

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AE00

**Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), intend to restore the grizzly bear (*Ursus arctos*), a threatened species, into east-central Idaho and a portion of western Montana. We are designating grizzly bears to be reintroduced into the area described in this rule 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 Selkirk and Cabinet-Yaak ecosystems in north Idaho, northeastern Washington, and northwestern Montana; 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. We evaluated potential effects of this final rule in the "Final Environmental Impact Statement on Grizzly Bear Recovery in the Bitterroot Ecosystem." This grizzly bear reintroduction does not conflict with existing or anticipated Federal agency actions or traditional public uses of wilderness areas or surrounding lands.

**EFFECTIVE DATE:** This rule is effective December 18, 2000.

**ADDRESSES:** The complete file for this final rule is available for inspection, by appointment during normal business hours, at U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812.

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

**SUPPLEMENTARY INFORMATION:****Background***1. Legislative*

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. 1531-1540), including the creation of section 10(j), which provides for the designation of specific populations of listed species as "experimental populations." Previous authorities in the Act permitted us to reintroduce a listed species for conservation and recovery purposes. However, local opposition to reintroduction efforts from parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a conservation and recovery tool.

Under section 10(j), the Secretary can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." Reintroduction of the experimental populations must further the conservation of the listed species. An experimental population must be separate geographically from nonexperimental populations of the same species. Designation of a population as experimental increases our flexibility and discretion in managing reintroduced listed species.

After designating a population as experimental under section 10(j) of the Act, the Secretary must determine whether such populations are essential, or nonessential, to the continued existence of the species. Regulatory restrictions may be considerably reduced under a nonessential experimental population designation, which is defined as being nonessential to the survival of the species. For the purposes of section 7 of the Act, we treat nonessential experimental populations that are located outside of the National Wildlife Refuge System or National Park System as if they are species proposed for listing. If a nonessential experimental population is located within such a refuge or park, the population is treated as if it is listed as a threatened species.

Section 7 provisions for Federal agency coordination have limited application to nonessential experimental populations found outside such refuges and parks. The two provisions that apply are: (1) Section 7(a)(1), which requires all Federal agencies to use their authority to conserve listed species; and (2) section 7(a)(4), which requires Federal agencies to confer with the Service on actions

that are likely to jeopardize the continued existence of a proposed species throughout its range. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Individual animals used in establishing an experimental population may be obtained from other populations if their removal is not likely to jeopardize the continued existence of the species and a permit has been issued in accordance with 50 CFR part 17.22 prior to their removal.

*2. Biological*

This final experimental population rule addresses 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 1,000-1,100 grizzly bears remain in a few isolated populations in Montana, Idaho, Wyoming, and Washington. This represents approximately 2 percent of their historic range in the lower 48 States (U.S. Fish and Wildlife Service 1993). The grizzly bear was listed as a threatened species in the lower 48 States under the Act in 1975 (40 FR 3173).

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.

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 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 Bitterroot ecosystem (Melquist 1998).

### Recovery Efforts

The reestablishment of a grizzly bear population in the Bitterroot ecosystem will increase the survival probabilities and further the conservation of the species in the lower 48 States. If the experimental population is lost, it will not diminish the survival probabilities for bears in other ecosystems. However, if the experimental population is successful, it will enhance grizzly bear survival and conservation over the long term by providing an additional population and thus adding a measure of security for the species.

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

In 1992, we organized a Technical Working Group to develop a Bitterroot ecosystem chapter to append to the Grizzly Bear Recovery Plan. This interagency group of biologists worked with a citizens' involvement group composed 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. We revised the Grizzly Bear Recovery Plan in 1993 (U.S. Fish and Wildlife Service 1993) and later 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 Bitterroot ecosystem as an experimental, nonessential population under section 10(j) of the Act and the preparation of a special rule and an Environmental Impact Statement (EIS) on this proposal. By establishing a nonessential experimental population, more flexible management practices may be implemented to address potential negative impacts or concerns regarding

the recovery. The Chapter identified a tentative long-term recovery objective of approximately 280 grizzly bears for the Bitterroot ecosystem.

Planning for the recovery of grizzly bears into the Bitterroot ecosystem 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. We then formed and funded an interagency team to prepare the EIS in 1995. The team included our specialists and those from the 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 for the Bitterroot ecosystem emphasized public participation from the outset.

We developed a public participation and interagency coordination program to identify issues and alternatives to be considered in the EIS process. We published a Notice of Intent (NOI) concerning grizzly bear recovery in the Bitterroot ecosystem in the **Federal Register** on January 9, 1995 (60 FR 2399). The notice was furnished as required by National Environmental Policy Act (NEPA) 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, we issued a news release announcing the beginning of the NEPA process and the start of an EIS on grizzly bear recovery to the Bitterroot ecosystem.

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, which was mailed to 1,100 people and distributed at 7 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. We asked interested parties to identify relevant issues and alternatives related to grizzly bear reintroduction into the Bitterroot ecosystem for the analysis. On June 5, 1995, we published a notice in the **Federal Register** initiating the formal scoping process with a 45-day comment period (60 FR 29708). We sent a news release 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. We initiated public scoping of

issues by mailing a brochure detailing the EIS process.

From July 5 to 11, 1995, we held seven public scoping sessions in the form of open houses 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 representatives of the Service, the Forest Service, and State fish and wildlife agencies were available to discuss grizzly bears, their recovery, and the EIS process. Those attending the open houses received copies of the issue and alternative scoping brochure and the question-and-answer booklet. We encouraged them to leave written comments with agency personnel or mail their comments later. Verbal comments or questions were also 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. We extended the scoping comment period for 30 days (from July 20 to August 21, 1995). On July 25, we provided a press release to local and national media to announce the extension. This extension was requested by numerous public interests with varied opinions on this complex topic.

We solicited written public comments on issues and alternatives at the open houses and through the media. In response, we received more than 3,300 written comments from individuals, organizations, and government agencies. These comments arrived in more than 565 letters, open house meeting notes, 6 petitions, and 6 form letters or postcards. Strong polarization of concerns regarding grizzly bear management typified the public comments. 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.

We continued public involvement and outreach activities in 1995 and began to prepare the EIS. The Bitterroot Ecosystem Chapter—Supplement to the Grizzly Bear Recovery Plan was finalized and signed on September 11, 1996. The EIS Team continued to follow

the NEPA process to prepare the Draft EIS. The team completed the Draft EIS in August 1996, and released it to us and then to agency partners for internal review and comment. Comments were incorporated, and we reviewed the final draft in February 1997. We incorporated comments from the final review and completed the Draft EIS in June 1997 (U.S. Fish and Wildlife Service 1997).

We released the Draft EIS and proposed special rule for public review and comment on July 1, 1997. The proposed rule, "Proposed Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana" was then published in the **Federal Register** on July 2, 1997 (62 FR 35762) (U.S. Fish and Wildlife Service 1997a). Comments were accepted through September 30, 1997. We then extended the comment period to November 1, 1997, based on numerous requests for more time to prepare responses. Following a request from a member of the Idaho congressional delegation, we extended the comment period a second time to December 1, 1997.

During October 1997, we held public hearings/open houses in seven communities on the perimeter of the Bitterroot area to gather public comments on the Draft EIS and proposed rule. Approximately 1,400 people attended these hearings, and 293 individuals testified. The Salmon and Hamilton hearings both had more people signed up to speak than time allowed. The dates and locations for the public hearings were Challis, Idaho, and Hamilton, Montana (October 1); Missoula, Montana, and Lewiston, Idaho (October 2); Boise, Idaho, and Helena, Montana (October 3); and Salmon, Idaho (October 8). In addition, we held meetings with local community and State leaders, and interest groups in communities around the perimeter of the proposed recovery area. The Draft EIS, the Summary of the Draft EIS, and the Special Rule were all published on our web site at <http://www.r6/fws/gov/endspp/grizzly>.

We received comments on the two draft documents from more than 24,000 individuals, organizations, and government agencies. These comments arrived in more than 2,660 letters, Draft EIS summary forms, resolutions, and hearing testimonies. Ten petitions were received with more than 21,000 signatures. Fifteen form letters were identified. This degree of interest from the public indicates the strong feelings people have about the possibility of grizzly bear recovery in the Bitterroot ecosystem.

An analysis of the public comments on the Draft EIS and proposed rule was performed by an interagency team of 14 employees from our agency and the U.S. Forest Service (Content Analysis Team) in December 1997 and January 1998. The system used to analyze comments was objective, reliable, and traceable. We prepared a detailed summary report, "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" and an executive summary report of 24,251 public comments and released the summary to the public in April 1998 (U.S. Fish and Wildlife Service 1998).

The major issues raised by the public included recovery area boundaries; bear sources; designation of experimental nonessential population; the Endangered Species Act; restrictions on use of public lands; local control; best available science; the grizzly bear as a missing component of the ecosystem; what is a viable grizzly population; population corridor linkages; range requirements of the grizzly; effects to the grizzly (genetics, disease, bear safety, adequate food); ecosystem protection; effects of grizzlies on human health and safety; effects of grizzlies on livestock and pets; effects of grizzlies on big game species and hunting opportunities; effects of grizzlies on recreational opportunities and public access; effects on local economy (jobs); and the need for education. Issues raised during public comment on the Draft EIS were similar to the issues identified during public scoping.

The Content Analysis Team briefed the EIS Team regarding the results of the Draft EIS comment analysis in February 1998. The EIS Team met numerous times to thoroughly review the content analysis reports and original comment letters. They identified significant issues and, through the NEPA process, discussed and decided on necessary revisions to the Draft EIS and proposed rule to be responsive to public comment. During 1998, the EIS Team prepared the Final EIS and revised the special rule. In early 1999, we began our internal review of the draft final EIS and the draft final rule.

