020; *Western Watersheds Project, et al. v. Schultz*, 2025 WL 2658776, CV22-149-M-DWM (D. Mont. Sept. 17, 2025)).

The ruling in *Western Watersheds* found the EA was insufficient because it did not adequately address habitat connectivity and cumulative impacts to bears. The failure to address connectivity in the EA was arbitrary and capricious “in light of the fact that connectivity is considered one of the “six demographic factors that are important to the resiliency of grizzly bear.” The plan (Recovery Plan) acknowledged that: “linkage, which we also refer to as connectivity, between ecosystems would be necessary for isolated populations to reach and sustain themselves at recovery levels” (Service 1993, pp. 23, 24).

Moreover, the 2024 SSA and 2025 Proposed Rule state connectivity is vital to long-term recovery of grizzly bear throughout the proposed DPS and lack of regulatory protections for connectivity is a threat to the grizzly bear DPS. “Further, the lack of regulatory mechanisms to address the threats of human-bear conflicts, human population growth, and potential reductions in connectivity further increases the risk of a possible reduction in the resiliency of the grizzly bear populations in the grizzly bear DPS within the foreseeable future.”

The Proposed Rule (Service 2025) states: “Therefore, in the absence of measures to allow for connectivity, habitat fragmentation would continue to be a threat to the grizzly bear DPS.” (emphasis provided). “The lack of mortality thresholds in connectivity areas may result in a contraction of estimated occupied range, which could decrease the likelihood of successful immigration. Therefore, in the absence of conservation measures, connectivity and genetic health would continue to be a threat to the grizzly bear DPS.” (emphasis provided).

Denning habitat is also a key component of habitat and demographic connectivity (Bader and Sieracki 2022). They found denning habitat is being limited by climate change and encroaching motorized and mechanized use.

Connectivity routes between the NCDE and GYE have been modeled by Walker and Craighead (1997), Peck et al. (2017), Sells, et al. (2023) and routes between the NCDE and the Bitterroot have been modeled by Walker and Craighead (1997) and Sells and Costello (2024). We note that connectivity is not restricted to the areas directly between the recovery areas in a shortest path scenario. All habitats analyzed by several different researchers have found connectivity value for grizzly bears (Bader and Sieracki 2024b).

At page 122, the SSA states: “...additional data are needed to inform effects of motorized access in potential connectivity areas that could facilitate natural recolonization of the BE. Motorized access remains an issue for the CYE, SE, and North Cascades, where conservation mechanisms to address motorized access are not yet finalized or standards have not been met.”

At page 190 the SSA states: “Connectivity between the GYE and the NCDE is a long-term goal for the State of Montana as set out in their draft Grizzly Bear Management Plan, however several statements in the draft plan contradict this statement and the plan does not include any concrete commitments to promote connectivity.” The Final Plan from Montana did not correct these deficiencies. This is crucial because the major connectivity areas between the recovery areas are within Montana. The Service has made a similar mistake in the PR, which does not map or specify where connectivity areas are located.

The SSA notes: “However, there are no mortality thresholds in connectivity areas outside of the GYE and NCDE DMAs for grizzly bears, as discussed above under Mortality Limits. In addition, 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, as discussed above in Mistaken-Identity Killings.”

Also, “In addition, there are no regulatory mechanisms to facilitate natural connectivity between grizzly bear populations, which could reduce the potential to improve long-term genetic health of small or isolated populations and natural recolonization of the unoccupied ecosystems. Therefore, without adequate conservation measures, human-caused mortality would continue to be a threat to the grizzly bear DPS.” (emphasis provided).

“Therefore, in the absence of measures to allow for connectivity, habitat fragmentation would continue to be a threat to the grizzly bear DPS.” (emphasis provided).

“The lack of mortality thresholds in connectivity areas may result in a contraction of estimated occupied range, which could decrease the likelihood of successful immigration. Therefore, in the absence of conservation measures, connectivity and genetic health would continue to be a threat to the grizzly bear DPS.” (emphasis provided). In fact, this is occurring in the GYE where the distribution area contracted by 3.5% (Costello et al. 2025).

The Service Biological Opinion on the Lolo Forest Plan (2023) states: “No Forest Plan direction specifically addresses the management of grizzly bears outside of recovery zones, NCDE Zone 1, and the Ninemile DCA.”

The SSA states: “After evaluating threats to the species and assessing the cumulative effect of the threats under the Act’s section 4(a)(1) factors, we conclude that the grizzly bear DPS is at increased risk of extinction within the foreseeable future.” (emphasis provided).

“Further, the lack of regulatory mechanisms to address the threats of human-bear conflicts, human population growth, and potential reductions in connectivity further increases the risk of a possible reduction in the resiliency of the grizzly bear populations in the grizzly bear DPS within the foreseeable future.” (emphasis provided).

The Service has not defined on a map where the connectivity areas are and thus, we do not know where the 4(d) rule would apply greater “management flexibility” measured in dead bears.

LACK OF ENFORCEMENT

Compounding nearly every issue and threat is a lack of enforcement, research and management as budgets have been reduced and patrols are fewer. The PR does not account for this. The current round of cuts in federal government positions in the U.S. Forest Service, National Park Service, Bureau of Land Management and the Service are having a widespread effect on enforcement, management, research and monitoring. According to the Center for Biological Diversity, more than 530 of the Service’s positions that have been terminated were biologist positions part of the 20% of total Service losses

<https://oregoncapitalchronicle.com/briefs/u-s-fish-and-wildlife-sees-nearly-20-drop-in-staff-since-trump-took-office/#:~:text=By:%20Mia%20Maldonado%20%2D%20December%2016%2C%202025%202:21%20pm&text=Nearly%201%2C800%20U.S.%20Fish%20and,to%20cut%20the%20federal%20workforce>

The Service lost the assistant National Grizzly Bear Recovery Coordinator and the Recovery Coordinator (Cooley 2025) said this would affect what the Service can do on monitoring of grizzly bear populations including May Be Present mapping. A grizzly bear recovery position in the CYE and SE was lost and monitoring in the SE has been halted (Service 2025).

