

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R7-ES-2012-0033;
70120-1113-0000-C3]

RIN 1018-AW57

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Wood Bison in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the State of Alaska, propose to establish a nonessential experimental population of wood bison in central Alaska, in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This proposal, if made final, would also establish provisions under which wood bison in Alaska would be managed. We are seeking comments on this proposal and on our draft environmental assessment, prepared pursuant to the National Environmental Policy Act of 1969, as amended, which analyzes the potential environmental impacts associated with the proposed reintroduction.

DATES: To ensure that we are able to consider your comments on this proposed rule, they must be received or postmarked on or before March 19, 2013. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 4, 2013.

ADDRESSES: *Comments:* You may submit written comments and other information on this proposed rule or on the draft Environmental Assessment (EA) by either one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R7-ES-2012-0033 and then follow the instructions for submitting comments. We request that comments be submitted through <http://www.regulations.gov> whenever possible.

U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-ES-2012-0033; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal

information you provide us (see the Public Comments section below for more information).

Copies of Documents: This proposed rule and the draft EA are available at <http://www.regulations.gov> at Docket No. FWS-R7-ES-2012-0033. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Fish and Wildlife Service Regional Office, Fisheries and Ecological Services, at 1011 East Tudor Road, Anchorage, AK 99503. Additional background and supporting information is provided in the Alaska Department of Fish and Game (ADF&G) Environmental Review of Wood Bison Restoration in Alaska (ADF&G 2007), which can be accessed online at: <http://www.adfg.alaska.gov/index.cfm?adfg=woodbison.management>.

FOR FURTHER INFORMATION CONTACT: Sonja Jahrsdoerfer, 1011 East Tudor Road, Anchorage, AK 99503, (907) 786-3323, or email woodbison-AK@fws.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Under the Endangered Species Act, the Service may establish an experimental population, allowing for the reintroduction of a species to its former range with special rules that allow for some of the management requirements of the ESA to be relaxed to facilitate acceptance by local landowners and managers. The Alaska Department of Fish and Game (ADF&G) proposes to reintroduce wood bison (*Bison bison athabasca*) into one or more of three areas within their historical range in central Alaska (Yukon Flats, Minto Flats, and the lower Innoko/Yukon River area). If this proposed rule is adopted, the Alaska Department of Fish and Game (ADF&G) would have primary management responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service. ADF&G would serve as the lead agency in the reintroduction and subsequent management of wood bison in Alaska; however, ADF&G would continue to coordinate with the Service on these restoration efforts. Management of populations in the NEP area would be guided by provisions in: (1) The associated special rule; (2) the EA for this action and ADF&G's environmental review; and (3) management plans developed for each area by ADF&G with

involvement of landowners and other stakeholders. The rule would also allow for future regulated hunting based on sustained yield principles, once the herds are deemed sufficiently resilient to support such.

Public Comments

To ensure that any final action resulting from this proposed rule will be as effective as possible and that the final EA on the proposed action will evaluate all potential issues associated with this action, we invite the public, including Tribal and other government agencies, the scientific community, industry, and other interested parties, to submit relevant information for our consideration. Comments on the proposed rule and the draft EA that will be most useful are those that are supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. We particularly seek comments concerning:

(1) Any information on the biological or ecological requirements of wood bison;

(2) Current or planned activities in the proposed nonessential experimental population (NEP) area;

(3) Current or planned management of the NEP population; and

(4) Any information concerning the boundaries of the proposed NEP area.

We will take into consideration all comments and additional information we receive in order to determine whether to issue a final rule to implement this proposed action and whether to prepare a finding of no significant impact or an environmental impact statement. Comments we receive may lead to a final rule that differs from this proposal.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. Comments submitted to <http://www.regulations.gov> must be received before midnight (Eastern Time) on the date specified in the **DATES** section. All comments, whether submitted in hard copy or via <http://www.regulations.gov>, become part of the supporting record and will be posted on the Web site. You may request at the top of your document that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. Please note that comments submitted to <http://www.regulations.gov> are not immediately viewable. The system

receives comments immediately, but they are not publically viewable until we post them.

All electronic and hard copy comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov> and also by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Fisheries and Ecological Services, Anchorage, AK (see **ADDRESSES**).

Public Hearings

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) provides for public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by the date shown in the **DATES** section.

Background

Legislative

Under Canada's Species at Risk Act (SARA) (Ministry of Justice, Canada, <http://laws-lois.justice.gc.ca>), the wood bison is listed as threatened, having been reclassified from endangered to threatened status in 1988. In the United States, the wood bison was first listed under the Endangered Species Conservation Act of 1969 as endangered (see 35 FR 8491, June 2, 1970). The Canadian National Wood Bison Recovery Team petitioned the Service to reclassify the wood bison as threatened, and on February 8, 2011, we published in the **Federal Register** (1) a 12-month finding indicating that the petitioned action was warranted, and (2) a proposed rule to reclassify the wood bison as a threatened species (76 FR 6734). On May 3, 2012 the status of the wood bison was reclassified to threatened (86 FR 26191).

Under the ESA, species listed as endangered or threatened are afforded protection largely through the prohibitions of section 9, the requirements of section 7, and corresponding implementing regulations. Section 9 of the ESA and its implementing regulations at 50 CFR 17.21 and 17.31, in part, prohibit any person subject to the jurisdiction of the United States to take ("take" includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. The term

'harm' is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. It also is illegal to knowingly possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 7 of the ESA and its implementing regulations at 50 CFR part 402 outline the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. Under section 7(a)(1) of the ESA, all Federal agencies are directed to use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered or threatened species. Section 7(a)(2) of the ESA states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Congress amended the Endangered Species Act of 1973, in 1982, with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Under section 10(j) of the ESA, the Secretary of the Interior can designate reintroduced populations established outside the species' current range as "experimental." Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. A threatened designation allows us discretion in devising management programs and special regulations for the population. Further, when we promulgate a section 10(j) rule for a species, the regulations at 50 CFR 17.31 that extend most section 9 prohibitions to threatened species do not apply, as the generic regulations are superseded by the section 10(j) rule, which contains the specific prohibitions and exemptions necessary and appropriate to conserve that species.

