

U.S. Fish and Wildlife Service
C/O Hilary Cooley, Grizzly Bear Recovery Coordinator
5275 Leesburg Pike
Falls Church, VA 22041–3803.

17 August, 2026

Re: Sportsmen's Alliance Foundation's Comments on FWS' Request for Comments on Revised Proposed Protective Regulations for the Grizzly Bear Under Section 4(d) of the Endangered Species Act, July 17, 2026 (FWS–R6–ES–2024–0186)

U.S. Fish and Wildlife Service:

The Sportsmen's Alliance Foundation (SAF) respectfully submits these comments in accordance with the Service's request for comments regarding the proposed rule to revise the protective regulations for the grizzly bear (*Ursus arctos horribilis*) in the lower-48 States under section 4(d) of the Endangered Species Act of 1973 (ESA), as amended. 91 Fed. Reg. 44780 (July 17, 2026); (FWS–R6–ES–2024–0186). SAF is a national non-profit organization dedicated to promoting and educating the public about our hunting, fishing, and trapping heritage, and science-based wildlife management. SAF achieves its mission through public education and issue research, conducted both independently and in partnership with local sportsmen and conservation organizations. Our membership consists of individual and organizational members across the country, many of whom hunt, fish, trap, and recreate in the grizzly bears' range, and many more whom benefit from statutorily and scientifically-sound management of our nation's threatened and endangered species.

To begin, we applaud the U.S. Fish and Wildlife Service's (Service) continued work in conserving and recovering the grizzly bear in the lower-48 States. Upon being listed as

threatened under the ESA in 1975, between 700-800 grizzlies remained in the lower-48.¹

Now, over 2,000 grizzly bears occupy four primary ecosystems in the lower-48 States.² The tremendous success in conserving and recovering grizzly bears is a direct result of sound management by the Service and Federal, State, and Tribal partners. Specifically, management utilizing all tools available under the ESA, in ways that encourage cooperation and flexibility, has placed the grizzly bear on solid footing for continued population increases, expanded ranges, and, ultimately, delisting from the ESA. That's commendable and worth celebrating.

Among the tools successfully utilized by the Service is section 4(d) of the ESA. Section 4(d) grants broad authority to the Secretary of the Department of the Interior (or his delegates, such as the Service) to determine what protections are necessary and advisable to provide for the conservation of threatened species. To do so, the Service may prohibit with respect to any threatened species any act prohibited under section 9(a)(1) of the ESA. Section 9 provides an extensive list of prohibitions for endangered species, but it does not provide a specific list for threatened species. Instead, the Service has the option to select the prohibitions that are necessary and advisable for the management of each threatened species.

Historically, the Service has utilized "blanket" 4(d) rules for threatened species, which applies all of section 9's prohibitions unless they are "withdrawn as appropriate, by special rule for particular species and by permit in particular situations." *Sweet Home*

¹ *Species Status Assessment for the Grizzly Bear (Ursus arctos horribilis) in the Lower-48 States*, U.S. Fish and Wildlife Service, October 28, 2024, at 4.

² <https://www.fws.gov/project/qas-grizzly-bear-lower-48-revision-and-4d-rule> (last visited August 17, 2026).

Chapter of Communities for a Great Oregon v. Babbitt, 1 F.3d 1, 5 (D.C. Cir. 1993), *opinion modified on reh'g*, 17 F.3d 1463 (D.C. Cir. 1994), *rev'd*, 515 U.S. 687 (1995). This practice granted de-facto endangered status to species listed as threatened. However, these blanket rules never aligned with Congressional intent or the best reading of the statute.

Indeed, Congress intended to provide endangered species with “the highest level of protection of any species classification.” *Humane Soc’y of U.S. v. Kempthorne*, 481 F. Supp. 2d 53, 64 (D.D.C. 2006), vacated sub nom. *Humane Soc. of U.S. v. Kempthorne*, 527 F.3d 181 (D.C. Cir. 2008). But flexibility is the cornerstone of Section 4(d):

The Secretary is authorized to issue appropriate regulations to protect endangered or threatened species: he may also make specifically applicable any of the prohibitions with regard to threatened species that have been listed in section 9(a) as are prohibited with regard to endangered species. Once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species.

H.R.Rep. No. 412, 93rd Cong., 1st Sess. 12 (1973); *Sierra Club v. Clark*, 755 F.2d 608, 616 (8th Cir. 1985).

Fortunately, the Service recognized the importance of a species-specific 4(d) rule for grizzly bears, and the bears have benefited from some form of a 4(d) rule for over 50 years. The Service continues that recognition in the current proposal to amend the grizzly’s 4(d) rule. First, and importantly, the proposed 4(d) rule includes section 9 prohibitions,

including: importing or exporting; take, including mistaken-identity killings; possession, delivery, carriage, transport, or shipment of taken grizzly bears; interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce. Undoubtedly, section 9 prohibitions can and do aid in the recovery of threatened species, and the grizzly bear is no different. The Service's inclusion of these section 9 prohibitions advances the species' conservation, and ultimate recovery, by protecting grizzly bears from activities most likely to be detrimental to the species' recovery. These section 9 prohibitions are already in place for grizzly bears, and they have proven effective in advancing conservation of the species.

Second, and more importantly, the Service proposes specific section 9 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 on grizzly recovery. SAF supports nearly all of the proposed exceptions. The Service does indeed have a "special and unique relationship" with its Federal, State, and Tribal partners, and the proposed 4(d) recognizes the decades of commitment, collaboration, and resource investment put forth by these partners to impact the species' recovery and ongoing success. For a variety of reasons, partners (particularly State natural resource and wildlife agencies) are in a unique position to aid the Service in grizzly recovery, including through data collection and sharing, relationships with local governments and landowners, and species-specific expertise. Even more, section 6 of the ESA provides that the Service must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the ESA. The Service is following that mandate here.