We released the Final EIS on grizzly bear recovery in the Bitterroot ecosystem on March 24, 2000. Chapter 5 of the Final EIS contains a detailed review of public comments on the Draft EIS, including comments on the proposed rule, and the Service's response. The Final EIS considers six alternatives: (1) Restoration of Grizzly Bears as a Nonessential Experimental Population with Citizen Management (Preferred Alternative); (1A) Restoration

of Grizzly Bears as a Nonessential Experimental Population with Service Management; (2) Natural Recovery—The No Action Alternative; (3) No Grizzly Bear Alternative; (4) Restoration of Grizzly Bears as a Threatened Population with Full Protection of the Act and Habitat Restoration; and (4A) Restoration of Grizzly Bears as a Threatened Population with Full Protection of the Act and Service Management. All comments on the Final EIS received from the public during the 30-day public review period were considered prior to preparation of the Record of Decision.

On November 13, 2000, the Service signed the Record of Decision on the Final EIS, and selected the Preferred Alternative (Alternative 1 in the Final EIS) for implementation (see following document in this section of the **Federal Register**). This alternative is the Restoration of Grizzly Bears as a Nonessential Experimental Population with Citizen Management.

#### Experimental/Reintroduction Site

We intend to restore grizzly bears into the Bitterroot ecosystem of east-central Idaho in the Selway-Bitterroot and Frank Church-River of No Return Wilderness Areas on Federal lands managed by the Forest Service. The Bitterroot location was selected as a site for an experimental population of grizzly bears based on several factors. The area known as the Bitterroot ecosystem is centered around the federally designated 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 (26,072 square miles) of contiguous national forest lands in central Idaho and western Montana. These include portions of the Bitterroot, Boise, Salmon/Challis, Clearwater, Nez Perce, Payette, Sawtooth, and Panhandle National Forests in Idaho, and the Bitterroot and Lolo National Forests in western Montana. The core of the ecosystem contains three designated wilderness areas including the Frank Church-River of No Return, Selway-Bitterroot, and Gospel Hump. These areas provide approximately 15,793 square kilometers (6,098 square miles) of grizzly bear habitat. We plan to reintroduce grizzly bears only into the Selway-Bitterroot Wilderness Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. We will identify specific release sites that have high-quality bear habitat and low likelihood of human encounters.

There is no documentation that grizzly bears from northwestern Montana have moved into central Idaho. There is no evidence of any grizzly bears in the Experimental Population Area, thus there is no evidence of an existing grizzly bear population in the Experimental Population Area. In an effort to create a definition of a population for use in determining the feasibility of experimental population status for the Bitterroot ecosystem, we solicited input from 54 scientists familiar with bear populations. Thirty-seven scientists responded, and we adopted a definition. The definition of a grizzly bear population, as used in the Final EIS to define a minimal existing grizzly bear population in the Bitterroot, follows: "A grizzly bear population is defined by verified evidence within the previous six years, consisting of photos within the area, verified tracks and/or sightings by reputable scientists or agency personnel, of at least two different female grizzly bears with young or one female seen with different litters in two different years in an area geographically distinct (separate) from other grizzly bear populations. Verifiable evidence of females with young, to be geographically distinct (separate), would have to occur greater than 10 miles (U.S. Fish and Wildlife Service 1993, page 171) from the nearest non-experimental grizzly bear population recovery zone boundary." Research data from the Cabinet-Yaak ecosystem indicates the average home range size of an adult female grizzly bear, when converted to a circle, has a radius of 10 miles (Kasworm and Servheen 1995).

The term "current range," as it is used in this rule, refers to the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones (U.S. Fish and Wildlife Service 1993, page 171). The term "geographically separate," as it is used in this rule, means that the Experimental Population Area and the recovery zone boundary of any existing grizzly bear population are separated by more than 10 miles.

The Bitterroot Experimental Population Area is outside the current range but within the historic range of the grizzly bear. The Bitterroot Experimental Population Area is greater than 10 miles from any recovery zone boundary of any existing grizzly bear population. 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 will 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 Experimental Population Area, we will continue to monitor for the presence of any grizzly bears naturally occurring in the area, and evaluate any new reports of sightings from the area.

#### Reintroduction Protocol

We will undertake the grizzly bear recovery project in the Bitterroot ecosystem 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 Provincial government. We will also enter into agreements with the appropriate Canadian Provincial government agencies to obtain grizzly bears.

Grizzly bears (*Ursus arctos*) for this reintroduction will be obtained from Canadian and U.S. grizzly populations with permission from the Canadian Provincial governments and concurrence from the appropriate State officials. Grizzly bears can be taken by authorized State, Federal, and tribal authorities for scientific or research purposes under the authorities granted by 50 CFR 17.40.

The Bitterroot ecosystem recovery program proposes moving a minimum of 25 grizzly bears of both sexes 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 Bitterroot ecosystem. We will reintroduce only bears with no history of conflict with humans or livestock. We will capture and reintroduce bears at the time of year optimal to their survival. This process will likely occur when grizzly bear food supplies in the Bitterroot ecosystem are optimum. We plan to transport bears to east-central Idaho, provide any necessary veterinary care, and fit them with radio collars in order to monitor them by the use of radiotelemetry. We will determine the movements of individual grizzly bears and how they use their habitat, and keep the public informed of general bear locations and recovery efforts. We will release bears close enough to each other to create a "colony" or population of bears, providing the basis from which they will successfully reproduce and expand in numbers.

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 minimum of 325 grizzly bears exist in the Northern Continental Divide ecosystem in northwestern Montana, and an estimated minimum of 328 exist in the Yellowstone ecosystem (1998 estimates per Grizzly Bear Recovery Plan criteria (U.S. Fish and Wildlife Service 1993)). The Final EIS analysis indicates no significant adverse impact to source populations from removal of grizzly bears for reintroduction to the Bitterroot ecosystem (U.S. Fish and Wildlife Service 2000), i.e., no significant adverse biological impact is expected from the removal of 10–15 grizzly bears from the British Columbia population over a 5-year period, and no significant 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. Such removals will be from areas that are outside the recovery zone, and not within 10 miles of the recovery zone line of either ecosystem. Under 50 CFR 17.80(b), the term "nonessential experimental population" means an experimental population whose loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild. The Service finds that grizzly bears to be used in the reintroduction effort meet the definition of "nonessential" because the loss of the reintroduced grizzlies is not likely to appreciably reduce the likelihood of survival of the species in the wild.

We will continue to ask private landowners and agency personnel in or around the Bitterroot ecosystem to immediately report any grizzly bear observations to us or to other authorized agencies. We will also conduct an extensive public information and education program. 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 Final EIS.

#### Status of Reintroduced Population

In accordance with section 10(j) of the Act, this rule designates grizzly bears reintroduced to the Bitterroot ecosystem as a nonessential experimental population. After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a nonessential experimental animal. The primary reasons for this designation are the biological status of the grizzly and the need for

management flexibility to achieve reintroduction goals. Such designation will allow these grizzly bears to be treated as a species proposed for listing for the purposes of section 7 of the Act. This designation allows us to establish a more flexible and less restrictive special rule, rather than applying the general prohibitions of the Act that otherwise apply to threatened species.

We find that protective measures and management practices under this final rule are necessary and advisable for the conservation of the grizzly. We also find that nonessential experimental status is appropriate for grizzly bears taken from wild populations and released into the Bitterroot ecosystem of east-central Idaho. Formal section 7 consultation will not be required for any proposed U.S. Forest Service activity in the Bitterroot ecosystem as a result of the experimental reintroduction of bears, and the requirements of section 7(a)(2) will not apply because there are no National Wildlife Refuges or National Parks within the Bitterroot Experimental Population Area. However, because nonessential experimental grizzly bears will be treated as a species proposed for listing, the conferencing requirements under section 7(a)(4) will apply. Presently, we envision no conflicts 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.

Most of the reintroduction area is composed of remote and sparsely inhabited wild lands. However, some risks to grizzly recovery are associated with take of grizzlies resulting from 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 Wildlife Services programs are prohibited or strictly regulated by State and Federal law and policy. Very few paved or unpaved roads are in the reintroduction area or immediately

outside of it. The unpaved roads typically have low levels of vehicle traffic, and are constructed for low speeds and used only seasonally. Grizzly bears, therefore, 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 recovery effort are thought to be minimal.

#### **Location of the Experimental Population Area**

The Bitterroot Grizzly Bear Experimental Population Area includes most of east-central Idaho and part of western Montana (see map attached to rule). This approximately 65,113-square-kilometer area (25,140-square-mile area) will include the area bounded by U.S. Highway 93 from its junction with the Bitterroot River near 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; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis, to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana. Much of the Experimental Population Area has high-quality bear habitat with low likelihood of conflicts between grizzly bears and humans.

The proposed release site for restoring grizzly bears into east-central Idaho is on national forest land in the Selway-Bitterroot Wilderness Area. The Bitterroot Grizzly Bear Recovery Area (Recovery Area) consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (approximately 14,983 square kilometers; 5,785 square miles) (see map attached to rule). The Recovery Area is

located within the Experimental Population Area, and is the area where grizzly bear recovery will be emphasized. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Citizen Management Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this special rule to change the definition of the Recovery Area.

#### **Management of the Reintroduced Population**

This special rule establishes a 15-member Citizen Management Committee (Committee) to facilitate recovery of the experimental grizzly bear population in the Bitterroot ecosystem. The Committee will make recommendations to the land and wildlife management agencies that the Committee believes will lead to recovery of the grizzly bear in the Bitterroot ecosystem. Decisions on and implementation of these recommendations will remain the responsibility of the land and wildlife management agencies. The Idaho Department of Fish and Game, Nez Perce Tribe, Montana Department of Fish, Wildlife, and Parks, and the Forest Service, in coordination with us, will continue to exercise day-to-day management responsibility within the Experimental Population Area.

