

ix. By removing the phrase "peppermint, hay," wherever it appears in part 180.

x. By removing the phrases "safflower, fodder (fodder, forage, and grain)," and "safflower, forage," wherever they appear in part 180.

xi. By removing the phrase "spearmint, hay," wherever it appears in part 180.

xii. By removing the phrase "sunflower, forage," wherever it appears in part 180.

**§ 180.106 [Amended]**

xiii. In § 180.106, in the entry for "2 parts per million..." revise the phrase "forage, and straw of barley" to read "straw of barley."

**§ 180.277 [Amended]**

xiv. In § 180.277 revise the phrase "barley (grain, forage, and straw)" to read "barley (grain and straw)."

**§ 180.288 [Amended]**

xv. In § 180.288 by revising the phrase "barley (fodder, forage, grain and straw)" to read "barley (fodder, grain and straw)."

**§ 180.230 [Amended]**

xvi. In § 180.230 by removing the phrase "peanut hulls and."

**§ 180.236 [Amended]**

xvii. In § 180.236 by removing the phrase "0.4 parts per million in or on peanut hulls."

**§ 180.361 [Amended]**

xviii. In § 180.361 by removing paragraph (b).

**PART 186—[AMENDED]**

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. Part 186 is amended as follows:

i. By removing the phrase "apple, pomace (dry)" wherever it appears in part 186.

ii. By removing the phrase "citrus, molasses," wherever it appears in part 186.

iii. By removing the phrase "corn soapstock" wherever it appears in part 186.

iv. By removing the phrases "grape pomace," "grapes, pomace, dried," "grapes, pomace, (wet and dry)," "grapes, pomace, (wet and dried)," "grape pomace (dry or wet)," "grape pomace (wet)," "grape pomace (dry)," and "grape pomace, wet and dry," wherever they appear in part 186.

v. By removing the phrases "raisin, waste," and "grape, raisin waste," wherever they appear in part 186.

vi. By removing the phrase "hops, spent," wherever it appears in part 186.

vii. By removing the phrase "peanuts, soapstock," wherever it appears in part 186.

viii. By removing the phrase "peanuts, soapstock, fatty acids," wherever it appears in part 186.

ix. By removing the phrase "soapstock" wherever it appears in part 186.

x. By removing the phrase "soybeans, soapstock," wherever it appears in part 186.

xi. By removing the phrase "soybeans, soapstock, fatty acids," wherever it appears in part 186.

xii. By removing the phrase "spent mint hay," wherever it appears in part 186.

xiii. By removing the phrase "sugarcane, bagasse," wherever it appears in part 186.

xiv. By removing the phrase "sunflower, seeds, hulls," wherever it appears in part 186.

xv. By removing the phrase "sunflower, seeds, soapstock," wherever it appears in part 186.

xvi. By removing the phrase "tomatoes, pomace, dried," wherever it appears in part 186.

xvii. By removing the phrase "tomatoes, pomace, wet," wherever it appears in part 186.

**§ 186.450 [Amended]**

xviii. In § 186.450 by removing the phrase "citrus molasses and."

**§ 186.3450 [Removed]**

xix. By removing § 186.3450.

**§ 186.350 [Amended]**

xx. In § 186.350 by removing the entry beginning with "125 parts per million...."

**§ 186.1650 [Amended]**

xxi. In § 186.1650 by removing the entry beginning with "20 parts per million...."

**§ 186.4800 [Amended]**

xxii. In § 186.4800 by removing the entry beginning with "45 parts per million...."

**§ 186.1450 [Amended]**

xxiii. In § 186.1450 the entry for "5 parts per million," is amended by removing the phrase "sugarcane bagasse and."

**§ 186.2225 [Amended]**

xxiv. In § 186.2225 by removing the entry "1.5 parts per million in sugarcane baggase."

**§ 186.3350 [Removed]**

xxv. By removing § 186.3350.

[FR Doc. 97-17369 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AE00**

**Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to reintroduce the grizzly bear (*Ursus arctos horribilis*), a threatened species, into east-central Idaho and a portion of western Montana. These grizzlies will be classified as a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. Grizzly bear populations have been extirpated from most of the lower 48 United States. They presently occur in populations in the Cabinet/Yaak ecosystem in northwestern Montana and north Idaho, the Selkirk ecosystem in north Idaho and northeastern Washington, the North Cascades ecosystem in northwestern Washington, the Northern Continental Divide ecosystem in Montana, and the Yellowstone ecosystem in Montana, Wyoming, and Idaho. The purpose of this reintroduction is to reestablish a viable grizzly bear population in the Bitterroot ecosystem in east-central Idaho and adjacent areas of Montana, one of six grizzly recovery areas identified in the Grizzly Bear Recovery Plan. Potential effects of this proposed rule are evaluated in a draft Environmental Impact Statement released concurrently with the publication of this proposed rule. This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional

public uses of wilderness areas or surrounding lands.

**DATES:** Comments from all interested parties must be received by October 9, 1997.

**ADDRESSES:** Comments or other information may be sent to Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. The complete file for this proposed rule is available for inspection, by appointment during normal business hours, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher Servheen, at the above address, or telephone (406) 243-4903.

**SUPPLEMENTARY INFORMATION:** The U.S. Fish and Wildlife Service (Service) also will hold public hearings to obtain additional verbal and written information. Hearings are proposed to be held in Boise, Lewiston, and Salmon, Idaho; and Helena, Missoula, and Hamilton, Montana. The location, dates, and times of these hearings will be announced in the **Federal Register** at least 15 days prior to the first hearing, and in local newspapers.

## Background

### 1. Legal

The Endangered Species Act Amendments of 1982, Public Law 97-304, made significant changes to the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), including the creation of section 10(j) which provides for the designation of specific animals and populations as "experimental." Under previous authorities in the Act, the Service was permitted to reintroduce a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts from certain parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the utility of reintroduction as a management tool.

However, under section 10(j), a listed species reintroduced outside of its current range, but within its historic range, may be designated, at the discretion of the Secretary of the Interior (Secretary), as "experimental." This designation increases the Service's flexibility and discretion in managing reintroduced endangered species because such experimental animals may be treated as a threatened species. The Act requires that animals used to form an experimental population be

separated geographically from nonexperimental populations of the same species.

Additional management flexibility is possible if the experimental population is found to be "nonessential" to the continued existence of the species in question. Section 10(j) of the Act states that nonessential experimental animals are not subject to the formal consultation provision of the Act unless they occur on land designated as a national wildlife refuge or national park. Individual animals within nonessential experimental populations located outside national parks or national wildlife refuges are treated, for purposes of section 7 of the Act, except for subsection 7(a)(1), as if they were only proposed for listing under section 4 of the Act. Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal agency.

