

Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI03

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Removal of Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are reevaluating our decision with respect to grizzly bear recovery in the Bitterroot Ecosystem (BE), published November 17, 2000 (65 FR 69644). The Record of Decision (ROD) for a Final Environmental Impact Statement (FEIS) published in March 2000, selected the Preferred Alternative. This alternative established a nonessential experimental population of grizzly bears in the BE in east-central Idaho and a portion of western Montana pursuant to section 10(j) of the Endangered Species Act of 1973, as amended. A final rule to implement the preferred alternative was published in the Federal Register on November 17, 2000. In light of our current recovery needs for grizzly bears in other areas and our available resources, as well as the objections of the States that would be

affected by the reintroduction of grizzly bears in the BE, we are reevaluating our prior decision. We are now proposing to select the No Action Alternative as our Preferred Alternative (see Notice of Intent elsewhere in this edition of the Federal Register) and are currently requesting public comments on this action. After receipt and review of all comments, the Service will make a final decision with regard to this proposal. If we select the No Action Alternative, we will remove the pertinent regulations.

DATES: A 60-day comment period has been announced on the reconsideration of the Final EIS (see Notice of Intent to reevaluate the Record of Decision for the Final Environmental Impact Statement for Grizzly Bear Recovery in the Bitterroot Ecosystem published in this issue of the Federal Register). Written public comments are solicited independently on this action or along with comments on the Notice of Intent. Written comments must be received by [insert date 60 days from date of Federal Register publication].

ADDRESSES: Written comments should be addressed to Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Box 25486 DFC, Denver, Colorado 80225. Comments also may be mailed electronically to <FW6_grizzly@fws.gov>. The Final EIS (FEIS), Record of Decision (ROD), and Final Rule are available for viewing and downloading at <<http://www.r6.fws.gov/endspp/grizzly/>>. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Baker, Assistant Regional Director, Ecological Services (see ADDRESSES above), at telephone 303-236-7400.

SUPPLEMENTARY INFORMATION:

Background

A Final Environmental Impact Statement (FEIS), published in March 2000 (see 65 FR 12570, March 9, 2000), evaluated a proposal to establish an experimental population and reintroduce grizzly bears into the Bitterroot Ecosystem (BE) in east-central Idaho and western Montana. Six alternatives were discussed. The Preferred Alternative, selected in the Record of Decision (ROD), was to establish a nonessential experimental population of grizzlies in the BE under section 10(j) of the Endangered Species Act (50 CFR Section 17.84) (see 65 FR 69644, November 17, 2000). A final rule to implement the Preferred Alternative was published in the Federal Register on November 17, 2000 (65 FR 69624), and is codified at 50 CFR 17.84(l). See FEIS and final rule for a more detailed discussion.

In the ROD we said that implementation of the Preferred Alternative was contingent upon adequate funding, so that the current level of Service activities in other grizzly bear recovery areas would not be compromised. We also stated that bears would be reintroduced in 2002 at the earliest, again contingent upon available funding. While the ESA requires us to identify recovery actions for listed species, we have the discretion and flexibility to identify the highest priority recovery activities and to determine if experimental populations should be established.

There are approximately 1,000 to 1,100 grizzly bears in the western United States, scattered over Montana, Idaho, Washington, and Wyoming. We estimate there are between 400-600 bears in the Yellowstone ecosystem; 400-500 bears in the Northern Continental Divide ecosystem; 40-50 bears in the Selkirk ecosystem; 30-40 bears in the Cabinet-Yak ecosystem; and fewer than 15 bears in the Northern Cascade ecosystem. Although grizzly bears inhabited the BE at one time, they were killed to eliminate threats to humans and domestic livestock, for their fur, and for sport. The last verified death of a grizzly in the Bitterroot was in 1932; the last tracks were observed in 1946.

We are currently conducting a variety of activities relating to the recovery of the grizzly bear. We produce habitat-based recovery criteria; conduct and analyze population surveys; develop and test better population estimation methodologies; trap bears to mark for population studies and monitoring; work with States to address problem bears that endanger livestock or humans; assess food and other habitat resources; provide secure habitat for females to raise their young; educate the public and local governments about living with bears and how to avoid conflicts with them; and work with companies and government agencies on how to manage and develop resources in bear country. Each of these activities is crucial in ensuring the recovery of the grizzly in existing ecosystems. We will spend \$494,000 in FY 2001 to carry out grizzly recovery efforts.

