



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2024-0186; FXES1111090FEDR-267-FF09E21000]

RIN 1018-BI14

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)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental notice of proposed rulemaking; revised proposed protective regulations under section 4(d); reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or FWS), notify the public that we are making changes to our January 15, 2025, 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, as amended (Act or ESA). We are reopening the comment period because we are proposing substantive changes to the protective regulations in the January 15, 2025, proposed rule. Comments previously submitted will be considered and do not need to be resubmitted now. However, we invite comments on the new information presented in this announcement relevant to the changes to the proposed protective regulations, as described below. We encourage those who have commented previously to submit additional comments, if appropriate, considering this new information relative to the protective regulations for the grizzly bear. At this time, we are not proposing any revisions to, nor asking for additional comments on, any other components of our January 15, 2025, proposed rule for the grizzly bear, including the proposed grizzly bear distinct population segment (DPS). In

addition, we are providing notice that we are considering issuing separate final rules for our final determinations on the revision to the grizzly bear listing and the revision to the 4(d) rule.

DATES:

Written comments: We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments submitted electronically using the Federal eRulemaking Portal (see ADDRESSES, below) must be received by 11:59 p.m. eastern time on the closing date.

Information Collection Requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after the date of publication of this rule in the *Federal Register*. Therefore, comments should be submitted to the Service by **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES:

Comment submission: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov>. In the Search box, enter FWS–R6–ES–2024–0186, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy*: Submit by U.S. mail to: 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.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at <https://www.fws.gov/species/grizzly-bear-ursus-arctos-horribilis> or at <https://www.regulations.gov> at Docket No. FWS–R6–ES–2024–0186.

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted within 60 days of publication of this document to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or Info_Coll@fws.gov (email). Please reference RIN 1018–BI14 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, 406–243–4903, hilary_cooley@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R6–ES–2024–0186 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Information to assist us with applying or issuing protective regulations under section 4(d) of the Endangered Species Act of 1973, as amended (Act or ESA) that may be necessary and advisable to provide for the conservation of the grizzly bear in the lower-48 States. In particular, we seek information concerning:

(a) Whether we should remove, add, or clarify any of the section 9 prohibitions in the proposed 4(d) rule;

(b) Whether we should remove, add, or clarify any of the exceptions from the prohibitions in the proposed 4(d) rule associated with either conservation benefit or de minimis take, and specifically, whether or how we address incidental take associated with otherwise lawful activities, including limits on liability for entities regulating those activities;

(c) Whether we should modify the structure and requirements for management tiers; and

(d) Impacts (conservation and economic) associated with implementing the 4(d) rule;

(e) How frequently and in what geographical areas are activities that we propose to continue to regulate under the proposed 4(d) rule (e.g., sale, “take”) currently occurring;

(f) Whether there are other laws currently in place beyond what we describe in the economic considerations document that regulate the activities or “take” prohibited in the proposed 4(d) rule;

(g) Any new entities likely to request section 10(a)(1)(A) permits for conducting activities that would involve “take” that we propose to continue to prohibit such as capture or handling of the grizzly bear in the lower-48 States;

(h) Data available on the time and economic costs of obtaining section 10(a)(1)(A) permits in accordance with 50 CFR 17.32 for these activities compared to existing costs associated with permits under 50 CFR 17.22;

(i) Any new entities likely to develop habitat conservation plans and request section 10(a)(1)(B) permits for conducting activities that would involve incidental “take” of the grizzly bear in the lower-48 States that we propose to continue to prohibit;

(j) Data available on the time and economic costs of obtaining section 10(a)(1)(B) permits in accordance with 50 CFR 17.32 compared to existing costs associated with permits under 50 CFR 17.22 for these activities;

(k) Any other entities not addressed in this proposed rule that may be affected by the 4(d) rule;

(l) Any information about effects to States, on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government; and

(m) Comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a change from the proposed rule. Section 4(d) of the Act directs the Service to issue regulations necessary and advisable for the conservation of threatened species. You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final regulation may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may change the parameters of the prohibitions or the exceptions to those prohibitions in the protective regulations issued under section 4(d) of the Act. For example, we may expand the prohibitions if we conclude the protective regulation as a whole, including those additional prohibitions, is necessary and advisable to provide for the conservation of the species. Conversely, we may establish additional or different exceptions to the prohibitions in the final rule if we conclude the activities would facilitate or are compatible with the conservation and

recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Previous Federal Actions

Please see our January 15, 2025 (90 FR 4234), proposed rule for a full summary of our previous Federal actions for the grizzly bear. Our January 15, 2025 (90 FR 4234), proposed rule would revise the listing of the grizzly bear by defining the boundaries of the contiguous U.S. grizzly bear distinct population segment (DPS) with revised protective regulations for the grizzly bear issued under section 4(d) of the Act. That proposal had a 60-day comment period, ending March 17, 2025, which we extended for an additional 60 days (90 FR 12286, March 17, 2025). The extended comment period ended on May 17, 2025. We are now reopening the public comment period for an additional 30 days to give all interested parties an opportunity to comment on our revised proposal for the protective regulations issued under section 4(d) of the Act for the grizzly bear in the lower-48 States, and to notify the public that we are considering issuing separate final rules for our final determinations on the revision to the grizzly bear listing and the revision to the 4(d) rule.

Background

Section 9 of the Act provides a specific list of prohibitions for endangered species but does not provide these same prohibitions for threatened species. Instead, pursuant to section 4(d) of the Act, for any species listed as a threatened species, the Secretary must issue protective regulations that are “necessary and advisable to provide for the conservation of such species” (these are referred to as “4(d) rules”). Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as they deem necessary and advisable to provide for the conservation of species listed as threatened species. “Conservation” is defined in the Act to mean the use

of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions for a given species.

Courts have recognized the extent of the Secretary's discretion under section 4(d) to develop regulations that are appropriate for the conservation of threatened species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance v. Lautenbacher*, 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the Act's legislative history, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [them] with regard to the permitted activities for those species. [They] may, for example, permit taking, but not importation of such species, or [they] may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Under our section 4(d) authorities, we put in place protections intended to both prevent a threatened species from becoming an endangered species and to promote its recovery. Section 4(d) rules explain what is prohibited for a threatened species, thus making the activity unlawful without a permit or authorization under the Act for the

prohibited activity unless otherwise excepted in the 4(d) rule (species-specific 4(d) rules may also include affirmative requirements). Section 4(d) rules are therefore directly related to what actions may require permits in the future. Permits may be issued for purposes described in our threatened species permitting regulations in title 50 of the Code of Federal Regulations (CFR; 50 CFR 17.32), including for recovery actions, conservation benefit agreements (previously referred to as candidate conservation agreements with assurances and safe harbor agreements), or habitat conservation plans. 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. For example, there are two categories of exceptions we frequently include in 4(d) rules, and these are for otherwise prohibited acts or forms or amounts of “take” that are: (1) unavoidable while conducting beneficial actions for the species, or (2) considered inconsequential (de minimis) to the conservation of the species. For otherwise prohibited take or activities that require permits under section 10 of the Act, programmatic approaches—such as general conservation plans and template habitat conservation plans—may be available as another way for project proponents to comply with prohibitions or requirements applicable to one or more species while reducing the time that would otherwise be associated with developing individual permit applications. 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.”

The grizzly bear (*Ursus arctos horribilis*) currently has a species-specific protective regulation at 50 CFR 17.40(b), which we are proposing to amend. The provisions of this species’ proposed protective regulation under section 4(d) of the Act are one of many tools we will use to promote the conservation of the grizzly bear in the lower-48 States. The grizzly bear also has two designated experimental populations. An experimental population is a population of a listed species that has been specifically

designated under section 10(j) of the Act for release into habitat capable of supporting the species outside of its current range. 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. Any changes to NEP population status or their specific regulations would require separate rulemaking processes with opportunities for public review and comment (see *Interaction of the 4(d) Rule with 10(j) Regulations*).

The proposed protective regulations will apply only if and when we finalize this proposed 4(d) rule. Nothing in 4(d) rules change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the grizzly bear. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. These requirements are the same for a threatened species regardless of what is included in its 4(d) rule. A 4(d) rule does not alter section 7 obligations, including the criteria for informal and formal consultations or the analytical process used for biological opinions or concurrence letters. 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. For example, as with an endangered species, if a Federal agency determines an action is “not likely to adversely affect” a threatened species, this will require the Service’s written concurrence (50 CFR 402.13(c)). 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.