Specimens used to establish an experimental population may be removed from a source or donor population, provided their removal is not likely to jeopardize the continued existence of the species and appropriate permits have been issued in accordance with 50 CFR 17.22. Grizzly bears (*Ursus arctos horribilis*) for this proposed reintroduction will be obtained from Canadian and United States grizzly populations with permission from the Canadian and Provincial governments and concurrence from the appropriate State officials. Grizzly bears are common in western Canada (10,000 to 11,000 in British Columbia) and Alaska (an estimated 30,000 to 35,000). An estimated 516 exist in the Northern Continental Divide ecosystem in northwestern Montana, and an estimated 245 exist in the Yellowstone ecosystem. No adverse biological impact is expected from the removal of 10-15 grizzly bears from the British Columbia population over a 5-year period. No adverse biological impact is expected from the removal of 10-15 grizzly bears from the Northern Continental Divide and/or Yellowstone ecosystem populations over a 5-year period. Consequently, the Service finds that grizzly bears to be used in the reintroduction effort meet the definition of "nonessential" (50 CFR 17.80 (b)) because the loss of the reintroduced grizzlies is not likely to appreciably reduce the likelihood of survival of the species in the wild.

The grizzly bear was listed as a threatened species in the lower 48 States under the Act in 1975 (40 FR 3173).

### 2. Biological

This proposed rule deals with the grizzly bear, a threatened species that once ranged throughout most of western North America. An estimated 50,000 grizzly bears roamed the American West prior to European settlement (U.S. Fish and Wildlife Service 1993). However, distribution and population levels of this species have been diminished by excessive human-caused mortality and loss of habitat. Today, only 800 to 1,000 grizzly bears remain in a few isolated populations in Montana, Idaho, Wyoming, and Washington, which represents approximately 2 percent of their historic range in the lower 48 States (U.S. Fish and Wildlife Service 1993).

The natural history of grizzly bears and their ecological role was poorly understood during the period of their eradication in the conterminous United States. As with other large predators, grizzly bears were considered a nuisance and threat to humans. Today, the grizzly bear's role as an important and necessary part of natural ecosystems is better understood and appreciated.

Historically, the grizzly bear was a widespread inhabitant of the Bitterroot Mountains in east-central Idaho and western Montana. Historic grizzly bear range includes national forest lands within and surrounding the Selway-Bitterroot Wilderness Area and Frank Church-River of No Return Wilderness Area on both sides of the Salmon River. The demise of the grizzly from the Bitterroot ecosystem (BE) was due to the actions of humans. Bears were actively killed for their fur, for sport, and to eliminate possible threats to humans and domestic livestock. The last verified death of a grizzly bear in the Bitterroot Mountains occurred in 1932 and the last tracks were observed in 1946 (Moore 1984, 1996). Although occasional unverified reports of grizzly sightings persist in the ecosystem (Melquist 1985), no verified tracks or sightings have been documented in more than 50 years, and currently there is no evidence of any grizzly bears in the BE.

### 3. Grizzly Bear Recovery Efforts

The reestablishment of a grizzly bear population in the BE will increase the survival probabilities and conservation of the grizzly bear in the lower 48 States. If the experimental population is lost, it will not further decrease the survival probability of the bear in other ecosystems beyond what currently exists. However, if the experimental population is successful it will enhance grizzly bear conservation over the long

term. The Grizzly Bear Recovery Plan was finalized in 1982 (U.S. Fish and Wildlife Service 1982) and called for the evaluation of the Selway-Bitterroot ecosystem as a potential recovery area. An interagency team of grizzly bear scientists concluded the area provided suitable habitat and could support 200–400 grizzly bears (Servheen et al. 1991). In 1991, the Interagency Grizzly Bear Committee subsequently endorsed the BE as a grizzly bear recovery area, and requested that the Service pursue recovery.

In 1992, the Service organized a Technical Working Group to develop a BE chapter to append to the Grizzly Bear Recovery Plan. This interagency group of biologists worked with a citizens' involvement group comprised of local residents and agency personnel to draft a recovery plan chapter. Public comments, including those from local communities in central Idaho and western Montana, were integrated into the final chapter. The Service revised the Grizzly Bear Recovery Plan in 1993 (U.S. Fish and Wildlife Service 1993) and produced the Bitterroot Ecosystem Recovery Plan Chapter (Chapter) as an appendix (U.S. Fish and Wildlife Service 1996). This Chapter called for the reintroduction of a small number of grizzly bears into the BE as an experimental, nonessential population under section 10(j) of the Act and the preparation of an Environmental Impact Statement (EIS) on this proposal. By establishing a nonessential experimental population, more liberal management practices may be implemented to address potential negative impacts or concerns regarding the reintroduction. The Chapter identified a tentative long-term recovery objective of approximately 280 grizzly bears for the BE.

Planning for the reintroduction of grizzly bears into the BE of east-central Idaho and western Montana was initiated in 1993, when the agencies of the Interagency Grizzly Bear Committee requested that an EIS be prepared. The Service formed and funded an interagency team to prepare the EIS. The team included specialists from the Service, U.S. Forest Service, Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, and the Nez Perce tribe. The Grizzly Bear EIS program emphasized public participation.

A public participation and interagency coordination program was developed to identify issues and alternatives to be considered. A public Notice of Intent (NOI) concerning grizzly bear recovery in the BE, was published in the **Federal Register** on

January 9, 1995 (60 FR 2399). The notice was furnished as required by the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain input from other agencies and the public on the scope of issues to be addressed in the EIS. This NOI asked the public to identify issues that should be addressed in the draft EIS. A few days earlier the Service also had issued a news release announcing the beginning of the EIS process and the start of an EIS on grizzly bear reintroduction into the BE.

Eight preliminary issues were identified in March 1995 from scoping meetings for the Chapter and the NOI to prepare an EIS. Three preliminary alternatives also were identified and published in a Scoping of Issues and Alternatives brochure. This brochure was mailed to 1,100 people and distributed at seven open houses. The brochure gave background information, described the purpose and need of the proposed action, listed preliminary issues and alternatives, and explained how to become involved in the EIS process. People were asked to identify issues and alternatives related to grizzly bear reintroduction into the BE. On June 5, 1995, a notice was published in the **Federal Register** initiating the formal scoping process with a 45-day comment period (60 FR 29708). A news release was sent to the print, radio, and television media in western Montana and Idaho on June 26, 1995, announcing the dates and locations for public open houses. Public issue scoping was initiated by the Service by mailing a brochure that detailed the EIS process.

From July 5–11, 1995, seven public scoping sessions in the form of open houses were held in Grangeville, Orofino, and Boise, Idaho; Missoula, Helena, and Hamilton, Montana; and in Salt Lake City, Utah. At the open houses, people could watch a 5-minute introductory video about the proposed action of reintroducing a nonessential experimental population and talk with representatives of the Service, U.S. Forest Service, and State Fish and Game agencies about grizzly bears, their recovery, and the EIS process. Those who attended the open houses received copies of the issue and alternative scoping brochure and question-and-answer booklet. They were encouraged to leave written comments with agency personnel or mail their comments later. Verbal comments or questions were heard and responded to by the agency representatives, but verbal testimony was not formally recorded. More than 300 people attended these scoping sessions and offered comments on the proposal, the preliminary issues and

alternatives, and voiced their opinions on grizzly bears and reintroduction. The scoping comment period was extended 30 days (from July 20 to August 21, 1995). On July 25 a press release was sent to local and national media to announce the extension. This extension was requested by numerous public interests with varied opinions on this complex topic.