As experimental populations uniformly carry "threatened" status, section 4(d) of the ESA applies. Section 4(d) of the ESA allows us to adopt whatever regulations are necessary and

advisable to provide for the conservation of a threatened species. Although the ESA limits the type of regulated take available for the conservation of threatened species, the Secretary is granted broad flexibility in promulgating "special" regulations under section 4(d) of the ESA to protect threatened species, and may allow for direct take, as has been done in the past, for example, with Gila trout (71 FR 40657, July 18, 2006).

Based on the best available information, we must determine whether experimental populations are "essential" or "nonessential" to the continued existence of the species. Experimental populations, whether essential or nonessential, are treated as a threatened species. However, for section 7 interagency cooperation purposes only, an NEP located outside of a National Wildlife Refuge or National Park is treated as a species proposed for listing.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, only two provisions of section 7 of the ESA apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2) of the ESA. Section 7(a)(4) requires Federal agencies to confer (rather than consult, as required under section 7(a)(2)) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. A conference results in conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. However, because an NEP is by definition not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP. Thus, regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Animals used to establish an experimental population may be obtained 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. In 2008, 53 wood bison were imported into Alaska after necessary permits and approvals were obtained. The primary original source of Alaska's wood bison is a captive-bred population at Elk Island National Park (EINP), Alberta, Canada, which was propagated for the purpose of providing disease-free stock for reestablishing

populations in other parts of the species' original range (Gates *et al.* 2001, p. 15). These animals are presently maintained at the Alaska Wildlife Conservation Center (AWCC) in Portage, Alaska, where additional, disease-free, wood bison (obtained as a result of an illegal import in 2003) are also held.

Canada's "National Recovery Plan for the Wood Bison" includes the specific goal of reestablishing at least four viable populations of 400 or more wood bison in Canada (Gates *et al.* 2001, pp. 32–33). This plan supports fostering the "restoration of wood bison in other parts of their original range and in suitable habitat elsewhere" but sets no discrete goals for recovery in other parts of the species' range. The Wood Bison Recovery Team places a high priority on the reintroduction of wood bison to Alaska (Gates *et al.* 2001, pp. 32–33). The reestablishment of free-ranging, disease-free wood bison in Alaska would contribute to the overall conservation of wood bison in North America. However, future loss of a wood bison NEP from Alaska would not reduce the likelihood of the species' survival in its current range in Canada, which encompasses the only populations Canada evaluates when considering the status of the species for listing purposes under SARA. Consequently, because their loss would not appreciably reduce the likelihood of survival of the species in the wild, the Service finds that any wood bison populations established in Alaska would meet the definition of "nonessential" (*see* 50 CFR 17.80(b)). Therefore, we propose to designate a nonessential experimental population of wood bison in Alaska.

Biological

Members of the family Bovidae, wood bison are the largest native terrestrial mammal in the western hemisphere, with adult bulls weighing 2,000 pounds (900 kilograms) or more (Reynolds *et al.* 2003, p. 1015). Wood bison are somewhat larger than the other extant bison subspecies in the United States, the plains bison (*B. b. bison*), and are distinguished by a more pronounced hump, forward-falling display hair on the head, reduced chaps and beard, and different variegation and demarcation on the cape (van Zyll de Jong *et al.* 1995, pp. 393–396). Specimen collections and historical accounts indicate that the historical range of wood bison included much of Interior and Southcentral Alaska, and the Yukon, the western Northwest Territories, and northern Alberta and British Columbia in Canada (Stephenson *et al.* 2001, pp. 135–136; Reynolds *et al.* 2003, pp. 1012–1013).

Wood bison are predominantly grazers, foraging mainly on grasses and sedges that occur in northern meadows (Larter and Gates 1991, p. 2679).

Wood bison were present in Alaska for most of the last 5,000 to 10,000 years (Stephenson *et al.* 2001, pp. 125, 145–146). Detailed historical accounts from Athabaskan elders in Alaska describe how bison were hunted and used and indicate that bison were an important source of food for Athabaskan people before the population declined to low levels within the last few hundred years (Stephenson *et al.* 2001, pp. 128–134). The most recent recorded sightings of wood bison in Alaska were from the early 1900s, of small groups or single animals in northeastern Alaska (Stephenson *et al.* 2001, pp. 129–134). Factors leading to the extirpation of wood bison from Alaska most likely included unregulated hunting by humans, along with the isolation of subpopulations caused by changes in habitat distribution during the late Holocene (Stephenson *et al.* 2001, pp. 146–147).

Wood bison were largely extirpated from Alaska and much of their original range in Canada by about 1900 (Stephenson *et al.* 2001, p. 140). At that time, only a few hundred animals existed in northeastern Alberta. Intensive conservation efforts in Canada beginning around 1900 are principally responsible for preventing the species' extinction (Gates *et al.* 2001, pp. 11–21). However, the translocation of surplus plains bison into Wood Buffalo National Park in the 1920s (Carbyn *et al.* 1993, pp. 25–27) resulted in some genetic dilution of wood bison, as well as the introduction of domestic cattle diseases into this population (Gates *et al.* 2001, p. 35). Cattle diseases, including bovine brucellosis and bovine tuberculosis, are still a management concern in some herds in Canada (Gates *et al.* 2010, pp. 28–32; USDA 2008, p. 10). The susceptibility of wood bison and other native ungulates to these diseases underscores the importance of rigorous disease-testing protocols prior to releasing wood bison in Alaska (ADF&G–ADEC 2008).

Recovery Efforts

Recovery efforts in Canada have been very successful. There are approximately 10,000 free-ranging wood bison in Canada today, including about 4,500 in 7 free-ranging, disease-free herds and 5,000 in 4 free-ranging herds that are not disease-free. In 1978, there was 1 free-ranging, disease-free herd with 300 individuals, the MacKenzie herd. By 2000, when the last Canadian status review was conducted, the

number of disease-free herds had grown to 6, with a total of approximately 2,800 individuals. Since 2000, an additional herd has been established, bringing the total number of herds to 7, and the number of disease-free, free-ranging bison has increased to approximately 4,500. Four of the herds have a population of 400 or more, meeting one of the primary recovery goals. An additional 300 animals are held in a publicly owned captive herd (Elk Island National Park herd) that is maintained for conservation purposes (<http://www.pc.gc.ca/pn-np/ab/elkisland/natcul/natcul1/b/ii.aspx>, viewed October 12, 2011). There are also 45 to 60 commercial wood bison operations in Canada, with approximately 500 to 700 animals (Canadian Wildlife Service, unpublished data 2009). Although commercial wood bison herds are not a part of Canada's recovery programs, their existence indicates that wood bison will propagate readily, given sufficient space and proper nutrition.