At the end of a formal consultation, the Service issues a biological opinion, containing its determination as to whether the Federal action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “jeopardy” biological opinion) (50 CFR 402.14(h)).

If the Service determines in its biological opinion the action is likely to jeopardize listed species or destroy or adversely modify critical habitat, it shall include reasonable and prudent alternatives, if any exist, it believes would avoid the likelihood of jeopardy or destruction or adverse modification (50 CFR 402.14(h)). In accordance with 50 CFR 402.14(i), when there is a “no jeopardy” biological opinion but “take” of a listed species is reasonably certain to occur, the Service is required to issue an incidental take statement that specifies those reasonable and prudent measures (RPMs) the Service considers necessary or appropriate to minimize the impact of the incidental take and terms and conditions (TCs) that must be complied with to implement those measures. 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. In those cases where take is prohibited, the RPMs/TCs associated with the incidental take statement would vary depending on the nature of the action, the location, scope, etc. Regardless, 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).

Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and interagency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but still require consultation). These tools, which can also increase consistency across consultations, may include consultation guidance; streamlined, online consultation processes via the Service's digital project planning tool (Information for Planning and Consultation; <https://ipac.ecosphere.fws.gov/>); template language for biological opinions; or programmatic consultations. 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.

Interaction of the 4(d) Rule with 10(j) Regulations

As discussed above, there are currently two NEPs for the grizzly bear in the lower-48 States: (1) the Bitterroot NEP in portions of Idaho and Montana; and (2) the North Cascades NEP in the State of Washington. We treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations under section 4(d) of the Act with respect to that population (50 CFR 17.82). We have established protective regulations for the Bitterroot and North Cascades NEPs for grizzly bears at 50 CFR 17.84(l) and 17.84(y), respectively.

Species-specific regulations promulgated under section 10(j) of the Act are specific to and apply only to the designated experimental population authorized for release and identified through regulation. The 10(j) regulations specific to an experimental population do not apply to members of nonexperimental populations of the same species (per section 10(j)(1) of the Act and our regulations at 50 CFR 17.80(a)). This ensures the experimental populations and nonexperimental populations each receive

the appropriate level of protections under the Act. Currently, no grizzly bears have been released in either the Bitterroot or North Cascades NEPs, so 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)).

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. Following an initial release, any grizzly bears within the experimental population area would receive all the Act's protections and the exceptions associated with the experimental population regulations promulgated under section 10(j). If grizzly bears are released in an NEP area, the 4(d) rule would no longer apply in that NEP area unless the 10(j) regulation for that NEP area is removed through a separate rulemaking.

Provisions of the Proposed 4(d) Rule for the Grizzly Bear in the Lower-48 States

Exercising the Secretary's authority under section 4(d) of the Act, we have developed this proposed rule, designed to address the grizzly bear's conservation needs. Section 4(d) requires the Secretary to issue such regulations as they deem necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species (*In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmty. for a Great Or. v. Babbitt*, 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds*, 515 U.S. 687 (1995))). Our necessary and advisable determination includes consideration of conservation and economic impacts (*Kansas Natural Resources Coalition, et al. v. USFWS, et al.* 780 F. Supp. 3d 650 (W.D.

Tex. 2025)). We explain below why we find that, if finalized, the prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the grizzly bear.

The protective regulations we are proposing for the grizzly bear incorporate prohibitions from section 9(a)(1) of the Act to address the threats to the species. We propose to include the following prohibitions of section 9(a)(1) of the Act, and implementing regulations codified at 50 CFR 17.21, which make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. We also propose to prohibit—with specific exceptions described below, certain acts with grizzly bears that have been legally taken (i.e., the acts of possessing, selling, delivering, carrying, transporting, or shipping, by any means whatsoever). This proposed protective regulation includes these prohibitions to help conserve the species' existing populations, and decrease synergistic, negative effects from ongoing or future threats.

In particular, this proposed 4(d) rule will provide for the conservation of the grizzly bear by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: 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.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take is intended to help conserve the species’ existing populations, and decrease synergistic, negative effects from other stressors. Therefore, we propose to prohibit take of the grizzly bear, except for take resulting from those actions and activities specifically excepted by this proposed 4(d) rule.

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. We propose to conditionally except take associated with the following activities:

- Employees or agents of the Service acting in the course of their official duties;
- Import and export;
- Possession;
- Interstate or foreign commerce;
- Permits;
- Scientific, genetic, or population augmentation purposes;
- Defense of life (self-defense);
- Aiding sick and injured grizzly bears;
- Disposal of or salvage a dead grizzly bear;

- Incidental take by authorized agencies due to nonlethal capture and handling of other species for research and management;
- Deterrence;
- Management activities; and
- Incidental take associated with regulated trapping of other species.

We provide additional detail regarding these exceptions and the conditions under which they would apply below. Although there are no habitat-based take exceptions in this 4(d), we recognize that the primary land managers across much of this range in the lower-48 are Federal agencies (e.g., U.S. Forest Service). 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.

We also describe a dynamic approach, with two tiers of additional exceptions for management activities and incidental take for Federal, State, or Tribal agencies once management plans and conservation strategies are finalized, population demographic objectives are achieved, and Memorandums of Understanding (MOUs) with the Service are completed. These activities are intended to incentivize conservation actions and have negligible impacts to the grizzly bear in the lower-48 States.

Grizzly bears sometimes obtain anthropogenic food sources, such as pet food, garbage, or livestock. Grizzly bears that repeatedly obtain anthropogenic foods (i.e., food-conditioned bears) can become a threat to human safety. Additionally, grizzly bears that kill or injure livestock (i.e., depredating bears, or bears that cause damage or loss) can affect the livelihood of ranchers and other livestock owners. Deterrence, relocation, or timely removal of depredating or food-conditioned grizzly bears mitigates risks to

human safety and livestock, thereby fostering increased public tolerance and support for conservation efforts. This approach has been implemented by wildlife agencies for decades, during which grizzly bear populations have continued to expand. In this proposed 4(d) rule, we consider strategies, including nonlethal and lethal methods, to increase human safety and reduce human-bear conflicts and thereby promote conservation of the grizzly bear.

We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. Their decades of commitment, collaboration, and resource investment have been central to the species' recovery and ongoing success. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing the Act. Section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Our Federal and Tribal agency partners also possess scientific data and valuable expertise on the status and distribution of grizzly bears, as well as important knowledge of local issues and concerns. Therefore, we propose 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 take as specified in a current Technical Letter of Assistance (TLA) from, or MOU with, the Service under the provisions of this proposed 4(d) rule. A TLA is a letter issued by the Service that describes and clarifies terms and conditions for take by authorized agencies.

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. For example, this

rule would clarify exceptions for any employee or agent of the Service or any other authorized agency, who is designated by their agency for such purposes. Such employees or agents, may, when acting in the course of their official duties, live-capture grizzly bears if such action is necessary for scientific, genetic, or population augmentation purposes, take grizzly bears to aid sick or injured individuals, dispose of or salvage a dead grizzly bear that may be useful for scientific study, and incidentally take grizzly bears associated with research or non-lethal management of other species. We also propose to except take for individuals conducting nonlethal deterrence to discourage grizzly bears from using areas near human-occupied areas.

Below, we provide additional detail regarding the following proposed exceptions: import and export; possession; interstate or foreign commerce; permits; scientific, genetic, or population augmentation; aiding sick or injured grizzly bears; disposal of or salvage a dead grizzly bear; incidental take from research and nonlethal management of other species; deterrence; management activities; 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. Table 1 summarizes these exceptions and Table 2 summarizes the additional exceptions under either Tier 1 or Tier 2 for authorized agencies once the tier's conditions are met.

Table 1. Summary of the proposed exceptions to the prohibitions for the grizzly bear. Additional exceptions for management activities and incidental take by authorized agencies may apply in geographic areas identified as Tier 1 or Tier 2 once the tier's conditions are met and MOUs with the Service are complete (see Table 2).

