

Testimony Regarding H.R. 2532 (Tribal Heritage and Grizzly Bear Protection Act)
Before the U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Water, Oceans, and Wildlife

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Main Points

- The Greater Yellowstone ecosystem grizzly's recovery is due to the collaboration of federal biologists, states, tribes, conservation groups, and landowners.
- Congress should encourage these efforts to continue while preserving the flexibility states and tribes need to manage growing grizzly populations.
- Unfortunately, H.R. 2532 could discourage further recovery efforts for this species and potentially others.
- Instead, Congress should incentivize continued state and tribal efforts to establish additional populations.
- It should also seek to convert grizzlies into less of a liability and more of an asset for the landowners who accommodate them or provide habitat.
- Ultimately, managing recovered wildlife is a state responsibility, and it's time for states to lead on grizzly bear conservation.

Chairman Huffman, Ranking Member McClintock, and honorable members of the subcommittee, thank you for inviting me to address this important topic.

I am a senior attorney with Pacific Legal Foundation, where I litigate environmental cases, principally concerning endangered species. I am also a research fellow with the Property and Environment Research Center based in Bozeman, Montana, where they directly experience the costs and benefits of grizzlies. I've also written extensively on endangered species and other environmental issues, including in law review journals and articles for the popular press.

The recovery of the Greater Yellowstone ecosystem grizzly has been “a true American conservation success story,” according to Collin O’Mara, president of the National Wildlife Federation.¹ I agree. With that recovery, it is appropriate for Congress to consider how it can best promote the population’s continued growth while recovering grizzly in other suitable habitats.

Your focus in that endeavor should be on creating the right incentives. The GYE grizzly’s recovery required the cooperation of federal biologists, state wildlife officials, conservationists, and landowners.² A significant motivation for that effort was the promise that the states would assume management responsibility for the recovered population, including greater flexibility to promote the species’ continued progress while addressing competing concerns. The simple fact is that, as the National Wildlife Federation has noted, “[a]s the needs of Yellowstone grizzlies change or increase, so will the tools and protections needed to meet them.”³

¹ See Press Release, Nat’l Wildlife Fed., *Grizzly Bear Recovery an Endangered Species Act Success Story* (Mar. 3, 2016), available at <https://www.nwf.org/en/Latest-News/Press-Releases/2016/3-03-16-Grizzly-Bear-Recovery-an-Endangered-Species-Act-Success-Story>.

² See Nat’l Park Serv., *Grizzly Bears & the Endangered Species Act*, <https://www.nps.gov/yell/learn/nature/bearesa.htm> (last accessed May 10, 2019); see also Final Rule Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife, 82 Fed. Reg. 30,502 (June 30, 2017).

³ See Nat’l Wildlife Fed., *The Facts About Yellowstone Grizzly Bear Delisting*, <https://www.nwf.org/~media/PDFs/Wildlife/FactsAboutGrizzlyDelisting.ashx> (last accessed May 9, 2019).

Montana Governor Steve Bullock's reaction to the delisting was entirely correct: it "is a remarkable success story . . . one we should celebrate[.]"⁴ Doing so means acknowledging and rewarding past efforts while ensuring that the incentives of these stakeholders remain aligned. If we don't reward those who contribute to the successful recovery of one population, we leave little reason for others to contribute their resources and energy to the recovery of other populations.⁵

Unfortunately, H.R. 2532 would undermine this progress and replace cooperation with conflict. Sections 3 and 5 of the bill would, respectively, broadly prohibit take⁶ after populations recover and limit when permits could be issued. Effectively retracting state management authority over wildlife, it would require federal management of the species in perpetuity. This would eliminate a key incentive for collaborative efforts to recover grizzly populations. It could also set a precedent that could undermine such efforts for other species and undermine public support for wildlife conservation and the ESA.

Although not always ideal, the fact is that the primary carrot the Endangered Species Act offers to those who work toward species recovery is the prospect that success will be rewarded by a return to state management and reduced regulatory burdens at the federal level. Eliminating this incentive is sure to discourage such efforts going forward. Paradoxically, H.R. 2532 not only requires federal permitting after a population recovers, but it also appears to propose making permits more difficult to obtain after that recovery than when populations remained subject to the ESA, effectively punishing successful recovery efforts.