This lack of staffing on the Lolo National Forest has resulted in serial violations of the Food Storage Orders for National Forests with grizzly bear habitat. These include within the occupied Ninemile Demographic Connectivity Area. The Bureau of Land Management reported at the Interagency Grizzly Bear Committee meeting on July 21, 2026 that it has been ordered to not adopt or implement food storage orders. It is not the level of commitment to fully implement and enforce standards represented in the Conservation Strategies for all aspects of grizzly bear management including Food Storage Orders.

The main deterrent to illegal behavior on National Forest lands is the visible presence of Forest Service personnel whether research, trail crews, wildlife, fisheries, restoration and campground staff, including fee collection and hosts. These positions have been cut the deepest and there is a dearth of visual presence of Forest Service employees on National Forest lands. Food storage orders are almost impossible to enforce with the lack of staff. Thus, deterrence has been significantly reduced, changing

conditions significantly on the landscape and significantly increasing the potential for unauthorized taking of grizzly bears.

There are simply not enough enforcement staff to patrol the millions of acres of National Forests with grizzly bear habitat and its tens of thousands of miles of roads and motorized trails. Illegal mortality of grizzly bears is certain to increase under this scenario.

HUMAN-ASSISTED AUGMENTATION IS NOT JUSTIFIED

The PR provides exemptions for take associated with genetic augmentation. The need for an augmentation program is highly questionable. Dr. Frank van Manen, former leader of the Greater Yellowstone Grizzly Bear Study Team said “genetics are not an immediate issue.”

The State of Montana acknowledges that Fish, Wildlife & Parks biologists have said connection is “inevitable” and the most recent Occupied and May Be Present areas (Costello et al. 2025) show the NCDE and GYE occupied areas have grown closer.

Grizzly bear augmentation of the GYE is political in nature and there has been no scientific analysis in support of it, nor disclosure of potential impacts on the NCDE source population, or the likelihood of success versus natural connectivity.

Milligan et al. (2018) found translocations in Alberta were only 30% successful with a weak definition of success (survival for one year without returning to trap site).

The Conservation Strategies are not being implemented in regards to connectivity, road densities, new roads and food storage to name but a few. Food storage is spotty or non-existent on portions of the Lolo National Forest. Under the Proposed Rule, simply having a Conservation Strategy allows for more exemptions from take prohibitions beyond that contemplated under the Strategies. The simple act of applying for a permit also will allow additional take beyond what is currently allowed.

The claim that various sources of mortality are “*de minimus*” is false. Removals due to conflicts with livestock have risen dramatically in recent years and the SSA found that management removals are a threat to the grizzly bear DPS. They are not “*de minimus*.” Moreover, several categories of mortality have been rising including Defense of Life, vehicle strikes, and loss of habitat. The cumulative effect of these increases will result in population decline.

The dramatically inflated allowance of take also results in loss of essential habitats for grizzly bears. By reducing the carrying capacity of the land, takes under § 9 are inevitable and cumulatively devastating.

The PR, SSA and proposed delisting rule also do not accurately capture the full extent of several threat factors. They fail to adequately account for several emergent threats including climate change, recreation, private land development, avian flu and others. They also do not include a viability assessment as stated below. Low population numbers are a direct threat to grizzly bear survival and their existence in the wild.

Based on Montana Fish, Wildlife & Parks data, grizzly bear “defense of life kills” (DOL) have increased seven-fold in recent years, out of proportion to both human and grizzly bear population growth. Importantly, these are only the known, reported incidents and most mortalities are not reported.

At page 169 the SSA states: *“In the GYE DMA, from 2002 to 2023, 31 percent (134 of 433) of human-caused mortalities of independent-age bears and 50 percent (60 of 119) of human-caused mortalities of dependent young were defense-of-life kills (Gould 2024a, in litt.).”* In the NCDE and CYE these figures are 14% and 18%.

TAKINGS FROM MOTORIZED ACCESS AND NON-MOTORIZED TRAILS

The SSA at page 113: *“In general, motorized access brings humans into grizzly bear habitats, and increased human presence may disturb, displace, or kill grizzly bears if human-interactions trigger activities that are associated with human-caused mortality, such as defense-of-life kills or management removals.”*

The Service wrote: *Unmanaged motorized access: (1) increases human interaction and grizzly bear mortality risk; (2) increases displacement from important habitat; (3) increases habituation to humans; and (4) decreases habitat where energetic (i.e., food) requirements can be met (Mattson et al. 1987, pp. 269–271; McLellan and Shackleton 1988, pp. 458–459; McLellan 1989, pp. 1862–1864; Mace et al. 1996, pp. 1402–1403; Schwartz et al. 2010a, p. 661).*” (emphasis provided).

In general, road access probably poses the most imminent threat to grizzly bear habitat, and therefore the Recovery Plan recommended that road management be given the highest priority for grizzly bear recovery (Service 1993:21-22).

The Service has failed to consider that the current levels of Open Motorized Route Density (OMRD) and illegal use of roads and trails and lack of standards specific to grizzly bears in connectivity areas is a leading factor in slowing population expansion. The SSA and the 2025 Proposed Delisting Rule state motorized use and lack of standards is a threat to the entire DPS.

In fact, the Lolo Plan BiOp admits this:

“It is likely that existing motorized access conditions within most of the GBAUs on the Forest may be resulting in some level of ongoing significant displacement effects to grizzly bears,” (emphasis provided).