Exceptions from the Prohibitions	Description of the exception, with any applicable conditions and monitoring requirements
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Employees or agents of the U.S. Fish and Wildlife Service (Service)	Any employee or agent of the Service may, when acting in the course of their official duties, take a grizzly bear.
Import and export	Federal, State, or Tribal agencies may import live grizzly bears into the lower-48 States. Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may import or export live grizzly bears or their parts and products into or out of the United States. Federal, State, or Tribal agencies may import or export grizzly bear parts and products for scientific, cultural, law enforcement, educational, or research purposes.
Possession	Federal, State, and Tribal agencies with authorization to possess from the Service may possess, deliver, carry, transport, or ship grizzly bear parts and products of grizzly bears. Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may possess live grizzly bears (e.g., orphaned cubs) obtained from the wild. Museums and other nonprofit institutions with authorization to possess from the Service may possess, deliver, carry, transport, or ship grizzly bear parts and products for cultural, education, information, and outreach purposes. Parts and products may only be possessed by entities or nonprofit (501(c)(3)) organizations whose primary stated purposes are cultural, education or research. Parts and products shall not be traded, transferred or disposed without prior authorization from the Service and may not be used in advocacy or lobbying efforts.
Interstate or foreign commerce	A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce with prior authorization from the Service.
Permits	Any person may conduct activities as authorized by a valid permit under § 17.32.
Scientific, genetic, or population augmentation purposes	Collection of samples from a grizzly bear in the wild excepted for authorized agencies. Designated agents with a TLA or MOU may live-capture and tag, collar, transport, and release a grizzly bear. Take that results in a grizzly bear mortality or grizzly bear lasting bodily injury must be reported to the Service within 48 hours or as soon as practical given remote conditions. Without an MOU or TLA, a permit under § 17.32 is required.
Defense of life (self-defense)	Any person may take a grizzly bear in defense of their own life or the lives of others. Grizzly bears taken in self-defense or in defense of human life must be reported by the person who has taken the bear or their designee within 48 hours of occurrence or as soon as practical given remote conditions.

Aiding sick or injured grizzly bears	Take is excepted for authorized agencies aiding bears determined to be sick or injured to the extent they are unable to effectively move, obtain food, or defend themselves for any length of time (i.e., lasting bodily harm) if the necessary actions are conducted in a humane manner. Take associated with orphaned cubs must have prior authorization from the Service, except in geographic areas identified as Tier 2 (see Table 2, below). Take must be reported to the Service within 48 hours or as soon as practical given remote conditions.
Disposal of or salvage a dead grizzly bear	Take is excepted for authorized agencies to dispose of or salvage a dead grizzly bear that may be useful for scientific study. Take must be reported to the Service within 48 hours or as soon as practical given remote conditions.
Incidental take from research and nonlethal management of other species by authorized agencies	Incidental take associated with research and nonlethal management of other species by an authorized agency identified in a TLA from, or an MOU with, the Service is excepted.
Deterrence	Take in the form of harassment is excepted for individuals to conduct deterrence of grizzly bears for the purposes of avoiding human-bear conflicts or to discourage bears from using areas near homes and other human-occupied areas under the following conditions: any deterrence must be conducted in accordance with the Service's grizzly bear hazing guidelines (https://www.fws.gov/sites/default/files/documents/Grizzly%20Bear%20Hazing%20Guidance%202020_Final.pdf); and any person using deterrence methodologies must not intentionally cause lasting bodily injury or mortality to the grizzly bear. All grizzly bear mortalities or incidents resulting in lasting bodily injury must be reported to the Service within 48 hours or as soon as practical given remote conditions. Authorized agencies may use additional tools, including contracted services, as described in a TLA from, or an MOU with, the Service. In Tier 2 geographic areas, excepted deterrence techniques available to authorized agencies will be determined by the applicable Federal, State, or Tribal laws and regulations (see Table 2, below).

Management activities	Take associated with management activities is excepted for authorized agencies, with prior authorization from the Service, to avoid human-bear conflicts, prevent habituation, improve grizzly bear survival, release or relocate non-targets, or aid in law enforcement investigations, given: efforts are made to eliminate potential sources of conflict, when applicable and reasonably possible, by securing attractants, using deterrence, and/or live-capturing and releasing the bear unharmed in a remote area; authorized agencies may relocate bears as a preemptive action for the purpose of preventing conflict that appears imminent or breaking habituated behavior of grizzly bears lingering near human-occupied areas; any relocations shall be coordinated with the Service and appropriate land-management agencies; and lethal control of a grizzly bear involved in conflict requires prior authorization from the Service. Annual reports are due to the Service on or by February 15.
Incidental take associated with regulated trapping of other species	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.

Table 2. Additional take exceptions for individuals and authorized agencies that may apply to specific geographic areas under Tier 1 and Tier 2 once the tier's conditions are met and MOUs with the Service are complete. "No change" indicates that there are no additional provisions provided under the tier for the specified activity, so the exception described in Table 1 applies.

Exceptions from the Prohibitions	Tier 1:	Tier 2:
	Conditions: Management plans and conservation strategies are finalized and MOU with Service complete.	Conditions: Management plans and conservation strategies are finalized, populations have achieved demographic objectives, and MOU with Service complete.

Employees or agents of the Service; Import and export; Possession; Interstate or foreign commerce; Permits; Scientific, genetic, or population augmentation purposes; Defense of life (self-defense); Disposal of or salvage a dead grizzly bear; Incidental take from research and nonlethal management of other species by authorized agencies	No change (See Table 1)	No change (See Table 1)
Aiding sick or injured grizzly bears	No change (See Table 1)	Same as Table 1, plus take associated with orphaned cubs by authorized agencies does not require prior authorization from the Service. Take must be reported to the Service within 48 hours or as soon as practical given remote conditions.
Deterrence	No change (See Table 1)	Excepted deterrence techniques for authorized agencies will be determined by the applicable Federal, State, or Tribal laws and regulations.
Management activities	No change (See Table 1)	Take associated with management activities by authorized agencies is excepted under applicable Federal, State, and Tribal laws. Service oversight, excluding Service law enforcement investigations, will be carried out consistent with the monitoring and reporting requirements. Annual reports are due to the Service on or by February 15.

Incidental take associated with regulated trapping of other species for Tier 1, or Incidental take for Tier 2	Incidental take associated with regulated trapping of other species is excepted, provided trapping is conducted in accordance with Federal, State, or Tribal laws and regulations. Annual reports are due to the Service on or by February 15.	Incidental take is excepted, provided those activities are conducted in accordance with Federal, State, or Tribal laws and regulations. Annual reports are due to the Service on or by February 15.
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(1) Import and Export (see (b)(3)(ii) below)

Federal, State, or Tribal agencies may import live grizzly bears into the lower-48 States. Additionally, Federal, State, or Tribal agencies may import or export grizzly bear parts and products for scientific, cultural, law enforcement, educational or research purposes. Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may import or export live grizzly bears or their parts and products into or out of the United States. This exception furthers the conservation of the species by supporting genetic, demographic, or restoration recovery needs.

(2) Possession (see (b)(3)(iii) below)

Federal, State, and Tribal agencies with authorization to possess from the Service may possess, deliver, carry, transport, or ship grizzly bear parts and products. Public zoological institutions (see 50 CFR 10.12) may possess live grizzly bears (e.g., orphaned cubs) obtained from the wild after entering into an MOU with the Service. Museums and other nonprofit institutions with authorization to possess from the Service may possess, deliver, carry, transport, or ship grizzly bear parts and products for cultural, education, information, and outreach purposes. Parts and products may only be possessed by entities or nonprofit (501(c)(3)) organizations whose primary stated purposes are cultural, education, or research. Parts and products shall not be traded, transferred or disposed without prior authorization from the Service and may not be used in advocacy or lobbying efforts. This exception furthers the conservation of the species by supporting

law enforcement needs and education efforts intended to improve social acceptance of the species.

(3) Interstate or foreign commerce (see (b)(3)(iv) below)

A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce with prior authorization from the Service.

(4) Permits (see (b)(3)(v) below)

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. The regulations that govern permits for threatened wildlife state that the Service may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for scientific purposes, to enhance propagation or survival, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

(5) Scientific, genetic, or population augmentation purposes (see (b)(3)(vi) below)

We propose to except take for authorized agencies to take or collect samples from grizzly bears in the wild. 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. Take that results in a grizzly bear mortality or grizzly bear lasting bodily injury must be reported to the Service within 48 hours or as soon as practical given remote conditions. In the absence of an MOU or TLA, a permit under §

17.32 is required. This exception furthers the conservation of the species by supporting genetic, demographic, or restoration research.

