

INTRODUCTION

While grizzly bear conservation efforts in the Greater Yellowstone Ecosystem (“GYE”) have made remarkable progress, the conservation community has concerns about the continued recovery of the grizzly bear in a post-delisting world. We believe a delisting rule provides an opportunity to address our concerns about grizzly bear recovery, both with respect to the GYE Distinct Population Segment (“DPS”) specifically and to the listed entity writ large.

Many of our organizations have been actively involved in grizzly bear conservation since the species was first listed. We have participated in public meetings, helped develop state and federal management plans, engaged in on-the-ground efforts to reduce human-bear conflicts, conducted scientific research, and advanced litigation when necessary. We hope to continue this participation by helping to shape a delisting rule that is robust and assures the grizzly bear’s continued recovery across the landscape.

In the following one-pagers, we outline our concerns and the ways a delisting rule might address them. Our concerns fall into five major categories:

- 1) Post-delisting monitoring and status-review triggers for the GYE population;
- 2) Habitat protections;
- 3) A commitment to natural connectivity of grizzly bear populations;
- 4) Funding continued grizzly bear conservation efforts; and
- 5) A commitment to grizzly recovery beyond the GYE.

We look forward to discussing these proposals with you in further detail in the coming weeks and months. Please do not hesitate to contact us with questions or concerns.

Sincerely,

Center for Biological Diversity
Defenders of Wildlife
Earthjustice
Endangered Species Coalition
Greater Yellowstone Coalition
National Parks Conservation Association
Natural Resources Defense Council
Sierra Club

POST-DELISTING MONITORING AND STATUS REVIEW TRIGGERS

Concern: We remain concerned that states' post-delisting commitments to sustainably manage grizzly bears are unenforceable, and management plans, as written, lack a clear mechanism for returning bears to protected status if current threats worsen or future threats arise. We believe these concerns could be alleviated by a delisting rule that accomplishes the following:

Establishes a biologically relevant post-delisting monitoring period

The ESA sets a 5-year floor on post-delisting monitoring. For a long-lived species like the grizzly bear, post-delisting monitoring should occur for a biologically relevant period of time (i.e., at least 3 to 4 generations).¹

We suggest that the post-delisting monitoring period be **the sum of 4 consecutive, 7-year population monitoring periods, or 28 years**. A 7-year monitoring period is appropriate because it accommodates the demonstrated 7- to 10-year lag time between actual changes in population dynamics and the ability to detect those changes. Seven-year monitoring periods will also reflect approximately one generation of grizzly bears.

Establishes Sufficient Status Review Triggers

If any of the following scenarios occurs during the post-delisting monitoring period, FWS should immediately initiate a status review to determine if relisting is warranted:

- 1) Failure to meet one or more of the **population standards, habitat standards, or monitoring protocols and commitments** (as described in Chapters 2-4 of the Conservation Strategy and associated approved state plans);
- 2) Monitoring demonstrates evidence of a **negative population trajectory**;²
- 3) Failure to demonstrate, by 2020 and at each 7-year monitoring period thereafter, **natural connectivity** between the GYE grizzly bear population and other regional populations;
- 4) Any **change in state law, policy or management** that would potentially increase the threat to the grizzly bear population.³

If any of these scenarios occurs during the 28-year monitoring period, a status review should immediately commence. If FWS determines relisting is warranted, the full process for relisting should commence. Otherwise, (1) the 28-year post-delisting monitoring period shall be restarted, or (2) an additional 7 years shall be added to the monitoring period, whichever is shorter.⁴

¹ There is precedent for biologically relevant post-delisting monitoring periods, e.g., peregrine falcon (3-year intervals for 15 years), Hawaiian hawk (proposed 5-year intervals for 20 years).

² We propose this trajectory be measured by the central tendency of population growth, estimated in two ways: (1) by trend in population estimates based on Chao2, using a 7-year running average, and (2) by trend in population based on re-calculated vital rates, as measured in years 7, 14, 21, and 28 of the monitoring period using data collected over the previous 7-year period. A status review should be triggered if either trend is negative.

³ E.g., establishing a maximum population cap; creating geopolitical boundaries that mandate predator control or agency removal; or changing state law or policy so as to encourage, facilitate, or require the lethal removal of bears for the benefit of ungulates or livestock. See, e.g., 74 Fed. Reg. 15123, 15148 (Apr. 2, 2009) (similar change-in-law provision in Final Rule for the Northern Rocky Mountain (NRM) gray wolf).

⁴ See, e.g., 74 Fed. Reg. at 15155 (similar extension provision in Final Rule for the NRM gray wolf).

HABITAT PROTECTION

Concern: The habitat protections afforded to grizzly bears in a post-delisting world fall short of what is needed to ensure the species' continued recovery. We believe the following habitat provisions should be incorporated into a delisting rule to ensure grizzly bears retain the protection they need on the landscape:

Expanded Food Storage Orders

Food storage orders should be expanded to **all Forest Service and Bureau of Land Management ("BLM") lands within the Conservation Management Area**. This is a simple and proactive way to reduce human-bear conflicts, promote public safety, and protect grizzly bears.