Written public comments on issues and alternatives were solicited at the open houses and through the media. More than 3,300 written comments were received from individuals, organizations, and government agencies. These comments arrived in over 565 letters, open house meeting notes, six petitions, and six form letters or postcards. Public comments typified the strong polarization of concerns regarding grizzly bear management. Approximately 80 percent of written responses were from residents of counties in Montana and Idaho adjacent to the proposed reintroduction area. Major concerns raised included public safety, impacts of grizzly bears on existing land uses, travel corridors and linkages, nuisance bears and their control, and depredation by bears on domestic livestock and native ungulates.

Hearings and a public comment period will be conducted after the release of the draft EIS and proposed rule to obtain public input.

#### 4. Reintroduction Site

The Service proposes to reintroduce grizzly bears into the BE of east-central Idaho in the Selway Bitterroot Wilderness on Federal lands managed by the U.S. Forest Service. The Bitterroot location was selected as a site for an experimental population of grizzly bears because of the following factors. The area known as the BE is centered around the Wilderness Areas of central Idaho, while a small portion extends eastward over the crest of the Bitterroot Mountains into Montana. It includes about 67,526 square kilometers (sq km) (26,072 square miles (sq mi)) of contiguous national forest lands in central Idaho and western Montana. These include portions of the Bitterroot, Boise, Challis, Clearwater, Nez Perce, Payette, Sawtooth, Salmon, and Panhandle National Forests in Idaho, and the Bitterroot and Lolo National Forests in western Montana. The core of the ecosystem contains three wilderness areas including the Frank Church-River of No Return, Selway-Bitterroot, and Gospel Hump. These areas provide approximately 15,793 sq km (6,098 sq mi) of grizzly bear habitat. Grizzly bears would only be reintroduced into the Selway-Bitterroot Wilderness Area

unless the Citizen Management Committee (Committee) determines that reintroduction in the River of No Return Wilderness is appropriate. Specific release sites that have high quality bear habitat and low likelihood of human encounters would be identified. The area is also geographically separate from other existing grizzly bear populations in Idaho and Montana. Thus, any grizzly bears documented inside the Idaho experimental population area would probably be from reintroduction efforts rather than naturally dispersing extant grizzly populations from northern Idaho or northwestern Montana.

Because reintroduced grizzly bears will be classified as a nonessential experimental population, the Service's management practices can reduce local concerns about excessive government regulation on private lands, uncontrolled livestock depredations, excessive big game predation, and the lack of State government and local citizen involvement in the program.

Establishment of grizzly bears in the BE of central Idaho will initiate recovery in one of the six ecosystems identified as having the potential to provide adequate habitat to maintain the grizzly bear as a viable and self-sustaining species, which will further the conservation of the species and assist in the attainment of the goals of the Grizzly Bear Recovery Plan (U.S. Fish and Wildlife Service 1993).

#### *5. Reintroduction Protocol*

The proposed grizzly bear reintroduction project would be undertaken by the Service in cooperation with the U.S. Forest Service, other Federal agencies, the States of Idaho and Montana, the Nez Perce Tribe, and entities of the Canadian government. To obtain grizzly bears, the Service will enter into formal agreements with the Canadian and Provincial governments and/or resource management agencies and the State of Montana.

The BE reintroduction program proposes trapping 15–25 subadult male and female grizzly bears over a 5-year period from areas in Canada (in cooperation with Canadian authorities) and the United States that presently have populations of grizzly bears living in habitats that are similar to those found in the BE. Only bears with no history of conflict with people will be reintroduced. Bears will be captured and reintroduced at the time of year that will optimize their survival. This would likely occur when grizzly bear food supplies in the BE are optimum. Bears would be transported to east-central Idaho, given any necessary veterinary

care, and fitted with radio collars so that they can be monitored by radiotelemetry. Individual reintroduced grizzly bears would be monitored to determine their movements and how they use their habitat, and to keep the public informed of general bear locations and recovery efforts. Bears would be placed close enough to each other to create a "colony" or population of bears, providing a basis from which to expand in numbers.

The Service will continue to ask private landowners and agency personnel in or around the BE to immediately report any grizzly bear observations to the Service or other authorized agencies. An extensive information and education program will be employed to discourage the taking of grizzly bears by the public. Public cooperation will be encouraged to ensure close monitoring of the grizzly bears and quick resolution of any conflicts that might arise. Specific information on grizzly bear reintroduction procedures can be found in Appendix 6, "Scientific Techniques for the Reintroduction of Grizzly Bears," in the draft Bitterroot Grizzly Bear Recovery EIS (U.S. Fish and Wildlife Service 1997).

#### **Status of Reintroduced Populations**

In accordance with section 10(j) of the Act, the Service proposes to designate this reintroduced population of grizzly bears as nonessential experimental. Such designation would allow these grizzly bears to be treated as a species proposed for listing for the purposes of section 7 of the Act. This allows the Service to establish a less restrictive special rule rather than using the general prohibitions which might otherwise apply to threatened species. The biological status of the grizzly and the need for management flexibility resulted in the Service proposing to designate the grizzly bears reintroduced into east-central Idaho as "nonessential." This designation, together with other protective measures, will contribute to the conservation and recovery of the grizzly bear in east-central Idaho and western Montana.

The Service finds that protective measures and management practices under this proposed rulemaking are necessary and advisable for the conservation and recovery of the grizzly and that no additional Federal regulations are required. The Service also finds that the nonessential experimental status is appropriate for grizzly bears taken from wild populations and released into the BE of east-central Idaho. The nonessential status for such grizzlies allows for

additional management flexibility. Formal section 7 consultation would not be required for any proposed Forest Service activity in the BE as a result of the experimental reintroduction of bears, and the requirements of section 7(a)(2) would not apply. Presently, there are no conflicts envisioned with any current or anticipated management actions of the U.S. Forest Service or other Federal agencies in the area. The national forests are beneficial to the reintroduction effort in that they form a natural buffer to private properties and are typically managed in a manner compatible for grizzly bears and other wildlife. The Service finds that the more informal section 7(a)(4) conferencing requirements associated with the nonessential designation do not pose a threat to the recovery effort and continued existence of the grizzly bear.

Most of the reintroduction area is remote and sparsely inhabited wild lands. However, there are some risks to grizzly recovery associated with take of grizzlies in regard to other land uses and various recreational activities. Potential threats are hunting, trapping, animal damage control activities, and high speed vehicular traffic. Hunting, trapping, and USDA Animal Damage Control programs are prohibited or strictly regulated by State and Federal law and policy. There are very few paved or unpaved roads in the proposed reintroduction area or immediately outside of it. The unpaved roads typically have low vehicle traffic, and are constructed for low speeds and used only seasonally. Thus, grizzlies should encounter vehicles and humans infrequently. In accordance with existing labeling, the use of toxicants lethal to grizzlies is prohibited. Overall, the possible risks and threats that could impact the success of the reintroduction effort are thought to be minimal.