(6) Aiding sick or injured grizzly bears (see (b)(3)(viii) below)

We propose to except take for authorized agencies aiding grizzly bears determined to be sick or injured to the extent they are unable to effectively move, obtain food, or defend themselves for any length of time (i.e., lasting bodily harm) if the necessary actions are conducted in a humane manner. Take associated with orphaned cubs must have prior authorization from the Service except in geographic areas identified as Tier 2. In Tier 2 geographic areas, take associated with orphaned cubs does not require prior authorization from the Service. All take under this exception, including under Tier 2, must be reported to the Service within 48 hours or as soon as practical given remote conditions.

(7) Disposal of or salvage a dead grizzly bear (see (b)(3)(ix) below)

We propose to except take for authorized agencies to dispose of or salvage a dead grizzly bear that may be useful for scientific study. Take associated with disposal or salvage of a dead grizzly bear must be reported to the Service within 48 hours or as soon as practical given remote conditions.

(8) Incidental take from research and nonlethal management of other species by authorized agencies (see (b)(3)(x) below)

We propose to except incidental take by an authorized agency identified in a TLA from, or an MOU with, the Service for research and nonlethal management of other species. Although research and non-lethal management of other species by authorized agencies may result in some minimal level of take of the grizzly bear, such take is not expected to rise to a level that will have a negative impact (i.e., will have only de minimis impacts) on the species' conservation.

(9) Deterrence (see (b)(3)(xi) below)

We propose to except take caused by conducting deterrence of grizzly bears for the purposes of avoiding human-bear conflicts or to discourage bears from using areas near homes and other human-occupied areas when the deterrence is conducted according to current Service hazing guidelines. Deterrence means an intentional, nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property. Any person using deterrence methodologies must not intentionally cause lasting bodily injury to any grizzly bear and must be undertaken safely and responsibly. Acceptable deterrence techniques may include, but is not limited to, auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, bear spray, or soft projectiles fired from non-powder-actuated launchers intended to break on contact. Any person may deter a grizzly bear to protect themselves (e.g., using bear spray or loud noises). Excepted deterrence methodologies do not include baiting, stalking, or pursuing a grizzly bear. Authorized agencies may use additional tools for deterrence, including contracted services, as described in a TLA from, or an MOU with, the Service. For more information about appropriate nonlethal deterrents, individuals can contact the Grizzly Bear Recovery Office for the Service's most current hazing guidelines. By excepting take from deterring bears away from human-occupied areas, this exception furthers the conservation of the species by reducing the likelihood of human-bear conflicts and resulting management actions, such as removals.

(10) Management activities (see (b)(3)(xii) below)

We propose to except take by authorized agencies for management activities to prevent and mitigate human-bear conflicts. With prior authorization from the Service, authorized agencies may relocate grizzly bears to prevent conflicts, increase survival, prevent habituation, release or relocate non-targets, or aid in law enforcement investigations. Under this exception, authorized agencies may lethally remove grizzly

bears involved in conflict with prior authorization from the Service. Efforts must be made to eliminate potential sources of conflict, when applicable and reasonably possible, and by mitigating ongoing conflicts by securing attractants, using deterrence, and/or live capturing and releasing the bear unharmed in a remote area. Authorized agencies may relocate grizzly bears as a preemptive action for the purpose of preventing conflict that appears imminent or breaking habituated behavior of grizzly bears lingering near human-occupied areas; any relocations shall be coordinated with the Service and appropriate land-management agencies; and lethal control of grizzly bears involved in conflict requires prior authorization from the Service.

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. The Service will annually review monitoring reports and changes in Federal, State, or Tribal management to determine whether any change in tier status is appropriate.

As described below under *Additional exceptions for management activities and incidental take under Tier 1 and Tier 2*, and summarized above in Table 2, once management plans and conservation strategies are finalized and demographic objectives are achieved, authorized agencies may enter into an MOU with the Service to obtain additional Tier 2 exceptions associated with management activities.

(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.

Authorized agencies will continue to receive and operate under TLAs from the Service, which identify the terms and conditions for take, monitoring, and reporting by the authorized agencies. The authorized agencies would be required to submit an annual report to the Service documenting the location, date, and type of all take that resulted in the capture, relocation, or mortality of a grizzly bear within a calendar year on or by February 15 of the subsequent year. Upon receipt of that report, the Service would issue that agency a TLA for the following year. As described below under *Additional exceptions for management activities and incidental take under Tier 1 and Tier 2* and summarized above in Table 2, once management plans and conservation strategies are finalized for Tier 1, and demographic objectives are also achieved for Tier 2, authorized agencies may enter into an MOU with the Service to obtain additional Tier 1 or Tier 2 exceptions associated with incidental take.

(12) Additional exceptions for management activities and incidental take under Tier 1 and Tier 2 (see (b)(3)(xiv) below)

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. This approach allows Federal, State, and Tribal agencies to gain additional management flexibility while providing a mechanism to identify and address any potential issues to ensure conservation outcomes are maintained. This tiered approach contributes to the conservation of the species by incentivizing the development of regulatory mechanisms through the finalization of management plans and conservation strategies and may also enhance social tolerance for grizzly bears—an important consideration as grizzly bears expand into new areas.

We propose two tiers, Tier 1 and Tier 2, of increasing exceptions for management activities and incidental take that would provide authorized agencies additional management flexibilities. Under Tier 1, after finalizing management plans and conservation strategies, authorized agencies may enter into an MOU with the Service to gain an additional exception for incidental take associated with regulated trapping of other species, provided trapping is conducted in accordance with Federal, State, or Tribal laws and regulations (Table 2, above). 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. After finalizing management plans and conservations strategies, and once populations have achieved demographic objectives,

authorized agencies may enter into an MOU with the Service to gain additional exceptions under Tier 2 for management activities and incidental take (Table 2, above). 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. The respective conditions and monitoring and reporting requirements of Tier 1 and Tier 2 must be met and an MOU finalized with the Service for the additional exceptions to apply. Additionally, the Service would maintain oversight, by reviewing annual monitoring reports submitted by the authorized agencies and may revoke a tier designation if the conditions are not met. Failure to meet any or all of the conditions described for Tier 1 and Tier 2, will initiate a review by the Service and may result in revoking the management tier status of a Federal, State, or Tribal agency. We may also initiate a review of management tier status, which could result in revocation, if changes in Federal, State, or Tribal laws, rules, regulations, or management plans or practices, or other circumstances depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy.

Obtaining the additional exceptions under Tier 1 and Tier 2 requires that the authorized agencies complete an MOU with the Service. These MOUs would identify and formalize the management tier as either Tier 1 or Tier 2 for a particular geographic area. Where necessary, MOUs would replace the current TLAs that we provide to authorized agencies and could be updated throughout the year. Consistent with TLAs, these MOUs would outline the terms and conditions for take, define monitoring and reporting requirements, and establish designated agents from each authorized agency. In addition, these MOUs would document the Service's determination that conservation strategies and management plans meet the relevant criteria for a specific management tier, and identify the management tier for the applicable agency within a given geographic area described in a conservation strategy (e.g., ecosystem). Completed TLAs,

MOUs, and maps of the geographic areas assigned to either Tier 1 or Tier 2 would be available on our website at <https://www.fws.gov/office/grizzly-bear-recovery-program>.

Request for MOUs by authorized agencies to the Service may be in the form of an update to their MOU with the Service for grizzly bear management, or—for authorized agencies that do not yet have an MOU—a written request to enter into a new grizzly bear management MOU with the Service. In either case, the request to enter an MOU or move between tiers may be made at any time. The Service would determine if the conditions for the requested management tier had been met. Signature of the MOU by the Service would represent the Service's determination that the relevant requirements to change management tiers had been met and would officially mark the transition of management and incidental take to the exceptions in the new tier for that authorized agency. We first summarize additional detail regarding Tier 1 and then Tier 2 below:

(a) Tier 1

Tier 1 provides additional exceptions for incidental take associated with regulated trapping of other species by expanding the area in which incidental take exceptions apply to include areas where Federal, State, or Tribal agencies have adopted conservation strategies and management plans as specified and approved in a current MOU with the Service (Table 2, above). Conservation strategies and management plans must describe population management mechanisms necessary to achieve and maintain populations. This added flexibility incentivizes States and Tribes to ensure the adequacy of regulatory mechanisms. Therefore, 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. 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. The Service will annually review monitoring reports and changes in management and retains

the ability to revoke Tier 1 designations if changes in Federal, State, or Tribal laws, rules, regulations, or management plans or practices, or any other circumstances depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy. The MOU between the Service and State, Federal, or Tribal agencies will identify Tier 1 geographic areas, along with designated agents and terms and conditions, and will be available on our website at <https://www.fws.gov/office/grizzly-bear-recovery-program>.