That said, there are sensible things Congress can do to encourage the continued growth of existing grizzly populations while also incentivizing the restoration of

⁴ Press Release, *Governor Bullock Welcomes Yellowstone Grizzly Bear Delisting* (June 22, 2017), available at <http://governor.mt.gov/pressroom/governor-bullock-welcomes-yellowstone-grizzly-bear-delisting>.

⁵ See Jonathan Wood, *Recognizing Grizzly Bear's Recovery in Yellowstone Will Spur Further Conservation Efforts*, PERC.org (Oct. 26, 2018), available at <https://www.perc.org/2018/10/26/recognizing-grizzly-bears-recovery-in-yellowstone-will-spur-further-conservation-efforts/>.

⁶ This term is commonly misunderstood as applying only to the intentionally killing or harming of protected wildlife. Under the ESA and laws that borrow its definitions, it includes a wide range of activities that incidentally affect a member of a species or its habitat, including many innocent activities that merely disturb wildlife. See Jonathan Wood, *Overcriminalization and the Endangered Species Act: Mens Rea and Criminal Convictions for Take*, 46 *Env'tl. L. Rep.* 10,496, 10,504-06 (2016).

others. But doing so would require treating states, tribes, landowners, and others as partners. For instance, H.R. 2532's proposal to compensate landowners for livestock lost to grizzly predation is a sensible way to reduce the liability imposed on landowners who provide much-needed habitat. But it would be even better to make grizzlies an asset for states, tribes, and landowners by preserving flexible, local management and providing positive incentives to accommodate grizzlies' presence and to protect or restore their habitat.

The right incentives are critical for recovering wildlife populations.

“Conservation will ultimately boil down to rewarding the private landowner who conserves the public interest.”⁷ Aldo Leopold's words are as true today as they were when he wrote them. Time and again, we are reminded that conservation is best achieved by aligning the interests of all public and private stakeholders, thereby encouraging them to work together to recover wildlife populations.

In 2017, the GYE grizzly population became only the 39th U.S. species delisted under the ESA.⁸ From a mere 136 grizzlies in 1975, that population has grown to 700—likely the ecosystem's carrying capacity.⁹ This has been thanks, in large part, to the efforts of the Interagency Grizzly Bear Committee, which since 1983 has been coordinating planning, management, and research with the federal and state agencies responsible for grizzly bear recovery.¹⁰

Although that coordinated recovery has been challenged in court,¹¹ I expect the Ninth Circuit will uphold the delisting decision.¹² Even if not, the grounds cited by

⁷ Conservation Economics, *The River of the Mother of God* (1934).

⁸ 82 Fed. Reg. 30,502.

⁹ See 82 Fed. Reg. at 30,512.

¹⁰ See *Grizzly Bears & the Endangered Species Act*, *supra* note 2.

¹¹ See *Crow Indian Tribe v. USA*, No. 18-36030 (9th Cir. filed Dec. 5, 2018). Representing PLF and the PERC, I will be filing an amicus brief in that case, arguing that the district court erred in overturning the decision.

¹² Although a full explication is beyond this testimony, the district court's decision striking down the delisting is incorrect for at least three reasons. First, it applied a higher standard for delisting than applies to listing decisions, which is contrary to the text of the statute. See 16 U.S.C. §1533(a)(1), (b); see also 83 Fed. Reg. 35,196. Second, it held an acknowledged gap in the scientific literature against the agency, which is clearly forbidden by precedent and ignores the other evidence cited by the agency. *Arizona Cattle Growers Ass'n v. Salazar*, 606 F.3d 1160, 1164 (9th Cir. 2010); 82 Fed. Reg. at

the district court in striking down the delisting are such that the agency will likely soon consider once again whether to delist this population and others. But continued litigation could be avoided if Congress recognized this population's recovery while providing additional tools for its post-listing management.