An Adaptable Demographic Monitoring Area

Grizzly bear population estimates and mortality counts will occur in the so-called Demographic Monitoring Area ("DMA"). We believe the DMA boundary should not be fixed. Rather, it should be **adaptable and responsive to changing conditions** and changing grizzly bear distribution. A review of the DMA boundary should occur every 7 years (corresponding to our recommended post-delisting monitoring interval).

Expanded Habitat Standard Application

As currently drafted, the post-delisting habitat standards outlined in the Conservation Strategy⁵ apply only to the Primary Conservation Area ("PCA").⁶ We believe habitat standards (specifically those concerning road density, secure habitat and no net loss, developed sites, and no surface occupancy for oil and gas development) should apply **across federal lands within the DMA and to federal lands likely to serve as linkage zones** between the GYE and other grizzly bear populations.⁷ This ensures that the landscape in which recovery is assessed provides adequate protection for bears. It also affords bears a better opportunity to connect with other regional grizzly bear populations.

Identification of Appropriate Indicators

Measurable and appropriate indicators of habitat quality and food source availability should be identified and built into post-delisting monitoring plans. Additional indicators should be incorporated in the future if changing conditions so warrant. Post-delisting management should include appropriate tools to measure cumulative effects to grizzly bear habitat, as well as scientifically-based thresholds to safeguard against excessive cumulative effects, and the geographic application of these tools should reflect expanding grizzly bear distribution.

⁵ These standards will be implemented through Forest Plan Amendments finalized in 2006.

⁶ Since the Forest Plan Amendments were finalized, the distribution of grizzly bears has expanded far beyond PCA boundaries. In fact, the PCA encompasses only about half of the bear's "suitable habitat" as defined by FWS.

⁷ We propose in our one-pager on connectivity that the DMA include linkage zones. If FWS does not include linkage zones in the DMA, we request that habitat standards apply to those corridors.

COMMITMENT TO GRIZZLY BEAR CONNECTIVITY

Concern: GYE grizzly bears are not yet connected demographically or genetically to other grizzly bear populations, and removal of ESA protections without adequately addressing functional, natural connectivity could impede long-term recovery.

Background

The GYE grizzly bear population has been isolated from other populations for at least 100 years.⁸ This isolation has implications for genetic diversity and long-term population recovery. We would like to see a functioning meta-population of bears in the lower 48 states that is connected both demographically and genetically. Connectivity between the GYE and other regional grizzly bear recovery areas (most notably the Selway-Bitterroot and Northern Continental Divide Ecosystem (“NCDE”))⁹ requires linkage zones that allow for colonization and movement of individuals, ideally bears of both sexes. To that end, we suggest the following be incorporated into a delisting rule:

Inclusion of Linkage Zones in the Demographic Monitoring Area

The delisting rule should modify the Demographic Monitoring Area (“DMA”) so as to include critical linkage zones, using the best available science.¹⁰ Including linkage zones in the DMA will help ensure grizzly bear use of such zones is monitored. Ensuring that live bears and bear mortalities in linkage zones contribute to population counts will incentivize federal, state, and local governments to take proactive measures to reduce human-bear conflicts in those zones, and thus facilitate natural connectivity.

No Reliance on Human-Assisted Translocation

The delisting rule should not rely on human-assisted translocation of bears to promote genetic dispersal. Human-assisted translocation should only be used in emergency situations, not to overcome anthropogenic barriers to natural dispersal. If the situation becomes so dire that human-assisted translocation is required, FWS should consider this a “threat” under 16 U.S.C. § 1533(a)(1) necessitating the initiation of a status review. Reliance on natural connectivity, rather than human-assisted translocation, would demonstrate that FWS has achieved its goal of “a truly recovered” population under the ESA.

⁸ Craig R. Miller & Lisette P. Waits, The History of Effective Population Size and Genetic Diversity in the Yellowstone Grizzly (*Ursus arctos*): Implications for Conservation, 100 Proc. Nat’l Acad. Sci. 4334 (2003).

⁹ Connecting the two gems of the National Park Service, Yellowstone and Glacier, via grizzly dispersal would also meet broader Department of Interior goals and channel funding and research into this landscape. FWS can incorporate into a delisting rule the use of existing federal programs and funding (e.g., Land and Water Conservation Funds, Partners in Wildlife, Landscape Conservation Cooperatives).