The National Wood Bison Recovery Plan, prepared by Canada's National Wood Bison Recovery Team, is currently being updated (Wilson, Environment Canada, 2011, pers. comm.). In addition, the State of Alaska has outlined plans for wood bison restoration and will complete detailed management plans developed with public input, for each bison release area before wood bison are reestablished. If this proposal is adopted, any wood bison reintroduced to Alaska would be designated as nonessential to recovery and experimental.

Role of Regulated Hunting in Recovery

Regulated hunting has been used in Canada since 1987 to manage wood bison herds and is consistent with the recovery goals in the Canadian wood bison recovery plan. Herds with regulated harvest have increased in size (76 FR 6734, February 8, 2011). For example, the Mackenzie herd, which was established in 1963, first supported harvest in 1987 and now has grown to approximately 2,000 head, supporting an annual harvest of approximately 40 animals (http://www.enr.gov.nt.ca/_live/pages/wpPages/Mackenzie_Bison.aspx, viewed October 14, 2011). Regulated hunting has been used to (1) maintain herd size within the carrying capacity of the landscape; (2) reduce the potential for the spread of disease; (3) address public safety concerns near roads; and (4) increase community support for reestablished wood bison herds. Where hunting is allowed, it can lead to increased revenue for monitoring and management of the herds.

Sustainable levels of hunting of wood bison in Alaska would serve some of these same purposes, particularly securing the support of project sponsors (e.g., ADF&G, local communities, and nongovernmental organizations involved in the project). Because reintroduction of wood bison to Alaska depends heavily on this support, including provisions for hunting as a future management option is an essential component of this proposed rule. Moreover, provisions for future regulated hunting will assure landowners and development interests that the reintroduction of wood bison would not interfere with natural resource development or other human activities. Without such assurances, the reintroduction of wood bison to Alaska is unlikely to be acceptable to the public, development interests, or the Alaska State Legislature. Thus, we believe that the opportunity for Alaska to contribute to the overall recovery and conservation of wood bison will be lost if provisions for hunting are not included in this rulemaking.

Alaska Reintroduction Goals and Objectives

The proposed reintroduction of wood bison to Alaska is patterned after the successful reintroductions made in Canada. The goal of the Alaska wood bison restoration project is to reestablish one to three free-ranging populations. In addition to contributing to the conservation and recovery of wood bison in North America, objectives of the Alaska reintroduction effort include (1) restoring a key indigenous grazing animal to northern ecosystems; (2) restoring biological and habitat diversity and natural processes; (3) increasing the total number of wood bison in free-ranging, disease-free herds, thereby enhancing the overall survival of the species in the wild; (4) providing a basis for sustainable development, including opportunities for local tourism, and, in the future, hunting and other guiding businesses; and (5) reestablishing the historical cultural connection between bison and Alaska residents (ADF&G 2007, pp. 2–3).

Although many private landowners within the proposed NEP area have indicated support for the presence of wood bison on their lands in the future, some major private landowners have expressed concerns about the potential legal and regulatory burdens related to the ESA and wood bison, including effects on other resource development activities. Provisions of the proposed special rule would ensure that the reintroduction of wood bison would not

impede existing or potential future resource development activities.

Wood bison would be released only after a suitable management framework has been developed by the State in cooperation with landowners, land managers, the Service, conservation organizations, and Tribal and local governments. Because the reintroduction sites in Alaska are remote and roadless and create logistical and economical challenges for traditional management approaches (e.g., herding, fencing), the most feasible means of population control in the future, if it were needed, would likely be regulated hunting. Hunters in Alaska are accustomed to accessing (e.g., bush planes, float planes) and traveling (e.g., snow machines, off-road vehicles, hiking) in roadless areas and represent a feasible and economical method of population control. As mentioned above, wood bison in some herds in northern Canada are legally harvested under Territorial or Provincial hunting regulations, and regulated harvest is considered one of the primary management tools in conservation of the species.

Experience with bison reintroductions elsewhere indicates that reintroduced wood bison populations in Alaska are likely to prosper in the areas where the State of Alaska proposes to restore the species (ADF&G 2007, pp. 11–12). However, temporary fluctuations in numbers may occur, which would not constitute a reason to reevaluate or change the NEP status. We do not intend to change the NEP designation unless the wood bison is no longer listed as endangered or threatened under the ESA, in which case the NEP designation would be discontinued.

Source of Stock

In June 2008, under permits obtained from the Service, U.S. Department of Agriculture, Canadian Wildlife Service, and the State of Alaska, 53 wood bison were translocated from the disease-free EINP herd to a temporary holding facility at the AWCC, where they joined a small existing herd that was confiscated in 2003 after being imported illegally. As of October 2011, more than 100 wood bison were at AWCC. All of these animals have been subjected to a rigorous disease-testing protocol while preparations are made for release of free-ranging wood bison in Alaska (ADF&G–ADEC 2008).

Reintroduction Sites

ADF&G has identified three areas that would provide suitable habitat for wood bison. These sites were selected based on intensive evaluations of potential

habitat conducted in seven areas in Interior Alaska between 1993 and 2006 (Berger *et al.* 1995, pp. 1–9; ADF&G 1994, pp. 10–14; Gardner *et al.* 2007, pp. 1–24). Following the recommendations of Canada's Wood Bison Recovery Team, suitable release sites should: (1) Support a minimum population of 400 bison, (2) be separate from areas inhabited by plains bison, and (3) not have conflicting land uses such as agriculture (Gardner *et al.* 2007, p. 2). Based on forage availability, three areas in Alaska—the Yukon Flats, Minto Flats, and lower Innoko/Yukon River—were determined suitable to support viable populations of wood bison (ADF&G 2007, p. 27). The Yukon Flats offers the best habitat and can support in excess of 2,000 bison (Berger *et al.* 1995, p. 8). Minto Flats offers abundant forage, but the area is relatively small, and access to wet habitats may be limited during summer. The lower Innoko/Yukon River area offers suitable habitat that could possibly support 400 or more wood bison (Gardner *et al.* 2007, p. 8). Characteristics of each selected reintroduction site are described in more detail in the draft EA associated with this proposed action (see **ADDRESSES** for information on obtaining a copy of the draft EA).