#### **Location of Experimental Population**

The proposed release site for reintroducing grizzly bears into east-central Idaho is on national forest land in the Selway-Bitterroot Wilderness Area. The Service would designate the Bitterroot Grizzly Bear Recovery Area (Recovery Area) (approximately 14,983 sq km; 5,785 sq mi) to consist of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness. This is the area where grizzly bear recovery would be emphasized. The Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which includes most of east-central Idaho and part of western Montana, would be established by the Service under authority of section 10(j) of the Act. This

approximately 65,113 sq km (25,140 sq mi) area would include the area bounded by U.S. Highway 93 from Missoula, Montana, to Challis, Idaho; Idaho Highway 75 from Challis to Stanley, Idaho; Idaho Highway 21 from Stanley to Lowman, Idaho; Idaho Highway 17 from Lowman to Banks, Idaho; Idaho Highway 55 from Banks to New Meadows, Idaho; U.S. Highway 95 from New Meadows to Coeur d'Alene, Idaho; and Interstate 90 from Coeur d'Alene, Idaho, to Missoula, Montana. Much of the Experimental Population Area has high-quality bear habitat with low likelihood of conflicts between grizzly bears and humans.

### Management

The special rule would authorize a 15-member Citizen Management Committee (Committee) to be appointed by the Secretary in consultation with the Governors of Idaho and Montana, and the Nez Perce tribe. This Committee would implement the Bitterroot recovery chapter in the Grizzly Bear Recovery Plan and would be authorized management implementation responsibility by the Secretary, for the Bitterroot grizzly bear nonessential experimental population. All decisions of the Committee must lead to recovery of the grizzly bear in the BE. The Committee must consult with scientists to ensure that scientific information is considered in its decision making. The members would serve 6-year terms, although appointments may initially be of lesser terms to ensure staggered replacement. The members would consist of seven individuals appointed by the Secretary based on the recommendations of the governor of Idaho, five members appointed by the Secretary based on the recommendations of the Governor of Montana, one member appointed by the Secretary based on the recommendation of the Nez Perce Tribe, one member representing the U.S. Forest Service appointed by the Secretary of Agriculture or his/her designee, and one member representing the Service appointed by the Secretary or his/her designee. Among the members recommended by the Governors of Idaho and Montana would be a representative from each State fish and game agency. If either Governor fails to make recommendations, the Secretary (or his/her designee) will accept recommendations from interested parties on the Governor's behalf. The Secretary would solicit recommendations from the Nez Perce Tribe and would appoint one member from the Nez Perce Tribe. The Committee is to consist of a cross-

section of interests reflecting a balance of viewpoints, be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision making. The Committee is to be selected from communities within and adjacent to the recovery and experimental population areas.

The Bitterroot Chapter of the Grizzly Bear Recovery Plan contains a recovery goal for the Bitterroot area. The Committee could recommend a revised recovery goal, based on scientific advice, once sufficient information is available. Any revised recovery goals developed by the Committee would require public review appropriate for revision of a recovery plan. The recovery goal for the Bitterroot grizzly bear population would be consistent with the habitat available within the recovery area and the best scientific and commercial data available. Grizzly bears outside the recovery area and within the experimental population area would contribute to meeting the recovery goal if there were reasonable certainty for their long-term occupancy in such habitats outside the recovery area. The Committee would develop a process for obtaining the best biological, social, and economic data, which would include an explicit mechanism for peer-reviewed, scientific articles to be submitted to and considered by the Committee, as well as periodic public meetings (not less than every 2 years) in which qualified scientists could submit comments to and be questioned by the Committee. Using the best scientific evidence available, and standards and criteria developed by the agencies and the Committee, the Committee would determine if the bear reintroduction was successful after a minimum period of 10 years. If, based on these criteria and recommendations by the Committee, the Secretary after consultation with the Committee, the States of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife, and Parks, and the Nez Perce Tribe, concludes the reintroduction has failed, the experimental reintroduction would be terminated.

The Secretary would review the plans and efforts of the Committee. If the Secretary determines, through his/her representative(s) on the Committee, that the decisions of the Committee, the management plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the experimental population area, the Secretary's representative on the Committee will solicit from the Committee a determination whether the

decision, the plan, or implementation of components of the plan are leading to recovery. Notwithstanding a determination by the Committee that a decision, plan, or implementation of a plan are leading to recovery of the grizzly bear within the experimental population area, the Secretary, who necessarily retains final responsibility and authority for implementation of the Act, may find that the decision, plan, or implementation of a plan are inadequate for recovery and may resume management responsibility. In such case the Committee would be disbanded and all requirements identified in this rule regarding the Committee would be automatically nullified. Otherwise, the Committee would continue until the recovery objectives have been met and the Secretary completed delisting of the Bitterroot population.

Public opinion surveys, public comments on grizzly bear management planning, and the positions taken by elected officials indicate that grizzly bears should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by grizzly bear recovery activities. The recovery of grizzly bears would be emphasized in the Recovery Area, but bears moving outside the recovery area would be accommodated through management provisions in the special rule and through the management plans and policies developed by the Committee, unless potential conflicts were significant and could not be corrected.

Grizzly bear management would allow for resource extraction activities to continue without formal section 7 consultation under section 7(a)(2) of the Act. All section 9 "takings" provisions under the Act for the nonessential experimental population of grizzly bears in the Bitterroot ecosystem are included in this special rule. The Committee would be responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. People could continue to kill grizzly bears in self-defense or in defense of others, with the requirement that such taking be reported within 24 hours to appropriate authorities. Following the issuance of a permit by the Service, a person would be allowed to harass a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees. A livestock owner may be issued a permit to kill a grizzly bear killing or pursuing livestock on private lands if the response protocol established by the Committee has been satisfied and it has not been possible to capture the bear or deter depredations through agency efforts. If there were

significant conflicts between grizzly bears and livestock within the experimental population area, these could be resolved in favor of livestock by capture or elimination of the bear depending on the circumstances. There would be no Federal compensation program, but compensation from existing private funding sources would be encouraged. Animal control toxicants lethal to bears are currently not used on public lands within the recovery and experimental population areas. The Service anticipates that ongoing animal damage control activities would not be affected by grizzly bear recovery. Any conflicts or mortalities associated with these activities would result in review by the Committee and any necessary changes would be recommended by the Committee.

The Idaho Department of Fish and Game, Montana Department of Fish, Wildlife, and Parks, and the U.S. Forest Service, in consultation with the Service and the Nez Perce Tribe, would exercise day-to-day management responsibility within the experimental population area while implementing the Grizzly Bear Recovery Plan Chapter for the BE, and the special rules, policies, and plans of the Committee.

The experimental population area currently does not support any grizzly bears. It is also unlikely that grizzlies from northwestern Montana have arrived in central Idaho. No evidence of grizzly bears exists in the BE. Thus, the Service has determined that the east-central Idaho reintroduction area is consistent with provisions of section 10(j) of the Act; specifically, that experimental grizzly bears must be geographically separate from other nonexperimental populations. Grizzlies dispersing into areas outside of the experimental population area would receive all the protections of a threatened species under the Act.

