



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

August 14, 2026

The Honorable Doug Burgum
Secretary, U.S. Department of the Interior

The Honorable Brian Nesvik
Director, U.S. Fish and Wildlife Service

***Re: Comments on Docket FWS-R6-ES-2024-0186
Proposed Revision of the Protective Regulations for Grizzly Bear in the
Lower-48 States — Revisions to 4d Rule (50 CFR 17.40(b))***

Dear Secretary Burgum and Director Nesvik:

Expansion of grizzly bears in Idaho and neighboring states presents significant challenges for our state management agencies and local communities, including increased public safety concerns where people live, work and recreate, protection of private property, and management of other impacts. The Proposed Revision of the Protective Regulations unreasonably enables more armchair critics, a maze of pointless paperwork, and more opportunities for the activist-litigation-machine that's already well-funded at taxpayer expense.

I applaud the Trump Administration's recognition that it is long-past time to make this challenging job easier and the Administration's intention to provide more flexibility for States by eliminating needless federal bureaucracy and restrictions.

My office will continue to advocate for delisting grizzly bears in Idaho under the ESA. It's the appropriate course of action, based on both biology and federal law.

Rulemaking is still in progress to revise the 1975 ESA listing of grizzly bears in the lower-48 States. In the interim, the U.S. Fish and Wildlife Service (USFWS) recently proposed revisions to Endangered Species Act (ESA) "4d" regulations for grizzly bears.

Under separate cover, Idaho management agencies are submitting detailed comments recommending specific changes to USFWS's proposed rule language based on several key principles. Any final rule revising the ESA 4d regulations for grizzly bears must:

1. Reflect that people and varying land use objectives are fundamental parts of the grizzly bear management equation.
2. Recognize what activities have supported, as well as what activities have not prevented, grizzly bear population growth and expansion that has occurred in and between core habitat areas over the past 5 decades.
3. Acknowledge grizzly bear range expansion, and provide more management flexibility – not less – than the current 4d rule and applicable 1986 interagency guidelines.
4. Reject additional restrictions addressing “threats” to grizzly bears unless those threats are well documented and significant at a scale relevant to ESA species protection.
5. Support the Idaho Constitution's principles for the respective roles of federal and state government by adopting straightforward regulatory language that ends federal commandeering, or private commandeering by citizen suits, of state regulation of hunting, trapping, and other activities of private individuals.
6. Adopt clear criteria to address most, if not all, allowances for agency and individual actions. Clear criteria will eliminate or clarify proposed 4d changes that rely on future, vaguely described USFWS decision processes.
7. Simplify proposed tiering into only two categories – 1) a category of exceptions allowed directly by the rule, and 2) a category for a straightforward approval process enabling increased state or tribal management flexibility.
8. Honor the objective to reduce unnecessary bureaucracy by eliminating murky conditions and requirements that create a maze, instead of a direct path, for individuals and agencies to qualify for exceptions.

I note that legal requirements of the current rule and guidelines differentiate conflict management based on core grizzly bear habitat and areas with other land management priorities on federal land ownership only. The current rule does not have a blanket requirement for prior USFWS authorization specific to each individual control action. Idaho recommends changes to the proposed rule to ensure the rule does not increase restrictions on conflict management.

Idaho's comments also recommend a fundamental shift to the proposed framework for management flexibility. Of significant concern are proposed restrictions, process requirements, and the creation of multiple management tiers whose main distinction revolves around potential take of grizzly bears incidental to individual trapping activities. However, best available data, including examination of hundreds of live and dead grizzly bears by agencies, indicate incidental

public trapping (by individuals targeting other species) has not been a significant source of grizzly bear mortality in the lower-48. Additionally, incidental public trapping has not been a source of injury, or even capture, during decades of year-round coyote trapping in Idaho, Montana, and Wyoming or the incremental expansion of state-regulated wolf trapping seasons since 2011.

Notably, USFWS' 2022 Species Status Assessment did not discuss incidental public trapping. Instead, the issue first appeared in the 2024 Species Status Assessment. There was no indication of actual captures, and this discussion paralleled "peer review" comments made by Chris Servheen. This shift, without an apparent factual basis, is troubling. Even more troubling is that Dr. Servheen, who is a retired USFWS grizzly bear recovery coordinator, was untruthful in the peer reviewer vetting process about not having conflicts of interest. In fact, while acting as a "peer reviewer" he was also a paid, retained expert witness for the Earthjustice law firm in citizen suit litigation here in Idaho. This litigation had the express purpose of forcing Idaho's closure of wolf trapping seasons in roughly half of the state – without a single documented capture of a grizzly bear in traps that were otherwise lawfully set during an Idaho wolf trapping season. A similar citizen suit was brought in Montana.

We support revisions to the 4d rule that reduce – not expand – opportunities for litigation under citizen suit provisions that detract from conservation of grizzly bears and other wildlife. These suits may pay lip service to grizzly bear conservation, but based on our experience, they are more focused on other objectives, including special interest fundraising and financing a proliferation of lawyers. These organizations use citizen suits in favorable legal forums to commandeer state wildlife regulation for their private objectives.

USFWS should take this opportunity to include language in the 4d revisions to uphold constitutional distinctions between federal and state roles. Under the "anti-commandeering" doctrine of our U.S. Constitution, the federal government may not compel state and local governments to enact or administer regulatory programs implementing federal laws like the ESA, nor may it prohibit states from licensing or authorizing private activity. Requiring states to restrict private conduct as a condition of avoiding ESA liability does precisely what this doctrine forbids. By including language that clarifies ESA liability relative to individual activities, the 4d rule would benefit grizzly bear conservation and wildlife conservation in general by preventing diversion of state resources to defend against citizens suits.

I note that public comments on the Docket, to date, reflect considerable advocacy campaign boilerplate. I call upon the USFWS to vigorously reject those who unjustly demonize our state management agencies and local communities – as if they have made no investment or sacrifice to support grizzly bear conservation in the past as well as in the future. The record of remarkable grizzly bear population growth speaks for itself, and ESA delisting is long overdue.

Revisions to the 4d rule should not enshrine state agencies and local communities as victims of their own successful on-the-ground efforts. Instead, final rulemaking should reward perseverance and correct a system in which process has been allowed to triumph over substance for decades.

Sincerely,

A handwritten signature in blue ink that reads "Raúl R. Labrador". The signature is fluid and cursive, with the first name "Raúl" being more prominent and stylized than the last name "Labrador".

RAÚL R. LABRADOR
Attorney General