RULES AND REGULATIONS

CHAPTER 1—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 27—ENDANGERED AND THREATENED WILDLIFE

Amendment Listing the Grizzly Bear of the 48 Continental States as a Threatened Species

Background:

On February 14, 1974, the Fund for Animals, Inc., petitioned the Department of the Interior to list the grizzly bear as endangered in the conterminous 48 States. Notice for the petition was published in the Federal Register on March 29, 1974 (39 FR 11611). Simultaneously, the Governors of the States of Colorado, Idaho, Montana, Washington, and Wyoming were notified of the petition, and were requested to supply data on the status of the species in their States.

As a result of this review, the Director found that there were indeed sufficient data to warrant a proposed rulemaking that the grizzly bear of the conterminous States be listed as a threatened species. This proposed rulemaking was published in the Federal Register on January 2, 1975 (40 FR 5-7). Interested persons were invited to submit written comments on the proposal to the Director (FWS/LE), United States Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036, no later than March 3, 1975.

Summary of Comments:

The 545 comments received may be summarized as follows, with some persons advocating more than one position:

(1) Eight persons opposed any listing at all on the grounds of insufficient data.

(2) Two persons opposed any listing of the Bob Marshall grizzly bears, but favored listing all other grizzly bears as either threatened or endangered.

(3) Twenty persons completely supported the proposed rulemaking.

(4) Four hundred twenty-one persons opposed any sport hunting of a threatened species.

(5) Ten persons opposed allowing depredating grizzlies to be taken on Federal lands.

(6) Eight persons opposed allowing any sport hunting of threatened species rather than as a threatened species.

(7) It was also suggested that the proposed rules be clarified so as to eliminate any implication that Montana-regulated sport hunting would be allowed in Montana.

(8) It was suggested, because grizzly bears from the Bob Marshall Ecosystem frequently roam outside the ecosystem, that bears taken in adjacent areas be included in the 36-year annual quota for the Bob Marshall Ecosystem.

(9) It was suggested that the period for reporting human defense, human safety, or depredation-control, takings of grizzly bears be shortened from 30 days to 5 days in order to discourage concealment of the facts of such takings.

The Director has considered the above comments as well as the evidence accompanying such comments. The Director has also considered other information obtained by the service both before and after the proposed rulemaking. Taken together, the evidence as a whole indicates that the grizzly bear of the 48 conterminous States should indeed be listed as a threatened species, for the reasons discussed hereafter.

Discussion:

The Endangered Species Act of 1973, (16 U.S.C. 1533(a)(1)), establishes the following criteria for determining whether a species should be listed as a threatened species:

(a) the presence or threatened destruction, modification, or curtailment of its habitat or range;

(b) overutilization for commercial, sporting, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued survival.

Specifically, with regard to the grizzly bear of the conterminous 48 States, present evidence suggests that conditions (1), (2), (4), and (5) are pertinent. One or more of these conditions are affecting each of the remaining grizzly bear populations in each of the named ecosystems as well as in the remainder of the conterminous 48 States. Major factors include, but are not limited to, the following:

(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) Unthinning practices and trillium construction 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 hunters, illegal poachers, human-bear conflicts, and livestock-bear conflicts.

(2) Overutilization for commercial, sporting, scientific, or educational purposes.

Many persons consider these bears as dangerous vermin, and this 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.

(3) Disease or predation. This factor is not applicable to the grizzly bears of the conterminous 48 States.

(4) The inadequacy of existing regulatory mechanisms.

There appear to be certain gaps in the scientific information relating to grizzly bears. Specifically lacking are better data on habitat condition and carrying capacity, total annual production, and total and mortality, and most importantly, annual turnover and population trends. This lack of information greatly hinders the present management procedures. Furthermore, this program an inadequate regulatory mechanism for protecting the bears.

(5) Other natural and manmade factors affecting its continued survival:

(a) In two of the three areas where grizzly bears still occur, the bears are isolated from other populations so that they cannot be reinforced, either genetically or by movement of individual bears.

(b) Increasing human use of Yellowstone and Glacier National Parks, as well as livestock use of surrounding national forests, will exert increasing detrimental pressures on grizzly bears unless management measures favoring the species are enacted.

Furthermore, despite the above problems facing the grizzly bear in the conterminous 48 States, this species is better regarded as threatened rather than endangered. The Endangered Species Act of 1973 defines an "endangered species" as a species which is in danger of extinction throughout all or a significant portion of its range. The grizzly bear in the conterminous 48 States at one time occurred throughout the western United States, but is now confined to a relatively small area in Montana, Wyoming, and Idaho. Nevertheless, reduction in range occurred mostly in the 19th Century during the westward advance of civilization. There has been no significant reduction in the range of the grizzly bear in the past half century, and the population in the conterminous 48 States is not in danger of extinction in its present range.

