

Managing Recovered Species under the ESA

REGINA LENNOX

SCI LUNCH AND LEARN FEB. 2025



Why Are Wolves and Grizzlies Still Listed Under the ESA?





About SCI Advocacy

ESA Background

TABLE OF CONTENTS

	Page
Sec. 2. Findings, purposes, and policy	1
Sec. 3. Definitions	2
Sec. 4. Determination of endangered species and threatened species	4
Sec. 5. Land acquisition	11
Sec. 6. Cooperation with the States	11
Sec. 7. Interagency cooperation	15
Sec. 8. International cooperation	23
Sec. 8A. Convention implementation	24
Sec. 9. Prohibited Acts	25
Sec. 10. Exceptions	28
Sec. 11. Penalties and enforcement	34
Sec. 12. Endangered Plants	39
Sec. 13. Conforming Amendments	39
Sec. 14. Repealer	40
Sec. 15. Authorization of appropriations	40
Sec. 16. Effective date	41
Sec. 17. Marine Mammal Protection Act of 1972	41
Sec. 18. Annual cost analysis by the Fish and Wildlife Service	41

ESA Background (cont'd)

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(3) The terms “conserve”, “conserving”, and “conservation” mean to use and 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 this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

ESA Definition of a “Species”

- When wolves and grizzly bears were listed, the ESA defined a species differently.
- The 1973 definition included: “any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.”
- In 1978, the ESA was amended, and “species” was redefined to include “any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. § 1532(16).
- The 1996 DPS Policy incorporates two elements for finding a DPS:
 1. discreteness of the population segment and
 2. significance of the population segment.

Chronology of FWS Wolf Actions

1973, 1974, 1976: Wolf subspecies listed under the ESA.

1978: Combining the listing of all subspecies into lower 48 + Minnesota.

1978-1982: Development of recovery plans.

2003: First downlisting of wolves.

2007: Delisting of WGL DPS.

2008: Delisting of NR.

2009: Delisting of WGL DPS; delisting of ID and MT wolves.



2011: Congressional wolves in ID and MT; WGL DPS.

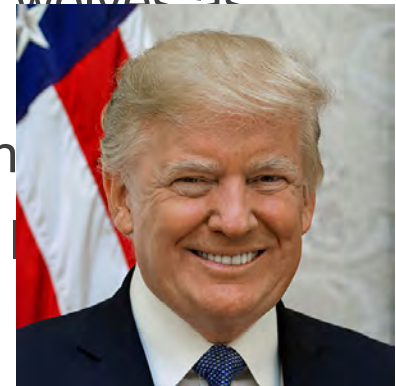
2012: Delisting of wolf.

2013: Proposed delisting.

2015: Relisting of Mexican wolves as endangered.

2019: Proposed delisting in

2020: Final delisting in the



Basis for Delisting – Great Lakes

- In 1978 and 1992, the FWS developed and revised a recovery plan for the “Eastern” wolf, which focused preserving the Minnesota wolf population and expanding to at least a second viable population of gray wolves in the Great Lakes.
- By 2001, Great Lakes wolves had surpassed recovery goals.
- Under the ESA, achieving (or surpassing) recovery plan goals does not automatically result in delisting. But the FWS reassessed the status of wolves in the Great Lakes and determined those populations were no longer endangered or threatened.

Basis for Delisting – NRM

- In 1980 and 1987, the FWS developed and revised a recovery plan for the Northern Rocky Mountains wolves, which included reintroducing wolves. In 1995 and 1996, wolves were reintroduced into high-quality habitat in the Greater Yellowstone Area and central Idaho.
- Between 1995 and 2008, wolf populations in these areas expanded and increased an average of 24%/year, with net population growth of 8-10%.
- Gray wolves met the FWS recovery criteria (300 wolves/30 breeding pairs) for the first time in 2000.

Why Are Wolves Still Listed?

Chronology of Court Actions

2005: Two courts (OR, VT) vacated 2003 downlisting.

2008: Court (DC) vacated 2007 WGL delisting.

2008: Court (MT) vacated 2008 NRM delisting.

2009: Court (DC) vacated WGL delisting.

2010: Court (MT) vacated 2009 NRM delisting.

2012: Court (9th Cir.) upheld Congressional delisting of ID and MT wolves.