Recovering endangered and threatened species populations has been an all-too-rare achievement. Although the ESA has an impressive record for preventing extinction (99% of protected species remain around), it has underwhelmed on the more ambitious goal of recovery (which has been achieved for only 2% of those species).¹³ This is because the ESA only sometimes achieves the alignment of incentives required to recover imperiled species.¹⁴ Too often, heavy-handed federal regulations create perverse incentives, encouraging the preemptive destruction of habitat and discouraging its restoration.¹⁵

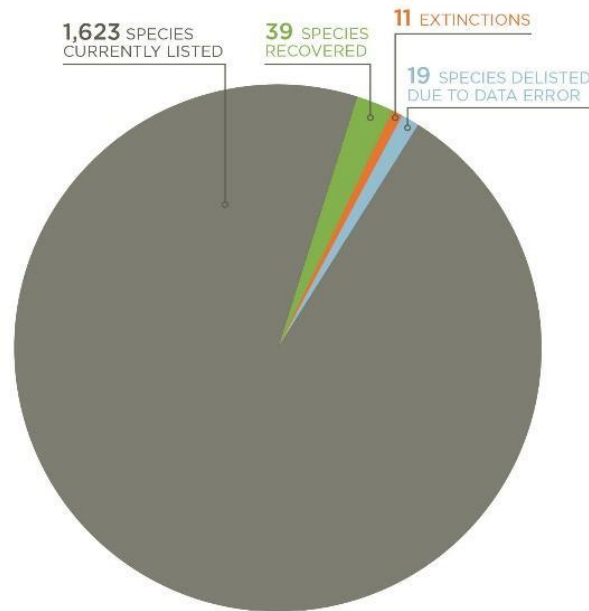
30,544. Finally, the court engaged in unsupported policy speculation. *See Crow Indian Tribe*, 343 F.Supp.3d at 1014.

¹³ *See* Jonathan Wood, *The Road to Recovery: How Restoring the Endangered Species Act's Two-Step Process Can Prevent Extinction and Promote Recovery*, PERC Policy Report 8-9 (2018), available at <https://www.perc.org/2018/04/24/the-road-to-recovery/>.

¹⁴ *See id.* at 14-15.

¹⁵ *See id.*; *see also* Dean Lueck & Jeffery Michael, *Preemptive Habitat Destruction under the Endangered Species Act*, 46 J. Law & Econ. 27 (2003).

Listings of Domestic Species under the Endangered Species Act



Source: U.S. Fish and Wildlife Service Environmental Conservation Online System.

The ESA's primary incentive is the prospect that a delisting will lead to more flexible management and, ultimately, regulatory relief for landowners—on whom most species depend for most of their habitat. This explains the law's gradual approach under which strict regulations apply to endangered species,¹⁶ federal agencies enjoy more flexibility for threatened species,¹⁷ and states enjoy further still flexibility once management shifts back to them upon a species' recovery and delisting.

Unfortunately, H.R. 2532 includes provisions that would discourage efforts to recover grizzly populations.

Sections 3 and 5 of H.R. 2532 would, respectively, broadly prohibit take of grizzlies from recovered populations and narrowly limit the circumstances where federal biologists could issue permits—even after the species has recovered to a point that

¹⁶ 16 U.S.C. § 1538.

¹⁷ 16 U.S.C. § 1533; 83 Fed. Reg. 35,174; *Road to Recovery*, *supra* note 13.

it is removed from the endangered species list.¹⁸ Although intuitively appealing (perhaps), these provisions would undermine the incentives to recover grizzly populations rather than strengthen them by eliminating the prospect that recovery will restore state flexibility to manage the species and regulatory relief will be granted to landowners who provide habitat.

States have extensive experience managing the wildlife within their borders—states ultimately own or control wildlife¹⁹—and are effective managers. In the case of the grizzly bear, states have worked with federal biologists and stakeholders to develop a conservation strategy that “provides an impressive set of protections” and identify potential habitat to accommodate the bear’s continued expansion.²⁰ In 2015, for instance, Wyoming spent more than \$2 million on grizzly bear research, mitigation of problem animals, and public education efforts.²¹

Experience shows that a return to state management will not jeopardize the grizzly’s recovery but will further promote it. Although the claim is often made that states will abandon the protection of species without the ESA’s continued protections, that claim has no support. In fact, no species recovered under the ESA has been relisted because of backsliding under state management²²—although that possibility is available to federal regulators were backsliding to occur.