The Lolo Plan BiOp at page 17: *“acknowledges both that no standards limit administrative use of roads outside of the recovery zones and that available data are less complete in this portion of the Forest in terms of the types and locations of closure devices and the condition of the road prism beyond the barrier.”*

The southern and western 62% of the Lolo National Forest have no standards specific to grizzly bears and there are no limits on OMRD or new permanent roads. This includes the best connectivity routes from the NCDE to the BE (Sells et al. 2023). Virtually all of the Lolo NF is within the Occupied and May be Present areas and all of it is within the Court-injunction area for wolf trapping.

The Lolo Plan BiOp at page 58: “•Given the lack of Forest Plan direction requiring specific levels of secure habitat on the areas outside of recovery zones, it is possible that projects may permanently reduce secure habitat...” (emphasis provided).

This is an illegal taking under ESA § 9 which results in a permanent loss of habitat especially in connectivity areas.

The Lolo BiOp also states: “*•While not specifically proposed under the Forest Plan, permanent route construction and use in the area outside of the recovery zones may occur...*

• permanent motorized routes that are restricted from the public could be constructed and have the potential to affect secure habitat or open motorized routes could be decommissioned and new permanent motorized routes could be constructed within secure habitat, thus reducing secure habitat but maintaining the linear motorized route density.

•Within the NCDE recovery zone, the Mission and Swan subunits are currently worse than the research benchmarks for OMRD, TMRD, and secure core. The short-term, temporary increases allowed under NCDE-STD-AR-03 may result in additional under-use of suitable habitat by individual female grizzly bears and/or their dependent offspring, which may disrupt normal breeding (or more specifically, cub rearing) or feeding patterns.”

Dr. David J. Mattson (2024), one of the world’s most acclaimed grizzly bear biologists, reviewed the Lolo Forest Plan BiOp. He wrote:

“...the Service’s analysis of likely effects of the action on individual bears and the prospects for recovery of the species in the contiguous United States is comprehensively flawed. More to the point, the Service systematically understates or underestimates likely harm. This is accomplished through neglect of best available science, misrepresentations of current conditions, specious claims, tortuous and otherwise flawed logic, and inattention to the precautionary principle.”

“I conclude that the “proposed action” (continued implementation of the 1986 Forest Plan) will cause considerable harm, not only to a significant number of individual grizzly bears, but also prospects for recovery of the species in the contiguous United States.”

“The Service acknowledges that continued implementation of the 1986 Lolo NF Plan would not limit road access or other infrastructure on the Forest outside the Ninemile DCA, NCDE Zone 1, and CYE BMU 22 (i.e., in extralimital areas), and that this lack of security would be “at a level substantially less than is likely needed to successfully support a female grizzly bear with cubs.”
BiOp at page 16.

The Conservation Strategy, NCDE Forest Plans and the PR are based on regulatory mechanisms found unlawful, arbitrary and capricious by numerous Judges in the U.S. District Court of Western Montana and the government recently withdrew its intent to appeal the latest District Court order to the Ninth Circuit Court of Appeals. The PR is arbitrary, capricious and misleading to claim or imply that adequate regulatory mechanisms exist to maintain the effectiveness of grizzly bear habitat necessary to sustain the

lower-48 DPS in the meager Recovery Zones, let alone allow bears to occupy or travel through the habitats necessary to connect recovery zones.

The GYE Conservation Strategy counts very small areas as secure core. At page 81 the SSA states: “*Our definition of secure habitat includes areas as small as 10 acres (0.31m² (0.016 mi²)).* The ruling in *Center for Biological Diversity, et al. v. U.S. Forest Service and Sun Mountain Lumber*, CV 23-110-M-DWM (D.Mont.) and the order in *Alliance for the Wild Rockies, et al. v. U.S. Forest Service* 9:25-cv-0009-KLD (D.Mont.) found the 10-acre standard is arbitrary and without scientific basis and fail to meet the ESA requirement to use the best available scientific information. It significantly departs from the standard definition of secure habitat being a contiguous area at least 2500 acres in size and 500 meters from the nearest motorized route (NCDE Conservation Strategy 2018). The Service has also used a 1-acre patch size claiming it was secure habitat (*Friends of the Bitterroot v. Borgum*, 2026 WL 1660439).

A major issue with logging is the roads that accompany the activity that provide access to poachers and increase encounters with humans. Forest openings and cut-blocks adjacent to motorized routes also increase the likelihood of illegal killings. The National Forests with grizzly bear habitat have approved large increases in the annual logging levels as much as four times the recent average and there are certain to be further increases as per the Executive Order of March 1, 2025, possibly evading ESA requirements. <https://www.whitehouse.gov/presidential-actions/2025/03/immediate-expansion-of-american-timber-production/> This will displace grizzly bears from prime habitats and expose them to increased mortality risk through the newly created access and loss of vegetative hiding cover.

The PR does not account for the impact of reduced environmental review of logging and other vegetation manipulation projects. These have largely been exempted from environmental impact review under NEPA. Moreover, Forest Plan standards are not being implemented due to an abuse of forest plan amendments applied to large landscapes of 30,000 acres and more with several occurring simultaneously on each National Forest. The Department of Agriculture has also adopted Emergency Situation Determinations that limit environmental review and threatened and endangered species analysis. The Service must evaluate the cumulative impact of these reductions in habitat protection in conjunction with approval of the PR.

The Lolo Plan BiOp at page 29:

“The Forest Plan does not have specific direction to coordinate vegetation management with grizzly bear conservation in the CYE, recovery zones or outside of the recovery zones.”

Moreover, at page 88 of the SSA: “*Non-motorized trails were not excluded from secure core because research indicates that non-motorized trails do not significantly affect grizzly bear survival in the GYE, and that survival was better explained by the absence of motorized routes.*” So do grizzly bears have to go extinct before mechanized use of non-motorized trails significantly affects survival? Thompson, et al. (2024) found there were strong displacement effects on grizzly bears away from trails up to 267m and the effects extended up to 1.8km. Trail-based effects are further discussed in the section on Recreation.