2014, 2017: Courts (DC, DC Cir.) vacated 2011 WGL delisting; court (DC) vacated 2012 WY delisting. 2017 DC Cir. reinstated WY delisting.

2022: Court (CA) vacated 2020 lower 48 delisting rule; currently on appeal to 9th Cir.

2023: Court (DC) ordered FWS (on settlement) to prepare nationwide recovery plan.

Why Were (Almost) All the Rules Vacated?

- Gray wolves have been recovered for years. The FWS has repeatedly found that wolf populations are increasing, their range is expanding, and the primary threats that previously caused their endangerment have been mitigated.
- **But**, courts have repeatedly found the FWS cannot delist wolves across a DPS or across the lower 48, based on undisputed recovery in certain areas.
 - Courts have found the FWS has not fully analyzed threats to wolves outside the core range.
- Most recently, a court also held that the FWS cannot delist wolves for not meeting the ESA's definition of a "species."
- In almost all cases, the issues have been technical with implementation of the ESA → not the FWS' analysis of threats facing the species or DPS.

Chronology of FWS Grizzly Actions

1975: Listing of grizzly bear as a threatened species in the lower 48.

1982: Publication of Grizzly Bear Recovery Plan (updated periodically through 2018) and identification of six recovery zones.

2000: Designating non-essential experimental population in BE.

2007: Delisting of GYE DPS.

2017: Delisting of GYE DPS.

2021: Petition to delist NCDE DPS.

2022: Petition to delist GYE DPS; petition to delist lower 48 grizzlies.

2024: Publication of final rule to designate a non-essential experimental population in NCE.

2025: Publication of proposed rule to designate single DPS across ID, MT, WA, WY.

Chronology of Court Actions

2009: Court (MT) vacated 2007 GYE delisting.

2011: Decision affirmed in part by 9th Cir.

2017: Delisting of GYE DPS.

2018: Court (MT) vacated 2017 delisting.

2020: Decision affirmed by 9th Cir.

2021: Lawsuit and subsequent settlement (2023) to complete EIS for BE experimental population.

Why Were the GYE Rules Vacated?

2007 Delisting: The courts found the FWS failed to fully evaluate the impact of decline in whitebark pine on grizzly populations.

2017 Delisting: The courts found three errors in the FWS' analysis:

1. The FWS did not sufficiently assess the effect of delisting the GYE population on the recovery of grizzly bears in the rest of the lower 48 States (relying on the wolf cases!);
2. The FWS and its state partners did not commit to recalibration of potential new population estimators to ensure the ongoing applicability of mortality limits; and
3. The FWS inadequately analyzed the genetic health of the GYE grizzly bear population and failed to mandate genetic interchange.