The Committee will have the authority and responsibility for various tasks relating to the experimental grizzly bear population, to include: (1) Soliciting technical advice from outside experts; (2) implementing the Bitterroot Chapter of the Grizzly Bear Recovery Plan; (3) establishing a public participation process to review Committee recommendations; (4) developing strategies to emphasize recovery in the Experimental Area; (5) developing grizzly bear-related guidance for proper camping and sanitation within the Experimental Population Area; and (6) developing a response protocol for responding to grizzly bear encounters. See question 9 of the special rule for a complete list of Committee tasks.

Two scientific advisors will be appointed to provide the Committee with ready access to independent scientific information on grizzly bears. These advisors, which will not be employed by Federal agencies involved in grizzly bear recovery, will be nonvoting members, and are to attend all Committee meetings.

The special rule provides a procedure to monitor the progress of the Committee and resolve disputes if Committee actions are not contributing to the recovery of grizzly bears in the

Bitterroot ecosystem or not in compliance with this special rule. Included in this provision of the special rule is a process to establish a peer review panel of three scientists (Scientific Review Panel). The Scientific Review Panel will review issues, solicit additional information if necessary, and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether actions and decisions are in compliance with the special rule and

leading to recovery of the grizzly bear in the Bitterroot ecosystem. The Scientific Review Panel process is diagrammed in Figure 1. Question 11 of the special rule contains the procedures to be followed when Committee actions are not leading to the recovery of the grizzly bear in the Experimental Population Area, including the steps that will be undertaken if the Secretary assumes lead management responsibility for the experimental population.

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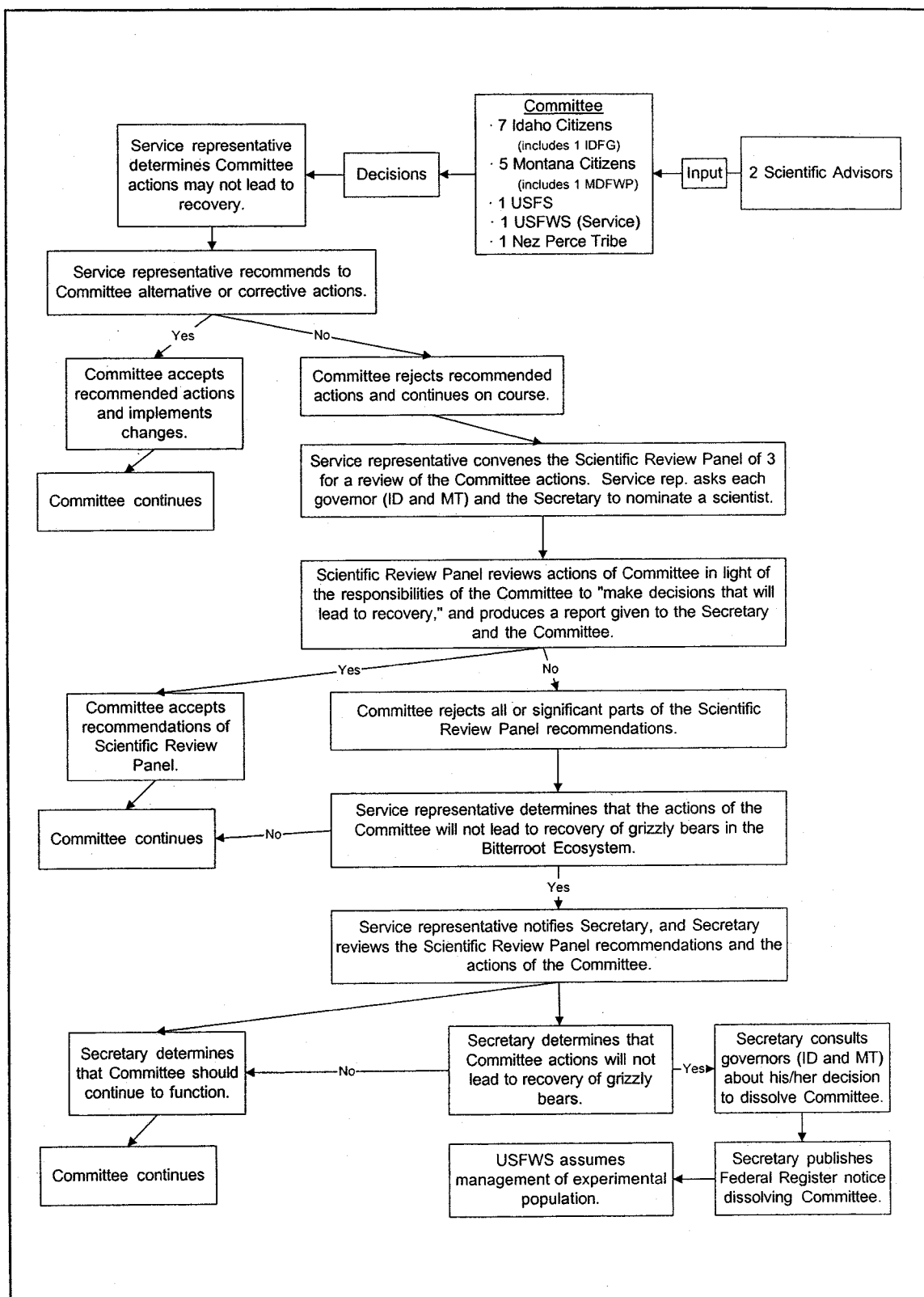


Figure 1. Scientific Review Panel process.

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### Potential for Conflict With Federal and Other Activities

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 Committee will emphasize the recovery of grizzly bears in the Recovery Area, but bears moving outside the Recovery Area into other parts of the Experimental Population Area will be accommodated through management provisions in the special rule and through the management plans and policies developed by the Committee.

"Emphasize the recovery" means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of bears will occur within the Recovery Area, and is specifically planned within the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate.

"Accommodate" means grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety or livestock. The Committee will not recommend that bears be disturbed or moved unless conflicts, including conflicts associated with livestock, are both significant and cannot be corrected as determined by the Committee. In this case, the Committee will develop strategies to discourage grizzly bear occupancy in appropriate portions of the Experimental Population Area.

Unless the Committee determines otherwise, grizzly bears will be discouraged from occupying private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area). Bears entering this area will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of

the management agencies or Committee, presents a clear threat to human safety or that shows signs that it may become habituated to humans, will be relocated by management agencies or destroyed, if necessary. This provision is to prevent conflicts and possible bear-human injury or the death of bears, and to promote and enhance public safety.

No formal consultation under section 7 of the Act will be required regarding potential impacts of land uses, including resource extraction, on nonessential experimental grizzly bears. However, because the nonessential experimental grizzly bears are treated as a proposed species for listing, Federal agencies will be required to confer, in accordance with section 7(a)(4) of the Act, on actions that are likely to jeopardize the continued existence of the experimental bears. The Committee is responsible for recommending changes in land-use standards and guidelines as necessary for grizzly bear management. The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The final decision on implementation of recommendations from the Committee will be made by those agencies. If the Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the NEPA requirements may apply. Such management plans and policies will be in accordance with applicable State and Federal laws.

People can 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 (OMB #1018-0095). After obtaining a permit from us, a person will be allowed to harass a grizzly bear attacking livestock (cattle, sheep, horses, and mules) or bees in the Experimental Population Area 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 to the appropriate authorities. We will also permit the use of livestock guard dogs to harass grizzly bears in a nonlethal fashion around livestock. 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 significant conflicts between

grizzly bears and livestock occur within the Experimental Population Area but outside of the Recovery Area, these could be resolved in favor of livestock by capture or elimination of the bear depending on the circumstances. We do not intend to establish a Federal compensation program for grizzly bear depredation, but compensation from existing private funding sources will be encouraged. Animal control toxicants lethal to bears are currently not used on public lands within the Recovery and Experimental Population Areas. We anticipate that ongoing animal damage control activities will not be affected by grizzly bear recovery. The Committee will review any conflicts or mortalities associated with these activities and will recommend necessary changes.

### Summary of Public Participation

The proposed rule was published in the **Federal Register** on July 2, 1997 (62 FR 35762) (U.S. Fish and Wildlife Service 1997a). The proposed rule also was included as Appendix 13 of the Draft Environmental Impact Statement (Draft EIS) (U.S. Fish and Wildlife Service 1997) and was published on the Internet at <http://www.r6.fws.gov/endspp/grizzly>. We received public comments on the proposed rule and the Draft EIS through December 1, 1997, which included two extensions of the deadline in response to public requests for more time to comment. During October 1997, we held public hearings/open houses to gather public comments on the Draft EIS and proposed rule in seven communities on the perimeter of the Bitterroot area. Approximately 1,400 people attended these hearings, and 293 individuals testified. The dates and locations for the public hearings were: Challis, Idaho, and Hamilton, Montana (October 1); Missoula, Montana, and Lewiston, Idaho (October 2); Boise, Idaho, and Helena, Montana (October 3); and Salmon, Idaho (October 8). In addition, we held meetings with local community leaders, State leaders, and interest groups in communities around the perimeter of the proposed Recovery Area.

More than 24,000 individuals, organizations, and government agencies provided comments on the two draft documents. These comments arrived in more than 2,660 letters, Draft EIS summary forms, resolutions, and hearing testimonies. The comments received included 10 petitions with more than 21,000 signatures and 15 form letters. An interagency team of 14 employees from the Fish and Wildlife Service and the Forest Service conducted an analysis of the public comments on the Draft EIS and



proposed rule in December 1997 and January 1998. We made a concerted effort to ensure that the methods used to analyze public comments were objective, reliable, and traceable. We prepared a detailed summary report, "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" and an executive summary report of 24,251 public comments and released the summary to the public in April 1998 (U.S. Fish and Wildlife Service 1998).