¹⁰ Linkage zones should be identified, initially, from the scientific literature (as called for in the 1993 Recovery Plan and 2011 Status review) and can be refined as new information is made available. See, e.g., Troy Merrill, Grizzly Bear Conservation in the Yellowstone to Yukon Region, Yellowstone to Yukon Conservation Initiative Tech. Rept. #6 (Aug. 2005); Troy Merrill & David Mattson, The Extent and Location of Habitat Biophysically Suitable for Grizzly Bears in the Yellowstone Region, 14 *Ursus* 171 (2003), Carlos Carroll et al., Carnivores as Focal Species for Conservation Planning in the Rocky Mountain Region, 11 *Ecol. App.* 961 (2001). See also U.S. Fish & Wildlife Serv., DRAFT NCDE Grizzly Bear Conservation Strategy (April 2013), at 4, 6, 19, 37 n.2, 41, 85-87.

FUNDING CONTINUED GRIZZLY BEAR CONSERVATION

Concern: We are concerned that post-delisting funding for grizzly bear monitoring, research, and other conservation efforts—particularly funding for population and habitat monitoring—will be inadequate given the fiscal environment facing management agencies.

Background

Due to their slow reproductive capacity, grizzly bear populations require years of monitoring and study to accurately assess population-scale trends. Grizzly bear management, including conflict-reduction efforts, requires funding in perpetuity. Thus, long-term, secure, adequate funding sources for both the state and federal agencies should be identified, to the extent practicable, prior to delisting. While the following items may not be appropriate for inclusion in the delisting rule itself, we would like to discuss them with you in an effort to develop an effective, durable, post-delisting grizzly bear conservation strategy:

Commitment to Assisting States with Funding

FWS should commit to assisting state management agencies with funding during the post-delisting monitoring period.

Partnership with the Conservation Community

FWS should partner with the conservation community to secure funding for post-delisting monitoring and research. The conservation community hereby commits to:

- 1) Support the establishment and implementation of a Grizzly Bear Conservation Fund by the Interagency Grizzly Bear Committee (IGBC) through the National Fish and Wildlife Foundation;
- 2) Seek new wildlife conservation funding sources from non-consumptive users;
- 3) Continue to fund projects that increase tolerance for grizzly bears and prevent bear-human conflicts from occurring; and
- 4) Engage in long-term advocacy supporting Congressional appropriations for grizzly bear conservation.

Assurance that the IGBC and Its Subcommittees Will Remain Viable

FWS should provide for, and provide funding for, a continuing oversight role by the IGBC and its affiliated committees, including the Yellowstone Grizzly Coordinating Committee (“YGCC”). The YGCC should be tasked with facilitating coordinated management between and among the three managing GYE states.

COMMITMENT TO GRIZZLY BEAR RECOVERY BEYOND THE GYE

Concern: The conservation community is concerned that delisting the GYE DPS from the larger grizzly bear listed entity could potentially jeopardize recovery of the bear in other portions of its range.

Background

The grizzly bear was listed as a threatened species in the “48 conterminous states of the United States” on July 28, 1975. At the time of listing, a few grizzly bears were still present in the North Cascades ecosystem, the Selway-Bitterroot ecosystem, and there was at least one female bear in the San Juan Mountains ecosystem. The Service has an obligation to recover the grizzly bear in those portions of its historic range where the species was present at the time of listing and in other areas where suitable habitat exists in Colorado, New Mexico, Arizona, Utah, California, Nevada, Oregon, and southern Washington, goals that the 1993 recovery plan and the 2011 status review for the grizzly bear acknowledged.

Delisting the GYE DPS could jeopardize recovery of the bear in the above-mentioned portions of its range by creating a “non-DPS remnant” listed entity. This concern is not merely hypothetical. In 2013, the Service concluded that the original listing of the gray wolf in the lower 48 States was invalidated by the designations of the Northern Rocky Mountain and Western Great Lakes DPS units. If the same scenario occurs with the delisting of the grizzly bear GYE DPS, as well as the Northern Continental Divide Ecosystem (“NCDE”) DPS, it is possible that the validity of the bear’s protected status in the Cabinet-Yaak, Selkirk, North Cascades, Selway-Bitterroot and San Juan mountains would be put in doubt—as would the species’ recovery.

Range-wide Reclassification

One option to avoid inadvertently creating a non-DPS remnant as a result of delisting the GYE DPS would be to undertake a range-wide review and reclassification of the grizzly bear listing at the time of the GYE DPS delisting proposal. Such an approach would be fully consistent with past agency practice. For example, the Service reclassified the original range-wide Columbian white-tailed deer listed unit into 2 DPS units prior to delisting the recovered Douglas County DPS unit while designating a Columbia River DPS unit as endangered. Likewise, the National Marine Fisheries Service reclassified the original range-wide Steller sea lion listing into 2 DPS units, and most recently reclassified the range-wide loggerhead sea turtle into 9 DPS units. We are aware that NMFS is currently pursuing similar reclassifications for the green sea turtle and humpback whale.

This approach or some similar procedural action would provide the Service an opportunity to resolve and address the warranted-but-precluded endangered status for the Cabinet-Yaak, Selkirk, and North Cascade ecosystems. It could also address the recommendations in the 2011 5-year review for the grizzly bear that likewise recommended that these populations be uplisted from threatened to endangered.