The Act defines a "threatened species" as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Fish and Wildlife Service is convinced that the problems outlined above facing the grizzly bears of the 48 conterminous States could render this species endangered within the foreseeable future throughout its range, and therefore, the species presently qualifies for threatened status.

With respect to location, the grizzly bear of the 48 conterminous States occurs almost entirely in three ecosystems. These are the Selway-Bitterroot Ecosystem (Clearwater National Forest, the Selway-Bitterroot Wilderness Area, and the Salmon River Breaks Primitive Area), the Bob Marshall (Flathead National Forest, Bob Marshall Wilderness Area, Mission Mountains Primitive Area, and Glacier National Park); and the Yellowstone Ecosystem (Yellowstone National Park, Grand Teton National Park, Teton National Forest, that part of Shoshone Na-
nion Forest north of Wind River, that part of Targhee National Forest east of U.S. Highway 26, that part of Gallatin National Forest south of Interstate Highway 99, and the Bear's Tooth Primitive Area. The regulations of this rulemaking are designed to insure the species' conservation in all three of these ecosystems, and to protect any members of the species occurring elsewhere in the 48 contiguous States.

With limited exceptions for public zoological parks and Federal or State employees engaged in scientific activities, the regulations prohibit nearly all importation, transportation, or sale of the lower 48 grizzly bear. They also place significant restrictions on the taking of such species.

In general, grizzly bears of the 48 contiguous States may be taken only in defense of human life, or to remove demonstrable but non-immediate threats to human safety, or to prevent significant depredations on livestock lawfully on the premises. All takings must be reported to the Service's Division of Law Enforcement, and to appropriate State officials, within 5 days after the close of the reporting period of the proposed rulemaking. The regulations have been reduced to 5 days in light of public comments that a 30-day period could lead to concealment of such takings. In addition, takings to remove demonstrable but non-immediate threats to human safety, or to prevent significant depredations on livestock lawfully on the premises, can be permitted only by Federal or State officials, after reasonable effort to live-capture and release unharmed in a remote area the bear involved have failed.

Federal or State employees may also take bears for scientific or research purposes, but such taking is limited to pursuing, capturing, or collecting grizzly bears.

Finally, grizzly bears in the Bob Marshall Ecosystem (excluding Glacier National Park) may, under certain circumstances, be hunted in accordance with Montana law. However, the present regulations make clear that there will be no hunting during the Glacier National Park portion of such ecosystem. In response to public comments, an ambiguity of the proposed rules has been eliminated by expressly providing that the regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

With respect to sport hunting elsewhere in the Bob Marshall Ecosystem, such taking is in accord with § 320 of the Endangered Species Act of 1973 (16 U.S.C. 1532(23)), which provides for regulated taking “in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.”

The Bob Marshall Ecosystem is just such an ecosystem. First of all, its grizzly bear population is large enough that bears are entering into settled areas where they threaten human safety and commit significant depredations on locally present livestock. Thus, grizzly bear population pressures definitely exist in the Bob Marshall Ecosystem.

Moreover, grizzly bears are large, aggressive, and sometimes dangerous animals. They are also quite mobile and difficult to capture. Therefore, hunting and trapping bears is not only too dangerous and too expensive to be used with sufficient frequency to relieve the above population pressures. A limited amount of regulated hunting is therefore necessary.

This regulated taking can be done two ways, (1) the isolated taking of specific nuisance bears, and (2) seasonal sport hunting. The isolated taking of nuisance bears, while necessary in given instances, is not sufficient to prevent numerous depredations and threats to human safety. This is because the occasional taking of one bear does not create a fear of man among the grizzly bear population in general.

By contrast, a regulated sport hunt will create an adequate fear of man. In a seasonally sporadic hunt, bears will be hunted and removed from the relatively large numbers of humans for a limited period of time, and consequently learn to avoid all areas where humans are encountered. It is this avoidance of man and the very fear that it generates which will reduce the number of depredations and threats to human safety.

Thus, in the Bob Marshall Ecosystem, population pressures require a limited amount of regulated taking, and the best way to do so is to combine limited taking of specific nuisance bears with a closely regulated sport hunt.

It is, of course, important to insure that the total number of bears killed from sport hunting and other causes is strictly controlled. As evidenced by the following letter, the Montana Department of Fish and Game has agreed that all sport hunting in the Bob Marshall Ecosystem will be stopped in any year where the total number of bears killed for whatever reason—defense of human life, nuisance control, other taking, and sport hunting—reaches 25 bears for that year.

