

REVISED DRAFT 1/04/96
ENDANGERED SPECIES ACT, RULE 10(j)
REINTRODUCTION OF GRIZZLY BEARS INTO THE BITTERROOT
GRIZZLY BEAR RECOVERY ZONE

50 CFR Section 17.84 Special rules-vertebrates.

(z) Grizzly Bear (*Ursus arctos horribilis*)

(1) Definitions. The definitions set out in Section 17.3 apply to this paragraph (z). For purposes of this paragraph --

(i) The term "Bitterroot Grizzly Bear Experimental Population Area" (Experimental Area) means that area delineated in paragraph (z)(9) of this section which surrounds and includes the Bitterroot Grizzly Bear Recovery Zone and within which management plans delineated in paragraph (z)(18) of this section will be in effect.

(ii) The term "Bitterroot Grizzly Bear Recovery Zone" (Recovery Zone) means that area delineated in paragraph (z)(10) of this section within which an experimental population of grizzly bears is released and within which management plans delineated in paragraph (z)(18) of this section will be in effect.

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

(iv) The term "Citizen Management Committee" (Committee) means that Committee delineated in paragraph (z)(12) of this section, which, upon delegation by the Secretary of Interior, in consultation with the Governors of Idaho and Montana, shall exercise the overall policy and management authority for decisions related to the reintroduction and management of grizzly bears in the Experimental Area.

(v) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. {For purposes of this special rule, timber harvest, mining, grazing, recreation and other activities lawfully conducted will not constitute "harm" within the meaning of the Endangered Species Act or regulations adopted thereunder.}

(2) The grizzly bear population reintroduced into the Recovery Zone and residing within this zone or the Experimental Area is a nonessential, experimental population. This population will be managed in accordance with the provisions of this rule and the management plan incorporated by reference herein.

(3) No person may take this species in the Experimental Area, except as provided in paragraphs (z)(4), (5), (6) and (7) of this section.

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

(5) (i) No person may take grizzly bears found in the area defined in paragraph (z)(9) of this section unless that take is in defense of that person's own life or the lives of others, provided that such taking shall be reported within 48 hours to either the Idaho Department of Fish and Game or the Montana Department of Fish, Wildlife and Parks.

(ii) Any other take of a grizzly bear must also be reported immediately to either the Idaho Department of Fish and Game or the Montana Department of Fish, Wildlife and Parks. Any take of a grizzly bear that results from negligent conduct or is a "knowing take" will be referred to the appropriate authorities for prosecution.

(iii) Any livestock owner may be issued a permit by the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks to harass grizzly bears found in the area defined in paragraph (z)(9) of this section that are actually harming or killing livestock, provided that all such harassment is by methods that are not lethal or physically injurious to the grizzly bear and is reported within 48 hours to either the Idaho Department of Fish and Game or the Montana Department of Fish, Wildlife and Parks. Procedures for expeditious permit issuance will be established by the Committee.

(iv) Any livestock owner may be issued a permit by the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks to take grizzly bears found in the area defined in paragraph (z)(9) of this section to protect livestock actually pursued or being killed on private properties if the response protocol established by the Committee has been satisfied and efforts to capture depredating grizzly bears by Service or state wildlife agency personnel have proven unsuccessful, provided that all such taking shall be reported within 48 hours to either the Idaho Department of Fish and Game or the Montana Department of Fish, Wildlife and Parks.

(v) The ability to take grizzlies in defense of a person's own life or the life of others shall not be constrained within the experimental area. In situations where personal property is imminently threatened or damaged, the Committee will develop guidelines for trained

professionals to relocate, remove, or destroy grizzly bears as quickly and efficiently as possible.

(6) Any authorized employee or agent of the Service or appropriate state wildlife agency or tribe who is designated for such purposes, when acting in the course of official duties, may, subject to Committee approval, take a grizzly bear from the wild in the Experimental Area if such action is necessary to:

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

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or part thereof from the experimental population that is taken in violation of these regulations or in violation of applicable state fish and wildlife laws or regulations or the Endangered Species Act.

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

(9) Bitterroot Grizzly Bear Experimental Population Area. The boundaries of the Bitterroot Grizzly Bear Experimental Population Area will be delineated by U.S. 93 from Missoula, Montana to Challis, Idaho; Idaho 75 to Stanley, Idaho; U.S. 21 from Stanley to Lowman, Idaho; the secondary road from Lowman to Banks, Idaho; U.S. 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; and Interstate 90 from Coeur d'Alene to Missoula, Montana. Grizzly bears outside of the Recovery Zone as defined in (z)(10) but within the Experimental Area will be accommodated through management provisions provided for in this rule and through the management plans and policies developed by the Committee.