(b) Tier 2

Tier 2 provides additional exceptions for management actions and incidental take to Federal, State, or Tribal agencies in geographic areas where populations have achieved demographic objectives as identified in interagency conservation strategies, and where conservation strategies and management plans have been adopted, as specified and approved in a current MOU with the Service. 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, while providing a mechanism to identify and address any potential issues to ensure conservation outcomes are maintained. If conservation outcomes are not maintained, as determined through monitoring and reporting requirements, Tier 2 designations could be reduced to Tier 1 or revoked. Therefore, 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.

Under Tier 2, authorized agencies must submit an annual report to the Service for a given geographic area 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. Additionally, this report must include demographic

monitoring reports. The Service will annually review monitoring reports and changes in management and retains the ability to revoke a Tier 2 designation if: (1) conservation strategy-defined demographic objectives or mortality thresholds are not maintained; (2) or if any change in State or Tribal laws, rules, regulations, or management plans or practices, or other circumstances depart significantly from the specifics of population management detailed in the conservation strategy. The MOU between the Service and State, Federal, or Tribal agency will identify Tier 2 geographic areas, along with designated agents and terms and conditions. We will post completed MOUs with a map that identifies Tier 2 geographic areas on our website at <https://www.fws.gov/office/grizzly-bear-recovery-program>.

The proposed 4(d) rule provides for the conservation of the grizzly bear because it will regulate activities that may pose a threat to the species. However, it also provides flexibilities in management and reduced permitting requirements for several activities. Where there is a Federal nexus, the 4(d) rule does not change any obligations under section 7 of the ESA. Please see our “Consideration of Economic Impacts of the Grizzly Bear 4(d) Rule” on <https://www.regulations.gov> for our consideration of economic impacts. After considering the conservation needs of the species and the economic impacts of the 4(d) rule, we have determined the 4(d) rule is necessary and advisable to provide for the conservation of the species. We appreciate any public comment on the potential impacts (conservation and economic) of the proposed 4(d) rule.

Required Determinations

Clarity of the Rule

We are required by Executive Order (E.O.) 12866 and E.O. 12988 and by the Presidential memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- (1) Be logically organized;

- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13653 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements. OIRA has determined this rule is significant under section 3(f)(4) of E.O. 12866. To support our necessary and advisable determination for 4(d) rules, we developed an economic considerations document that describes how implementation of the provisions in the proposed 4(d) rule may result in any economic impacts due to changes in current baseline protections. We have not quantified the impacts of the implementation of the 4(d) rule

but expect any economic costs or benefits to be minimal. However, the proposed regulatory framework of the proposed 4(d) rule would allow for additional exceptions to prohibitions (Tier 1 or Tier 2). Though we have not quantified the economic effects of these exceptions at this time, we anticipate these exceptions would provide potential cost savings by reducing regulatory burden through the provisions outlined under Tier 1 and Tier 2.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; title II of Pub. L. 104–121, March 29, 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying the rule will not have a significant economic impact on a substantial number of small entities.

While we do not conduct RFA analyses on our classification determinations under the Act, in accordance with recent caselaw (*Kansas Natural Resources Coalition, et al. v. USFWS, et al.* 780 F. Supp. 3d 650 (W.D. Tex. 2025))_we comply with RFA through consideration of conservation and economic impacts when promulgating 4(d) rules. Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities.

Some of the actions regulated by the proposed 4(d) rule are likely to involve Federal action agencies. 4(d) rules do not alter any obligations for Federal agencies under section 7 of the Act. Federal agencies, in consultation with the Service, are required to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. 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 RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities.

Please see our “Consideration of Economic Impacts of the Grizzly Bear 4(d) Rule” on <https://www.regulations.gov> for our consideration of economic impacts. The revised 4(d) rule would result in minimal changes to the regulated community regarding import, export, and intrastate or foreign commerce of the grizzly bear. Federal, State and Tribal agencies would retain all existing exceptions related to import and export of grizzly bears and obtain additional exceptions for these activities. The requirement for public zoological institutions to establish an MOU with the Service in order to possess live grizzly bears obtained from the wild or import or export live grizzly bears or their parts and products into or out of the lower-48 States is not expected to have a significant economic impact on these entities, as most public zoological institutions currently housing live grizzly bears already have MOUs with the Service. There is also little difference in the regulation of interstate and foreign commerce of grizzly bears in the revised 4(d) rule. Zoological institutions dealing with other public zoological institutions would need prior authorization from the Service to sell grizzly bears or offer them for sale in interstate or foreign commerce. In addition, public zoological institutions would need an MOU with the Service to possess live grizzly bears (e.g. orphaned cubs) obtained

from the wild. We have no record of any public zoological institution having exported grizzly bears for any purpose, including foreign commerce. Furthermore, we are not aware of any interstate commerce between public zoological institutions or of any Federal, State or Tribal authority selling grizzly bears in interstate commerce and we presume these types of activities are extremely rare. Finally, take and acts with illegally taken individuals would continue to be prohibited under the revised 4(d) rule. In addition, current informal approval and reporting processes would be formalized in the revised 4(d) rule and a few provisions would expand to extend exceptions to individuals, zoos, museums and other entities or non-profit organizations. Overall, the revised 4(d) rule would result in reduced regulatory requirements associated with take of the grizzly bear in the lower-48 United States (e.g., State, Tribal, and Federal conservation and management actions and individual deterrence actions). Further, the revised 4(d) rule would not compel or require any action on the ground to be undertaken at any time by anyone. The reasonably foreseeable effects that may result from promulgating or revising a 4(d) rule that extends some or all of the section 9 prohibitions are administrative (application or lack of application for a permit or authorization under the Act). We certify that, if adopted as proposed, this proposed rule would not have a significant economic impact on a substantial number of small entities. We request information (see **Information Requested**) to ensure we fully understand the potential small-entity impacts of this proposed rule.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use —Executive Order 13211

Executive Order 13211 requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a “significant energy action” as, among other things, an action that (i) meets the definition of a “significant regulatory

action” under E.O. 12866; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector.

(a) As discussed above under Regulatory Flexibility Act, this rule is not likely to have a significant economic effect on a substantial number of small entities.

(b) The regulations do not require a small government agency plan or any other requirement for expending local funds.

(c) Any costs incurred from the reporting requirement to notify the Service of any take of a grizzly bear as a result of defense of life are expected to be rare in occurrence and would only result in minor burden.

(d) The rule clarifies and improves upon the current regulations allowing greater management flexibilities based on the condition of the species within a management area.

(e) This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Government Actions and Interference with Constitutionally Protected Private Property Rights —Executive Order 12630

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. We have determined the rule has no potential takings of private property implications as defined by this Executive Order because this proposed 4(d) rule

would, with exceptions, maintain the regulatory status quo regarding activities currently allowed under the Endangered Species Act. A takings implication assessment is not required.

Federalism—Executive Order 13132

In accordance with E.O. 13132, this proposed 4(d) rule does not have significant federalism effects. A federalism summary impact statement is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined the rule does not unduly burden the judicial system and it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed a 4(d) rule in accordance with the provisions of the Act. To assist the public in understanding the conservation needs of the species, the proposed rule identifies the prohibitions and exceptions to those prohibitions that are necessary and advisable to the conservation of the species.

Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 et seq.)

This proposed rule contains new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We will ask OMB to review and approve the information collection requirements contained in this rulemaking related to revising the protective regulations for the grizzly bear in the lower-48 States under section 4(d) of the Act. Additional information collection requirements associated with importing or exporting, 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 are currently approved under the following:

- OMB Control No. 1018–0092, Federal Fish and Wildlife Applications and Reports—Law Enforcement; 50 CFR 13 and 14 (expires 05/31/2026, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB), and
- OMB Control No. 1018–0093, Federal Fish and Wildlife Permit Applications and Reports—Management Authority; 50 CFR 13, 15, 16, 17, 18, 22, 23 (expires 12/31/2026).

There are no forms associated with this information collection. Our proposed regulations under section 4(d) of the ESA, as amended, impose information collection requirements on the States, certain Federally recognized Tribal governments, and public zoological institutions as described below (Federal agencies are exempt from the PRA):

1. MEMORANDUMS OF UNDERSTANDING (MOUs)—This proposed 4(d) rule provides authorized agencies a path to gaining additional flexibilities by achieving certain benchmarks and entering into an MOU with the Service. This includes the requirement that agencies obtain prior authorization from the Service for conflict removals, as described in an MOU between the Service and authorized agency.