TAKE ASSOCIATED WITH ILLEGAL USE OF ROADS AND TRAILS

The PR does not take into account court rulings finding that illegal use of roads and trails is a taking of grizzly bears and such use must be included in calculations for motorized roads and trails density. On the Flathead National Forest in the NCDE, the ruling and final resolution in *Swan View Coalition, Friends of the Wild Swan v. Haaland* D.C. No. 9:22-cv-00096-DLC (D.Mont.) (appeal dismissed February 20, 2025) shows that the current system of accounting for road impacts is both biologically and legally deficient. Many “closed” roads are being accessed by illegal motorized use and must be incorporated into road density calculations for grizzly bear habitat security, as must all roads that have not been fully reclaimed to no longer function as roads or trails. Science also shows that grizzly bears avoid even closed roads (Mace and Waller 1997).

Moreover, on the Kootenai National Forest in the Cabinet-Yaak, the Ninth Circuit Court of Appeals agreed with the lower court that unauthorized road use must be included in road density calculations and that the Forest Service did not provide clear data on that. *Center for Biological Diversity et al. v. U.S. Forest Service* (No. 23-2882 D.C. No. 9:22-cv-00114-DWM). <https://www.kpax.com/news/montana-news/appeals-court-u-s-forest-service-must-count-all-roads-in-grizzly-habitat>

The decision in *Center for Biological Diversity et al. v U.S. Forest Service* CV 22-91-M-DLC (D.Mont) found again the Forest Service was unlawful regarding incorporating illegal road use data in density calculations. On Page 26: “*But here, the only rationale provided in the Amended BiOp for excluding [illegal] motorized access from the calculations is rationale that has been rejected by this Court and the Ninth Circuit.*” And, at page 17: “*But the Court agreed with AWR that temporary road use contemplated by the Access Amendments was different in kind from illegal use precipitated by ineffective closures because the former was regulated, while the latter was not.*”

Compliance with the current standard for NCDE grizzly bears of $0.6\text{km}/\text{km}^2$ ($1\text{mi}/\text{mi}^2$) within the Primary Conservation Area does not include the roads the Courts ordered must be included in density analysis.

Thus, when the illegally used roads and trails are incorporated into density calculations, these National Forests are not in compliance with the standards in the Conservation Strategy and Forest Plan Amendments. The SSA, PR and Final Rule do not account for this increased threat level.

New science also indicates that even the $0.6\text{km}/\text{km}^2$ standard may be too high. For example, Proctor et al. (2023) presented several models and their best model score indicated female grizzly bears best tolerated open motorized route density less than or equal to $0.3\text{km}/\text{km}^2$ ($0.5\text{mi}/\text{mi}^2$). This is half of what is allowed for grizzly bears. Data from McGloughlin and Stenhouse (2021) suggests OMRD in secondary conservation areas should be no more than $0.75\text{km}/\text{km}^2$ ($1.2\text{mi}/\text{mi}^2$). To achieve this standard in NCDE Zone 1 would require a 40% decrease in OMRD.

In the NCDE, there is also Zone 1, which is part of the Demographic Monitoring Area. Within Zone 1, the standard allows Open Motorized Route Density of $1.2\text{km}/\text{km}^2$ ($2\text{mi}/\text{mi}^2$). At this level, there are severe impacts on female survival rates, grizzly bear population growth, density, den selection and occupancy. These are summarized in the table below from Bader and Sieracki (2022). They also found bears

selected dens 1.2km from open motorized routes in the Northern Rockies, mostly in roadless areas, consistent with numerous other studies.

Road density (km/km ²)	Adult female survival rate	Population growth rate	Density bears/1000 km ²	Den selection probability
0	≈100%	Positive	30	N/A
0.6	95%	Static	≈ 30	70%
1.2	85%	Negative	10	30%
1.4	75%	Rapid decline	Lower	N/A
1.6	< 75%	Rapid decline	Lower	N/A
2.0	Lower	Rapid decline	Very low	≈ 0%

Sources: Boulanger and Stenhouse (2014); Pigeon et al. (2014); Proctor et al. (2019).

When illegally used roads and trails are included, the Forest Service and other entities are in violation of standards that are part of the Conservation Strategies and which have been amended into National Forest Plans. Taken in sum, significant, prohibited harm to grizzly bear habitat under ESA § 9 and damage to connectivity necessary for grizzly bear recovery is occurring across the Northern Rockies. The PR and its provisions for increased, excessive take will worsen this situation.

Given the current trend of anti-carnivore legislation in Montana, Wyoming and Idaho, there is no reason to believe that protective standards for connectivity areas would be implemented post-adoption of the PR and delisting. The final harm Rule and the documents it is based on do not assess the consequences to survival and recovery associated with the continued lack of standards.

TAKINGS FROM DEVELOPED AREAS

At page 124 the SSA states: *“The number of or capacity of developed recreation sites managed for overnight use can increase no more than once (e.g., a net of one campground may be added or expanded) in each BMU every 10 years (NCDE Subcommittee 2020, Chapter 3; USDA FS 2018c, p. 60; USDA FS 2018d, pp. 1-7, 1-19, 1-31, 1-42). This was chosen as a threshold because similar levels of increases occurred in the period prior.”* The peer review of this strategy by Dr. Bruce McLellan (Service 2018) raised alarm at this provision, which he said would increase habituation and mortality in grizzly bears. At page 89 of the SSA it states: *“We are currently re-evaluating the need for limitations on the size of any new or current developed site expansion under this objective.”* And at page 151: *“We are currently re-evaluating the allowance for increases in developed recreation sites.”* In fact, it was announced at the Interagency Grizzly Bear Committee meeting on July 21, 2026 that the GYE Conservation Strategy was amended to increase the allowance for developed sites.

Also, at page 124: *“In conclusion, the NPS and USFS within the NCDE recovery zone will continue to manage overnight developed recreation sites, with regulated increases, to 2011 levels within each bear management subunit, with some exceptions under the application rules (NCDE Subcommittee 2020, Chapter 3; USDA FS 2018c, p. 60; USDA FS 2018d, pp. 1-7, 1-19, 1-31, 1-42).”* What are the exceptions?