We reviewed and considered all written and oral comments relating to the proposed rule. Comments that specifically addressed the proposed rule were made in 33 individual letters. Numerous other comments on the draft EIS were specific to the proposed rule or related management considerations. We also considered these comments in our review of the proposed rule. We include a detailed summary of the significant issues raised in public comments on the Draft EIS and the proposed rule and our response to those issues in Chapter 5 of the Final EIS. The following summary of key changes made to the final rule as a result of issues raised in public comments on the proposed rule is abbreviated from the Final EIS Chapter 5 discussion of public comments. Refer to the Final EIS and "Summary of Public Comments on the Draft Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem" for a more comprehensive discussion of public comments on the proposed rule and Draft EIS. Both documents are available to the public (see **ADDRESSES** section).

#### **Key Changes in Final Rule as a Result of Public Comment**

We made the following key changes and clarifications to the final rule or to discussions in the final rule based on public comments received on the proposed rule. These changes, individually and cumulatively, do not alter the predicted effect of the final rule.

1. In response to the issues of how and where the experimental population of grizzly bears will be managed, we clarified and defined several terms in the final rule including "recovery emphasis," "accommodate," and "Recovery Area." We added a statement in paragraph (I)(2) of the final rule regarding the potential for consideration of future designated Wilderness areas for inclusion in the Recovery Area. In paragraph (I)(1) of the final rule, we modified the boundaries in the northeast end of the Experimental Population Area to use the Clark Fork

River as a boundary instead of I-90, which was used in the proposed rule, because the Clark Fork River is a more logical biological boundary for the north end of the Experimental Population Area than the highway.

2. In response to the issue of effects of grizzly bears on livestock, we clarified the types of harassment permitted, including the use of livestock guard dogs around livestock.

3. The following clarifications and additions respond to the issue of human safety: If a grizzly bear enters the exclusion area in the Bitterroot Valley, State and Federal wildlife management agencies will attempt to capture it immediately, notify the public of its presence, and keep the public updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area and that presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans will be relocated or destroyed by management agencies.

4. We changed the minimum time for determining the success or failure of the experimental reintroduction that the Committee must incorporate into the standards that they establish for such a determination. The proposed rule stated that the success or failure of the program cannot be measured in fewer than 10 years. After consideration of many comments, we changed the final rule to reflect our belief that absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years.

5. We added a clarification regarding how we would calculate a refined recovery goal for the Bitterroot experimental population. The proposed rule indicated that, if the Committee refines the recovery goal for the Bitterroot grizzly bear population after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area, the recovery goal will be consistent with the habitat available within the Recovery Area. The Committee will consider additional adjacent areas of public land for contribution of suitable grizzly bear habitat for recovery when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available.

6. We added several clarifications and changes to the Committee structure and function. We made these changes in response to the following public comment issues: (a) How the Committee will be selected; (b) the need for

scientific expertise on the Committee; (c) the need for clarification regarding mission, operations, and authority of the Committee; (d) the need for further insulation of the Committee from political influence; and (e) the need for a process to resolve conflicts between the Secretary and the Committee. The corresponding clarifications and changes are listed below:

(a) The Governors of Idaho and Montana will include written documentation of the qualifications of each person they nominate to the Secretary, and these nominations must be made within 60 days following the request from the Secretary.

(b) The Secretary will appoint two scientific advisors to the Committee as nonvoting members, to attend all meetings and provide scientific expertise to the Committee.

(c) We added Mission and Operating Guidelines Statements for the Committee.

(d) The Committee will implement the Bitterroot Chapter of the Recovery Plan in accordance with the final rule. The Committee may also make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. NEPA requirements may apply.

(e) The Secretary can assume lead management implementation responsibility from the Committee if the Secretary determines the Committee's decisions are not leading to recovery. The rule lays out a specific process for accomplishing this assumption of responsibility, which involves a Scientific Review Panel.

7. We changed the rule to indicate that bears outside the boundaries of the Experimental Population Area will have the status of "threatened," rather than "experimental." This is consistent with other experimental population rules.

In addition to the key changes just discussed, we have also changed the language and organization of the final rule to comply with the principles of "plain language." These changes do not affect the content of the rule.

#### **Status of Reintroduced Grizzly Bears and Conclusion**

If the status of the grizzly bear in the Bitterroot ecosystem is changed to threatened or endangered under the Act as a result of legal action or lawsuits, we will remove from the wild all reintroduced grizzly bears designated as nonessential experimental and revoke the pertinent regulations on the experimental population.

We do not foresee any likely situation that would require us to change the nonessential experimental status until the grizzly bear is recovered and delisted in the Bitterroot ecosystem according to provisions outlined in the Recovery Plan.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that reintroducing grizzly bears into the Bitterroot ecosystem will further the conservation and recovery of the species.

### Required Determinations

#### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this rule is a significant regulatory action (see item “d”) and has been reviewed by the Office of Management and Budget. Although the significance of this action under Executive Order 12866 is not related to economic effects, we have prepared an economic assessment for this special rule. The cost-benefit portion of this assessment is presented below. A complete copy of the assessment is available upon request see **ADDRESSES** section.

#### Cost-Benefit Assessment of the 10(j) Rule

The Service proposes to undertake the reintroduction of an experimental population of grizzly bears into the Bitterroot ecosystem for three principal reasons: (1) It is the policy of the Federal government to recover federally protected listed species so that they may be removed from the protection of the Act; (2) there is no naturally occurring market for the conservation and reintroduction of federally protected species; and (3) the reintroduction is being proposed on land owned and operated by the Federal government.

As explained previously, the Act requires the Federal government to conserve listed species and the ecosystems upon which they depend. Congress enacted the Act, as they do many other Acts, because of the need for the Federal government to correct for a market failure that results in resources being allocated inefficiently. Typically, public markets are able to allocate resources in the most efficient manner as long as there are no entry or exit constraints for market participants and no individual or group of individuals are able to influence the market price. The grizzly bear, however, like other wildlife, is not a publically traded commodity. This is because wildlife, in general, exhibits public good characteristics that render the benefits

enjoyed by individuals unrivaled. In other words, because the benefits exhibited by the grizzly bear can be enjoyed by many individuals without effect on the level enjoyed by others, a “free-rider” problem exists whereby individuals who value the grizzly bear have an incentive to let others pay for its provision. Under these circumstances, such goods are typically under-supplied and require the Federal government to step in and correct for this social inefficiency.

In addition to the public good characteristics of the grizzly bear, perhaps as compelling a case can be made in that the Federal government is proposing to reintroduce the grizzly bear on federally owned and operated land. As a land manager, the Federal government attempts to manage its lands in a manner that is most socially efficient. The grizzly bear is a large land mammal that requires a substantial amount of acreage to survive on its own. As a result, the Federal government is in a unique position to, among other things, manage its large land holdings to the benefit and reintroduction of the grizzly bear. As a large public landowner, the Federal government constantly tries to manage its lands in a manner that provides the greatest benefit to society. Through the Wilderness Act, Congress recognized a need for the Federal government to provide and manage some of its lands as wilderness due to its public good characteristics and the lack of a market to provide a socially optimal amount. By re-establishing the grizzly bear to a public wilderness, the Federal government is maximizing social welfare to those recipients who value true wilderness in the sense that the wilderness will more closely represent its original, primitive state.

#### Baseline

The Service conducted an economic analysis for the EIS, looking at effects on hunter harvest, livestock depredation, land use restrictions, human safety, visitor use and existence values. This economic assessment uses some of the information used in the EIS. We recognize that we could have chosen to proceed with grizzly bear reintroduction in the Bitterroot without a new regulatory or rulemaking action (the alternative that provided for reintroduction with full Act protection), in which case we would not have needed to promulgate a 10(j) rule. However, given our need for the public and their elected officials to lend their full support to efforts to recover the grizzly bear in the Bitterroot ecosystem, our doing so would be highly unlikely.

Therefore, we have chosen to compare the economic effects of the 10(j) rule to reintroduce grizzly bears to the Bitterroot ecosystem to a “no bear” baseline (as done in the EIS), rather than a baseline that assumes full protection under the Act.

#### Economic Effects of the Rule

The area affected by this rule consists of a limited area of mostly designated wilderness and surrounding lands in east central Idaho and western Montana, the Bitterroot ecosystem. The Bitterroot ecosystem, as characterized by data from 10 counties in central Idaho and 4 counties in western Montana, is approximately 44,419 square miles and 76% Federal land. As of 1996, the area had a population of about 241,000; a \$4.6 billion local economy; 440,570 cattle and sheep (298,000 are grazed on national forest); approximately 274,360 ungulates, with a hunter harvest of 28,023; and, received approximately \$13.2 million from recreational visits to national forests annually.

Most of the reintroduction area is composed of remote and sparsely inhabited wild lands. Very few paved or unpaved roads are in the reintroduction area or immediately outside of it. These unpaved roads typically have low levels of vehicle traffic, and are constructed for low speeds and used only seasonally. Grizzly bears, therefore, should encounter vehicles and humans infrequently.