Authorized agencies may relocate bears as a preemptive action to prevent conflict that appears imminent or in an attempt to break the habituated behavior of grizzly bears lingering near human-occupied areas. When a grizzly bear is captured, the employee will consult with the appropriate land management agency to determine a relocation site that is most suitable for the bear, considering age and sex of the bear, conflict history, and

current human use at available relocation sites. Such taking must be coordinated with the Service as described in a current MOU between the Service and the authorized agency.

The Service would enter into MOUs with authorized agencies to authorize more flexible grizzly bear management and with public zoological institutions to allow for specific types of conservation related activities consistent with this 4(d) rule. The Service does not expect to enter into MOUs with local governments or authorities. We are not reporting burden for Federal agencies as they are exempt from the requirements of the PRA. The Service would collect information from the relevant agencies in relation to these MOUs as described below.

2. MANAGEMENT PLANS/CONSERVATION STRATEGIES—This proposed 4(d) rule outlines a tiered framework where take exceptions for grizzly bear management activities and incidental take are linked to a population's demographic status and the status of conservation strategies and Federal, State, or Tribal management plans. This framework would provide for the conservation of the species by tailoring take exceptions for populations with conservation strategies and management plans that have been approved by the Service through an MOU, such that otherwise prohibited activities are expected to have negligible impacts to grizzly bear populations. This would incentivize conservation actions and promote increased public tolerance and support for conservation efforts.

a. *Management Plan*—Federal, State, or Tribal wildlife management agencies develop this document to define how they plan to manage grizzly bears. These plans should include specifics on conflict management, population management, and adherence to associated conservation strategies.

b. *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).

3. AMENDMENTS TO MANAGEMENT TIERS—Authorized agencies involved in grizzly bear management may gain additional flexibilities by entering into an MOU with the Service, where an agency may request the additional exceptions under Tier 1 or Tier 2 once they present evidence that the criteria required for the requested tier have been met. This request may be in the form of an update to their MOU with the Service for grizzly bear management, or—for authorized agencies that do not yet have an MOU—a request to enter into a new grizzly bear management MOU with the Service. In either case, the request to enter an MOU or move between tiers may be made at any time. The Service would determine if the requestor, and the relevant geographic area, met the conditions specified in this rule for the requested management tier.

Signature of the MOU by the parties would represent the Service's determination that the relevant requirements to change management tiers had been met and would officially mark the transition of management activities and incidental take to the exceptions in the new tier for that authorized agency within that particular geographic area over which they have jurisdiction. Authorized agencies in Tier 1 or Tier 2 will be required to submit reports associated with applicable demographic monitoring on or by February 15 of the subsequent year. Upon receipt and review of this report, the Service will renew the MOU, or issue a new MOU for agencies moving up to Tier 1 or Tier 2, for the following year (see reporting requirements below).

4. ACTIONS REQUIRING PRIOR AUTHORIZATION FROM THE SERVICE—

a. *Import and Export*—Federal, State, or Tribal agencies may import live grizzly bears into the lower-48 United States. Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may import or export live grizzly bears or their parts and products into or out of the United States. Federal, State, or Tribal agencies may import or export grizzly bear parts and products for scientific, cultural, law enforcement, educational, or research purposes.

b. *Possession*—Federal, State, and Tribal agencies with authorization to possess from the Service may possess, deliver, carry, transport, or ship grizzly bear parts and products. Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may possess live grizzly bears (e.g. orphaned cubs) obtained from the wild. Museums, and other nonprofit institutions with authorization to possess from the Service may possess, deliver, carry, transport, or ship unlawfully or lawfully taken grizzly bear parts and products for cultural, education, information, and outreach purposes.

c. *Interstate or Foreign Commerce*—A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce with prior authorization from the Service.

d. *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. Take must be reported to the Service within 48 hours or as soon as practical given remote conditions.

e. *Relocation of Grizzly Bears*—With prior authorization from the Service, except in areas where Tier 2 under paragraph (b)(3)(xiv)(D) applies, authorized

agencies may relocate grizzly bears to prevent conflicts, increase survival, or to break a habituated behavior, and may lethally remove a bear in certain situations considering the age and sex of the bear, nature of the conflict, and the bear's conflict history.

f. *Management of Grizzly Bears*—Take associated with management activities is excepted for authorized agencies, with prior authorization from the Service, except in areas where Tier 2 under paragraph (b)(3)(xiv)(D) applies, to avoid human-bear conflicts, prevent habituation, improve grizzly bear survival, release or relocate non-targets, or aid in law enforcement investigations, given:

1. Efforts are made to eliminate potential sources of conflict, when applicable and reasonably possible, by securing attractants, using deterrence, and/or live-capturing and releasing the bear unharmed in a remote area.

2. Authorized agencies may relocate bears as a preemptive action for the purpose of preventing conflict that appears imminent or breaking habituated behavior of grizzly bears lingering near human-occupied areas.

3. Any relocations shall be coordinated with the Service and appropriate land-management agencies.

4. Lethal control of a grizzly bear involved in conflict requires prior authorization by the Service.

5. REPORTING REQUIREMENTS—

a. *Mortalities/Bodily Injury*—Mortalities or suspected lasting bodily injury must be reported to the Service as described in a current TLA from, or an MOU with, the Service.

- 1. *Take Resulting in Grizzly Bear Mortality***—Take that results in a grizzly bear mortality must be reported to the Service within 48 hours, or as soon as practical given remote conditions.

2. Take Resulting in Grizzly Bear Lasting Bodily Injury—

Take that results in a grizzly bear lasting bodily injury must be reported to the Service within 48 hours, or as soon as practical given remote conditions.

b. *Moving Grizzly Bears*—Designated agents may move a grizzly bear to aid recovery or increase the genetic health of the population after notification to the Service.

c. *Defense of Life*—Any person may take a grizzly bear in defense of their own life or the lives of others. Grizzly bears taken in self-defense or in defense of human life must be reported by the person who has taken the bear or their designee within 48 hours of occurrence or as soon as practical given remote conditions. Take must be reported to the Office of Law Enforcement, U.S. Fish and Wildlife Service, in the appropriate region (see 50 CFR 2.2 for regional office information), and to appropriate State and Tribal authorities.

d. *Annual Report*—Agencies receiving a TLA from or entering into an MOU with the Service will submit an annual report to the Service documenting the location, date, and type of all excepted take that resulted in the capture, relocation, or mortality of a grizzly bear within a calendar year on or by February 15 of the subsequent year, at which point the Service will issue that agency a TLA.

e. *Monitoring*—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.

6. APPOINTMENT OF DESIGNATED AGENT—A designated agent is an employee of a Federal, State, or Tribal agency who as part of their official duties, normally handles carnivores, and when acting in the course of their official duties, may

engage in actions that result in take of the grizzly bear in the lower-48 United States consistent with the proposed 4(d) rule.

Title of Collection: Endangered and Threatened Wildlife—Grizzly Bear (50 CFR 17.40).

OMB Control Number: 1018–New.

Form Numbers: None.

Type of Review: New.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 45.

Total Estimated Number of Annual Responses: 73.

Estimated Completion Time per Response: Varies from 30 to 60 minutes, depending on activity.

Total Estimated Number of Annual Burden Hours: 66.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for authorizations/amendments/appointment of designated agent; annually or on occasion for reporting requirements.

Total Estimated Annual Non-hour Burden Cost: None.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference “RIN 1018–BI14/OMB Control No. 1018–NEW Grizzly” in the subject line of your comments. *National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.)*

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).

We invite the public to comment on the extent to which this proposed rule may have a significant impact on the human environment or fall within one of the categorical exclusions for actions that have no reasonably foreseeable effects on the quality of the

human environment that would require further analysis under NEPA. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order (SO) 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. In accordance with joint SO 3403 A1 of November 30, 2022, we recognize our responsibility to ensure our decisions with respect to wildlife safeguard the interests of potentially affected Tribes. We previously solicited information from Tribes to inform the development of our SSA report, but we did not receive any responses. Additionally, we did not receive any comments from Tribes in response to our January 15, 2025, proposal. We will inform and consult affected Tribes regarding this proposed rulemaking, and continue to coordinate with affected Tribes during the development of any final rules for the grizzly bear.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.40 by revising paragraph (b) to read as follows:

§ 17.40 Species-specific rules—mammals.