This faulty line of reasoning is in line with the Service’s faulty conclusion that recreation poses no threat to grizzly bears.

TAKINGS FROM RECREATION USE

The SSA concludes: **“Therefore, in the absence of the protections of the Act, we do not anticipate that recreation would be a threat to the grizzly bear DPS.”**

The SSA finds recreation is not a threat. This finding is completely groundless. The lack of regulation pertaining to recreation use in grizzly habitat is a major inadequate regulatory mechanism.

Recent scientific research shows that grizzly bears are displaced by trail-based recreation (Thompson et al. 2025). A host of studies show grizzly bears avoid motorized routes and even closed roads. Graves et al. (2003) documented disturbance to female grizzly bears by Off Road Vehicles in the Badger-Two Medicine Area in the NCDE.

Montana’s human population is growing rapidly with a net immigration rate now three times higher than the average for the last two decades. In 2022 Montana's population grew 1.5%, at the 2nd highest rate of immigration nationwide. The centers of this growth are concentrated within the areas adjacent to and between the grizzly bear recovery areas and DMAs. This growth will have profound impacts on maintaining a viable grizzly bear population due to housing demands, recreation demands, and other amenities. Increasing development of wildlife habitat and the accelerating pressure on our wild lands by more and more people and recreation demands diminishes the grizzlies’ chances of survival (Servheen in Wilkinson 2025).

Recommendations from the Montana Grizzly Bear Advisory Group for managing recreation should be adopted in full including objective monitoring and assessment of successes, failures, and ability to adapt in favor of protecting grizzly bears.

In the 1980s manufacturers began producing recreational machines that could go farther into previously inaccessible terrain. High power snowmobiles can traverse deep powder snow, enabling off-trail “high marking.” Mountain bikes became widely available and now feature shock absorbers, gas and electric-powered motors and spiked tires for over-snow use. ATVs are bigger, more powerful, and go faster. New technology includes snow bikes that are modified motorcycles with tracks instead of wheels that can access off-trail areas and negotiate tight spaces. Many mountain bike advocates claim that electric powered bikes are not motor vehicles, but that’s like saying a Prius or a Tesla isn’t an automobile because they have electric-powered engines. Trails with approved use by e-bikes should be included in total road and motorized trail density.

Recreation impacts on grizzly bears can take two forms: displacement and habituation, both of which are harmful. Displacement drives grizzly bears away from high quality habitats with primary food sources, resulting in direct loss of habitat as well as habitat security which can reduce fitness and the ability for females to rear cubs (Service 2022). Grizzly bears that habituate to areas with high human recreational activity may lose

their natural fear and avoidance of humans, which can lead grizzly bears to approach human residences and campsites and result in direct conflicts, often resulting in the lethal removal of the bear.

At page 134 the SSA concludes: *“Therefore, we do not have information suggesting that current and projected levels of non-motorized recreation (with the exception of hunting, see below), including mountain biking, require limitations at this time.”* This statement is completely ignorant of current science and ignores the former National Grizzly Bear Recovery Coordinator’s views.

Dr. David J. Mattson and other leading grizzly bear scientists have analyzed the impacts of different forms of recreation on grizzly bears, finding that mountain biking is many times more likely to result in a grizzly bear-human encounter and as much as 14 times as much compared to activities such as hiking.

Mattson (2019) at pages 36-37 includes this statement: *“The few investigations of encounters between bikers and grizzly bears paint a stark picture (Schmor 1999, Herrero and Herrero 2000, Honeyman 2007, Servheen et al. 2017. Data polled from all of these reports show that 87% (+- 4.6%) of all documented encounters were at distances less than 50m, and that 52% (+- 10%) involved females with young. Of those close encounters, 89% (+- 6%) resulted in the biker either being approached or charged by the involved bear.”*

Likewise, a Board of Inquiry Report chaired by the former National Grizzly Bear Recovery Coordinator (Servheen et al. 2017) on the death of a mountain biker who crashed into a male grizzly bear was well-publicized. Dr. Servheen has also said that mountain biking in grizzly bear habitat is particularly conducive to bear-human confrontations due to surprise encounters.

“High speed and quiet human activity in bear habitat is a grave threat to bear and human safety and certainly can displace bears from trails and along trails. Bikes also degrade the wilderness character of wild areas by mechanized travel at abnormal speeds.” (Servheen quoted in Wilkinson 2020).

According to Hammitt et al. (2015) *“The intrusion of humans into wildlife habitats during recreational activities can cause various types and levels of change in both animals and their habitat. First, the normal behavior of animals may be altered to various degrees, all the way from habituation to slight modifications to migration from impacted sites. Secondly, animals may be displaced completely to a new habitat or, in the case of sport hunting, and traveling, displaced from the population. Thirdly, all these impacts can cause a reduction in the reproductive level of many species. Ultimately, these impacts result in a change in the species composition and structure of wildlife populations”* (p. 59-60).

Another growing impact on habitat security are high-use non-motorized trails in Wilderness and roadless areas. Gunther (1990) documented significant displacement of grizzly bears away from high use recreation trails in Yellowstone National Park. Coleman et al. (2013) made similar findings.

The Flathead National Forest Plan allows parties up to 15 people with 35 head of stock within the Bob Marshall Wilderness and is expanding the number of Special Use Permits for outfitting and guiding, adding more use to high-use trails. The Custer-Gallatin National Forest is also expanding the number and types of Special Use Permits. The Service, as a party and approver to the Conservation Strategy must insist that high-use non-motorized trails be buffered 500m on either side as part of calculating the amount of secure core habitat as they previously were.