#### Potential Costs

One of the potential costs of grizzly bear restoration to the Bitterroot ecosystem is reduced big game hunting opportunities in hunting units/districts in or near the Recovery Area. However, we do not expect grizzly bear recovery to have any significant effect on huntable populations of ungulates in the Bitterroot ecosystem. Using Mattson's (1997) estimates of average grizzly bear predation rates of 1.4 and 5.8 ungulates per year for adult female and male bears respectively, a recovered population of 280 grizzly bears would be expected to prey upon 504 ungulates per year given a 50:50 sex ratio and a 50:50 adult-subadult ratio. This amount of loss would represent approximately 0.11% of estimated ungulate populations in the Bitterroot ecosystem, and would not measurably impact ungulate populations or hunter harvest. Of course, the impact would be significantly less until the population of grizzly bears is fully recovered, which is estimated to take 50–110 years.

A second area of potential costs associated with grizzly bear restoration to the Bitterroot ecosystem is the

possibility of livestock depredation by the recovered grizzly population. Again, these costs are expected to be very low, and are expected to be minimal prior to full recovery of the population of grizzly bears in the Bitterroot ecosystem. Via a mathematical equation using depredation rates from the Yellowstone and Northern Continental Divide ecosystems in relation to total livestock in each of these ecosystems, we estimated that after a recovered population of 280 grizzly bears is achieved, depredation incidents involving livestock would take from 4 to 8 cattle, and from 5 to 44 sheep annually. The calculation of lost value due to this depredation is straightforward. The lost value per year is equal to the estimated number of lost animals per year times the market value of those animals. Given the average value per cow of \$565 and the average value per sheep of \$92 (average values as of 1996 according to Montana and Idaho Departments of Agricultural Statistics as cited in U.S. Fish and Wildlife Service 2000), we estimate that between \$2,720 and \$8,568 per year in livestock predation losses would occur after grizzly bears are fully recovered. It is possible that a private compensation program (such as exists for the gray wolf recovery program) will be set up to lessen the impact of these costs to individual ranchers. If this were the case, the impact of livestock losses would be shifted from the individual ranchers to contributors to such a fund.

We expect that any land use restrictions due to the restoration of grizzly bears to the Bitterroot ecosystem would be minor and temporary, and would not result in lost economic value in recreational activities, timber harvest, or mineral extraction. This conclusion is based on the experience of the Interagency Grizzly Bear Committee, a group composed of officials of the Service, the Forest Service, the Bureau of Land Management and state wildlife offices, and responsible for coordinating management of grizzlies in nearby locations.

It is expected that any land use restrictions on recreation due to the restoration of grizzly bears to the Bitterroot would not result in lost economic value. While some visitors may be inconvenienced due to occasional temporary trail closures, this inconvenience is unlikely to result in any appreciable loss of economic value as, based on experience in other areas where grizzly bears exist, such closures will be rare and use will shift to trails elsewhere. Regulations specific to outfitters operating within the Recovery Area and backcountry recreationists,

including horsepackers and river rafters, may be promulgated at some future time requiring the use of bear-proof garbage and food containers and methods when in the backcountry.

While these regulations would necessarily involve some economic impact to the outfitter and the public, we do not anticipate that this impact would be substantial in any respect. The cost of bear-proofing an outfitter's camp can vary depending on the method of protection used. For a small outfitter, slings and pulleys may run as much as \$50 to \$100 dollars. For larger outfitters, electric fencing or containers could run \$1,000 dollars. For very large outfitters with multiple camps the total cost could be \$2,000 to \$3,000. It is very unlikely that outfitters would reduce operations in the recovery area due to increased costs of bear-proof containers. Big game outfitting on USFS lands is allocated through special use permits. These permits are, in many areas, highly valued assets of the outfitter's business. It is unlikely that an outfitter would either abandon or underutilize their permit because of the cost of purchasing bearproof containers. The cost of the containers when amortized across the outfitter's clients over the life of the containers would represent a very small portion of the total operating expense that the outfitters face.

Timber harvest and mineral extraction are land use activities that are compatible with bear recovery as long as they meet the standards and guidelines of the Forest Service's Forest Plans. Current Forest Plans for the Clearwater and Nez Perce National Forests outside of wilderness areas are adequate for grizzly bear recovery, and we do not anticipate that this grizzly bear reintroduction will result in an economic effect on current timber harvest plans or mineral extraction. It is anticipated that future Forest Plans will continue to manage for grizzly bears as the Forest Service is required by the Act to carry out programs for the conservation of this and other listed species, the Forest Service has been an active member of the Interagency Grizzly Bear Committee, and undeveloped lands will only become more rare and valuable to the continued existence of wildlife in the future.

We examined the costs to human safety and found these to be relatively small. In the Bitterroot ecosystem, during the first several decades following reintroduction, chance of injury caused by grizzly bears would be exceedingly small due to the low density of bears in the area. Projections for human injury once bears are recovered 50–110+ years in the future,

are less than one injury per year and approximately one grizzly bear-induced human mortality every few decades. Backcountry precautions, primarily keeping human foods away from bears, dramatically reduces human-grizzly bear incidents. The potential of encounters between people and grizzly bears is low, and injury rates for the Bitterroot are expected to be similar to the rates for areas outside of the national parks where grizzly bears exist.

For comparison, we used human injury rates from areas with similar circumstances: The Northern Continental Divide ecosystem and the Yellowstone ecosystem outside of Glacier and Yellowstone National Parks, respectively. Human-bear interactions in a national park are much more numerous than would be expected in the remote Bitterroot wilderness, and the statistics are not comparable. In northwest Montana (outside of Glacier Park) and northern Idaho, only two bear-inflicted injuries (one mortality) have occurred in the last 50 years. In the Bob Marshall Wilderness in 1956 a hunter shot and injured a grizzly bear that responded by mortally injuring him. In the Mission Valley in 1985, a bird hunter shot and wounded a grizzly that responded by injuring him. In the Yellowstone ecosystem outside of Yellowstone National Park, there have been 22 injuries due to grizzly bears (including 3 mortalities) within the last 159 years, for an average of one mortality every 53 years.

Given that mortalities in both of these areas average one every 50 years, and the generally accepted range of values for a human life is \$4–10 million, cost in human mortalities is expected to average approximately 80,000–200,000 per year. Costs have only been monetized for human mortality. Human injury is also an additional potential cost, but was not determined for this assessment.

A potential cost is a decrease in visitation of the area by the public. However, changes in visitor use are difficult to anticipate. While some individuals might wish to see a grizzly bear in the wild, others might wish to avoid the possibility of encountering one. The costs of decreased visitation was not estimated.

Finally, the cost for the actual reintroduction is expected to be approximately \$433,600 per year for the 5-year reintroduction period (U.S. Fish and Wildlife Service 2000). This includes the cost of capturing and transplanting bears (\$90,600), monitoring and management of the population (\$173,000), travel expenses of the Citizen Management Committee

(\$20,000), and initial costs for sanitation, outreach, and law enforcement activities by the Forest Service (\$150,000). Annual costs for monitoring and citizen management is expected to be approximately \$193,000 for each year beyond the 5-year reintroduction period.

#### SUMMARY OF POTENTIAL COSTS ASSOCIATED WITH THE 10(J) RULE

	Potential annual cost (\$)
Big game hunting .....	Insignificant.
Livestock depredation .....	2,720–8,568. <sup>1</sup>
Bear-proofing .....	Not quantified as annual cost.
Timber harvest .....	Insignificant.
Mineral extraction .....	Insignificant.
Human mortality .....	80,000–200,000. <sup>1</sup>
Human injury .....	Not determined. <sup>2</sup>
Reduction in visitation .....	Not determined.
Costs of monitoring/management .....	193,000. <sup>3</sup>
Total .....	275,720–401,568.

<sup>1</sup> Costs expected to be significantly lower initially (approaching zero), reaching these amounts after 50–110 years.

<sup>2</sup> Costs expected to be significantly lower initially with projections of one injury/year after 50–110 years.

<sup>3</sup> Costs expected to be \$433,632 for the initial 5 years.

#### Potential Benefits

Grizzly bears are a high-profile species with interest nationwide. A survey of Yellowstone National Park visitors found that respondents ranked the grizzly bear highest among wildlife species they would most like to see on their trip to the park. Restoration of grizzly bears in the Bitterroot ecosystem would further increase national awareness of the presence of this species in the lower 48 States.

Existence value is the value a person associates with the knowledge that a resource exists, even if that person has no plans or expectations of ever directly using that resource. People may hold this value for a number of reasons. In this case, the resource being valued is a recovered or recovering population of grizzly bears in the Bitterroot ecosystem. Since existence values potentially affect everyone in the country, some of these impacts fall to individuals outside of the Bitterroot ecosystem. Because the presence of grizzly bears completes both the biological component of the ecosystem and the wilderness experience, existence benefits are expected to result from the reintroduction.

Another potential benefit is an increase in visitation of the area by the public. However, as stated in the "Potential Costs" section, changes in

visitor use are difficult to anticipate. No monetary value is given to benefits from visitor use in this assessment.

#### Cost-Benefit Summary

We anticipate no significant costs to land use activities on public or private land with regard to hunting, timber harvest, mining, or public access/recreational use. Annual costs associated with livestock depredation, equipment for outfitters to bear-proof camps, risk to human safety, and management and monitoring of the population of grizzly bears are estimated to be approximately \$275,720–401,568 or more (depending on costs for bear-proofing by outfitters). It is uncertain what the net visitation impacts will be. They were not quantified in this assessment. Existence value benefits are expected to result from this rule.

(a) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule would allow management of grizzly bears by government agencies and the public to minimize conflicts over uses of public lands, effects on domestic animals and livestock, and impacts on ungulate populations. A Citizen Management Committee would be authorized to manage implementation of the experimental population and would be tasked with implementing the Bitterroot Chapter of the Grizzly Bear Recovery Plan. Reintroduction could result in grizzly bear recovery in the Bitterroot ecosystem (achievement of the tentative recovery goal of approximately 280 grizzly bears occupying suitable habitat) in a minimum of 50 years (4% growth rate), although recovery would likely require more than 110 years (2% growth rate after the bears were released).