* * * * *

(b) Grizzly bear (*Ursus arctos horribilis*) —

(1) **Definitions.** As used in in paragraph (b) of this section:

Authorized agency means a Federal, State, or Tribal agency designated by the U.S. Fish and Wildlife Service in a memorandum of understanding (MOU) or Technical Letter of Assistance (TLA) to assist in implementing all or part of the specified actions in paragraph (b)(3) of this section.

Conservation Strategy means an interagency document detailing the habitat and population management mechanisms that will achieve and maintain demographic and habitat objectives, which would include mortality thresholds; remain in place after grizzly bears are no longer listed under the Act; and demonstrates the adequacy, continuity, and

continued agency application of population and habitat management regulatory mechanisms in order to maintain populations.

Designated Agent means an employee of an authorized agency, who, as a part of their official duties, normally handles large carnivores, and when acting in the course of their official duties, may engage in actions that result in take consistent with this rule.

Deterrence means an intentional, nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property, and does not cause death or lasting bodily injury to the grizzly bear.

Grizzly bear means any member of the species *Ursus arctos horribilis* within the lower-48 States, as described in 50 CFR 17.11(h), including any part, offspring, dead body, part of a dead body, or product of such species.

Grizzly bear involved in conflict means a grizzly bear that has caused substantial property damage, obtained anthropogenic foods not associated with bear-baiting (e.g., pet food, livestock feed, garbage), killed or injured lawfully present livestock, domestic animals in proximity to human-occupied areas, or working dogs, damaged beehives, breached an intact structure or electrified perimeter to obtain fruit or crops (e.g., greenhouse, garden, orchard, field, stackyard or grain bin), shown repeated and persistent signs of habituation in proximity to human-occupied areas (e.g., has been repeatedly hazed or previously relocated), exhibited aggressive behavior (i.e., not acting in defense of offspring or food or in response to a surprise encounter), or has been involved in a human-grizzly encounter resulting in human injury or loss of human life.

Habituation means the decrease of an animal's flight response following repeated exposure to inconsequential stimuli.

Human food-conditioned bear means a bear that has learned to associate people, human activities, human-use areas, or food storage receptacles with anthropogenic food as a result of repeatedly accessing anthropogenic foods without negative consequences.

Human-occupied areas means any structures or areas currently used or inhabited by humans (e.g., homes, residential areas, occupied campgrounds or trailheads, job sites).

Incidental take means take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; it must be unintentional and not due to negligent conduct. The act of taking a grizzly bear that is wrongfully or mistakenly identified as another species is not considered incidental take and may be referred to appropriate authorities for prosecution.

Lasting bodily injury/injured means any permanent damage or injury that limits a grizzly bear's ability to effectively move, obtain food, or defend itself for any length of time.

Livestock means cattle, sheep, pigs, horses, mules, goats, domestic bison, alpacas, llamas, and donkeys. Livestock excludes poultry, bees, and dogs (working or otherwise) not in close proximity to human-occupied areas or to lawfully present livestock.

Management Plan means a document developed by a Federal, State, or Tribal wildlife management agency detailing their agency's grizzly bear management program that will support the long-term viability of the species and is consistent with current interagency conservation strategies or other multi-state or multi-agency agreements.

Management Tier means one of two tiers, Tier 1 and Tier 2, which would be defined in an MOU between an authorized agency and the Service. Tier 1 and Tier 2 identify additional exceptions to take associated with Federal, State, or Tribal management and regulated trapping of other species provided for a particular geographic area once conservation strategies and Federal, State, or Tribal management plans are finalized for Tier 1 and demographic objectives are also met for Tier 2.

Memorandum of Understanding (MOU) means a document Federal, State, or Tribal agencies may enter into with the Service to authorize additional exceptions for grizzly bear management consistent with the two management tiers (Tier 1 and Tier 2) under this rule. Public zoological institutions will also need an MOU to accept wild grizzly bears.

Mortality threshold means a level of annual mortality established in a conservation strategy to help ensure the grizzly bear population within a given geographic area remains above a minimum population size. Mortality thresholds are expressed as a percent of the population, pertain to mortality from all sources, and include overall mortality as well as independent female and male mortality levels.

Non-target means a grizzly bear (a) caught during a conflict capture and handling effort that is not the bear responsible for the specific conflict, or (b) captured during research efforts directed at another species.

Occupied Range means an estimate of the roughly contiguous area within which bears have established residency or have demonstrated habitat use. Estimated occupied range represents a minimum known area of occupancy. It does not include occasional forays outside the estimated range or low-density peripheral areas and therefore does not represent the total known extent of occurrences.

Prior authorization from the Service means a representative from the U.S. Fish and Wildlife Service, as specified in a current MOU, or TLA, has agreed with the proposed management action prior to the action being taken.

Self-Defense means a person acting to protect themselves, or any other individual, from bodily harm.

Sick means affected with disease or ill health.

Technical Letter of Assistance (TLA) means a letter issued by the Service describing and clarifying terms and conditions for take by authorized agencies.

Tier 1 means the first of two management tiers that applies where authorized agencies have adopted conservation strategies and Federal, State, or Tribal management plans that have been approved by the Service through an MOU, but populations have yet to reach demographic objectives as specified in a conservation strategy.

Tier 2 means the second of two management tiers that applies where authorized agencies have adopted conservation strategies and Federal, State, or Tribal management plans that have been approved by the Service through an MOU, and where populations have met demographic objectives as specified in a conservation strategy.

(2) ***Prohibitions.*** With the exception of designated experimental population areas for the grizzly bear where grizzly bears have been reintroduced and the species is subject to the prohibitions specified for grizzly bear experimental populations in § 17.84, the following prohibitions that apply to endangered wildlife also apply to grizzly bear in the lower-48 States. Except as provided under paragraph (b)(3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife. This includes take associated with mistaken identity (e.g., while black bear hunting). The act of taking a grizzly bear that is wrongfully identified as another species is prohibited and may be referred to appropriate authorities for prosecution.

(iii) Possession, delivery, carriage, transport, or shipment of unlawfully or lawfully taken grizzly bears.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* The following exceptions to the prohibitions apply to the grizzly bear in the lower-48 States:

(i) *Employees or agents of the U.S. Fish and Wildlife Service*—Notwithstanding § 17.21(c)(1), and unless otherwise specified, any employee or agent of the Service may, when acting in the course of their official duties, take a grizzly bear.

(ii) *Import and Export*—Except as provided in paragraphs (b)(3)(ii)(A-C) of this section, no person shall import or export any grizzly bear into the lower-48 United States.

(A) Federal, State, or Tribal agencies may import live grizzly bears into the lower-48 States.

(B) Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may import or export live grizzly bears or their parts and products into or out of the lower-48 States.

(C) Federal, State, or Tribal agencies may import or export grizzly bear parts and products for scientific, cultural, law enforcement, educational, or research purposes.

(iii) *Possession*—Except as provided in paragraphs (b)(3)(iii)(A-C) of this section, no person shall possess a grizzly bear in the lower-48 States.

(A) Federal, State, and Tribal agencies with authorization to possess from the Service may possess, deliver, carry, transport, or ship parts and products of grizzly bears.

(B) Public zoological institutions (see 50 CFR 10.12) with an MOU with the Service may possess live grizzly bears (e.g., orphaned cubs) obtained from the wild.

(C) Museums and other nonprofit institutions with authorization to possess from the Service may possess, deliver, carry, transport, or ship grizzly bear parts and products for cultural, education, information, and outreach purposes. Parts and products may only be possessed by entities or nonprofit (501(c)(3)) organizations whose primary stated purposes are cultural, education or research. Parts and products shall not be traded,

transferred, or disposed without prior authorization from the Service and may not be used in advocacy or lobbying efforts.

(iv) *Interstate or foreign commerce*—A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce with prior authorization from the Service.

(v) *Permits*—Any person may conduct activities as authorized by a valid permit under § 17.32.

(vi) *Scientific, genetic, or population augmentation purposes*—An authorized agency may collect samples from a grizzly bear in the wild. Additionally, any designated agent may live-capture and tag, collar, and transport a grizzly bear consistent with this grizzly bear 4(d) rule and a current TLA or MOU if such action is necessary for scientific, genetic, or population augmentation purposes. The following conditions apply to this exception:

(A) Take that results in a grizzly bear mortality or grizzly bear lasting bodily injury must be reported to the Service within 48 hours or as soon as practical given remote conditions.