Locations of the three potential wood bison reintroduction sites and boundaries of the proposed NEP are shown in Figure 1 (below). The boundaries of the proposed NEP represent our interpretation of the best available information on the extent of the wood bison's historical occurrence in Alaska. This historical range includes substantial areas with little or no suitable bison habitat, interspersed with localized areas that would provide high-quality habitat. By proposing this large area for NEP designation, we do not imply that most or all of the area within the NEP boundary is suitable habitat for wood bison.

Reintroduction Procedures

In conformance with recommendations of bison geneticists and conservation biologists, about 40 captive-raised wood bison should be released at a single site within the NEP area in the first year of the program, and a similar number may be released at each of two additional sites in subsequent years. Additional bison may be released in each area if stock and funding are available. Released wood bison would be excess to the needs of captive-breeding herds at EINP and AWCC, and their release would not affect the genetic diversity of the captive wood bison populations. Wood bison released in Alaska would be tagged with

passive radio frequency tags, and some bison would be radio-collared. Population monitoring would include telemetry studies and aerial population surveys to determine and monitor population size, productivity, and movements.

A temporary holding facility consisting of up to 5 to 10 fenced acres (2 to 4 hectares), a small camp, and a supply of hay would be provided at each release site. Ideally, wood bison would be transported to the site in late winter or early spring and held for several weeks prior to release to allow them to acclimate in their new location. A more detailed review of reintroduction procedures is included in the draft EA (see **ADDRESSES** for information on obtaining a copy of the draft EA).

ADF&G, the Service, and reintroduction cooperators would evaluate the success of each reintroduction effort and apply knowledge gained to subsequent efforts, thereby increasing the efficiency and long-term success in wood bison restoration in Alaska. ADF&G would work with various cooperators to monitor population growth and movements, and to conduct basic long-term environmental monitoring.

Legal Status of Reintroduced Populations

Based on the current legal and biological status of the species and the need for management flexibility, and in accordance with section 10(j) of the ESA, the Service proposes to designate all wood bison released in Alaska as members of the NEP. Such designation allows us to establish a special rule for management of wood bison in Alaska, thus avoiding the general section 9 prohibitions that would otherwise limit our management options. The legal and biological status of the species and the need for management flexibility resulted in our decision to propose the NEP designation for wood bison reintroduced into Alaska.

The proposed section 4(d) special rule associated with this proposed NEP designation would further the conservation of wood bison by allowing their reintroduction to a large area within their historical range. The special rule would provide assurances to landowners and development interests that the reintroduction of wood bison would not interfere with natural resource development or other human activities. Without such assurances, the reintroduction of wood bison to Alaska would not be acceptable to the public, development interests, or the Alaska State Legislature. Except as provided for

under section 10(e) of the ESA or as described in the proposed section 4(d) special rule associated with this proposed NEP rule, take of any member of Alaska's wood bison NEP would be prohibited under the ESA.

Geographic Extent of the Proposed Rule

The proposed geographic extent for the Alaska wood bison NEP includes the Yukon, Tanana, and Kuskokwim River drainages in northern Alaska (refer to Figure 1 in the rule portion of this document). Section 10(j) of the ESA requires that an experimental population be geographically separate from other wild populations of the same species. Because wild wood bison no longer exist in Alaska, the reintroduced herd(s) would not overlap with any existing wild wood bison population. Wood bison herds established in Alaska would be separated from the nearest wild population in Canada (Aishihik herd in Yukon) by at least 450 miles (725 kilometers) of mostly hilly or mountainous terrain, which would deter long-distance movements between herds.

All released wood bison and their offspring would likely remain in areas adjacent to release sites and well within the boundaries of the NEP area due to the presence of prime habitat (extensive meadow systems that will provide an abundance of preferred forage for bison) and surrounding geographic barriers. The geographic area being proposed for NEP designation represents what ADF&G believes to be the maximum geographic extent to which bison populations might expand if they are reestablished in Alaska.

Management

(a) *Authority and planning.* If this proposed rule is adopted, ADF&G would serve as the lead agency in the reintroduction and subsequent management of wood bison in Alaska; however, ADF&G would continue to coordinate with the Service on these restoration efforts. If this proposed rule is adopted, the Service would delegate management authority to ADF&G, contingent upon periodic reporting in conformity with Federal regulations. Management of populations in the NEP area would be guided by provisions in: (1) The associated special rule; (2) the EA for this action and ADF&G's environmental review; and (3) management plans developed for each area by ADF&G with involvement of landowners and other stakeholders.

The ADF&G would use public planning processes to develop implementation and management plans for wood bison restoration. Planning

would include representatives from local communities, regional population centers, landowners, Alaska Native interests, wildlife conservation interests, industry, and State and Federal agencies as appropriate for each area. Draft management plans would be circulated for public review, and final plans would be presented to the Alaska Board of Game and Federal Subsistence Board for review and approval. More detailed information on wood bison reintroduction and management is provided in the EA associated with this proposed action (see **ADDRESSES** for information on obtaining a copy of the draft EA).

(b) Population monitoring.

Reintroduced wood bison populations would be monitored annually and during important seasonal periods. Biological data necessary for long-term bison management would be obtained from annual spring population surveys, fall or winter composition counts, and monitoring of herd movements. Bison populations are relatively easy to monitor because of their visibility, gregarious nature, and fidelity to seasonal ranges (ADF&G 2007, p. 12).

Through public outreach programs, ADF&G would inform the public and other State and Federal agencies about the presence of wood bison in the NEP area. Reports of injured or dead wood bison would be required to be provided to ADF&G (see the draft EA for contact information) for a determination of the cause of injury or death.

(c) Disease monitoring and prevention.

Because of the extensive disease-testing programs at EINP (U.S. Department of Agriculture 2008, pp. 5–13) and at AWCC (ADF&G–ADEC 2008), the risk of reintroduced wood bison being infected with serious diseases is negligible. The ADF&G would continue to obtain samples for disease testing as opportunities arise in connection with future wood bison radio-collaring efforts or harvests. In the unlikely event that a disease posing a significant threat to wood bison, other wildlife, or humans were to occur, the situation would be addressed through appropriate management actions, including vaccination or other veterinary treatment, culling, or removal of an entire herd, as described in the draft EA.