On the contrary, recovered populations have fared well under state management. In Montana, for instance, the gray wolf population—which in many ways closely resembles the grizzly’s ESA experience—exceeds 500, more than five times the

¹⁸ The bill borrows text from the ESA, which should be done only with caution considering longstanding conflict over the meaning of this text. Congress or the courts must resolve this uncertainty because *Chevron* deference does not apply to “major questions” or provisions with criminal applications. See *Utility Air Reg. Gp. v. EPA*, 573 U.S. 302 (2014); *Abramski v. United States*, 573 U.S. 169 (2014). Should “take” be interpreted according to its ordinary, common law meaning or interpreted broadly to ensnare ordinary activities that incidentally harm species? See *Babbitt v. Sweet Home Chapter of Communities for a Greater Or.*, 515 U.S. 687 (1995). And what is the *mens rea* standard that applies for criminal applications? See Wood, *Overcriminalization*, *supra* note 6.

¹⁹ See *Horne v. Dept. of Agriculture*, 135 S. Ct. 2419, 2431 (2015).

²⁰ Nat’l Wildlife Fed., *The Facts About Yellowstone Grizzly Bear Delisting*, *supra* note 3.

²¹ See Steven Rinella, *The Problem With Protecting Grizzly Bears*, N.Y. Times (May 9, 2016), available at <https://www.nytimes.com/2016/05/09/opinion/the-problem-with-protecting-grizzly-bears.html>.

²² See U.S. Fish & Wildlife Serv., *Delisted Species*, <https://ecos.fws.gov/ecp0/reports/delisting-report> (last accessed May 11, 2019).

federal recovery goal, even with state-regulated hunting and trapping.²³ Similarly, states successfully manage other predator species, including mountain lions and black bears.²⁴

Rather than celebrating and rewarding the incredible effort that has gone into recovering the GYE grizzly, this bill would undermine or, worse, punish those efforts. For instance, Section 5 restricts the availability of permits even more than under the ESA so that landowners would be acting to their detriment by working to recover grizzlies.²⁵

These provisions would also set a dangerous precedent that also set a dangerous precedent that could discourage state efforts to conserve other species. What assurances would states, tribes, and landowners have that the recovery of other popular species would not be met with a similar federal takeover?

These provisions would also frustrate future, innovative federal efforts to recover endangered and threatened wildlife. For experimental populations and threatened populations, federal agencies have significant flexibility to craft solutions that promote species recovery, address competing concerns, and avoid overreliance on heavy-handed regulation.²⁶ For the grizzly, however, this bill would eliminate that flexibility upon a population's recovery. Thus, an effective conservation strategy developed by federal biologists, states, or tribes for an experimental or threatened population would have to be terminated if it succeeded at recovering the population.

Instead, states, tribes, and landowners should continue to lead on grizzly conservation, with Congress supporting good incentives for that effort.

Although this bill would undermine the goal of recovering grizzly populations, there is much Congress could do to support the ongoing collaborative effort to grow

²³ M. Jeff Hagener, *A Toast to the GYE Grizzly Recovery*, Montana Outdoors (2016), available at fwp.mt.gov/mtoutdoors/HTML/director/2016/DMJA16.htm.

²⁴ See *id.*

²⁵ Compare Section 5 with 16 U.S.C. § 1539.

²⁶ See Wood, *Road to Recovery*, *supra* note 13; U.S. Fish and Wildlife Serv., *Endangered Species Act Experimental Populations* (Nov. 2016), available at [https://www.fws.gov/pacific/ecoservices/endangered/recovery/pdf/10j%20Experimental%20Population%20Fact%20Sheet%2011-9-16%20\(approved%20by%20ARD-ES\).pdf](https://www.fws.gov/pacific/ecoservices/endangered/recovery/pdf/10j%20Experimental%20Population%20Fact%20Sheet%2011-9-16%20(approved%20by%20ARD-ES).pdf).

existing populations and reestablish others. But any such effort must focus on strengthening the incentives for continued collaboration.