Although the Service has determined that there is no existing grizzly bear population in the recovery area that would preclude reintroduction and establishment of an experimental population in Idaho, the Service will continue to monitor for the presence of any grizzly bears naturally occurring in the area. Prior to any reintroduction, the Service would evaluate the status of any grizzlies found in the experimental population area.

Once this special rule is in effect and grizzly bears have been released into the recovery area, any grizzly bears found within the experimental area, including any bears that move in from outside the experimental area, will be classified as part of the experimental population. The special rule would remain in effect

unless the Secretary determines that the actions of the Committee are not resulting in recovery of the grizzly bear in the BE, in which case the Secretary will resume lead management implementation responsibility for the BE experimental grizzly bear population. The Secretary's decision will be based on the best scientific and commercial data available. Prior to resumption of lead management implementation responsibility, the Secretary will provide the Committee with recommended corrective actions and a 6-month time frame in which to accomplish those actions.

The Committee could review existing grizzly bear standards and guidelines utilized by the U.S. Forest Service and other agencies and landowners. They will be deemed adequate pending review by the Committee, and the Committee may recommend changes to the U.S. Forest Service and other agencies and landowners. Existing laws and regulations governing land management activities will promote grizzly bear recovery. The Committee's annual reviews of grizzly bear mortalities will be the primary mechanism to assess the adequacy of existing management techniques and standards.

The Committee will also be expected to develop grizzly bear guidance for proper camping and sanitation within the experimental population area. Existing grizzly bear camping and sanitation procedures developed in other ecosystems containing grizzly bears will serve as a basis for such guidelines.

The Committee also will be asked to develop specific guidance for responses to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the experimental population area. If there are significant conflicts between grizzly bears and livestock within the experimental area, these could be resolved in favor of the livestock by capture or elimination of the bear depending on the circumstances. No restrictions on trail systems in front or backcountry areas are anticipated, and policy changes on trail restrictions would be recommended by the Committee as necessary.

The Committee will revise mortality limits, population determinations, and other criteria for recovery as appropriate. The Committee also will be tasked with developing strategies to emphasize recovery in the recovery area and to accommodate grizzly bears inside the experimental area. If grizzly bears range outside the recovery area, and if

conflicts occur that are both significant and cannot be corrected as determined by the Committee, then the Committee will be expected to develop strategies to discourage grizzly bear occupancy in reoccurring trouble spots within the experimental population area. No changes in existing livestock allotments are anticipated. Unless the Committee determines otherwise, this special rule provides that private lands outside the national forest boundary in the Bitterroot Valley, Montana, comprise an area where any human/grizzly conflicts would be considered significant and not correctable. Grizzly bear occupancy will be discouraged in these areas outside the national forest boundary in the Bitterroot Valley, Montana, and grizzly bears will be captured and returned to the recovery area. The purpose of this is to ensure that grizzly bears do not move onto the private lands in the Bitterroot Valley, Montana, where human conflict potential would be high.

The Committee will also be tasked with reviewing all human-caused mortalities during the first 5 years to determine whether new measures for avoiding future occurrences are required. For example, the Committee could work with the Fish and Game Departments in both Idaho and Montana to develop solutions to minimize conflicts between grizzly bears and black bear hunting, should such conflicts occur.

The Committee will be asked to establish standards for determining whether or not the experimental reintroduction has been successful. These standards will reflect the success or failure of the program and cannot be measured in less than 10 years. General examples for such standards for failure could include—no bears remaining in the experimental population area for no apparent reason; and the relocated bears exhibiting unsuccessful reproduction as evidenced by no cubs of the year or yearlings.

All reintroduced grizzly bears designated as nonessential experimental will be removed from the wild and the experimental population status and regulations revoked if legal actions or lawsuits change their status to threatened or endangered under the Act.

Based on the above information, and utilizing the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that reintroducing grizzly bears into the BE will further the conservation and recovery of the species.

### Public Comments Solicited

The Service intends that any final rule resulting from this proposal be as accurate and effective as possible. Therefore, comments from the public, States, tribes, other concerned government agencies, the scientific community, industry, or any other party concerning this proposed rule are hereby solicited. Comments must be received within 90 days of publication of this proposed rule in the **Federal Register**.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

The Service also will hold public hearings to obtain additional verbal and written information. Hearings are proposed to be held in Boise, Orofino, and Salmon, Idaho; and Helena, Missoula, and Hamilton, Montana. The location, dates, and times of these hearings will be announced in the **Federal Register** at least 15 days prior to the first hearing, and in local newspapers.

### National Environmental Policy Act

A draft EIS under the National Environmental Policy Act is available to the public (see **ADDRESSES**). This proposed rule is an implementation of the proposed action and does not require revision of the EIS on grizzly bear recovery in the BE.

### Required Determinations

This proposed rule was not subject to review by the Office of Management and Budget under Executive Order 12866. Potential economic effects of this proposed rulemaking could occur in five areas—(1) effects on hunter harvest, (2) effects on livestock depredation, (3) effects on land use restrictions, (4) effects on visitor use, and (5) effects on existence values (U.S. Fish and Wildlife Service 1997). Because reintroduction of grizzly bears to the BE will not have any significant effect on huntable populations of ungulates in the BE, no economic impact related to hunter harvest is expected. Grizzly depredation on domestic livestock would likely be minimal during the estimated 50 years required to achieve full grizzly recovery in the BE. After recovery is achieved, depredation incidents involving livestock are expected to be between 4 and 7 cattle and between 0 and 44 sheep per year, with these losses spread over the entire BE area. Therefore, economic impacts due to livestock depredations are estimated at between \$2,260 and

\$8,003 per year. No economic impacts due to land use restrictions are expected as a result of this proposed rule because current land management practices for recreational activities, timber harvest, and mineral extraction are compatible with grizzly bear recovery in the BE and this proposed rule does not recommend any changes to current management practices. Survey results show that while visitation to the BE by local residents would likely decrease as a result of grizzly reintroduction, visitation by regional and national residents would increase, balancing out the decline in local visitation. Therefore, no significant economic impact is expected as a result of changes in visitor use. Expected effects on existence values were derived through estimation of how much individuals would be willing to contribute to a fund to support (or oppose) grizzly reintroduction in the BE as described in this proposed rule. Using this method, the Service estimates that net social benefits, including existence values, as a result of this proposed rule would be very large, on the order of \$40–\$60 million per year. This large estimate reflects the large percentage of the U.S. population that supports grizzly recovery and the fact that the grizzly bear is an extremely high profile wildlife species. Based on the above discussion, the Service concludes that this proposed rulemaking will not result in any significant impact on the U.S. economy.

The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Also, no direct costs, enforcement costs, information collection, or record-keeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as detailed in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Service has determined and certified pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The Service has further determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

### References Cited

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and Wildlife Research Unit. University of Idaho, Moscow. 54 pp.

Moore, W.R. 1984. Last of the Bitterroot grizzly. *Montana Magazine* (November–December): 8–12.

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Servheen, C., A. Hamilton, R. Knight, B. McLellan. 1991. Report of the technical review team: Evaluation of the Bitterroot and North Cascades to sustain viable grizzly bear populations. Report to the Interagency Grizzly Bear Committee. U.S. Fish and Wildlife Service, Boise, Idaho. 9 pp.

