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

GRIZZLY BEAR
Proposed "Threatened" Status in the
Conterminous 48 States

The Director, United States Fish and
Wildlife Service, hereby issues a notice
of proposed rulemaking which would list
the grizzly bear (Ursus arctos horribilis)
in the 48 conterminous States of the
United States as a threatened species in
50 CFR 17.32 and establish appropriate
regulations to provide for the conserva-
tion of such species.

BACKGROUND

On February 14, 1974, the Fund for
Animals, Inc., petitioned the Department
of the Interior to list the grizzly bear
(Ursus arctos horribilis) in the conter-
minous 48 States of the United States as
an "endangered" species. This petition,
and accompanying supportive data, were
examined by Fish and Wildlife Service
biologists who determined that the Fund
for Animals, Inc., had presented sub-
stantial evidence to warrant a review of
the status of the grizzly bear in the con-
terminous 48 States; a notice to that
effect was placed in the Federal Register
on March 29, 1974 (39 FR 11611). Sim-
ultaneously, the Governors of States in
which grizzly bears are resident were
notified of the review and were requested
to supply data relative to the status of
the species in their respective States.

As a result of this review, the Director
finds that there are sufficient data to
warrant a proposed rulemaking that the
grizzly bear is a "threatened" species in
the 48 conterminous States of the United
States. This position is taken recogniz-
ing that reliable population status infor-
mation is unavailable except for the
Yellowstone Ecosystem; and even here
there are conflicting estimates of the
population. Currently, studies are under-
way in the States south of Canada which,
in time, will provide better information.
Consequently, the Director will reevalu-
ate his position as new information be-
comes available and take appropriate
action, if needed, at that time.

The Endangered Species Act of 1973
(16 U.S.C. 1533(a)(1)) includes the fol-
lowing statement:

The Secretary shall by regulation deter-
mine whether any species is an endangered
species or a threatened species because of any
of the following factors:

(1) Present or threatened destruction,
modification, or curtailment of its habitat
or range;

(2) Overutilization for commercial, sport-
ing, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory
mechanisms; or

(5) Other natural or manmade factors
affecting its continued existence.

Specifically, with regard to the grizzly
bear in the conterminous 48 States, pres-
tent evidence suggests that conditions
(1), (2), and (5) are pertinent. One or
more of these conditions are affecting
each of the remaining grizzly bear popu-
lations in each of the named ecosystems
as well as in the remainder of the conter-
minous 48 States. Major factors in-
clude, but are not limited to, the follow-
ing:

(1) Present or threatened destruction,
modification, or curtailment of habitat
or range. (a) The range of the grizzly
bear, which at one time was much of the
western United States, is now confined
to isolated regions in Montana, Idaho
and Wyoming.

(b) Land use practices, including live-
estock grazing, timbering and trial con-
struction in areas where these bears still
occur have resulted in the building of
numerous access roads and trails into
areas which were formerly inaccessible. This has resulted in making the bears more accessible to legal hunters, illegal poachers, human-bear conflicts, and livestock-bear conflicts.

19) Overutilization for commercial, sporting, scientific or educational purposes. Many persons consider these bears as dangerous vermin; such an attitude results in a continual loss of animals through indiscriminate illegal killing. Other bears are taken regularly in control operations, because they are considered a threat to human safety, and still others are lost because of livestock depredations on public and private lands. In addition, legal sport hunting is continuing in two of the three States where grizzlies still occur. The resulting total mortality is considered excessive both by the Montana Cooperative Wildlife Research Unit and the National Academy of Sciences.

(3) Other natural and manmade factors affecting its continued survival.

(a) In two of the three areas where grizzly bears still occur, they are isolated from other populations so that they cannot be gene-pool. Such bears may be at an increased risk of inbreeding and may be less able to adapt to changing conditions.

(b) In a smaller area, bears may be killed through indiscriminate hunting, trapping, and other activities.

(c) Rapid closing of the garbage dumps in Yellowstone National Park in 1970 and 1971 may have resulted in a dispersal of the bears out of the park and into adjacent States where they were not subject to legal and illegal killing.