To its credit, Section 6 of this bill proposes to compensate landowners for livestock losses due to grizzly predation. This is a sensible proposal that has helped encourage ranchers to accommodate other species.²⁷ In fact, states with existing grizzly populations already have state-administered compensation programs, with funding coming from the state, federal grants, and even private organizations.²⁸ The details matter a great deal,²⁹ of course, but such programs can be an effective way to make large predators less of a liability for landowners and, thereby, reduce opposition to their further expansion.

Although making species less of a liability would be helpful, Congress should set its sights higher: make rare species an asset for the states, tribes, and landowners who provide habitat. There are many ways to accomplish this goal, but, given the grizzly's needs, two stand out:

The federal government could provide incentives for states and tribes to relocate grizzlies where doing so could avoid other forms of take.

First, the federal government could provide financial incentives for states and tribes to relocate grizzlies where doing so can avoid the need for other, less palatable forms of take. States have had success recovering species through such preferences.

For instance, between 2014 and 2017, Utah developed its own plan to recover the Utah prairie dog while federal regulations for that species were enjoined by a federal court.³⁰ The state financed the improvement of prairie dog habitat on state

²⁷ See, e.g., Hank Fischer, *Who Pays for Wolves?*, PERC Reports (2001), available at <https://www.perc.org/2001/12/01/who-pays-for-wolves/>.

²⁸ Montana Livestock Loss Board 2016 Biennial Report (2016), available at <https://leg.mt.gov/content/Committees/Interim/2015-2016/Economic-Affairs/Meetings/Aug-2016/livestock-loss-board8-16.pdf>; Mark Davis, *Grizzlies increasing cost of managing livestock east of Yellowstone Park*, Powell Tribune (Apr. 25, 2019), available at <http://www.powelltribune.com/stories/grizzlies-increasing-cost-of-managing-livestock-east-of-yellowstone-park.18659>.

²⁹ Rarely will these programs provide full compensation, because some expense or effort is necessary to apply for compensation and payment may be delayed while the application is reviewed.

³⁰ See Jonathan Wood, *A Prairie Home Invasion*, PERC Reports (2017), available at <https://www.perc.org/2017/12/09/a-prairie-home-invasion/>; see also *People for the Ethical Treatment*

conservation lands and authorized take after property owners notified the state and provided an opportunity for state biologists to try relocating the animals to the new, improved habitat instead.³¹ The Utah prairie dog population roughly doubled between 2012 and 2017, under state management for most of that time.³² The plan proved so successful that, even though a court later reinstated federal regulations, the agency has allowed states and counties to continue operating under the state plan.³³

Critical to reintroduction efforts, however, are regulatory protections to incentivize accommodation of the species in its new habitat. Congress itself has acknowledged this in past, successful efforts to establish new wildlife populations. For the California sea otter, for instance, Congress sought to mitigate the threat posed by the species' small range by establishing a separate population in the Channel Islands.³⁴ Recognizing that this reintroduction would affect the surrounding fishery and the fishermen who depend on it, Congress cabined the application of the ESA and Marine Mammal Protection Act's take prohibitions, which led to the fishermen's support for the translocation effort.³⁵ Today, the sea otter has met its recovery goal thanks, in large part, to the success of this new population, which has experienced double-digit annual growth for much of the past decade.³⁶

of Property Owners v. U.S. Fish and Wildlife Serv., 57 F.Supp.3d 1337 (D. Utah 2014), *reversed by* 852 F.3d 990 (10th Cir. 2017). Utah, joined by X other states, filed an amicus brief in the case emphasizing the benefits of federalism to endangered species and other wildlife. CITE.

³¹ See Wood, *A Prairie Home Invasion*, *supra* note 30.

³² See *id.*

³³ See Jonathan Wood, *A postscript to the Utah prairie case: federal agency embraces state-led reform*, PacificLegal.org (Apr. 13, 2018), available at <https://pacificlegal.org/a-postscript-to-the-utah-prairie-dog-case-federal-agency-embraces-state-led-reform/>.