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U.S. Fish and Wildlife Service. 1996. Bitterroot Ecosystem Recovery Plan Chapter—Supplement to the Grizzly Bear Recovery Plan. U.S. Fish and Wildlife Service, Missoula, Montana. 27 pp.

U.S. Fish and Wildlife Service. 1997. Reintroduction of grizzly bears to the Bitterroot Ecosystem. Draft Environmental Impact Statement, Missoula, Montana.

Author: The principal author of this proposed rule is Dr. Christopher Servheen (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

Accordingly, the U.S. Fish and Wildlife Service hereby proposes to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

### PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed that § 17.11(h) be amended by revising the existing entry for the “Bear, grizzly (=brown)” under “MAMMALS” and adding a new entry under “Bear, Grizzly (=brown)” to read as follows:

### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
<b>MAMMALS</b>							
*	*	*	*	*	*	*	*
Bear, Grizzly (=brown) ..	<i>Ursus arctos horribilis</i>	Holarctic .....	U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	T	1, 2D, 9,—	NA	17.40(b)
Do .....	do .....	do .....	U.S.A. (portions of ID and MT, see 17.84(j)).	XN		NA	17.84( )
*	*	*	*	*	*	*	*

3. It is proposed that § 17.84 be amended by adding paragraph (k) to read as follows:

**§ 17.84 Special rules—vertebrates.**

\* \* \* \* \*

(k) Grizzly bear (*Ursus arctos horribilis*).

(1) *Definitions.* The definitions set out in § 17.3 apply to this paragraph (k). For purposes of this paragraph—

(i) The term *Bitterroot Grizzly Bear Experimental Population Area* means that area delineated in paragraph (k)(9) of this section, which includes the *Bitterroot Grizzly Bear Recovery Area*, and within which management plans developed as part of the Citizen Management Committee described in paragraph (k)(12) of this section will be in effect. This area is within the historic range of the grizzly bear.

(ii) The term *Bitterroot Grizzly Bear Recovery Area* (Recovery Area) means that area delineated in paragraph (k)(10) of this section within which a nonessential experimental population of grizzly bears is to be released. The Recovery Area is within the historic range of the species.

(iii) The term *Bitterroot Valley* means those private lands lying within the Bitterroot Experimental Population Area outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass.

(iv) The term *Citizen Management Committee* means that Committee delineated in paragraph (k)(12) of this section.

(v) The term *take* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. For purposes of this special rule, except for persons engaged in hunting or shooting activities, any person may take grizzly bears in the area defined in paragraph (k)(9) of this section, provided that such take is incidental to, and not the purpose of, an otherwise lawful activity, including activities conducted in

accordance with plans of the Committee, and provided that such taking shall be reported within 24 hours to appropriate authorities as listed in paragraph (k)(5) of this section. Persons lawfully engaged in hunting or shooting activities must correctly identify their target before shooting in order to avoid illegally shooting a grizzly bear. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.

(2) The grizzly bears to be reintroduced pursuant to this special rule will be nonessential experimental and release of grizzly bears pursuant to this special rule will further the conservation of the species.

(3) No person may take this species in the Experimental Area, except as provided in paragraphs (k)(1)(v), (4), (5), and (6) of this section.

(4) Any person with a valid permit issued by the U.S. Fish and Wildlife Service or by the appropriate State or Tribal agency pursuant to a subpermit issued by the U.S. Fish and Wildlife Service under § 17.32 may take grizzly bears in the Experimental Area for scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. Such permits must be consistent with the Act, with management plans adopted for this population and with applicable State fish and wildlife conservation laws and regulations.

(5)(i) Persons may take grizzly bears found in the area defined in paragraph (k)(9) of this section in defense of that person's own life or the lives of other persons. Such taking shall be reported within 24 hours as to date, exact location, and circumstances to the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law

Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540), and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208-334-3700), or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535), and Nez Perce Tribal authorities (as appropriate).

(ii) Any livestock owner may be issued a permit by the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks and appropriate Tribal authorities to harass grizzly bears found in the area defined in paragraph (k)(9) of this section that are actually harming or killing livestock, provided that all such harassment is by methods that are not lethal or physically injurious to the grizzly bear and such harassment is reported within 24 hours as to date, exact location, and circumstances to the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540) and either the Idaho Department of Fish and Game, P.O. Box 25, Boise, Idaho 83707 (208-334-3700), or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535), and the Nez Perce Tribal authorities (as appropriate).

(iii) Any livestock owner may be issued a permit by the U.S. Fish and



Wildlife Service, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks to take grizzly bears on private lands found in the area defined in paragraph (k)(9) of this section to protect livestock actually pursued or being killed on private property, after any response protocol established by the Committee has been satisfied and efforts to capture depredating grizzly bears by U.S. Fish and Wildlife Service or State or Tribal wildlife agency personnel have proven unsuccessful, provided that all such taking shall be reported as to date, exact location, and circumstances within 24 hours to the U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125), or U.S. Fish and Wildlife Service, Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540) and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208-334-3700), or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535), and the Nez Perce Tribal authorities (as appropriate).

(6) Any authorized employee or agent of the U.S. Fish and Wildlife Service or appropriate State wildlife agency or Nez Perce Tribe who is lawfully designated for such purposes, when acting in the course of official duties, may take a grizzly bear from the wild in the Experimental Areas if such action is necessary to:

- (i) Aid a sick, injured, or orphaned grizzly bear;
- (ii) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;
- (iii) Take a grizzly bear that constitutes a demonstrable but nonimmediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property and after it has been demonstrated that it has not been possible to eliminate such threat by live capturing and releasing the grizzly bear unharmed in the area defined in paragraph (k)(10) of this section or other areas approved by the Committee;
- (iv) Move a grizzly bear for genetic purposes;
- (v) Relocate a grizzly bear to avoid conflict with human activities;

(vi) Relocate grizzly bears within the Experimental Area to improve grizzly bear survival and recovery prospects.

(7) No person except those authorized under paragraphs (k)(4) (5) and (6) of this section shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or part thereof from the Experimental Population Area taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (k) (3) and (7) of this section.

(9) *Bitterroot Grizzly Bear Experimental Population Area*. The boundaries of the Bitterroot Grizzly Bear Experimental Population Area are delineated by U.S. 93 from Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; and Interstate 90 from Coeur d'Alene to Missoula, Montana. Grizzly bears within both the Recovery Area as defined in (k)(10) of this section and within the Experimental Area will be accommodated through management provisions provided for in this rule and through the management plans and policies developed by the Committee. All grizzly bears found in the wild within the boundaries of this paragraph (k)(9) of this section after the first releases will be considered nonessential experimental animals. In the conterminous United States, a grizzly bear that is outside the experimental area (as defined in paragraph (k)(9) of this section) would be considered as threatened unless it is marked or otherwise known to be an experimental animal.