PROPOSED

Grizzly bears in the conterminous 48 States occur almost entirely in three grizzly bear "ecosystems." These are: Selway-Bitterroot Ecosystem (Clearwater National Forest, the Selway-Bitterroot Wilderness Area, and the Salmon River breaks 17 Primitive Area); Bob Marshall Ecosystem (Flathead National Forest; Bob Marshall Wilderness Area, Mission Mountains Primitive Area, and Glacier National Parks); and Yellowstone Ecosystem (Yellowstone National Park, Gros Teton National Park, Teton National Forest, that part of Yellowstone National Forest north of Wind River; that part of Galiatin National Forest south of Interstate Highway 90, and the Beartooth Primitive Area).

No new Federal regulations are now thought necessary for the Bob Marshall Ecosystem because in 1975 Montana will implement a strictly controlled annual quota on the number of grizzly bears that may be taken therein, and because of other considerations. The following letter from the Montana Department of Fish and Game reflects these considerations.

On December 30, 1974, the U.S. Fish and Wildlife Service published an amendment to the Endangered Species Act (39 FR 44990) to deal with the situation. That amendment Part 17 "Endangered and Threatened Wildlife," and established a new D for threatened wildlife. The complete revision of Part 17, presently in preparation, this rule, could further amend Part 17, which is the "look-alike" of the "look-alike"

PUBLIC COMMENTS SOLICITED

The Director intends that adopted rules be as responsive as possible to the conservation of the grizzly and therefore desires to obtain comments and suggestions of the other available government and private interests on these rules.

Final promulgation of grizzly regulations, in the interest of maintaining the public in a state where they are considered threatened. The Service is subject to acknowledgment receipt of comments received by the Director of Fish and Wildlife Service, P.O. Box 19163, Washington, D.C. 20036. All comments received will be considered. The Service will respond to the comments received by the Service in writing to the Director of Fish and Wildlife Service.

Sincerely,

WESLEY R. WOODCOED, State Director and Game Director.

However, it is proposed herein that regulations be applied to the other two ecosystems and to the grizzly bear which may occur in other areas of the conterminous 48 States. Such regulations involve a comprehensive system in order to provide for the conservation of the grizzly bear in those two ecosystems. The proposed rule would also cover grizzly bears outside of areas through a "look-alike" provision. Under this provision bears from other geographic areas would also be treated as "threatened" unless there is evidence provided establishing that such bears originated outside the portion of their range where they are considered threatened.

DEPARTMENT OF FISH AND GAME

STATE OF MONTANA

November 25, 1974.

Mr. Lynn A. Greenleaf,
Director, Fish and Wildlife Service,
Washington, D.C.

DEAR MR. GREENLEAF: In the interest of maintaining an ecosystem related to grizzly bear management and in order for the U.S. Department of Interior to find adequate documentation of the placing of any restrictive federal regulations on grizzly bears in the Bob Marshall ecosystem, the Montana Fish and Game Commission has developed the following program:

(1) That the maximum number of grizzly bear to be removed annually from the Bob Marshall ecosystem will not exceed 25. Our records show that the average annual take from this population since 1967 has been 29 and at this time it is felt that a conservative take from this population would be advisable. In order to control the removal of bears from the population there will be an annual quota not to exceed 25. This number will include bear losses from any other cause and the annual legal quota will be so adjusted. Hunters holding bear permits will be required to report a kill to the Department of Fish and Game within 48 hours and within a ten-day period shall be required to submit the hide and skull to the department for scientific analysis and purchase a trophy permit. The hunting season will be closed upon 48 hours notice when the removal figure begins to approach 25.

(2) Removal of nuisance bears will be held to a minimum through live-trapping and transplanting into inaccessible areas and by other means available to the department. The bear in question would be killed only when all else fails. All bears taken will be, if possible, transported to the department's wildlife laboratory in Bozeman where complete scientific data will be recorded and analyzed. All such records will, of course, be available to all cooperating agencies and the public.

(3) No change in the above policies will be made without giving 90 days notice in writing to the Director of the Fish and Wildlife Service.

