

## Title 50—Wildlife and Fisheries

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

## PART 17—ENDANGERED AND THREATENED WILDLIFE

## Amendment Listing the Grizzly Bear of the 48 Conterminous 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 (*Ursus arctos horribilis*) of the conterminous 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 substantial evidence to warrant a review of the status of the grizzly bear in the conterminous 48 States. Notice to that effect was placed 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 review, 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 48 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) Three persons opposed any listing of the Bob Marshall grizzly bears, but favored listing all other grizzly bears as either threatened or endangered.

(3) Fifteen persons completely supported the proposed rulemaking.

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

(5) Three hundred ten persons opposed allowing depredating grizzlies to be taken on Federal lands.

(6) Four hundred twenty-one persons favored listing the "Lower 48" grizzly bear as an endangered 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 Glacier National Park.

(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 25-bear annual quota for the Bob Marshall Ecosystem.

(9) Finally, 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:

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

(2) overutilization for commercial, sporting, 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 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) Timbering practices and trail 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 legal 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 numbers, annual reproduction and mortality, and most importantly, annual turnover and population trends. This lack of information greatly hinders the present management program for grizzly bears and makes such 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.

However, 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 occupied suitable habitat in much of 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 Ecosystem (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-

tional Forest north of Wind River, that part of Targhee National Forest east of U.S. Highway 20, that part of Gallatin National Forest south of Interstate Highway 90, and the Beartooth 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 conterminous States.

With limited exceptions for public zoological parks and Federal or State employees engaged in scientific activities, the regulations prohibit nearly all importation, exportation, 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 conterminous States may not be taken except 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 such takings must be reported in writing to the Service's Division of Law Enforcement, and to appropriate State officials, within 5 days after they occur. (The 30-day reporting period of the proposed rulemaking has 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 performed only by Federal or State employees, and only after reasonable efforts 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 sport hunting in 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 § 3(2) of the Endangered Species Act of 1973 (16 U.S.C. 1532(2)), 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 now wandering into settled areas where they threaten human safety and commit significant depredations on legally 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, live-trapping and transplanting is simply too dangerous and too expensive to be used with sufficient frequency to relieve the above population pressures. A limited amount of regulated taking is necessary.

This regulated taking can be two types, (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 seasonal sport hunt, bears are exposed to 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 which will reduce numerous depredations and threats to human safety.

Thus, in the Bob Marshall Ecosystem, population pressures require a limited amount of regulated taking, and the best system of such taking 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, 1973.

DEAR LYNN: 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 inadvisable 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 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 the established number of 25. This number will include bears lost from any other cause and the annual legal harvest 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 will 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. WOODGEED,  
State Fish and Game Director.

However, public comments to the proposed rulemaking pointed out that Bob Marshall grizzly bears often roam outside the ecosystem. Consequently, in the regulations which follow, it was decided to halt sport hunting whenever 25 bears have already been killed during the year in the entire northwest quarter of Montana.

The proposed rulemaking also included a new Subpart E entitled "Similarity of Appearance". Public comments on this 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 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 pressures 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 regulations will be modified accordingly. It is not anticipated that this situation will occur in the Selway-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 conterminous States of the United States is a threatened species within the meaning of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and that the following regulations are deemed necessary and advisable for the conservation of such species.

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

These amendments will be effective August 1, 1975.

Dated: July 23, 1975.

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

Accordingly, § 17.32 is amended to read:

## § 17.32 Threatened wildlife list.

Common name	Scientific name	Range	Portion of range where threatened
(a) Mammals:			
(1) •••	-----		
(2) •••	-----		
(3) •••	-----		
(4) Grizzly bear	<i>Ursus arctos horribilis</i>	48 conterminous States of the United States.	Entire.

(1) **Definitions.** (A) *Grizzly bear.* As used in this section, the term "grizzly bear" means any member of the species, *Ursus arctos horribilis* of the 48 conterminous states of the United States, including any part, offspring, dead body, part of a dead body, or product of such species.

(ii) **Prohibitions and exceptions:** The prohibitions and exceptions below apply to grizzly bears.

(A) **Taking.** (I) **Prohibition.** Except as provided in paragraph (a) (4) (ii) (A) (II) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(II) **Exceptions.** (a) **Self-defense and defense of others.** Grizzly bears may be taken in self-defense, or in defense of others, but any such taking shall be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, and to appropriate State officials, within 5 days after it occurs.

(b) **Removal of nuisance bears.** A grizzly bear constituting a demonstrable but non-immediate threat to human safety, or committing significant depredations to lawfully present livestock; may be taken, but only if:

(1) it has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(2) the taking is done in a humane manner by authorized Federal or State employees; and

(3) the taking is reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036,

and to appropriate State officials, within 5 days after it occurs.

(c) **Federal or State scientific or research activities.** Federal or State employees may pursue, capture, or collect grizzly bears for scientific or research purposes.

(d) **Northwestern Montana.** If it is not contrary to the laws and regulations of the State of Montana, a person may hunt grizzly bears in the Flathead National Forest, the Flat head National Forest, the Bob Marshall Wilderness Area, and the Mission Mountains Primitive Area of Montana: *Provided*, That if in any year in question, 25 grizzly bears have already been killed for whatever reason in that part of Montana, including the Bob Marshall Wilderness Area and the Mission Mountains Primitive Area, which is bounded on the north by the United States-Canadian Border, on the east by U.S. Highway 91, on the south by U.S. Highway 12, and on the west by Montana-Idaho State line, the Director shall post and publish a notice prohibiting such hunting, and any such hunting for the remainder of that year shall be unlawful: *Provided further*, That any taking of a grizzly bear, for whatever reason, in the above-described portion of Montana shall be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, and to the Montana Department of Fish and Game, within 5 days after the taking occurs; and except that any taking on an Indian reservation within the above-described area shall be so reported only to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036.

(e) **National Parks.** The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

(B) **Unlawfully taken grizzly bears.** (I) **Prohibition.** Except as provided in paragraph (a) (4) (ii) (B) (II) 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.** (I) **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.

(II) **Commercial exportation.** (I) **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) **Importation.** (I) **Prohibition.** Except as provided in paragraph (a) (4) (ii) (E) (II) of this section, no person shall import any grizzly bear into the United States.

(II) **Exceptions.** (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.

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

(F) **Selling or offering for sale.** (I) **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.

(G) **Other violations.** (I) **Prohibitions.** No person shall attempt to commit, cause to be committed, or solicit another to commit any act prohibited by paragraph (a) (4) (I) of this section.

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