Our highest priority for recovery of the grizzly bear is to continue to carry out these recovery activities in ecosystems where the grizzly bear populations currently exist. Rather than diverting resources towards a reintroduction of grizzlies, it is more important at this time to ensure the continued viability of our ongoing recovery efforts in the existing ecosystems.

Apart from higher priority uses of limited recovery funds, reintroduction of grizzlies is strongly opposed by some citizens potentially adversely affected by this action. We propose to reexamine the concerns raised about the safety of human inhabitants in or near the Bitterroot ecosystem to ensure that the potential safety risks to humans are adequately considered. We must be cognizant of the possibility that humans may be killed or injured as grizzly bears are introduced.

Accordingly, we believe that it is neither prudent nor consistent with our recovery priorities to expend our limited recovery funds and staff effort on establishment of a nonessential, experimental grizzly bear population in the BE at this time. Moreover, we believe

that further consideration of the legitimate safety concerns of the current residents of BE against reintroduction is warranted.

Proposed Action

We are proposing to select the No Action Alternative analyzed in the Bitterroot FEIS as our Preferred Alternative. The No Action Alternative described in the FEIS is entitled Natural Recovery. This alternative assumes that current management activities will continue over the next 50+ years. The overall environmental effects of taking no action likely would result in continued recovery in the other ecosystems (because bears will not be removed and resources will not be diverted), but no recovery of grizzly bears in the BE in the near future. Although grizzly bears may start to move into the BE within 50 years from the Yellowstone Ecosystem, complete recovery of the grizzly bear population in the BE would require at least 100-160 years. If grizzly bears naturally dispersed to the BE they would be protected as a threatened species under the ESA. (See FEIS for a thorough evaluation of this alternative.)

Should the No Action alternative be selected as the new Preferred Alternative, there will be no action taken by the Service to reintroduce grizzly bears into the Bitterroot area and the Service will concentrate its efforts to recover grizzly bears in existing areas. Therefore, if we select the No Action Alternative, there will be no need for the rule on establishment of an experimental population, and the rule will be removed from 50 CFR 17.84.

Public Comments Solicited

We intend for any rule that is finally adopted to be as effective as possible. Therefore, we invite the public, concerned government agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this

proposed rule (see "ADDRESSES" section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

Required Determinations

Regulatory Planning and Review

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, recognized as the Bitterroot ecosystem. The Bitterroot ecosystem, as characterized by data from 10 counties in central Idaho and 4 counties in western Montana, has an area of approximately 44,419 square miles (17,976 ha) and is about 76% Federal land. As of 1996, the area had a human population of about 241,000 people; a \$4.6 billion/year local economy; 440,570 head of livestock (cattle and sheep); approximately 274,360 deer and elk; a yearly harvest of 28,023 deer and elk; and, received approximately \$13.2 million/year from recreational visits to national forests.

This proposed rule is a significant rule and is subject to review by the Office of Management and Budget (OMB) under 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.). Small entities most likely to be affected by this rule are producers of domestic livestock. Although highly unlikely in the near future, grizzly bears may re-colonize this area from other ecosystems. It is estimated that at least 50 years will pass before grizzly bears might reach this area. If breeding populations became established, it would conservatively require an additional 50-110 years for a recovery of grizzly bears in the BE.

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

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more on local or State governments or private entities. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. Primary grizzly bear management responsibility would reside with the Service. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not

required.

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.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, we have 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 rule contains no information collection. An agency may not conduct or sponsor, and

a person is not required to respond to, a collection of information unless it displays a current 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 No-Action alternative.

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), Executive Order 13175 and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (EO 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send your comments concerning how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, D.C. 20240 (e-mail: Exsec@ios.doi.gov).

Author

The principal author of this proposed rule is Susan Baker (see Addresses section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Removal

Accordingly, under the authority of 16 U.S.C. 1531-1544, the Service hereby proposes to amend Part 17 by removing Section 17.84(l), subchapter B of Chapter I, title 50 of the Code of Federal Regulations.

PART 17 [AMENDED]

1. 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.

§ 17.84 (1) [REMOVED]

2. Remove § 17.84 (1)

Dated: _____

Acting Assistant Secretary for Fish and Wildlife and Parks

(Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Proposed Removal of Regulations)