(b) This rule will not create inconsistencies with other agencies' actions. Nonessential experimental population designations under section 10(j) of the Act reduces both the interagency consultation requirements (with other Federal agencies) and "taking" restrictions of the Act. The reintroduction of grizzly bears will occur on Federal public lands managed by the U.S. Forest Service. The action allowed by this rulemaking is consistent with the policies and guidelines of the Forest Service. Because of the substantial regulatory relief provided by nonessential experimental population designations, we do not believe the reintroduction of these bears will conflict with existing or proposed human activities or hinder public use of the Bitterroot ecosystem.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because we expect minimal impacts or restrictions to existing human uses of the Bitterroot ecosystem.

(d) This rule will raise a novel policy issue. We have previously promulgated more than a dozen section 10(j) rules for experimental populations of other listed threatened and endangered species in various localities since 1984. However, this is the first experimental population rule that establishes a management process that includes a Citizen Management Committee. For this reason, the rule is a significant regulatory action in accordance with Executive Order 12866.

#### Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

We certify that this 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.). We have determined that the small entities most likely to be affected by this rule are producers of domestic livestock. There are 4,327 farms within the 14 counties covering the Bitterroot grizzly bear primary analysis area in central Idaho and western Montana. As discussed above, grizzly depredation on domestic livestock would likely be minimal during the estimated 50–110+ years until the population of grizzly bears in the Bitterroot ecosystem is fully recovered. We estimate that after a recovered population of 280 grizzly bears is achieved, depredation incidents involving livestock would be from 4 to 8 cattle and from 5 to 44 sheep per year. Prior to full recovery, depredation losses are expected to be below these estimated levels. In a worst-case situation, depredation could impact 52 out of 4,327 farms, which would not constitute a substantial number of small entities (U.S. Fish and Wildlife Service 2000).

#### Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of a nonessential experimental population of grizzly bears in the Bitterroot ecosystem will not cause: (a) Any effect on the economy of \$100 million or more; (b) any major increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises. Based upon the analysis of identified factors, we have determined that no individual industries within the United States will be significantly affected, and no changes in the demography of populations are anticipated. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of the grizzly bear through reintroduction to suitable habitat.

*Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)*

We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, that this final rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

The management responsibility for the reintroduced population will rest with a Citizen Management Committee created by the Secretary. This Committee will involve local people in the management of this population. Travel and per diem for non-Federal members of this Committee and funding for the function of this Committee will come from the Service.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not "take" private property and will not alter the value of private property. More than 75% of the area included in the nonessential experimental population area is on Federal lands.

*Federalism*

In accordance with Executive Order 13132, this rule will not affect the structure or role of States and will not have direct, substantial, or significant effects on States. Also, our economic analysis indicates that considerable economic benefits would result from the designation.

In keeping with Department of the Interior policy, the Service requested information from and coordinated development of the proposal with appropriate State resource agencies in Idaho and Montana. In addition, both States participated in the development of the EIS. The Service will continue to coordinate any future designation of experimental population status with the appropriate State agencies.

*Civil Justice Reform*

In accordance with Executive Order 12988, we have further determined that this regulation does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

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

This final rule contains collections of information requiring the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* Authorization for this information collection has been approved by OMB and has been assigned control number 1018-0095. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

A Final EIS on the reintroduction of the grizzly bear in the Bitterroot ecosystem has been prepared and is available to the public (see **ADDRESSES**). The Final EIS should be referred to for analysis of the Preferred Alternative chosen in the Record of Decision.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have closely coordinated this rule with the Nez Perce Indian Tribe, which has been involved in development of the rule, and determined that there are no effects.

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**Author**

The principal author of this final 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.

**Regulation Promulgation**

Accordingly, we hereby 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 section 17.11(h) by revising the table entry for “Bear, grizzly (=brown)” under “MAMMALS” 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						
MAMMALS							
*	*	*	*	*	*		*
Bear, grizzly (=brown).	<i>Ursus arctos</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(l)).	XN	706	NA	17.84(l)
*	*	*	*	*	*		*

3. Amend section 17.84 by adding paragraph (l) to read as follows:

**§ 17.84 Special rules—vertebrates.**

\* \* \* \* \*

(l) Grizzly bear (*Ursus arctos*).

(1) *Where does this special rule apply?* The special rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined as follows:

The boundaries of the Experimental Population Area are delineated by U.S. 93 from its junction with the Bitterroot River near 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; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).

(2) *What is the legal status of the grizzly bear?*

(i) The grizzly bear is listed as “threatened” in § 17.11 (h) and protected under this part. However, the grizzly bear population to which this paragraph (l) applies is considered a nonessential experimental population in accordance with section 10(j) of the Act.

(ii) We have determined that, as of December 18, 2000, no grizzly bear population exists in the Experimental Population Area. We find, in accordance with § 17.81 (b), that the reintroduction of grizzly bears as a nonessential experimental population, as defined in § 17.81 (b), will further the conservation of the species and will be consistent with provisions of section 10(j) of the Act, which requires that an experimental population be geographically separate from other nonexperimental populations of the same species. We also find, in accordance with § 17.81 (c)(2), that the experimental population of grizzly bears in the Experimental Population Area is not essential to the survival of the species in the wild.

(iii) Grizzly bears within the Experimental Population Area and the Recovery Area will be accommodated through management provisions provided for in this paragraph (l) and through management plans and policies developed by the Citizen Management Committee (Committee; see paragraph (l)(6) of this section). After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a member of the nonessential experimental population.

(iv) In the conterminous United States, a grizzly bear that is outside the Experimental Population Area identified in paragraph (l)(1) of this section will be considered as threatened.

(3) *Where will grizzly bears be released, and where will recovery be emphasized?*

The Bitterroot Grizzly Bear Recovery Area identifies the area of recovery emphasis within the Experimental

Population Area. The Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (See map at the end of paragraph (l) of this section). All reintroductions will take place in the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this paragraph (l) to change the definition of the Recovery Area.

(4) *What activities are prohibited in the Experimental Population Area?*

(i) You may not take (see definition in § 10.12 of this subchapter) any grizzly bear in the Experimental Population Area, except as provided in this paragraph (l). We may refer unauthorized take of grizzly bears to the appropriate authorities for prosecution.

(ii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or parts thereof that are taken from the Experimental Population Area or possessed in violation of the regulations in this paragraph (l) or in violation of applicable State wildlife conservation laws or regulations or the Act.

(iii) You may not attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this paragraph (l).

(5) *What activities are allowed in the Experimental Population Area?*

(i) For purposes of this paragraph (l), except for persons engaged in hunting or shooting activities, you will not be in

violation of the Act for "unavoidable and unintentional take" (see definition in paragraph (I)(16) of this section) of grizzly bears within the Experimental Population Area when such take is incidental to a legal activity and is not a result of negligent conduct lacking reasonable due care, and when due care was exercised to avoid the taking. Any taking must be reported within 24 hours to appropriate authorities as listed in paragraph (I)(5)(iii) 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. Shooting a grizzly bear as a result of mistaking it for another species is considered a lack of reasonable due care. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.

(ii) Any person with a valid permit issued by us may take grizzly bears in the Experimental Population 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 the nonessential experimental population, and with applicable State wildlife conservation laws and regulations.

(iii) You may take grizzly bears in the Experimental Population Area in self-defense or in defense of the lives of others. Such taking must be reported within 24 hours as to date, exact location, and circumstances to the Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903); or the Assistant Regional Director for Law Enforcement, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125); or the 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 (208-843-2253) (as appropriate).

(iv) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, or appropriate Tribal authorities to harass (see definition in § 17.3) grizzly bears found in the Experimental Population Area that are actually pursuing or killing livestock (to

include permitting the use of livestock guard dogs around livestock to harass such grizzly bears). Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. All such harassment must be accomplished by an opportunistic, noninjurious method (see definition of "opportunistic, noninjurious harassment" in paragraph (I)(16) of this section) to the grizzly bear, and such harassment must be reported within 24 hours as to date, exact location, and circumstances to the authorities listed under paragraph (I)(5)(iii) of this section.

(v) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks or appropriate Tribal authorities to take grizzly bears on private lands found in the Experimental Population Area in a manner other than harassment as defined in this paragraph (I), in order to protect livestock actually pursued or being killed on private property. Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. Any response protocol established by the Committee must have been satisfied and efforts to capture depredating grizzly bears by Service or State or Tribal wildlife agency personnel must have proven unsuccessful. All such taking must be reported as to date, exact location, and circumstances within 24 hours to the authorities listed under paragraph (I)(5)(iii) of this section.

(vi) Any authorized employee or agent of the 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 Population Area if such action is necessary to:

(A) Aid a sick, injured, or orphaned grizzly bear;

(B) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;

(C) 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 otherwise eliminating such depredation or loss of personal property has not been possible, and after eliminating such threat by live-capturing and releasing the grizzly bear unharmed in the area defined in paragraph (I)(2) of this section or other areas approved by the Committee has been demonstrated not to be possible;

(D) Move a grizzly bear for genetic management purposes;

(E) Relocate grizzly bears within the Experimental Population Area to improve grizzly bear survival and recovery prospects; or (F) Relocate a grizzly bear to avoid conflict with human activities. However, grizzly bears in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety, livestock, or bees. Unless the Committee determines otherwise, this rule provides that on private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in the exclusion area, and grizzly bears found there will be captured and returned to the Recovery Area, or placed in captivity, or destroyed, depending on the history of each bear. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(6) *How will local citizens be involved in the management of the Bitterroot nonessential experimental grizzly bear population?*

(i) The Secretary will establish a Citizen Management Committee for the Bitterroot grizzly bear experimental population and will authorize management implementation responsibility as described in paragraph (I)(9) of this section, in consultation with the Governors of Idaho and Montana. As soon as possible after the effective date of this rule, the Secretary will organize the Committee by requesting nominations of citizen members from the Governors of Idaho and Montana and the Nez Perce Tribe and nominations of agency members by represented agencies.