Other trail-based impacts are also apparent. Thompson, et al. (2024) found there were strong displacement effects on grizzly bears up to 267m and effects extended up to 1.8km

Recreation destinations also create residential developments that add to sprawl, water pollution, wildlife displacement and mortality sinks for sensitive species like grizzly bears. The Big Sky area in Montana is a prime example. These become permanent features of the landscape. Another threat of unrestrained recreational impact on grizzly bears is the proposal to expand the Holland Lake Lodge. Dr. Chris Servheen (2023) told the Interagency Grizzly Bear Committee these expansions of recreational use are an inadequate regulatory mechanism which will prevent delisting. This proposal would be allowed under the NCDE Conservation Strategy which allows one new large developed area or an expansion of an existing development area once every ten years in each Bear Management Unit. The peer review of this strategy by Dr. Bruce McLellan (USFWS 2018) raised alarm at this provision, which he said would increase habituation and mortality in grizzly bears.

There are also winter recreation impacts on denning bears and other species. New technology such as motorized “snow-skis” allow people to access densely forested and remote terrain.

In Appendix F the SSA states: *“We found no studies in the peer-reviewed literature documenting the effects of snowmobile use on any denning bear species and no records of litter abandonment by grizzly bears in the lower-48 States due to snowmobiling;”*

Hilderbrand et al. (2000) document a female grizzly and her two cubs killed by a snowmobile caused avalanche in Alaska. In Alberta, there have been several recent encounters with denning bears, including a disturbed bear that killed a recreationist. The fact there has been no documented impacts in the lower 48 in the peer-review literature doesn’t mean it doesn’t happen, just that few to none have been studying it. Prodrunzny et al. (2002) mapped conflict zones in GYE between snowmobiling and denning grizzly bears. Winter Recreation Use Plans also take into account snowmobile impacts on denning grizzly bears, though not adequately. These are admissions that snowmobiling can impact denning grizzly bears. A permit for heli-skiing in the Centennial Mountains was rejected by the Forest Service on the basis that the sound and vibrations from helicopters could disturb denning grizzly bears. This is similar to noise and vibrations from snowmobiles, which are directly above ground level. Crupi et al. (2022) found heli-skiing negatively affected den selection by grizzly bears.

TAKINGS FROM MINING

There is a boom of critical minerals mining activity in the cobalt and parallel rare earth elements (REE) mineral belts from the Continental Divide at Lost Trail Pass to Lemhi Pass and in the Salmon River area. Cumulative impacts from existing and expected mining and mineral exploration activities within and adjacent to the identified connectivity area along the Continental Divide and MT/ID state line should be analyzed and disclosed.

The proposed Sheep Creek Mine at the headwaters of the Bitterroot River within a primary connectivity area (Sells et al. 2023) has been prioritized for “fast-track 41” evaluation by the Administration which means reduced and expedited environmental review.

Gold mining exploration has been approved in the Rogers Pass area within a high value connectivity area for grizzly bears between the NCDE and GYE.

Mining is also a persistent threat to the Cabinet Mountains with two major proposed mines. This tiny population of grizzly bears could be heavily impacted. Kendall, et al. (2015) found the loss of just one adult female can create population decline to even more critically low levels. An adult female grizzly bear was illegally killed in the CYE near the Montana-Idaho border in October 2025 which has likely affected population trend.

TAKINGS FROM PRIVATE LAND DEVELOPMENT

The SSA concludes: “We do not have information to indicate that current levels of private land development are limiting to grizzly bear populations at this time.” And, “...in the absence of conservation measures, private land development may be a threat to the grizzly bear DPS.”

Private land development has long been a threat to grizzly bears. It is the reason that the Vital Ground land trust and many others exist. Prime riparian habitats are rapidly being subdivided.

Human population growth in the counties in and around the grizzly recovery areas has grown dramatically and with it, ever-increasing sprawl into non-urban areas. This is a direct threat to connectivity and reestablishment of a single northern Rockies grizzly bear population necessary for long-term recovery.

CLIMATE CHANGE

The Service’s position is that climate change is not a threat to grizzly bears and their food sources. The ruling in *Center for Biological Diversity et al. v. U.S. Forest Service* (No. 23-2882 D.C. No. 9:22-cv-00114-DWM) found the Forest Service failed to analyze climate change within a single project area. Of course, the Northern Rockies are far larger and subject to a greater range of climate change effects.

The SSA states:

“Therefore, we do not anticipate changes in food resources to be a threat to the grizzly bear DPS.”

Most grizzly bear biologists in the United States and Canada do not expect habitat changes predicted under climate change scenarios to have significant consequences for grizzly bears (Servheen and Cross 2010, p. 4).

Therefore, in the absence of the protections of the Act, we do not anticipate potential effects of climate change to be a threat to the grizzly bear DPS.”

These statements are contradicted by a host of scientists and the scientific literature. The Servheen and Cross reference is from 16 years ago and before significant climate change research. It was a report on a workshop and not a peer-reviewed published analysis. The SSA neglects to include the following statement from Servheen and Cross: “Climate change may play a significant role in driving grizzly bear/human interactions and conflicts.”

This is an example of using older, now out-of-date science to justify a current decision. Climate change effects on grizzly bears are not speculative or “potential” nor are they in the distant future. Rather, they have been documented in many published studies and the Service failed to adequately incorporate this information into the threat assessment. The SSA treats climate change as a potential future threat rather than the documented current and imminent threat it represents to entire ecosystems and the planet. Adding to the current effects from climate change, scientists predict these threats will significantly increase in the foreseeable future.

Kurth et al. (2024) reviewed 120 papers pertaining to climate change effects on grizzly and black bears in North America and provide an extensive resource of climate change effects. They wrote: “Climate change poses a pervasive threat to humans and wildlife by altering resource availability, changing co-occurrences, and directly or indirectly influencing human-wildlife interactions.” And, “Climate-driven changes in natural food availability were frequently implicated in influencing bear behavior and demography and creating conditions under which interactions with humans are likely to increase.” And, “Given substantial evidence of climate impacts to bears, incorporating climate considerations into bear management can help managers strategically allocate resources and promote human-bear coexistence.” (emphasis added)

Existing and ongoing climate change effects on grizzly bears are predicted to increase. Rogers, et al. (2021): “Our results suggest that climatic modulation of costs imposed by the thermal environment likely is an important driver of behaviour and energetics in large endotherms and that relative importance of the thermal environment to endotherm ecology is likely to increase as the climate continues to warm.”