Common Threads – Wolves and Grizzlies

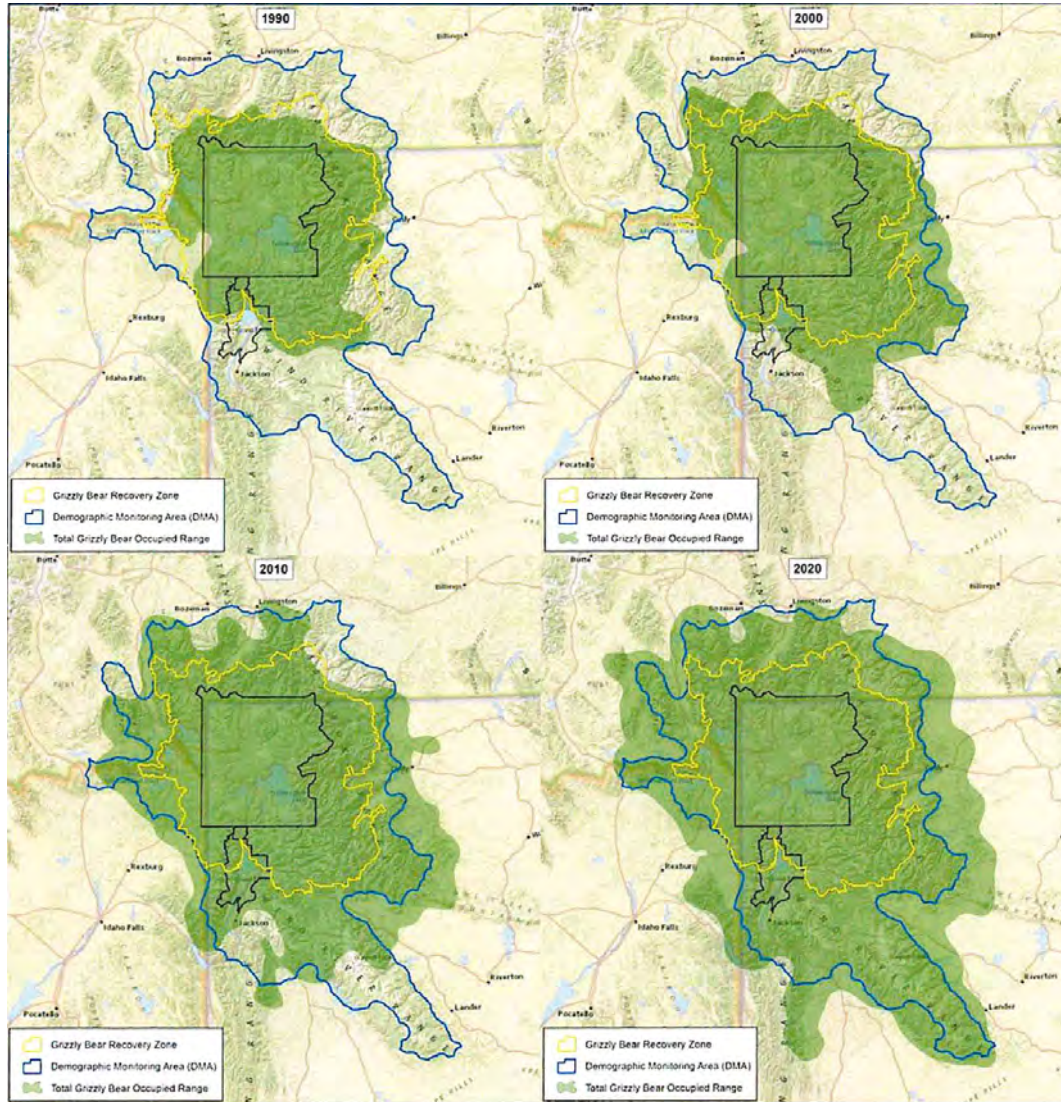
- When gray wolves and grizzlies were first listed, the ESA defined a species differently, without the concept of a “DPS.”
- The definition of a species change in 1978.
- The “DPS” allowed for the FWS to recognize recovery where it occurred—but the prior listings have kept gray wolves and grizzlies locked in as listed across the lower 48.
- The delistings sought to return management to the States, where it starts and belongs. Plaintiffs **hate** this.
- Plaintiffs have weaponized the ESA to prevent delisting through litigation.



Current Status – Wolves

- Listed as endangered in 44 States.
- Listed as threatened in Minnesota.
- Delisted in ID, MT, WY, small parts of OR, UT, WA.
- Due to a court decision and settlement, the FWS is developing a nationwide recovery plan (of a species it has found recovered for ~20 years...)
- The FWS paid over \$1.3 million for a national “conversation” about wolves.
- The appeal of the 2020 delisting is live.
- Plaintiffs sued over the FWS’ 2024 refusal to re-list wolves in NRM/West.