(ii) The Committee will be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement.

(A) Membership will consist of seven individuals appointed by the Secretary based upon the recommendations of the Governor of Idaho, five members



appointed by the Secretary based upon the recommendations of the Governor of Montana, one member representing the Nez Perce Tribe appointed by the Secretary based on the recommendation of the Nez Perce Tribe, one member representing the Forest Service appointed by the Secretary of Agriculture, and one member representing the Fish and Wildlife Service appointed by the Secretary. Members recommended by the Governors of Idaho and Montana will be based on the recommendations of interested parties and will include at least one representative each from the appropriate State wildlife agencies. If either Governor or the Tribe fails to make recommendations within 60 days, the Secretary (or his/her designee) will accept recommendations from interested parties, and will make the appointments.

(B) The Committee will consist of a cross-section of interests reflecting a balance of viewpoints, and members are to be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision-making. In their recommendations to the Secretary, the Governors of Idaho and Montana will attach written documentation of the qualifications of those nominated relating to their knowledge of, and experience in, natural resource issues and their commitment to collaborative decision-making.

(C) Except for the representatives from Federal agencies, the Committee will be selected from communities within and adjacent to the Recovery and Experimental Population Areas.

(D) The Secretary will fill vacancies as they occur with the appropriate members based on the recommendation of the appropriate Governor, the Nez Perce Tribe, or agency.

*(7) Will independent scientific information be readily available to the Committee?*

The Secretary will appoint two scientific advisors to the Committee as nonvoting members to attend all meetings of the Committee and to provide scientific expertise to the Committee. These scientific advisors will not be employed by Federal agencies involved in grizzly bear recovery. The Secretary will contact the Wildlife Society Chapters in Idaho and Montana and the Universities of Idaho and Montana for nominations and will select one wildlife scientist representing each State and appoint them as advisors to the Committee.

*(8) What is the overall mission of the Committee, and how will it operate?*

(i) The mission of the Committee is to facilitate recovery of the grizzly bear in the Bitterroot ecosystem by assisting in implementing the Bitterroot ecosystem chapter of the recovery plan (Bitterroot Ecosystem Recovery Plan Chapter—Supplement to the Grizzly Bear Recovery Plan, U.S. Fish and Wildlife Service, Missoula, Montana, 1996). The Committee will make recommendations to land and wildlife management agencies that it believes will lead to recovery of the grizzly bear. Decisions on, and implementation of, these recommendations are the responsibility of the land and wildlife management agencies.

(ii) The Committee will meet a minimum of two times per year. These meetings will be open to the public. Additionally, the committee will provide reasonable public notice of meetings, produce and provide written minutes of meetings to interested persons, and involve the public in its decision-making process. This public participation process will allow members of the public and/or special interest groups to have input to Committee decisions and management actions.

*(9) What authority will the Committee have, and what will be its primary tasks?*

The Committee will have the authority and the responsibility to carry out the following functions:

(i) Developing a process for obtaining the best biological, social, and economic data. This process will include an explicit mechanism for soliciting peer-reviewed, scientific articles on grizzly bears and their management, and holding periodic public meetings not less than every 2 years, in which qualified scientists may submit comments to and be questioned by the Committee. The two scientific advisors will lead this process. 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 in the Bitterroot ecosystem and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species.

(ii) Soliciting technical advice and guidance from outside experts. The scientific advisors will lead the development of an ongoing process to provide the Committee with the best scientific and commercial data available. The scientific advisors will provide this information in the form of peer-reviewed scientific articles on

grizzly bears and their management, Committee meetings with presentations by scientific experts, and requests to State and Federal management agencies and the private sector for scientific expertise and advice.

(iii) Implementing the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan consistent with this paragraph (I). The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The Committee will make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. If Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the requirements of the National Environmental Policy Act may apply. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee will give full consideration to Service comments and opinions and those of the Forest Service, Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(iv) 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 making decisions.

(v) Developing its internal processes, where appropriate, such as governance, decision-making, quorum, terms of members, officers, meeting schedules and location, public notice of meetings, and minutes.

(vi) Requesting staff support from the Service, the Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, Forest Service, other affected Federal agencies, and the Nez Perce Tribe, when necessary to perform administrative functions, and requesting reimbursement from us for non-Federal Committee members for costs associated with travel, lodging, and incidentals.

(vii) Reviewing existing grizzly bear standards and guidelines used by the Forest Service and other agencies and landowners. The Committee will perform an annual review of grizzly bear mortalities and the number and location of bear/human conflicts. This review 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 Forest Service and other agencies and landowners.

(viii) Developing grizzly bear guidance for proper camping and sanitation within the Experimental Population Area and making recommendations to land management agencies for adoption of such guidelines. Existing camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(ix) Developing a protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Population 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 what the Committee may do to help prevent future conflicts or mortalities. The Committee will recommend, as necessary, policy changes on trail restrictions for human safety to appropriate wildlife and land management agencies.

(x) Recommending to the Service changes to recovery criteria, including mortality limits, population determinations, and other criteria for recovery as appropriate.

(xi) Reviewing all human-caused grizzly bear mortalities to determine whether new measures for avoiding future occurrences are required and make recommendations on such measures to appropriate land and wildlife management agencies. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the State Fish and Game Departments in both Idaho and Montana to develop solutions to minimize the effects on grizzly bears of black bear hunting.

(xii) Developing strategies to emphasize recovery inside the Recovery Area and to accommodate grizzly bears inside other areas of the Experimental Population Area.

(A) Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Population Area. The Committee will not recommend that bears be disturbed or moved unless conflicts are both significant and cannot be corrected as determined by the Committee. This provision includes

conflicts associated with livestock, for which the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Population Area outside of the Recovery Area.

(B) Unless the Committee determines otherwise, this rule provides that private land outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), is an area where any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in these areas, and grizzly bears will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(xiii) Establishing standards for determining whether the experimental reintroduction has been successful and making recommendations on the inclusion of such standards in the Grizzly Bear Recovery Plan. These standards will be based on the best scientific and commercial information available and will reflect that, absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years. General guidelines for the standards by which failure will be measured include, but are not limited to, one or more of the following conditions:

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

(B) 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.

(xiv) Developing procedures for the expeditious issuance of permits described in paragraphs (l)(5)(iv) and (l)(5)(v) of this section, and making

recommendations on such procedures to appropriate agencies.

(xv) Developing 2-year work plans for the recovery effort for submittal to the Secretary pursuant to paragraph (l)(11)(i) of this section.

(xvi) Establishing, based on the best available science, a refined interim recovery goal for the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available and after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area. As this information becomes available, the Committee may recommend the recovery goal to the Secretary along with 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. Additional adjacent areas of public land can be considered for contribution of suitable habitat when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available. Any recommendations for revised recovery goals developed by the Committee will require public review and our approval as appropriate prior to revision of any recovery plan. Grizzly bears outside the Recovery Area and within the Experimental Population Area can contribute to meeting the recovery goal if their long-term occupancy in such habitats outside the Recovery Area is reasonably certain.

(10) *What agencies will be responsible for day-to-day management activities?*

The Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, the Nez Perce Tribe, and the Forest Service, in coordination with us, will exercise day-to-day management responsibility within the Experimental Population Area in accordance with this paragraph (l). The Service and these cooperating agencies will share management responsibility as per agreements with, and in consideration of, recommendations from the Committee.

(11) *How will progress of the Committee be monitored; and what process will be followed by the Secretary to resolve disputes over whether Committee actions are leading to recovery?*

(i) The Secretary or our representative on the Committee will review the Committee's 2-year work plans (see paragraph (l)(9)(xv) of this section). If the Secretary determines, through our representative on the Committee, that the Committee's decisions, work plans, or the implementation of those plans are

not leading to the recovery of the grizzly bear within the Experimental Population Area or are not in compliance with this paragraph (l), our representative will ask the Committee to determine whether such a decision, plan, or implementation of a plan is leading to recovery and is in compliance with this paragraph (l). The Secretary, who retains final responsibility and authority for implementation of the Act, will review the Committee's determination, as provided in paragraphs (l)(11)(ii) through (iv) of this section, and then make a final determination. Should the Secretary find that a decision, work plan, or implementation of a plan by the Committee is inadequate for recovery of the grizzly bear or is not in compliance with this paragraph (l), the Secretary may assume lead management responsibility.

(ii) The Service representative will consider Committee input before making any determination that Committee actions are not leading to recovery or are not in compliance with this paragraph (l). In the event that our representative on the Committee determines that the actions of the Committee are not leading to recovery of the Bitterroot grizzly bear population or are not in compliance with this paragraph (l), he or she will recommend to the Committee, based on the best scientific and commercial data available, alternative or corrective actions and provide 6 months for the Committee to accomplish those actions. Should the Committee reject these corrective actions, our representative will convene a Scientific Review Panel of three and will submit to the panel for review those Committee actions or decisions that he or she has determined are not leading to recovery or are not in compliance with this paragraph (l). The Service representative will consider the views of all Committee members prior to convening a Scientific Review Panel.