(10) Bitterroot Grizzly Bear Recovery Zone. The Bitterroot Grizzly Bear Recovery Zone will consist of the Selway-Bitterroot Wilderness and the Frank Church River of No Return Wilderness. All reintroductions will take place in the Selway-Bitterroot Wilderness unless the Committee determines that reintroduction in the Frank Church River of No Return Wilderness is appropriate. This definition differs from that found in the Grizzly Bear Recovery Plan. The term "Bitterroot Grizzly Bear Recovery Zone" used here identifies the area of recovery emphasis.

(11) Recovery Goal. The Bitterroot Chapter of the Grizzly Bear Plan identifies a recovery goal. This recovery goal will be refined as grizzly bears are reintroduced and occupy suitable habitats in the Experimental Area. The recovery goal will be based on the best scientific and commercial data available. Current information suggests a recovered population will be between 200-300 grizzly bears occupying suitable habitats within the wilderness and adjacent lands. The Committee will recommend a final recovery goal when sufficient information on the experimental grizzly bear population is available. When the recovery goal is met, the Secretary of Interior will promulgate a rule for the delisting of the grizzly bear population within the Experimental Area in accordance with the requirements of 50 CFR 424.11(d).

(12) Citizen Management Committee. Upon promulgation of this rule and after consultation with the Governors of Idaho and Montana, the Secretary of Interior shall delegate management authority for the Bitterroot grizzly bear experimental population to the Citizen Management Committee. The Committee will:

(i) Base its decisions upon the best scientific and commercial data available;

(ii) Have the authority to solicit technical advice and guidance from outside experts;

(iii) Request staff support from Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, U.S. Fish and Wildlife Service, U.S. Forest Service, other affected federal agencies, and the affected tribes, to perform administrative functions and reimburse Committee members for costs associated with meetings, travel, and incidentals; and

(iv) Develop and oversee management plans, policies and direction for the management of grizzly bears in the Experimental Area in accordance with applicable state and federal laws.

(13) The Idaho Department of Fish and Game and the Montana Department of Fish, Wildlife and Parks, in consultation with the Service and appropriate tribes, will exercise day-to-day management responsibility within the Experimental Area while implementing the policies and plans of the Committee.

(14) The Secretary of Interior shall review a two-year work plan submitted by the Committee that outlines the policy directions for the Bitterroot reintroduction effort. If the Secretary of Interior determines, through his/her representative on the Committee, that the decisions of the Committee, the management plans or the implementation of those plans are not leading to the recovery of the grizzly bear within the Experimental Area, the Service shall solicit from the Committee a determination whether the decision, the plan or implementation of components of the plan are leading to recovery. Notwithstanding a determination by the Committee that a decision, the plans, or implementation of the plans are leading to recovery of the grizzly bear within the Experimental Area, the Secretary of Interior may find by a preponderance of the evidence that the decision, the plans or implementation of the plans are inadequate for recovery and may assume management authority. Prior to that assumption, the Secretary of Interior shall provide the Committee with recommended corrective actions and a six-month time frame in which to accomplish those actions.

(15) The Committee shall be composed of 15 members serving six-year terms. Appointments may initially be of lesser terms to ensure staggered replacement. That membership shall consist of seven individuals appointed by the Secretary of Interior based upon the recommendations of the Governor of Idaho; five members appointed by the Secretary of Interior based upon the recommendations of the Governor of Montana; one member appointed by the Secretary of Agriculture or his/her designee; and one member appointed by the Secretary of Interior or his/her designee. Members recommended by the Governors of Idaho and Montana shall be based on the recommendations of the interested parties and shall include at least one representative each from the appropriate state fish and wildlife agency. Other representatives shall be selected from affected interest groups, including local governments. The Secretary of Interior shall solicit recommendations from the affected tribes and shall appoint a tribal member. The Secretary of Interior shall fill vacancies as they occur with the appropriate members based on the recommendation of the appropriate Governor or tribes. The Committee shall continue until the recovery objectives have been met and the Secretary of Interior has initiated delisting.

(16) Provisions for public involvement. The Committee shall provide means by which the public may participate in, review and comment on the decisions of the Committee.