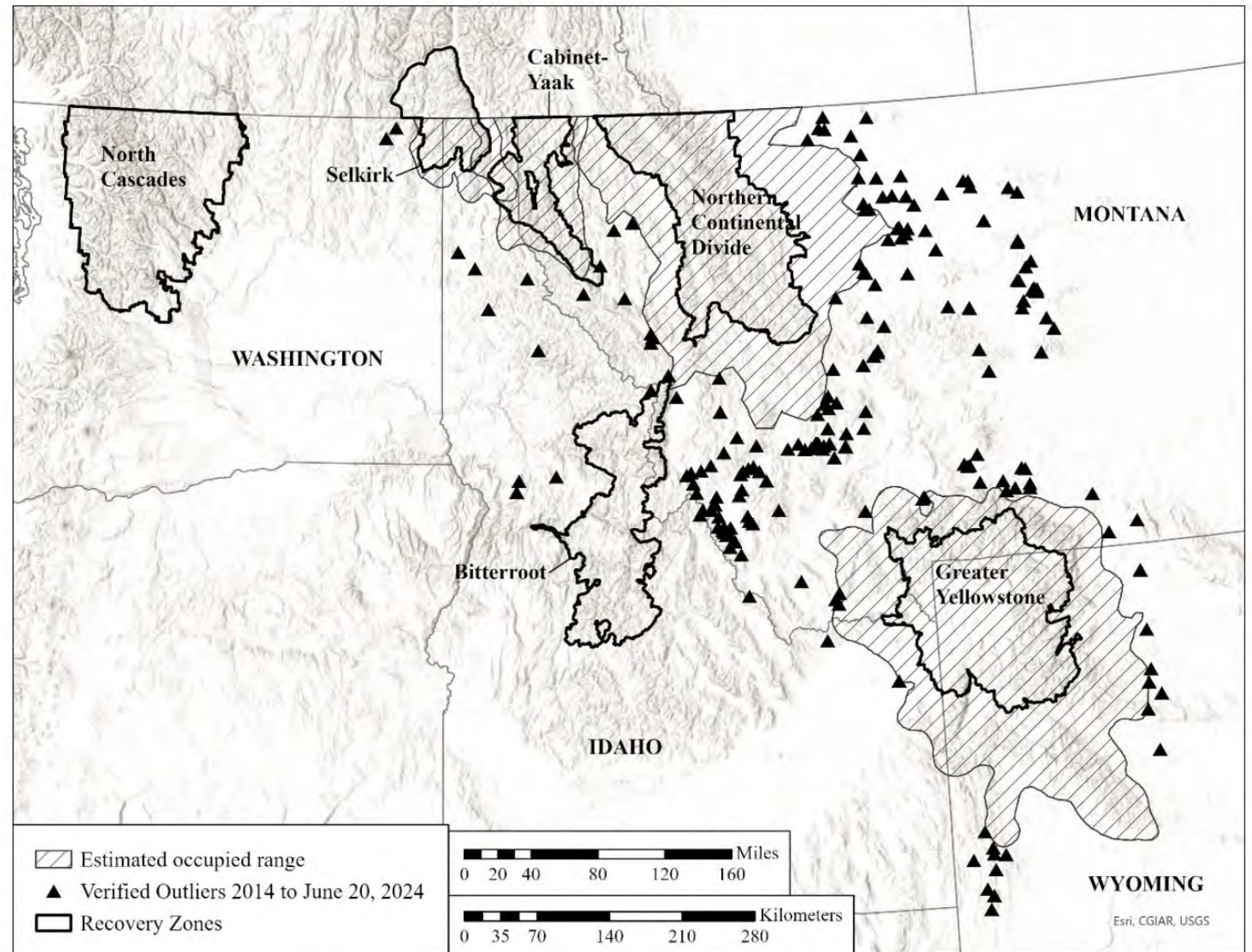




Current Status – Grizzly Bears

- All grizzly populations listed as threatened.
- The FWS recently denied petitions to delist the GYE and NCDE populations.
- The FWS recently proposed a rule to redesignate grizzly populations ... without recognizing recovery of the GYE and NCDE.
- The 2025 rule would allow additional take.

Grizzly Bear Recovery Zone



What Can Congress Do?

- Congress delisted NRM wolves in 2011. It will likely be up to Congress to delist wolves again, as well as grizzlies.
 - Reps. Tiffany and Boebert and 30 co-sponsors have introduced the “Pet and Livestock Protection Act” to reinstate the 2020 delisting of wolves.
 - The “Grizzly Bear State Management Act” (HR 281, S 316) has been introduced in the House and Senate.
 - Congress should also consider delisting the NCDE grizzly population.
- Possible ESA amendments including reducing the ability of activist groups to petition and to challenge delistings.

SAFARI CLUB INTERNATIONAL

PRIORITIES FOR THE TRUMP ADMINISTRATION

TO SUPPORT AND ADVANCE HUNTING AND
SUSTAINABLE-USE CONSERVATION



2

ADOPT SENSIBLE AMENDMENTS TO THE ENDANGERED SPECIES ACT THAT ARE CONSISTENT WITH CONGRESSIONAL INTENT AND IMPROVE CONSERVATION OF TRULY AT-RISK SPECIES.

3

ALLOW THE U.S. FISH AND WILDLIFE SERVICE TO FOCUS ON SPECIES TRULY AT-RISK BY DELISTING WOLVES AND GRIZZLY BEARS FROM THE ENDANGERED SPECIES ACT.



Questions?