The assessment fails to assess the impacts on denning chronology in grizzly bears, which is exposing bears to human threats over a longer period of time each year and at times of year when natural food sources may be largely unavailable (Pigeon et al. 2016).

Montana has experienced what climate change scientists have predicted for years which is milder winters and lower snowpack that melts earlier (Whitlock et al. 2018, Montana Climate Assessment).

In the winter of '23-'24 female grizzly bears with cubs were out at the end of December and into January (Montana Fish, Wildlife & Parks 2024) and some grizzlies were reported by the Custer-Gallatin National Forest out in January around Gardiner and West Yellowstone. Montana Fish, Wildlife & Parks issued a bulletin urging people to carry bear spray — in January. Grizzly bears were still out in both the NCDE and GYE in December 2025, including two females with cubs in the Swan Valley in the NCDE.

Hostetler et al. (2021, The Greater Yellowstone Climate Assessment) found that in the next 80 years “GYE is projected to warm by 5-6° F by 2040 and as much as 10-11° F by the end of the century. A greater portion of winter precipitation will fall as rain instead of snow and snowpack will continue to decline. Snowmelt and runoff will occur earlier in the spring, adding to water shortages in summer.” “Since 1950 the growing season is two weeks longer, below 8000’ annual snowfall declined 25% and by 96% in September.”

Fowler et al. (2019) found a significant reduction in the denning period for North American grizzly and black bears. They cite four studies that documented grizzly bears being active all winter.

The PR also neglects to mention the settlement of *Flathead-Lolo-Bitterroot Citizen Task Force et al. v. State of Montana* Case CV 23-101-M-DWM which established the area where grizzly bear are present in Montana. Based on the newer scientific evidence and verified observations by Montana Fish, Wildlife & Parks, the federal Courts in this case determined that the dates when most grizzly bears in Montana are in their dens is January 1-February 15. Relying on old dates incorporated into Forest Travel Plans are exposing grizzly bears to harassment, disturbance and harm across large areas of occupied grizzly bear habitat.

The Service also relies on inaccurate data for the miles open to snowmobile use and the use of old data for denning dates which last as long as the end of April and allows oversnow use through in many cases, the end of April. It does not account for climate change that has shortened denning seasons.

The Lolo Forest Plan and Travel Plan/MVUM leave grizzly bears exposed to oversnow motorized use, including off-trail, cross-country use, for from 8 weeks to 21.5 weeks when they are out of their dens. The Lolo National Forest says there are 628 miles of snowmobile routes and 66% of the Forest is open to oversnow cross-country motorized use. “Over-snow vehicles are authorized to travel off of designated routes and to travel cross-country in specific areas on the Forest. Cross-country travel with over-snow vehicles is allowed on about 66 percent of the Forest, either all winter or seasonally.”

The Lolo Plan BiOp at page 25 states:

“•About 206,000 acres of cross-country over-snow vehicle use on the Forest could occur within grizzly bear denning habitat during the denning period, with about 205,100 of these acres open to cross-country over-snow vehicle use during the den emergence period.” (emphasis provided).

Under the Court ordered denning dates, the amount of acreage open to cross-country snowmobile use during the den emergence period is far greater. The resulting impacts have not been analyzed.

These impacts are not hypothetical or predictions of the future. Montana Fish, Wildlife & Parks issued a public announcement on July 29, 2026 titled Berry Crops Are Struggling, Bear Conflicts Are On The Rise which includes these statements:

Montana Fish, Wildlife & Parks specialists around the state are seeing similar behavior – bears that should be foraging for berries in the mountains are getting into trouble around homes and communities looking for something to eat.

Jamie Jonkel is FWP's long-time bear conflict specialist in the Missoula area. He's experienced this cycle of behavior time and again when natural food sources aren't available.

"This year is panning out to be one of the worst natural food failures on record," said Jonkel.

Hungry bears – both black bears and grizzlies – can be attracted to a variety of things around homes.

More than 250 bear-related incidents have occurred just in the Region 2 area alone in the past two months.

These incidents lead to management removals, which the Service concludes are a threat to the grizzly bear DPS.

Linnell, et al. (2002) report that bears generally select dens 1-2km from human activity. Ciarniello, et al. (2005) found grizzly bears avoid roads when selecting den sites. Bader and Sieracki (2022) found grizzly bears selected dens 1.2km away from open motorized routes. Pigeon, et al. (2014) found den selection dropped by 30% at road density 1mi/mi² (0.6km/km²); reduced by 70% at $\approx$ 2mi/mi² (1.2km/km²) and reduced to $\approx$ zero at 3.2mi/mi² (2km/km²).

Activity within 200m can cause den abandonment leading to increased cub mortality. Impacts short of den abandonment include physiological changes such as increased heart and breathing rate and wakefulness (Fortin, et al. 2016).

According to Parks Canada and the province of Alberta, at least six denned grizzly bears have been disturbed by recreationists in parks with one human injury and elsewhere in Canada a person was killed in an encounter with a denning bear that was disturbed by human activity.

Any additional loss of available denning habitat would be a limiting factor on the ability of connectivity habitat areas to support residential occupancy by grizzly bears, including females with cubs.

There must be a new assessment of grizzly bear denning chronology. The problem with the government analyses is they base denning dates that rely on data as far back as 40 years. It has been more than 20 years since the last scientific assessment for GYE (Haroldson et al. 2002, data current through 1999). This obscures the signal we are now getting from climate change. Most long-time grizzly bear biologists and managers state they have detected a change in recent years and there is data to back it up.