The proposed rule reflects the value State partners bring to the table, and the proposed exceptions empower States to partner with the Service in a more meaningful way – a way that allows States to guide management activities of grizzly bears both now and post-delisting. As such, we support the proposal that any qualified employee or designated agent of an authorized agency, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the grizzly bear in the lower-48 States that may result in otherwise prohibited activity, including take. The proposal leans on existing expertise of Service partners while simultaneously preparing and educating partners for more partner-led management in the future, including full State-led management after grizzly bears are delisted. We would, however, remove references to the take of orphaned cubs. Occasional take of orphaned cubs can already occur after consultation with the Service, and it would also remain an option under the proposal's Tier 2 exceptions. Specifically referencing the take of orphaned cubs in the proposed rule could cause confusion, result in social disapproval, and ultimately hinder grizzly bear recovery.

We also support the dynamic approach that provides for a tiered system of exceptions depending on the conditions met. Tiers 1 and 2 provide an even greater amount of flexibility for the Service and advance the conservation of grizzly bears. Importantly, the tiered approach provides appropriate safeguards for the implementation of section 9 exceptions. We support Tier 1's conditions for implementation, which require Federal, State, or Tribal agencies to have management plans and conservation strategies for grizzly bears finalized. These conditions incentivize conservation actions and ensure exceptions will have negligible impacts to grizzly bears in the lower-48 States. Similarly, we support

the conditions required for Tier 2 exceptions. These include the same conditions as Tier 1 but also require grizzly populations to achieve demographic objectives before Tier 2 exceptions can be implemented.

We do suggest that the Service incorporate specific management and demographic criteria directly into the proposal instead of utilizing MOUs to trigger the advancement of Tiers. MOUs can delay processes, create management discrepancies among jurisdictions and entities, and make the Service vulnerable to litigation on each MOU. By including specific criteria into the rule instead of establishing criteria via MOU, the Service could create an auto-triggering mechanism to advance entities from one Tier to the next. Doing so would create consistency and durability, ultimately advancing grizzly conservation and reducing litigation and corresponding delays in much-needed management. If the Service does move forward with this approach, we ask the Service to reopen rulemaking in order to comply with the notice requirements of the Administrative Procedure Act.

The Service has proposed appropriate safeguards to ensure that exceptions do not negatively impact the conservation or recovery of grizzly bears. First, the proposed 4(d) rule does not create exceptions for State, Federal, or Tribal agencies without Service consultation. This requires agencies to report 4(d) exception activities to the Service and to consult with the Service when agency actions might invoke a 4(d) exception. This ensures agencies are prepared to manage grizzlies in a way that furthers their conservation and recovery. It also ensures that agency plans and strategies adhere to Service goals and ESA requirements. Additionally, the Service has clearly outlined the proposed exceptions and the conditions in which they apply. For each section 9 exception the Service has proposed,

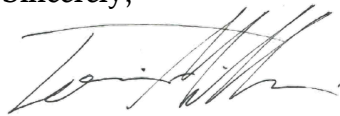
the Service has provided appropriate detail of the situations in which that exception applies and which entities qualify for the exception. To qualify for broader Tier 1 and 2 exceptions, the Service has proposed additional safeguards. To qualify for Tier 1, agencies must have a co-management agreement in place with the Service. And further safeguards are required before Tier 1 entities can qualify for the even broader Tier 2 exceptions. Tier 2 safeguards grizzly conservation and recovery by requiring population demographics to meet specific levels before Tier 2 exception implementation can occur. As mentioned, these safeguards are necessary, but we ask the Service to incorporate them more clearly and directly in the rule itself, rather than through case-by-case MOUs.

Further, the Service will review agency participation annually and may downgrade or revoke tier designations if required conditions are not met, including changes in Federal, State, or Tribal laws, rules, regulations, or management plans or practices, or if other circumstances depart significantly from the potential to achieve grizzly bear conservation and recovery. The safeguards required to access the proposed section 9 exceptions, and then to move up in the dynamic exception tiers, are scientifically based, pragmatic, and incentivize conservation, collaboration, and regional and local buy-in. We do ask the Service to consider adjusting its reviews to a rolling three-year average. Doing so aligns the Service's review process with the review of demographic criteria in agency management plans and conservation strategies. A three-year review timeline would ensure demographic changes caused by seasonal conditions or one-offs do not unnecessarily result in Tier revocation.

Again, we applaud the Service's work over the last half-century in conserving and

recovering grizzly bears. The Service was appropriately utilized and developed partnerships with Federal, State, and Tribal partners and has taken full advantage of all management tools available under the ESA. The result has been grizzly bear management that encourages cooperation and flexibility and has placed the grizzly bear on solid footing for continued population increases, expanded ranges, and, ultimately, delisting from the ESA. The Service's proposed 4(d) rule advances these successes even further. Grizzlies have significantly benefited from previous 4(d) rules, and this proposal thoughtfully and appropriately incorporates section 9 prohibitions and, importantly, exceptions to those prohibitions under very specific circumstances. The proposed exceptions will advance grizzly bear conservation and recovery and encourage Federal, State, and Tribal partners to work diligently to achieve successes. We do ask that the Service consider modifications, as discussed, to the exception for the take of orphaned cubs, the requirement of MOUs versus inclusion of specific requirements in the rule itself, and the review timeline for Tier status review and revocation. The ESA was never intended to be rigid, and the Service's proposal recognizes that. It grants States and Tribes more management flexibility, encourages management buy-in, and creates harmony among human interests and grizzly bear recovery. We support much of the proposed rule, and we look forward to a future where grizzlies no longer require listing under the ESA.

Sincerely,



Torin Miller
Associate Litigation Counsel