(d) *Genetics.* Wood bison selected for reintroduction are excess to the needs of the captive populations in Canada. The ultimate goal is to reestablish wild wood bison populations in Alaska with founding animals that are as genetically diverse as possible. Population objectives for each area would be developed during public management planning efforts, and would consider

conservation guidelines for population and genetic management.

(e) *Mortality.* Based on experience in reestablishing bison in other northern habitats, wood bison mortality is expected to be minimal after release (Gates and Larter 1990, p. 235). Public education, to be conducted by ADF&G for each release, would help reduce potential sources of human-caused mortality. Based on the results of previous releases of disease-free wood bison, it is unlikely that predator management would be needed to allow populations to be successfully reestablished. A review of predator-prey interactions (ADF&G 2007, p. 43) is available online at: http://www.adfg.alaska.gov/static/species/speciesinfo/woodbison/pdfs/er_no_appendices.pdf.

Section 10 of the ESA authorizes the Secretary of the Interior to permit "incidental take," which is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, such as recreation, livestock grazing, oil and gas or mineral exploration and development, timber harvesting, transportation, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. If this proposed rule is made final, a person could take a wood bison within the NEP area provided that the take is: (1) Unintentional, and (2) not due to negligent conduct. Such incidental take would not constitute "knowing take," and neither the Service nor the State would pursue legal action. If we have evidence of knowing (i.e., intentional) take of a wood bison that is not authorized, we would refer matters to the appropriate authorities for prosecution.

Highway vehicles and trains can pose a risk to bison (Rowe 2007, p. 8). In Alaska, the only area where vehicle collisions might occur is in the vicinity of the Minto Flats, where the Parks Highway and the Alaska Railroad border the southeastern edge, and the Elliot Highway approaches the northern edge of the area. There are currently no roads in the Yukon Flats or lower Innoko/Yukon River area. However, roads could be constructed within these areas in the future to support resource developments or for other purposes.

If this proposed rule is adopted, regulations to prohibit hunting until it would be sustainable would be developed and enforced by the appropriate law enforcement entity with jurisdiction for the area. Public education and enforcement activities would reduce the risk of illegal hunting. Based on results of similar efforts in Canada, we expect a low rate of natural

or incidental mortality (Gates *et al.* 2001, pp. 30–40). If significant illegal mortality does occur in any given year, the State would develop and implement measures to reduce the level of mortality to the extent possible.

(f) *Special handling.* If this proposed rule is adopted, ADF&G biologists, Service employees, and authorized agents acting on behalf of ADF&G or the Service may handle wood bison: (1) For scientific purposes; (2) to relocate bison to avoid conflict with human activities; (3) for conservation purposes; (4) to relocate wood bison to other reintroduction sites; (5) to aid sick, injured, or orphaned wood bison; and (6) to salvage dead wood bison. The Service would work with ADF&G to determine appropriate procedures for handling all sick, injured, orphaned, and dead wood bison.

(g) *Potential for conflict with oil and gas development, mineral development, recreation, and other human activities.* Several natural resource development projects that could be important to Alaska's economy are located within or near the three potential wood bison restoration sites. There is ongoing exploration and potential oil and gas development in the Minto Flats and Yukon Flats areas, and potential for a gold mine in an area about 30 to 40 miles (48 to 64 kilometers) east of the expanse of potential wood bison habitat near the lower Innoko/Yukon River area (Liles 2010, p. 1; U.S. Department of the Interior 2005, pp. 1–18; Barrick/Novagold 2008). However, wood bison are relatively tolerant of human activity and resource development activities (ADF&G 2007, p. 47; Fortin and Andruskiw 2003, p. 811). They are mobile and adaptable animals that can use a variety of habitats. Their large size and social nature also make them relatively easy to monitor (e.g., by aerial surveys) and manage.

Because wood bison will be introduced as an NEP, we expect their establishment will not preclude or conflict with the development of oil, gas, and mineral resources or other human activities. Minor conflicts between livestock grazing or agriculture and wood bison management might eventually occur in the southeast corner of the Minto Flats, where a few small agricultural operations exist. Such conflicts would be addressed through negotiations and cooperative habitat management between ADF&G and landowners (DuBois and Rogers 2000, pp. 17–24). Agricultural activities on private lands within the proposed NEP area would continue without additional restrictions during implementation of wood bison restoration activities. We do

not expect adverse impacts to wood bison in the proposed NEP area from hunting of other species; furbearer trapping; recreational activities, such as boating, snow machining, off-road vehicle use, or camping; or other resource gathering activities, such as fishing, firewood cutting, berry picking, or logging.

(h) *Protection of wood bison.* ADF&G would employ accepted animal husbandry practices to promote the welfare of wood bison during captive holding and release (Weinhardt 2005, pp. 2–21). Releasing wood bison in areas with little human activity and development would minimize the potential for accidental, human-related bison mortality, such as collisions with highway vehicles.

(i) *Public awareness and cooperation.* If this proposed rule is adopted, ADF&G would work with the Service and other organizations to continue to inform the general public about the effort to restore wood bison to parts of their original range. Through the efforts of ADF&G and others, there is already widespread public and agency awareness of the program on State, national, and international levels (ADF&G 2007, pp. 18–25 and Appendix D). Designation of the NEP in Alaska would provide assurance of management flexibility to landowners, agencies, and other interests in the affected areas. As described above, through the application of management provisions set forth in the proposed special rule, we do not expect wood bison reintroductions to impede future human activity and development in Alaska.

Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that reintroducing wood bison to Alaska and the associated protective measures and management practices under this proposed rulemaking would further the conservation of the species. The nonessential experimental population status is appropriate for wood bison taken from captive populations and released in Alaska because loss of a wood bison NEP from Alaska would not reduce the likelihood of the species' survival in its current range in Canada and would not appreciably reduce the likelihood of survival of the species in the wild. The Service additionally finds that the less stringent section 7(a)(4) conference requirements associated with the nonessential designation do not pose a threat to the recovery and continued existence of wood bison. An NEP designation provides important

assurances to stakeholders and the State in regards to regulatory compliance requirements relating to a listed species. This conservation effort would not occur without such assurances (Draft EA 2010, p. iii).