(17) Provisions for Committee Decision-Making. The Committee shall develop its internal processes, where appropriate, such as governance, decision-making, quorum, officers, meeting schedules and location, public notice of meetings, minutes, etc. Given the large size of the Committee,

consensus will be the preferred decision-making process, but a simple majority can approve any Committee decisions.

(18) Initial Standards and Guidelines for Bitterroot Grizzly Bear Management. The Committee shall develop management plans, as necessary, giving full consideration to the comments and opinions of the Idaho Department of Fish and Game and the Montana Department of Fish, Wildlife and Parks. The following are standards and guidelines to be utilized by the Committee in developing management plans for the reintroduction and management of grizzly bears within the Experimental Area:

(i) All decisions of the Committee and components of its management plans must lead toward recovery of the grizzly bear and minimize social and economic impacts.

(ii) Forest plan standards and guidelines for wildlife management will be deemed adequate unless the Committee determines otherwise.

(iii) Grizzly bear guidelines for proper camping and sanitation within the Experimental Area will be developed by the Committee. Existing grizzly bear camping sanitation procedures developed in other grizzly ecosystems will serve as a basis for such guidelines.

(iv) Development of appropriate responses to grizzly/human encounters, livestock depredations, and other grizzly/human conflicts within the Experimental Area and not specified in this rule will be the responsibility of the Committee.

(a) This rule anticipates no restrictions on trail systems in back- or front-country areas of the Experimental Area for grizzly security. Policy on trail restrictions for public safety will be set by the Committee.

(b) This rule anticipates no restrictions on black bear hunting within the Experimental Area for grizzly bear security. The Committee's mandate to review all grizzly mortalities during the first 5 years (Section 18(vi)) will apply to any mistaken-identity kills. The Committee will work with both state fish and game agencies to develop solutions that minimize conflicts between grizzly bears and black bear hunting.

(c) Ongoing animal damage control programs will not be affected by grizzly recovery. Significant changes in existing control practices would require Committee approval.

(d) This rule anticipates prompt delisting upon achievement of recovery goals, with subsequent management vested with the Citizen Management Committee, Montana Department of Fish, Wildlife and Parks, and Idaho Department of Fish and Game.

(v) Appropriate revisions of mortality limits, population determinations, succeeding reintroductions, and

other criteria for recovery will be the responsibility of the Committee.

(vi) During the first five years, all human-caused mortalities will result in a review by the Committee to determine whether new measures for avoiding future occurrences are required.

(vii) Management techniques may be adapted to respond to new information as the grizzly population establishes itself.

(viii) Grizzly Bear Presence Outside the Recovery Zone: The standards and guidelines recognize that grizzly bears will range outside the Recovery Zone and that grizzly bear habitat exists throughout the Experimental Area. A principle function of the Committee is to develop strategies to accommodate grizzly bears outside the Recovery Zone. Where conflicts are both significant and cannot be corrected as determined by the Committee, including conflicts associated with livestock, the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Area. For purposes of the rule and unless the Committee determines otherwise, private lands outside the national forest boundary in the Bitterroot Valley are an area where conflicts are significant and cannot be corrected. Grizzly bear occupancy will be discouraged and bears on private lands will be captured and returned to the Recovery Zone.

(ix) All existing grazing allotments within the Experimental Area will be managed similar to Situation 2 habitat, per the Interagency Grizzly Bear Committee Guidelines. The Committee will adapt this classification to minimize adverse impacts to permittees.

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

(20) The status of Bitterroot grizzly recovery will be reevaluated by the Committee and Secretary at five-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.

(21) Determination of an Unsuccessful Reintroduction Under Nonessential Experimental Designation. The Committee will establish standards for determining that the experimental reintroduction has been unsuccessful. It is recognized that absent extraordinary circumstances these standards will reflect that the success or failure of the program cannot be measured in less than ten years. General guidelines for those standards and criteria include one or more of the following conditions:

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

(ii) 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;

(iii) If, based on any of the criteria established by the Committee, the Secretary of Interior concludes, after consultation with the Committee, the states of Idaho and Montana, the Idaho Department of Fish and Game and the Montana Department of Fish, Wildlife and Parks, that the reintroduction has failed to produce a viable population, this rulemaking will be amended to terminate the experimental reintroduction. Any remaining bears will retain their experimental status.

(iv) Prior to declaring the experimental reintroduction a failure, a full evaluation will be conducted into the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, consideration will be given to continuing the relocation effort and the relocated population. If such reasonable measures cannot be identified and implemented, the results of the evaluation will be published in the FEDERAL REGISTER with a proposed rulemaking to terminate the experimental reintroduction.