(iii) Members of the Scientific Review Panel will be professional scientists who have had no involvement with the Committee and are not employed by Federal agencies responsible for grizzly bear recovery efforts. The Secretary will select one member of the panel, and the Governors of Idaho and Montana in consultation with the Universities of Idaho and Montana (respectively), will select one panel member each. The Scientific Review Panel will review Committee actions or decisions, solicit additional information if necessary and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether Committee actions will lead

to recovery of the grizzly bear in the Bitterroot ecosystem and are in compliance with paragraph (l). Examples of Committee actions, decisions, or lack of actions that can be submitted to the Scientific Review Panel include, but are not limited to, the following: sufficiency of public involvement in Committee activities; decisions involving sanitation and outreach activities; management of nuisance bears; adequacy of recommendations to land and wildlife management agencies; adequacy of Committee actions in addressing issues such as excessive human-caused grizzly bear mortality; and other actions important to recovery of the grizzly bear in the Bitterroot ecosystem. Committee compliance with paragraph (l) provides the basis for the recommendations of the Scientific Review Panel.

(iv) If, after timely review, the Committee rejects the recommendations of the Scientific Review Panel, and our representative determines that Committee actions are not leading to recovery of the Bitterroot population, he or she will notify the Secretary. The Secretary will review the Panel's recommendations and determine the disposition of the Committee.

(A) If the Secretary determines that the Committee should maintain lead management responsibility, the Committee will continue to operate according to the provisions of this paragraph (l) until the recovery objectives under paragraph (l)(9)(xvi) of this section or the Bitterroot Ecosystem Chapter of the Recovery Plan have been met and the Secretary has completed delisting.

(B) If the Secretary decides to assume lead management responsibility, the Secretary will consult with the Governors of Idaho and Montana regarding that decision and further attempt to resolve the disagreement. If, after such consultation, the Secretary assumes lead management responsibility, the Secretary will publish a notice in the **Federal Register** explaining the rationale for the determination and notify the Governors of Idaho and Montana. The Committee will disband, and all requirements identified in this paragraph (l) regarding the Committee will be nullified.

(12) *How will the Bitterroot grizzly bear population be monitored?*

The reintroduced population will be monitored closely by Federal and State agencies in cooperation with the Committee for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(13) *How will success or failure of the project be evaluated?*

The status of Bitterroot grizzly bear recovery will be reevaluated separately by the Committee and by the Secretary 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. Evaluating these parameters will assist in determining success or failure of the restoration.

(14) *What process will be followed if the Secretary determines the project has failed?*

(i) If, based on the criteria established by the Committee, the Secretary, after consultation with the Committee, the Governors of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, determines that the reintroduction has failed to produce a self-sustaining population, this paragraph (l) will not be used to reintroduce additional bears. Any remaining bears will retain their experimental status.

(ii) Prior to declaring the experimental reintroduction a failure, we will investigate the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, we will consider continuing the recovery effort and maintaining the relocated population. If such reasonable measures cannot be identified and implemented, we will publish the results of our evaluation in the **Federal Register** in a proposed rulemaking to terminate the authority for additional experimental grizzly bear reintroductions in the Bitterroot ecosystem.

(15) *Will the legal status of grizzly bears in the Experimental Population Area change?*

We do not intend to change the "nonessential experimental" designation to "essential experimental," "threatened," or "endangered" and foresee no likely situation that would result in such changes. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(16) *What are the definitions of key terms used in the special rule in this paragraph (l)?*

In addition to terms defined in § 10.12 and 17.3 of this subchapter, the following terms apply to this paragraph (l):

*Accommodate* means allowing grizzly bears that move outside the Recovery Area onto public land in the

Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock.

*Citizen Management Committee* (Committee) means that Committee described in paragraph (l)(6) of this section.

*Current range* means the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones or any area where there is a grizzly bear population, as defined in this paragraph (l)(16).

*Exclusion area* (Bitterroot Valley) means those private lands in Montana lying within the Bitterroot Experimental Population Area in the Bitterroot Valley outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass and west of Highway 93.

*Experimental Population Area* (Bitterroot Grizzly Bear Experimental Population Area) means that area delineated in paragraph (l)(1) of this section within which management plans developed as part of the Committee described in paragraph (l)(9) of this section will be in effect. This area includes the Recovery Area. The Experimental Population Area is within the historic range of the grizzly bear, but geographically separate from the current range of the grizzly bear.

*Geographically separate* means separated by more than 10 miles. The term refers to "wholly separate

geographically" in section 10(j)(2) of the Act. The Experimental Population Area and the recovery zone boundary of any existing grizzly bear population must be geographically separate.

*Grizzly bear population* is defined by verified evidence within the previous 6 years which consists of photos within the area, verified tracks, or sightings by reputable scientists or agency personnel of at least two different female grizzly bears with young or one female with different litters in 2 different years in an area geographically separate from other grizzly bear populations. Verifiable evidence of females with young, to be geographically separate, would have to occur greater than 10 miles from the nearest nonexperimental grizzly bear population recovery zone boundary.

*Opportunistic, noninjurious harassment* means harassment (see definition of "harass" in § 17.3) that occurs when the grizzly bear presents itself (for example, the bear travels onto and is observed on private land or near livestock). This paragraph (l) permits only this type of harassment. You cannot track, attract, search out, or chase a grizzly bear and then harass it. Any harassment must not cause bodily injury or death to the grizzly bear. The intent of harassment permitted by this definition is to scare bears away from the immediate area.

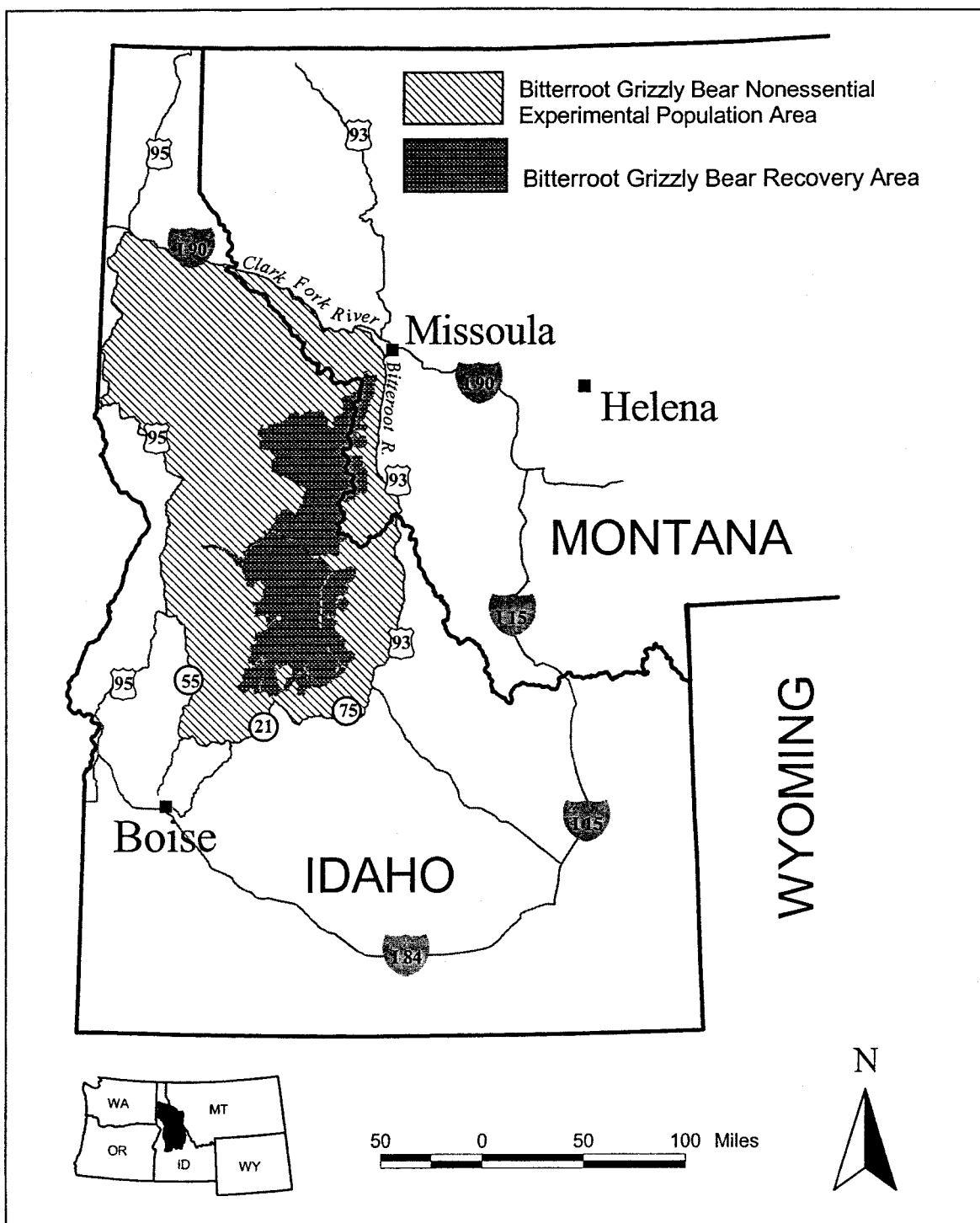
*Recovery Area* (Bitterroot Grizzly Bear Recovery Area) means the area of

recovery emphasis within the Experimental Population Area, and is delineated in paragraph (l)(2) of this section. This area consists of the Selway-Bitterroot and Frank Church-River of No Return Wilderness areas. The Recovery Area is within the historic range of the species.

*Recovery emphasis* means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of grizzly bears is planned to occur within the Selway-Bitterroot Wilderness portion of the Recovery Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate.

*Unavoidable and unintentional take* means accidental, unintentional take (see definition of take in § 10.12 of this subchapter) that occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. An example would be striking a grizzly bear with an automobile. Taking a grizzly bear by shooting will not be considered unavoidable and unintentional take. Shooters have the responsibility to be sure of their targets.

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**Kenneth L. Smith,**

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

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