Hunting is an important management tool for the long-term conservation of wood bison on the landscape because it will be the primary means by which herd size can be maintained within the carrying capacity of the reintroduction site(s). In addition, biologically sustainable harvest can help build support for wood bison conservation among constituents. Given that introduced wood bison will be determined to be nonessential, experimental populations, hunting will be an allowed take based on sustained yield principles established by the Alaska Department of Fish and Game with the Service. This finding only applies to the specific circumstances relating to establishing an NEP of wood bison in Alaska.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three specialists to solicit comments on the scientific data and assumptions relating to the supporting biological and ecological information for this NEP proposed rule. The purpose of such review is to ensure that the final NEP designation decision is based on the best scientific information available, as well as to ensure that reviews by appropriate experts and specialists are included in the rulemaking review process.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes

further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever a Federal agency publishes a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted, this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule consists of State, Federal, and private lands in interior and western Alaska. Reintroduction of wood bison associated with this proposed rule would not have any significant effect on recreational activities in the NEP area. We do not expect any closures of roads, trails, or other recreational areas. We do not expect wood bison reintroduction activities to affect the status of any other species, or other resource development actions within the release area (Fortin and Andruskiw 2003, p. 804). In addition, this proposed rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP for wood bison in Alaska would significantly reduce the regulatory requirements associated with the reintroduction of wood bison, would not create inconsistencies with other agency actions, and would not conflict with existing or future human activities, including other resource development, or Tribal and public use of the land. This proposed rule, if made final, would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of United States-based enterprises to compete with foreign-based enterprises.

Lands within the NEP area that would be affected if this proposed rule is adopted include the Yukon, Tanana, and Kuskokwim River drainages within Alaska. Many private landowners have indicated support for the presence of wood bison on their lands in the future. However, some major private landowners have expressed concerns about the potential legal and regulatory burdens related to the ESA and wood bison, including effects on other resource development activities, such as the possibility of natural gas extraction in an area near the southern end of the Minto Flats State Game Refuge, the potential for petroleum-related developments on the Yukon Flats, and mineral development adjacent to the lower Innoko/Yukon River area. The proposed special rule includes provisions to ensure that the reintroduction of wood bison would not impede these or any other existing or potential future resource development activities.

The existence of a wood bison NEP in Alaska would not interfere with actions taken or planned by other agencies. Federal agencies most interested in this proposed rulemaking include the Service, the Bureau of Land Management, the National Park Service, and the Bureau of Indian Affairs. The U.S. Forest Service has provided land to help support bison in captivity prior to release. This proposed rulemaking is consistent with the policies and guidelines of the other Department of the Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of wood bison in the areas described would not conflict with existing or future human activities on public lands administered by these agencies.

This proposed rule, if made final, would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule would not raise novel legal or policy issues. The Service has previously designated experimental populations of other species at numerous locations throughout the nation.

On the basis of this information, as stated earlier, we certify that, if adopted, this rule would not have a significant economic effect on a substantial number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), if adopted, the proposed NEP

designation would not place any additional requirements on any city, village, borough, or other local municipalities. The proposed specific sites where the NEP of wood bison would occur include predominantly State, Federal, and private lands in interior and western Alaska. Many landowners and agencies have expressed support for this project. The State has expressed support for accomplishing the reintroduction through an NEP designation. Accordingly, the NEP would not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required.

The NEP designation for wood bison in Alaska would not impose any additional management or protection requirements on the State or other entities. ADF&G has determined that restoring wood bison to Alaska is a high priority, and has voluntarily undertaken all efforts associated with this proposed restoration project. Since this rulemaking does not require that any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*, that this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities (i.e., it is not a “significant regulatory action” under this Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, we have determined that the establishment of a wood bison NEP would not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the ESA’s regulatory requirements with respect to that species within the NEP. Under NEP designations, the ESA requires a Federal agency to confer with the Service if the agency determines its action within the NEP area is likely to jeopardize the continued existence of the reintroduced species. However, even if a proposed Federal agency action would completely eliminate a reintroduced species from an NEP, the ESA would not compel the agency to deny a permit or cease any activity as long as the Service does not foresee that the activity may jeopardize the species’ continued existence throughout its range. Furthermore, the results of a conference are advisory and do not restrict agencies from carrying out, funding, or authorizing activities. Additionally, the proposed section 4(d) special rule stipulates that unintentional take (including killing or injuring) of the reintroduced wood bison would not be

a violation of the ESA, when such take is incidental to an otherwise legal activity (e.g., oil and gas development, mineral extraction).

Multiple-use management of lands within the NEP area by government, industry, or recreational interests would not change as a result of the NEP designation. Because of the substantial regulatory relief provided by NEP designations, we do not believe the proposed reintroduction of wood bison would conflict with existing human activities or hinder public use of the NEP area. Private landowners and others who live in or visit the NEP area would be able to continue to conduct their usual resource-gathering activities. The State of Alaska, through ADF&G, is a strong supporter of wood bison reintroduction under the NEP designation and has led the development and implementation of the restoration effort. A takings implication assessment is therefore not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation of a listed species) and would not present a barrier to any reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in the State of Alaska. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The proposed special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Alaska. The State endorses the NEP designation as the most feasible way to pursue wood bison restoration in Alaska, and we have

cooperated with ADF&G in preparing this proposed rule. Therefore, this proposed rule does not have significant Federalism effects or implications that would warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

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

This proposed rule does not contain new information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required. The Office of Management and Budget has approved the reporting requirements associated with experimental populations and has assigned OMB Control Number 1018–0095, expiring on May 31, 2014. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we have analyzed the impact of this proposed rule. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by this rule. We have prepared a draft EA on this proposed action and have made it available for public inspection: (1) In person at the U.S. Fish and Wildlife Service’s Regional Office (see **ADDRESSES**), and (2) online at <http://www.regulations.gov>. All appropriate NEPA documents will be finalized before this rule is finalized.

Government-to-Government Relationship With Tribes (E.O. 13175)

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, the Service, through ADF&G, has coordinated closely with the Tribal governments near potential release sites throughout development of this project and rulemaking process. The Service has extended an invitation for consultation to all Tribes within the

NEP area and will fully consider information received through the Government-to-Government consultation process, as well as all comments submitted during the public comment period by Tribal members or Tribal entities on the proposed NEP designation and wood bison reintroduction.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule is not expected to significantly affect energy supplies, distribution, and use, it is not a significant energy action. Therefore, no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise the

rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> and upon request from the Fish and Wildlife Service's Regional Office, Fisheries and Ecological Services (see ADDRESSES).