(B) In the absence of an MOU or TLA, a permit under § 17.32 is required.

(vii) *Defense of life*—Any person may take a grizzly bear in defense of their own life or the lives of others. Grizzly bears taken in self-defense or in defense of human life must be reported by the person who has taken the bear or their designee within 48 hours of occurrence or as soon as practical given remote conditions. Take must be reported to the Office of Law Enforcement, U.S. Fish and Wildlife Service, in the appropriate region (see 50 CFR 2.2 for regional office information), and to appropriate State and Tribal

authorities. The grizzly bear may only be retained, disposed of, or salvaged with the consent of, and consistent with directions from, the Office of Law Enforcement.

(viii) *Aiding sick or injured grizzly bears*—Take is excepted for authorized agencies aiding grizzly bears determined to be sick or injured to the extent they are unable to effectively move, obtain food, or defend themselves for any length of time (i.e., lasting bodily harm) if the necessary actions are conducted in a humane manner. Take associated with orphaned cubs must have prior authorization from the Service except in geographic areas where Tier 2 set forth under paragraph (b)(3)(xiv)(D) applies. Take must be reported to the Service within 48 hours or as soon as practical given remote conditions.

(ix) *Disposal of or salvage of a dead grizzly bear*—Take is excepted for authorized agencies to dispose of a dead grizzly bear or salvage a dead grizzly bear that may be useful for scientific study. Take must be reported to the Service within 48 hours or as soon as practical given remote conditions.

(x) *Incidental take from research and nonlethal management of other species by authorized agencies*—Incidental take associated with research and nonlethal management of other species by an authorized agency identified in a TLA from, or an MOU with, the Service is excepted.

(xi) *Deterrence*—Take in the form of harassment is excepted for individuals to conduct deterrence of grizzly bears for the purposes of avoiding human-bear conflicts or to discourage bears from using areas near homes and other human-occupied areas under the following conditions:

(A) Any deterrence must be conducted in accordance with the Service's grizzly bear hazing guidelines.

(B) Any person using deterrence methodologies must not intentionally cause lasting bodily injury or mortality to the grizzly bear.

(C) All grizzly bear mortalities or incidents resulting in lasting bodily injury must be reported to the Service within 48 hours or as soon as practical given remote conditions.

(D) Authorized agencies may use additional tools, including contracted services, as described in a TLA, or an MOU with the Service.

(E) In geographic areas under Tier 2, as set forth in paragraph (b)(3)(xiv)(D), additional exceptions for deterrence techniques will be determined by the applicable Federal, State, or Tribal laws and regulations.

(xii) *Management activities*—Take associated with management activities is excepted for authorized agencies, with prior authorization from the Service, to avoid human-bear conflicts, prevent habituation, improve grizzly bear survival, release or relocate non-targets, or aid in law enforcement investigations, given:

(A) Efforts are made to eliminate potential sources of conflict, when applicable and reasonably possible, by securing attractants, using deterrence, and/or live-capturing and releasing the bear unharmed in a remote area.

(B) Authorized agencies may relocate bears as a preemptive action for the purpose of preventing conflict that appears imminent or breaking habituated behavior of grizzly bears lingering near human-occupied areas.

(C) Any relocations shall be coordinated with the Service and appropriate land-management agencies.

(D) Lethal control of a grizzly bear involved in conflict requires prior authorization from the Service.

(E) *Monitoring and reporting requirements for management activities*—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. The

Service will annually review monitoring reports and changes in Federal, State, or Tribal management.

(xiii) *Incidental take associated with regulated trapping of other species*—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 covered by the TLA and conducted in accordance with Federal, State, and Tribal laws and regulations.

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

(B) *Monitoring and reporting requirements for incidental take exceptions*—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. The Service will annually review monitoring reports and changes in Federal, State, or Tribal management.

(xiv) *Additional exceptions for management activities and incidental take under Tier 1 and Tier 2*—Additional take exceptions related to Federal, State, and Tribal grizzly bear management activities and incidental take under this rule will be determined in accordance with either Tier 1 or Tier 2 as defined by this rule.

(A) Federal, State, and Tribal agencies responsible for grizzly bear management may request Tier 1 or Tier 2 status from the Service for a particular geographic area within their jurisdiction if they meet the following conditions:

(1) Conditions for Tier 1: The following conditions must be in place for the Service to approve a request from a Federal, State, or Tribal agency for Tier 1 status:

(a) An MOU with the Service that: documents the Service's determination that an associated conservation strategy and Federal, State, or Tribal management plan meet the relevant criteria for a specific management tier (including appropriate population management mechanisms in accordance with this rule); identifies the management tier for the applicable agency within a given geographic area; establishes designated agents; outlines terms and conditions for take; and defines monitoring and reporting requirements.

(2) Conditions for Tier 2: The following conditions must be in place for the Service to approve a request from a Federal, State, or Tribal agency for Tier 2 status:

(a) An MOU with the Service that: documents the Service's determination that an associated conservation strategy and Federal, State, or Tribal management plan meet the relevant criteria for a management tier (including appropriate population management mechanisms in accordance with this rule); identifies the management tier for the applicable agency within a given geographic area; establishes designated agents; outlines terms and conditions for take; and defines monitoring and reporting requirements; and

(b) The grizzly bear population defined in the MOU has achieved demographic objectives identified in the conservation strategy.

(B) For agencies that are in Tier 1 or Tier 2, failure to meet any or all of the conditions described for Tier 1 and Tier 2 as set forth in paragraph (b)(3)(xiv)(A), will initiate a review by the Service and may result in the Service revoking their management tier status. The Service may also initiate a review if any change in Federal, State, or Tribal laws, rules, regulations, or management plans or practices, or other circumstances depart significantly from the potential to achieve demographic objectives or mortality thresholds detailed in a conservation strategy.

(C) Tier 1—The following additional exceptions apply to geographic areas identified in an MOU with the Service as Tier 1.

(1) Management activities excepted under Tier 1—Take associated with management activities is excepted under the same conditions set forth in paragraph (b)(3)(xii).

(2) Incidental take associated with regulated trapping of other species excepted under Tier 1—Incidental take associated with regulated trapping of other species is excepted, provided trapping is conducted in accordance with Federal, State, or Tribal laws and regulations.

(3) Monitoring and reporting requirements under Tier 1—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. The Service will annually review monitoring reports and changes in Federal, State, or Tribal management.

(4) The Service may revoke Tier 1 designations for the following reasons:

(a) If changes in Federal, State, or Tribal laws, rules, regulations, or management plans or practices depart significantly from objectives detailed in a conservation strategy;

(b) If substantial grizzly bear mortality associated with incidental take or management actions occurs in areas within the occupied range but where specific mortality thresholds do not exist.

(D) Tier 2—The following exceptions apply to geographic areas identified in an MOU with the Service as Tier 2.

(1) Management activities excepted under Tier 2—Take associated with management activities is excepted under applicable Federal, State, and Tribal laws and regulations.

(a) Excepted deterrence techniques will be determined by the applicable Federal, State, or Tribal laws and regulations.

(b) When aiding sick or injured grizzly bears, authorized agencies may take orphaned cubs without prior authorization from the Service.

(c) Service oversight, excluding Service law enforcement investigations, will be carried out consistent with the monitoring and reporting requirements for Tier 2 set forth below in paragraph (b)(3)(xiv)(D)(3).

(2) *Incidental take excepted under Tier 2*—Incidental take is excepted, provided those activities are conducted in accordance with Federal, State, or Tribal laws and regulations.

(3) *Monitoring and reporting requirements under Tier 2*—Authorized agencies must submit an annual report to the Service for a given geographic area 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. Additionally, this report must include demographic monitoring reports. The Service will annually review monitoring reports and changes in Federal, State, or Tribal management.

(4) The Service may revoke Tier 2 designations for the following reasons:

(a) The population falls below demographic objectives identified in the conservation strategy for one year;

(b) Occupancy of females with young falls below objectives set forth in strategies or plans;

(c) Female mortality exceeds thresholds for two consecutive years;

(d) Overall mortality exceeds thresholds for two consecutive years; or

(e) Changes in Federal, State, or Tribal laws, rules, regulations, or management plans or practices, or other circumstances depart significantly from the potential to

achieve demographic objectives or mortality thresholds detailed in a conservation strategy.

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