³⁴ See Pub. L. No. 99-625 (1985).

³⁵ *Id.*; see Jonathan Wood, *Environmental Bureaucracy Undermines the Trust Needed to Promote Conservation*, PERC.org (Dec. 7, 2017), available at <https://www.perc.org/2017/12/07/environmental-bureaucracy-undermines-the-trust-needed-to-promote-conservation/>.

³⁶ Press release, USGS, *Sea Otter Survey Encouraging, but Comes Up Short of the "Perfect Story"* (Sept. 19, 2016), available at <https://www.usgs.gov/news/sea-otter-survey-encouraging-comes-short-perfect-story>. Despite this success, the U.S. Fish and Wildlife Service reneged on the compromise in 2012, citing the population missing (decades earlier) an interim numerical goal. 77 Fed. Reg. 75,266 (Dec. 19, 2012). The Ninth Circuit upheld this decision under its unique, extreme interpretation of *Chevron* deference, but the ultimate outcome is likely to be that fishermen and others will be far less willing to compromise due to the erosion of trust. See Wood, *Environmental Bureaucracy*, *supra* note 34; see also Jonathan Wood, *Undue Deference*, Nat. Rev. (July 29, 2018), available at <https://www.nationalreview.com/2018/07/brett-kavanaugh-opposition-to-chevron-deference-may-reverse-it/> (noting that 17 states urged the Supreme Court to review the Ninth Circuit's decision because of its broad impacts on *Chevron* deference).

In fact, the threat posed by heavy-handed federal regulations has undermined efforts to reintroduce grizzlies to the Bitterroot ecosystem. In the 1990s, the National Wildlife Federation and Defenders of Wildlife, working with loggers, developed a plan for this reintroduction. According to the National Wildlife Federation's Hank Fischer, "the loggers/mill workers weren't afraid of bears; they feared the rules that might accompany them. And most importantly, they feared a federal top-down approach to species restoration that might deny local people a voice in management decisions."³⁷ Unfortunately, the effort to provide regulatory protections to loggers and local management failed when some environmentalists demanded the strict federal regulations loggers feared which, in turn, caused the state to oppose the plan.³⁸ As a result, grizzlies have not been reintroduced to the Bitterroot more than twenty years later.³⁹

This bill would strictly regulate reintroduced populations, threatening precisely the sort of opposition that undermined reintroduction in the Bitterroot. This is no way to encourage landowners and communities to accommodate grizzly reintroduction.

Instead, the federal government could help incentivize grizzly relocation by compensating states and tribes for the grizzlies they make available for reintroduction to other habitat, by helping to coordinate reintroductions across interstate or state-tribal borders, and by providing technical assistance. However, to ensure that state and tribal management flexibility is preserved, this should be a voluntary program.

The federal government could make grizzlies an asset for landowners by providing positive incentives to accommodate grizzlies and restore habitat.

As explained above, the bill's proposed livestock loss compensation fund would be a step in the right direction by making grizzlies less of a liability for landowners who

³⁷ Hank Fischer, *The Bear Necessities: Reaching across the spectrum for species recovery*, PERC Reports (2008), available at <https://www.perc.org/2008/03/28/the-bear-necessities/>.

³⁸ See *id.*

³⁹ See Eve Byron, *Grizzly bears expected to return to the Bitterroots, eventually*, Missoulian (Dec. 24, 2017), available at https://missoulian.com/news/local/grizzly-bears-expected-to-return-to-the-bitterroots-eventually/article_a22fcfd-4715-50c5-aa6b-7da5ffa34692.html.

accommodate them. But it would be even more helpful to make grizzlies an asset to landowners.