Author

The primary authors of this proposed rule are Judy Jacobs, U.S. Fish and Wildlife Service, Anchorage, AK, and Bob Stephenson, Alaska Department of Fish and Game, Fairbanks, AK.

Administrative Changes to the ESA List at 50 CFR 17.11(h)

In preparing this proposed rule, we noted two errors in entries in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h); both are in the "Special rules" column. The entry for the special rule for slender chub (*Erimystax cahnii*) includes a reference to "17.84(sr)"; this reference should be to "17.84(s)". The entry for the special rule for bull trout (*Salvelinus confluentus*) includes a reference to "17.84(v)"; this reference should be to "17.84(w)".

These entries are in no way related to this special rule concerning wood bison. However, to correct these errors in the

Code of Federal Regulations, we must publish a rulemaking document in the **Federal Register**. Therefore, we are using this rulemaking action as the vehicle for making these corrections. Accordingly, we have proposed to revise these entries in the rule portion of this document. These changes are noncontroversial and purely administrative in nature.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the U.S. 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. Amend § 17.11(h) by revising the entries for "Bison, wood" under "Mammals" and "Chub, slender" and "Trout, bull" under "Fishes" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Bison, wood ..	<i>Bison bison athabascae</i> .	Canada, Alaska	Entire	T	3, 803	NA	NA
Bison, wood ..	<i>Bison bison athabascae</i> .	Canada, Alaska	U.S.A. (Alaska)	XN	NA	17.84(x)
*	*	*	*	*	*	*	*
FISHES							
*	*	*	*	*	*	*	*
Chub, slender	<i>Erimystax cahnii</i> .	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Chub, slender	<i>Erimystax cahnii</i> .	U.S.A. (TN, VA)	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(s)(1)(i)).	XN	NA	17.84(s)

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Trout, bull	<i>Salvelinus confluentus</i> .	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	U.S.A., coterminous (lower 48 states), except where listed as an experimental population.	T	637, 639E, 659, 670	17.95(e)	17.44(w), 17.44(x)
Trout, bull	<i>Salvelinus confluentus</i> .	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	Clackamas River subbasin and the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.	XN	NA	17.84(w)
*	*	*	*	*	*	*	*

■ 3. Amend § 17.84 by adding a new paragraph (x) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(x) Wood bison (*Bison bison athabascae*).

(1) Wood bison within the area identified in paragraph (x)(2)(i) of this section are members of a nonessential experimental population (NEP) and will be managed primarily by the State of

Alaska, in cooperation with the Service, in accordance with this rule and the respective management plans.

(2) *Where are wood bison in Alaska designated as an NEP?*

(i) The boundaries of the NEP area encompass the Yukon, Tanana, and Kuskokwim River drainages in Alaska (Figure 1). The NEP area includes much of the wood bison's historical range in Alaska, and the release sites are within

the species' historical range. The NEP area is defined as follows: the Yukon River drainage from the United States–Canada border downstream to its mouth; the Tanana River drainage from the United States–Canada border downstream to its confluence with the Yukon River; and the Kuskokwim River drainage from its headwaters downstream to its mouth at the Bering Sea.

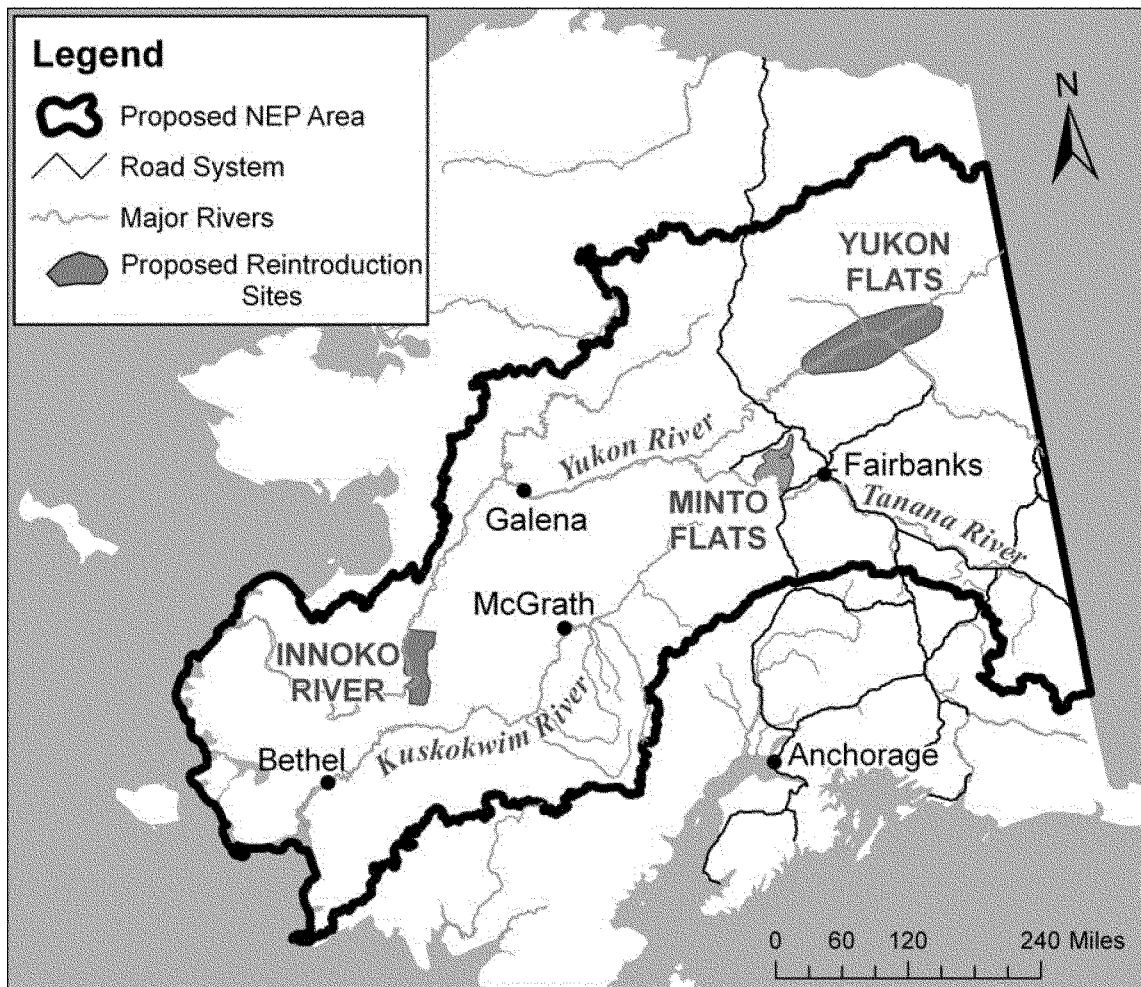


Figure 1. Boundaries of the wood bison NEP (black line) and location of the three sites for wood bison reintroduction in Alaska (gray areas).