Information from Yellowstone National Park (NPS) shows first documented grizzly bear sighting of the year over the past decade or so are mostly from early February to early March, much earlier than previously published studies (Expert Report of David J. Mattson *Flathead-Lolo-Bitterroot Citizen Task Force et al. v. State of Montana* Case CV 23-101-M-DWM). The trend is almost certain to continue. If plant phenology cannot adapt quickly enough, bears, especially in late fall/early winter and late winter/early spring, will be active when there may not be adequate natural foods which will cause bears to seek human foods, which causes high mortality risks and rates (Pigeon et al. 2016). If bears are out of the den a longer portion of the year, it creates added exposure to conflicts with humans and higher mortality risk.

A new assessment must account for the data bias in the GYE and NCDE. They do not sample areas beyond the core interior, the highest and snowiest area where denning seasons are generally longer. Denning behavior in a vast area of currently occupied habitat is not captured, nor the potential impacts from recreational activity that affects den selection and den viability (see also Bader and Sieracki 2022).

There are other predicted impacts on grizzly bears from climate change. See Mattson <https://insideclimatenews.org/news/14052019/grizzly-bears-killed-climate-change-yellowstone-rocky-mountains-wildlife-survival-whitebark-pine-beetle/#:~:text=The%20Risk%20Was%20Becoming%20Clear%20Back%20in%20the%201980s&text=%E2%80%9CWe%20were%20flagging%20climate%20change,there%20for%20a%20long%20time.%E2%80%9D&text=In%20the%20Yellowstone%20area%2C%20the,a%20lower%2Dquality%20habitat.%E2%80%9D>

Rogers et al. (2020) found lactating females have a harder time thermoregulating which may affect cub survival. Other effects include caloric burn which may deter grizzly bears from accumulating the fat reserves required for hibernation. Other impacts include increases in distribution area and lower bear density and challenges to thermoregulation.

Drought and climate change are known to have significant effects on primary food sources for grizzly bears including *Vaccinium spp.* and other berry producing shrubs. During drought years with poor berry crops, bear-human conflicts and grizzly bear mortalities explode (Montana Fish, Wildlife & Parks 2026; Jonkel, Montana Fish, Wildlife & Parks annual data). With climate change, such failures will become more common.

Corradini et al. (2023) wrote: “...synergistic effects of continued climate change and increased human impacts could lead to more extreme changes in food availability and affect observed population resilience mechanisms.” (emphasis provided).

There is no justification for the SSA to conclude that changes in food sources are not a threat to grizzly bears. “Shifts in bear habitat availability and quality are projected to continue in the face of climate change” (Kurth et al. 2024) (emphasis provided). The saying that grizzly bears are generalists and opportunists and “they’ll just eat something else” oversimplifies the issue. High protein foods may be replaced with low protein foods, which affects fitness and reproduction. Natural foods may be replaced by human-related foods, which

again increases mortality. These effects are already being detected and cumulatively warrant a finding that climate change is an imminent and ongoing threat to the grizzly bear DPS.

VIABLE POPULATIONS

The ESA requires that decisions be based on the best available scientific information. The PR ignores this mandate. The population definitions in the Conservation Strategies are administrative and political definitions and are not based on the best available science and the methods for estimating occupied habitat are faulty (Deposition of David J. Mattson; Expert Report of David J. Mattson *Flathead-Lolo-Bitterroot Citizen Task Force, et al. v. State of Montana, CV 23-101-M-DWM*). There is no scientific basis for the NCDE Grizzly Bear Conservation Strategy (Service 2018) standard of a 90% chance of not falling below 800. Mattson (2019b) shows that a population of 800 has a 59% probability of extinction.

The Service and other agencies only consider grizzly bear population viability for ≤ 100 years. This is far too short a time period for a species with a generational time of approximately 10-15 years.

O'Grady et al. (2006) found that inbreeding depression as measured by lethal equivalents (LE) is much greater in wild populations ($LE \approx 12$) than it is in captive populations ($LE \approx 4$). This can lead to the Extinction Vortex.

The best science is as follows: Reed et al. (2003) define viability as a 99% chance of survival for 40 generations, approximately 400 years for grizzly bears which have a generational time of ≈ 10 years (Miller and Waits 2003). Traill et al. (2007) reported mean Minimum Viable Population (MVP) for 212 species was 4169 individuals. Reed et al. (2003) recommend that conservation programs for wild populations be designed to conserve habitat capable of supporting ≈ 7000 adult vertebrates. Allendorf and Ryman (2002) estimated as many as 5,000 grizzly bears are required in a single population or connected meta-population.

The Conservation Strategies seek to maintain maximum populations of 800-1000, far below any of these science derived thresholds.

STREAMLINED CONSULTATIONS

The PR claims that § 7 still applies but hints at a streamlined process for agencies like the U.S. Forest Service. If these are mentioned, they must be defined so the public can understand and submit informed comment. Simplifying and dumbing down the process will result in more habitat destruction and dramatically increase mortality risk and reduced reproductive success.

All federal agencies are bound by the ESA and its mandate to recover species. Actions that impede this obligation are illegal. The PR allows excessive take and hints at reduced habitat protections which will impede and prevent recovery of the species.

CONCLUSION

Adding more mortality and non-lethal take to a species in this situation is irresponsible and contrary to recovery effort. The Service concluded that management removals are an ongoing threat to the grizzly bear. The PR would only increase this threat. It does not aid in the conservation of the species.

The Service has ignored its duties under the ESA, 16 U.S.C. §1531 et seq., to ensure that its actions do not jeopardize threatened and endangered species, that its actions do not result in unauthorized take of these species of wildlife, and that its actions promote conservation and recovery of these species. The agency's actions in this matter represent an unlawful departure from its legally binding mandate to protect and recover threatened species and their habitats.



Patty Ames, President

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