(10) *Bitterroot Grizzly Bear Recovery Area*. The Bitterroot Grizzly Bear Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church River of No Return Wilderness. All reintroductions will take place in the Selway-Bitterroot Wilderness unless the Committee determines that reintroduction in the Frank Church River of No Return Wilderness is appropriate. The term "Bitterroot Grizzly Bear Recovery Area" used here identifies the area of recovery emphasis.

(11) *Recovery Goal*. The Bitterroot Chapter of the Grizzly Bear Recovery Plan identifies a tentative recovery goal. This recovery goal may be refined by the

Committee as grizzly bears are reintroduced and occupy suitable habitats in the Experimental Area. When the final recovery goal is met, the Secretary of the Interior intends to publish a proposed rule for the delisting of the grizzly bear population within the Experimental Area in accordance with the requirements of the Act and its regulations.

(12) *Citizen Management Committee*. This Committee shall be authorized management implementation responsibility by the Secretary of the Interior, in consultation with the governors of Idaho and Montana, for the Bitterroot grizzly bear experimental population. As soon as possible after the effective date of this rule, the Committee shall be organized by requesting nominations of citizen members by the governors of Idaho and Montana, the Nez Perce Tribe, and nomination of agency members by represented agencies.

(i) The Committee shall be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement. Membership shall consist of seven individuals appointed by the Secretary of the Interior based upon the recommendations of the Governor of Idaho, five members appointed by the Secretary of the Interior based upon the recommendations of the Governor of Montana, one member representing the U.S. Forest Service appointed by the Secretary of Agriculture or his/her designee, and one member representing the U.S. Fish and Wildlife Service appointed by the Secretary of the Interior or his/her designee. Members recommended by the Governors of Idaho and Montana shall be based on the recommendations of the interested parties and shall include at least one representative each from the appropriate State fish and wildlife agencies. If either Governor fails to make recommendations, the Secretary (or his/her designee) shall accept recommendations from interested parties on the Governor's behalf. The Committee shall consist of a cross-section of interests reflecting a balance of viewpoints, be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision making. The Committee shall be selected from communities within and adjacent to the Recovery and Experimental areas. The Secretary of the Interior shall solicit recommendations from the Nez Perce Tribe and shall appoint one member. The Secretary of the Interior shall fill vacancies as they occur with the appropriate members

based on the recommendation of the appropriate Governor or the Nez Perce Tribe.

(ii) The Committee will be authorized and tasked with:

(A) Developing a process for obtaining the best biological, social, and economic data, which shall include an explicit mechanism for peer-reviewed, scientific articles to be submitted to and considered by the Committee, as well as periodic public meetings (not less than every 2 years) in which qualified scientists may submit comments to and be questioned by the Committee. The Committee will base its decisions upon the best scientific and commercial data available. All decisions of the Committee including components of its management plans must lead toward recovery of the grizzly bear and minimize social and economic impacts.

(B) Soliciting technical advice and guidance from outside experts.

(C) Implementing the Bitterroot chapter of the Grizzly Bear Recovery Plan. Develop management plans and policies, as necessary, for the management of grizzly bears in the Experimental Area. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee shall give full consideration to the comments and opinions of the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, and the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(D) Providing means by which the public may participate in, review, and comment on the decisions of the Committee. The Committee must thoroughly consider and respond to public input prior to its decisions.

(E) Developing its internal processes, where appropriate, such as governance, decision making, quorum, officers, meeting schedules and location, public notice of meetings, minutes, etc. Given the large size of the Committee, an affirmative vote by a simple majority is sufficient to approve any Committee decisions.

(F) Requesting staff support from Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, the U.S. Fish and Wildlife Service, the U.S. Forest Service, other affected Federal agencies, and the Nez Perce Tribe, to perform administrative functions and reimburse Committee members for costs associated with meetings, travel, and incidentals.

(G) Reviewing existing grizzly bear standards and guidelines utilized by the U.S. Forest Service and other agencies and landowners. Existing Forest Plan standards and guidelines, as amended,

will be deemed adequate pending review by the Committee. The Committee reviews of grizzly bear mortalities will be the primary mechanism to assess the adequacy of existing management techniques and standards. If the Committee deems such standards and guidelines inadequate for recovery of grizzly bears, the Committee may recommend changes to the U.S. Forest Service and other agencies and landowners.

(H) Developing grizzly bear guidance for proper camping and sanitation within the Experimental Area. Existing grizzly bear camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(I) Develop response protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Area. Any response protocol developed by the Committee will have to undergo public comment and be revised as appropriate based on comments received. Any conflicts or mortalities associated with these activities will result in review by the Committee to determine any recommendations that the Committee can make to help prevent future conflicts or mortalities. Policy changes on trail restrictions will be recommended by the Committee as necessary to appropriate wildlife and land management agencies.

(J) Revising mortality limits, population determinations, and other criteria for recovery as appropriate.

(K) Reviewing all human-caused mortalities during the first 5 years to determine whether new measures for avoiding future occurrences are required. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the Fish and Game Departments in both Idaho and Montana to develop solutions to minimize conflicts between grizzly bears and black bear hunting.

(L) Developing strategies to emphasize recovery inside the recovery area and to accommodate grizzly bears inside the Experimental Area. Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Area. Where conflicts are both significant and cannot be corrected as determined by the Committee, including conflicts associated with livestock, the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Area. Unless the Committee determines otherwise, this rule provides that

private lands outside the national forest boundary in the Bitterroot Valley are an area where any human/grizzly conflicts would be considered significant. Grizzly bear occupancy will be discouraged in these areas and grizzly bears will be captured and returned to the Recovery Area.

(M) Establishing standards for determining whether or not the experimental reintroduction has been successful. It is recognized that absent extraordinary circumstances, these standards will reflect that the success or failure of the program cannot be measured in less than 10 years. General guidelines for such standards include one or more of the following conditions:

(1) If, within the number of years established by the Committee following initial reintroduction, no relocated grizzly bear remains within the Experimental Area and the reasons for emigration or mortality cannot be identified and/or remedied;

(2) If, within the number of years established by the Committee following initial reintroduction, no cubs of the year or yearlings exist and the relocated bears are not showing signs of successful reproduction as evidenced by no cubs of the year or yearlings.

(N) Develop procedures for the expeditious issuance of permits described in paragraph (k)(5)(iii) of this section.

(O) Develop 2-year work plans for submittal to the Secretary of the Interior pursuant to paragraph (k)(14) of this section.

(P) The Committee may recommend refined recovery goals for the Bitterroot Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available. Sufficient information is currently not available to develop a scientifically sound recovery goal. As this information becomes available, the Committee may recommend the recovery goal to the Secretary of the Interior and procedures for determining how this goal will be measured. The recovery goal for the Bitterroot grizzly bear population will be consistent with the habitat available within the Recovery Area and the best scientific and commercial data available. Any revised recovery goals developed by the Committee will require public review appropriate for the revision of a recovery plan. Bears outside the Recovery Area will contribute to meeting the recovery goal if there is reasonable certainty for their long-term occupancy in such habitats outside the Recovery Area.