(ii) Any wood bison found within the Alaska wood bison NEP area, and reintroduction sites within this area, will be considered part of the NEP. The bison will be managed by the State of Alaska (ADF&G) to prevent establishment of any population outside the NEP area.

(3) *Under what circumstances might an Alaska wood bison NEP be eliminated?*

(i) We do not anticipate eliminating all individuals within an Alaska wood bison NEP unless:

(A) The State deems the reintroduction efforts a failure or most members of reintroduced populations have disappeared for any reason;

(B) Monitoring of wood bison in Alaska indicates appreciable harm to other native wildlife, such as the introduction of disease or other unanticipated environmental

consequences associated with their presence; or

(C) Legal or statutory changes reduce or eliminate the State's ability to complete the restoration effort as designed and intended in its management plans, with the management flexibility and protection of other land uses (including other resource development) provided in this NEP designation.

(ii) If any of the circumstances listed in paragraph (x)(3)(i) of this section occur, some or all wood bison may be removed from the wild in Alaska by any method deemed practicable by the State, including lethal removal. If the reintroduction of wood bison under this nonessential experimental designation is discontinued for any reason and no action is taken by the Service and the State to change the designation, all remaining wood bison in Alaska will retain their NEP status.

(4) *Which agency is the management lead for wood bison in Alaska?* The Alaska Department of Fish and Game (ADF&G) will have primary responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service, and will keep the Service apprised of the status of the effort on an ongoing basis. The Service will retain responsibility for ensuring compliance with all provisions of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), including compliance with section 7 for actions occurring on National Wildlife Refuge and National Park Service lands.

(5) *What take of wood bison is allowed in the NEP area?* In the following instances, wood bison may be taken in accordance with applicable State fish and wildlife conservation laws and regulations:

(i) Hunting will be an allowed take based on sustained yield principles established by the ADF&G.

(ii) A wood bison may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity, including but not limited to recreation (e.g., trapping, hiking, camping, or shooting activities); forestry; agriculture; oil and gas exploration and development and associated activities; construction and maintenance of roads or railroads, buildings, facilities, energy projects, pipelines, and transmission lines of any kind; mining; mineral exploration; travel by any means, including vehicles, watercraft, snow machines, or aircraft; tourism; and other activities that are in accordance with Federal, State, and local laws and regulations and specific authorizations. Such conduct is not considered intentional or “knowing take” for purposes of this regulation, and neither the Service nor the State will take legal action for such conduct. Any cases of “knowing take” will be referred to the appropriate authorities for prosecution.

(iii) Any person with a valid permit issued by the Service under 50 CFR 17.32 or by ADF&G may take wood bison for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the ESA. Additionally, any employee or agent of the Service or ADF&G designated for such purposes, acting in the course of official duties, may take a wood bison in the wild in the NEP area if such action is necessary:

(A) For scientific purposes;

(B) To relocate a wood bison to avoid conflict with human activities;

(C) To relocate a wood bison if necessary to protect the wood bison;

(D) To relocate wood bison within the NEP area to improve wood bison survival and recovery prospects or for genetic purposes;

(E) To relocate wood bison from one population in the NEP area into another, or into captivity;

(F) To aid or euthanize a sick, injured, or orphaned wood bison;

(G) To dispose of a dead wood bison, or salvage a dead wood bison for scientific purposes;

(H) To relocate wood bison that have moved outside the experimental population back into the experimental population; or

(I) To aid in law enforcement investigations involving wood bison.

(iv) Any person may take a wood bison in defense of the individual's life or the life of another person. The Service, the State, or our designated agent(s) may also promptly remove any wood bison that the Service, the State, or our designated agent(s) determine to be a threat to human life or safety. Any such taking must be reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.

(v) In connection with otherwise lawful activities, including but not limited to the use and development of land, provided at paragraph (x)(5)(ii) of this section, the Federal Government, the State, municipalities of the State, other local governments, Native American Tribal Governments, and all landowners and their employees or authorized agents, tenants, or designees may harass wood bison in the areas defined in paragraph (x)(2)(i) of this section, provided that all such harassment is by methods that are not lethal or physically injurious to wood bison and is reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.

(vi) Any taking pursuant to paragraph (x)(5)(ii) of this section must be reported within 14 days by contacting the Alaska Department of Fish and Game, 1300 College Road, Fairbanks, AK 99701; (907) 459-7206. The ADF&G will determine the most appropriate course of action regarding any live or dead specimens.

(6) *What take of wood bison is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (x)(5) of this section, all the provisions of 50 CFR 17.31(a) and (b) apply to the wood bison identified in paragraph (x)(1) of this section.

(ii) Any manner of take not described under paragraph (x)(5) of this section is prohibited in the NEP area.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified wood bison, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (x)(5) of this section or in violation of the applicable State or local fish and wildlife laws or regulations or the ESA.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense except the take expressly allowed in paragraph (x)(5) of this section.

(7) *How will the effectiveness of the reestablishment be monitored?* The ADF&G will monitor the population status of reintroduced bison herds at least annually and document productivity, survival, and population size. The Service or other Federal agencies may also be involved in population monitoring, particularly where National Refuge System or Bureau of Land Management lands are involved. Tribal governments or other organizations may also participate in population monitoring and other management activities. Depending on available resources, monitoring may occur more frequently, especially during the first few years of reestablishment efforts. This monitoring will be conducted primarily through aerial surveys and will be accomplished by State or Service employees, through cooperative efforts with local governments, or by contracting with other appropriate species experts.

Dated: January 2, 2013.

Michael J. Bean,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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