For instance, the American Prairie Reserve's Wild Sky Beef program is a voluntary, market-based program that seeks to make wildlife an asset for ranchers who accommodate them.⁴⁰ Its Cameras for Conservation initiative pays ranchers to install camera traps on their property and document the presence of wildlife species, like wolves and bears.⁴¹ APR also offers ranchers a premium for their beef if they adopt wildlife-friendly ranching practices.⁴² Both public and private certification efforts have similarly helped to nudge consumers to make more eco-conscious purchasing decisions.⁴³

Unfortunately, one of H.R. 2532's provisions would erect an unnecessary barrier to markets providing these sorts of incentives. Section 5(f) would forbid the sale or transfer of permits issued under the law. This would unnecessarily complicate the sale of affected property, undermining the property rights of anyone who provides habitat to grizzly.

It would also interfere with the ability of conservation groups to negotiate with landowners to avoid take. Like American Prairie Reserve, many conservation groups have negotiated with landowners, ranchers, and others whose work affects their goals.⁴⁴ Critical to these agreements are freely tradeable permits or property rights.⁴⁵ H.R. 2532's ban on alienation, similar to many other federal policies that restrict such trades, will unnecessarily block conservation groups from buying out these permits when the environmental benefits to them exceed the value of the

⁴⁰ See Wild Sky Beef, *About*, <https://www.wildskybeef.org/about> (last accessed May 11, 2019).

⁴¹ See AmericanPrairie, *Wild Sky's Cameras for Conservation*, Youtube.com (Aug. 5, 2016), available at <https://www.youtube.com/watch?v=Lrfdjzmu36Y>.

⁴² See Laura Huggins, *Contracting for Conservation*, PERC Reports (2017), available at <https://www.perc.org/2017/09/14/contracting-for-conservation/>.

⁴³ See CITE.

⁴⁴ Shawn Regan, *A Peaceable Solution for the Range Wars Over Grazing Rights*, Wall. St. J. (Apr. 23, 2014), available at <https://www.perc.org/2014/04/23/a-peaceable-solution-for-the-range-war-over-grazing-rights/>.

⁴⁵ See Bryan Leonard & Shawn Regan, *Legal and Institutional Barriers to Establishing Non-Use Rights to Natural Resources*, Nat. Res. J. (forthcoming), available at <https://www.perc.org/2018/12/05/legal-and-institutional-barriers-to-establishing-non-use-rights-to-natural-resources/>.

permit to the landowner.⁴⁶ At a minimum, Congress should not do anything to discourage these voluntary efforts; therefore, this provision of the bill should be removed.

The federal government can also play a role in establishing positive incentives for conservation. It already does so under a variety of programs, including the Natural Resources Conservation Service.⁴⁷ Because of the success of these incentive programs, the Farm Bill has become one of the most important pieces of legislation for conservation.⁴⁸

To help speed up the grizzly's recovery, Congress could do a variety of things. Most obviously, it could create a compensation fund that, rather than merely mitigating losses, seeks to reward landowners for providing habitat. Or Congress could create a matching-fund program for state and private habitat efforts. This would also benefit from their efforts to identify quality habitat, where this money would have the greatest impact.

Conclusion

The recovery of the GYE grizzly should be cause for celebration. Now that this population has recovered, it's time for states to take the lead on managing it. It is fitting, however, for this body to consider how to support state efforts to grow this and other populations, as well as how to create good incentives for landowners to accommodate grizzlies and protect habitat. Although this bill contains some provisions that would be helpful, others would undermine the incentives for this conservation, replacing cooperation with conflict.

⁴⁶ See *id.*

⁴⁷ See USDA, *About NRCS*, <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/about/> (last accessed May 11, 2019).

⁴⁸ See Nat'l Wildlife Fed., *Farm Bill*, <https://www.nwf.org/Our-Work/Our-Lands/Farm-Bill> (last accessed May 11, 2019); Larry Clemens and Jennifer Connor Nelms, *What the Farm Bill Means for Conservation*, Nature.org (Dec. 21, 2018), available at <https://www.nature.org/en-us/what-we-do/our-priorities/provide-food-and-water-sustainably/food-and-water-stories/what-the-farm-bill-means-for-conservation/>; Press Release, Env'tl. Def. Fund, *Farm Bill Prioritizes Innovation and Impact for Climate-Smart Agriculture* (Dec. 11, 2018), available at <https://www.edf.org/media/farm-bill-prioritizes-innovation-and-impact-climate-smart-agriculture>.