STATE OF MONTANA, DEPARTMENT OF FISH AND GAME, Helena, Mont. Mr. LYNN A. GREENWALT, Director, Fish and Wildlife Service, Washington, D.C.

November 25, 1974.

DEAR LYNCH: In the interest of maintaining an effective and harmonious program of grizzly bear management and in order for the U.S. Department of Interior to find advisable and unnecessary the placing of any restrictive federal regulations on grizzly bear in the Bob Marshall Ecosystem, the Montana Fish and Game Commission has developed the following programs:

(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 1937 has been 25 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 the established number of annual be taken. The quota includes bear taken from any other cause and the annual harvest will be set to be 30. Hunters holding bear permits will be required to report a kill to the Department of Fish and Game within 24 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 translocation into inaccessible areas and by other means available to the department. The bear in question will be taken only when the hide and skull is sold. All bears taken will be, if possible, transported to the department's wildlife laboratory in Bozeman where complete 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 H. WOODWARD, State Fish and Game Director.

However, public comments to the proposed rulemaking pointed out that the Bob Marshall grizzly bears often roam outside the ecosystem. Consequently, in the regulations which follow, it was decided that sport hunting whenever possible bears must be removed from any area within the entire northwest corner of Montana.

The proposed rulemaking also included a new Subpart E entitled “Similarity of Appearance.” Public comments on the Subpart manifested confusion and uncertainty as to its operation and effect. Clear and effective regulations on similarity of appearance are crucial to protection of both the endangered and threatened species. Therefore, the Service deems it advisable to give further study to similarity of appearance, and rather than publish the proposed subpart, the Service will instead shortly propose new rules on the subject.

If in the future, grizzly bear populations in the Yellowstone ecosystem recover to the point where population pressure require removal of a part of the population, consideration will be given to a controlled reduction by sport hunting conducted by concerned State wildlife agencies. And these agencies will be made aware of the fact that it is not anticipated that this situation will present the Swan-Bitterroot ecosystem within the foreseeable future.

For the reasons stated above, it is hereby determined that the grizzly bear (Ursus arctos horribilis) of the 48 contiguous States of the United States is a threatened species within the meaning of the Endangered Species Act of 1973 (16 U.S.C. 1531-1549), and that the following regulations are deemed necessary and advisable for the conservation of such species.

Accordingly, Part 17 of Chapter 1, Title 50, Code of Federal Regulations, is amended as set forth below.

These amendments will be effective August 1, 1975.


LYNN A. GREENWALT, Director, Fish and Wildlife Service.

Accordingly, § 1732 is amended to read:
### § 17.32 Threatened wildlife list.

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<tr>
<th>Common name</th>
<th>Scientific name</th>
<th>Range</th>
<th>Portion of range where threatened</th>
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<tbody>
<tr>
<td>(a) Mammals:</td>
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<td>(i)</td>
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<td>(iv)</td>
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<td>United States.</td>
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<tr>
<td>(a) Grizzly bear</td>
<td><em>Ursus arctos horribilis</em></td>
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(e) National Parks. The regulations of the National Park Service do not govern all taking of grizzly bears in National Parks.

(i) Unlawfully taken grizzly bears. (1) Prohibition. Except as provided in paragraph (a) (ii), (iii), (iv), and (v) of this section, no person shall possess, deliver, carry, transport, ship, export, or sell any grizzly bear taken unlawfully.

(ii) Exception. Federal or State employees may for scientific or research purposes possess, deliver, carry, transport, ship, or export unlawfully taken grizzly bears.

(c) Commercial transportation. (1) Prohibition. Except for public zoological institutions (see 50 CFR 10.12), no person shall, in the course of a commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any grizzly bear.

(d) Commercial exportation. (1) Prohibition. Except for public zoological institutions (see 50 CFR 10.12), no person shall, in the course of a commercial activity, export any grizzly bear from the United States.

(e) Foreign importation. (1) Prohibition. Except as provided in paragraph (a) (iv) or (e) (ii) (v) (ii) of this section, no person shall import any grizzly bear into the United States.

(f) Exemptions. (a) Federal or State scientific or research activities. Federal or State employees may import grizzly bears into the United States for scientific or research purposes.

(g) Public zoological institutions. Public zoological institutions (see 50 CFR 10.12) may import grizzly bears into the United States.

(h) Selling or offering for sale. (1) Prohibition. Except for public zoological institutions (see 50 CFR 10.12) dealing with other public zoological institutions, no person shall sell or offer for sale in interstate or foreign commerce any grizzly bear.

(i) Other violations. (1) Prohibitions. No person shall attempt to commit, cause to be committed, or solicit another to commit any act prohibited by paragraph (a) (iv) or (d) (ii) of this section.