(13) The Idaho Department of Fish and Game and the Montana Department

of Fish, Wildlife and Parks, in consultation with the U.S. Fish and Wildlife Service and Nez Perce Tribe, will exercise day-to-day management responsibility within the Experimental Area in accordance with this rule, the Bitterroot Chapter in the Grizzly Bear Recovery Plan and the policies and plans described in (k)(12) of this section.

(14) The Secretary of the Interior or his or her designee shall review 2-year work plans to be submitted by the Committee which outline the directions for the Bitterroot reintroduction effort. If the Secretary of the Interior determines, through his/her representative on the Committee that the decisions of the Committee, the management plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the Experimental Area, the Secretary of the Interior's representative on the Committee shall solicit from the Committee a determination whether the decision, the plan, or implementation of components of the plan are leading to recovery. Notwithstanding a determination by the Committee that a decision, plan, or implementation of a plan are leading to recovery of the grizzly bear within the Experimental Area, the Secretary of the Interior, who necessarily retains final responsibility and authority for implementation of the Endangered Species Act, may find that the decision, plan, or implementation of a plan are inadequate for recovery and may resume lead management responsibility. In the event that the Secretary of the Interior determines that

the actions of the Committee are not leading to recovery of the Bitterroot grizzly bear population, then the Secretary of the Interior shall resume lead management implementation responsibility for the Bitterroot experimental grizzly bear population. The Secretary of the Interior's decision shall be based on the best scientific and commercial data available. Prior to such resumption of lead management implementation responsibility, the Secretary of the Interior shall provide the Committee with recommended corrective actions and a 6-month time frame in which to accomplish those actions. Should the Secretary resume lead management responsibility, the Committee would be disbanded and all requirements identified in this rule regarding the Committee would be automatically nullified. If the Secretary does not resume lead management responsibility, the Committee shall continue until the recovery objectives have been met and the Secretary of the Interior has completed delisting.

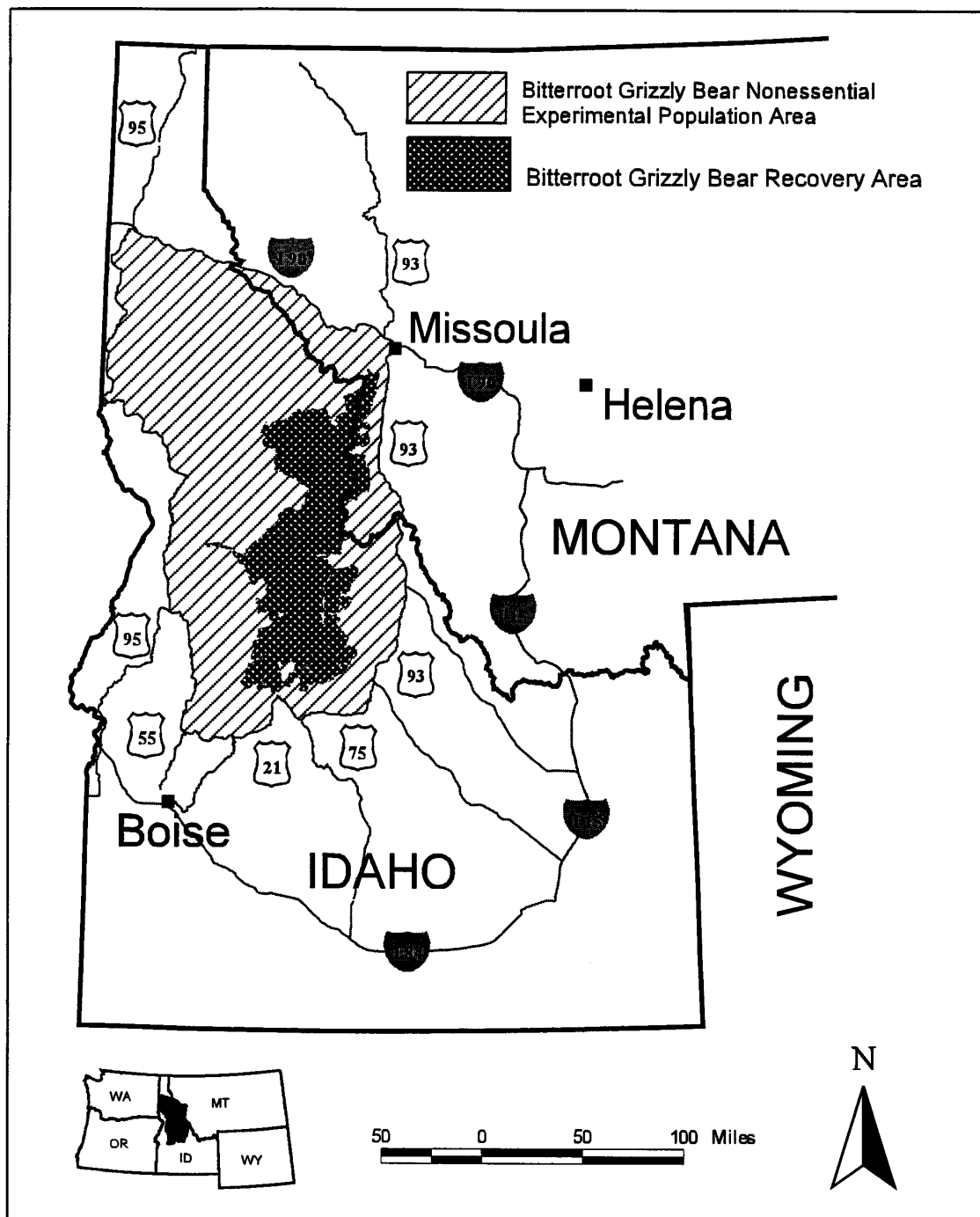
(15) The reintroduced population will be monitored closely for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(16) The status of Bitterroot grizzly bear recovery will be reevaluated by the Committee and Secretary of the Interior at 5-year intervals. This review will take into account the reproductive success of the grizzly bears released, human-caused mortality, movement patterns of individual bears, food habits, and overall health of the population and will

recommend changes and improvements in the recovery program.

(17) *Determination of an Unsuccessful Reintroduction Under Nonessential Experimental Designation by the Secretary of the Interior.* If, based on any of the criteria established by the Committee, unless the Secretary of the Interior has resumed management under (k)(14) of this section, the Secretary of the Interior concludes, after consultation with the Committee, the States of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, that the reintroduction has failed to produce a self-sustaining population, this rule will not be utilized as authority to reintroduce additional grizzly bears. Any remaining bears will retain their experimental status. Prior to declaring the experimental reintroduction a failure, a full evaluation will be conducted by the U.S. Fish and Wildlife Service into the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, consideration will be given to continuing the relocation effort and the relocated population. If such reasonable measures cannot be identified and implemented, the results of the evaluation will be published in the **Federal Register** with a proposed rulemaking to terminate the authority for additional experimental reintroductions.

BILLING CODE 4310-55-P



Dated: June 3, 1997.

**William Leary,**

*Acting Deputy Assistant Secretary, Fish,  
Wildlife and Parks.*

[FR Doc. 97-17136 Filed 7-1-97; 8:45 am]

BILLING CODE 4310-55-C