Sincerely,

WESLEY R. WOODCOED,
State Director and Game Director.

Federal Register, Vol. 40, No. 1—Thursday, January 2, 1975
PROPOSED RULES

(1) Prohibitions. These prohibitions apply to the Ursus arctos horribilis listed above.

(A) Bob Marshall Ecosystem. The following prohibitions apply only to such wildlife found in the Flathead National Forest, the Bob Marshall Wilderness Area, the Mission Mountain Primitive Area, and Glacier National Park, which together comprise the Bob Marshall Ecosystem in the State of Montana:

(I) Except as permitted by the laws and regulations of the State of Montana, no person shall take any such wildlife found in the Bob Marshall Ecosystem.

(B) Selway-Bitterroot Ecosystem. The following prohibitions apply only to such wildlife found in the Clearwater National Forest, the Selway-Bitterroot Wilderness Area, and the Salmon River Breaks Primitive Area, which together comprise the Selway-Bitterroot Ecosystem in the States of Idaho and Montana.

(1) Except as necessary in self-defense, no person shall take any such wildlife found in the Selway-Bitterroot Ecosystem: Provided, That any such taking in self-defense shall be lawful only if fully reported to the Director, and to appropriate State authorities, as soon as practicable after such taking, and in any event, within 30 days of such taking.

(C) Other Areas of the 48 Conterminous States. The following prohibitions apply to all such wildlife found in all areas of the 48 conterminous States not mentioned in prohibitions (A) and (B) above:

(I) Except as necessary in self-defense, or to prevent other serious threats to human safety, or to prevent significant deprivations in lawfully present livestock, no person shall take any such wildlife found in any area of the 48 conterminous States and not mentioned in prohibitions (A) and (B) above. Any such taking in self-defense shall be lawful only if fully reported to the Director, and to appropriate State authorities, as soon as practicable after such taking, and in any event, within 30 days of such taking. Any such taking to prevent other serious threats to human safety, or to prevent significant deprivations in lawfully present livestock, shall be lawful only if (1) it was not reasonably possible to eliminate such threat or deprivation by live-capturing and releasing unharmed in a remote area the wildlife involved; and (2) such taking is fully reported to the Director as soon as practicable after occurrence, and in any event, within 30 days of occurrence.

(D) No person shall import any such wildlife into the United States.

(E) No person shall export any such wildlife from the United States.

(F) No person shall possess, sell, deliver, carry, transport, or ship in interstate or foreign commerce any such wildlife.

(G) No person shall, in the course of a commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife.

(H) No person shall sell or offer for sale in interstate or foreign commerce any such wildlife.

2. Add a new Subpart E, and §§ 17.41 and 17.42, to read:

Subpart E—Similarity of Appearance

§ 17.41 General.

(a) Wildlife resembling endangered wildlife-treatment as endangered. Having found applicable the factors listed in section 1533(e) of the Endangered Species Act of 1973 (16 U.S.C. 1533(e)), the Director deems it advisable, for enforcement purposes, because of the resemblance to endangered species of the species listed below to treat the species listed below as endangered, and as subject to all prohibitions applicable to the endangered species which such wildlife resembles, unless documentation or other evidence is presented which clearly establishes that any such wildlife in question is not endangered.

(b) Wildlife resembling endangered wildlife-list.

<table>
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<tr>
<th>Common name</th>
<th>Scientific name</th>
<th>Range</th>
<th>Endangered species to which similar</th>
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<td>[Reserved]</td>
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§ 17.42 Similarity of appearance due to limited geographic application of endangered or threatened species.

(a) Wildlife listed as endangered in only a portion of its range—Treatment of all such wildlife as endangered. Whenever wildlife is listed as endangered in only a portion of its range, the Director deems it advisable, based on the factors listed in section 1533(e) of the Endangered Species Act of 1973 (16 U.S.C. 1533(e)), to treat all such wildlife, regardless of geographic origin, as endangered, unless documentation or other evidence is presented which clearly establishes that any such wildlife in ques-

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