

grizzly bear in the conterminous United States. The rule involves: (1) A new requirement to report taking to Regional Service agents and to Indian Tribal authorities; (2) addition of Tribal authorities to those persons allowed to take grizzly bears under specified conditions; (3) a stipulation that grizzly bears or their parts, taken in self-defense, cannot be possessed or moved, except by authorized Federal, State, or Tribal personnel; and (4) adjustment of the boundaries and quotas associated with the State grizzly hunting season in northwestern Montana. With regard to the last matter, available data indicate that grizzlies in certain areas are declining and should not be hunted, but that increasing grizzly activity elsewhere is leading to bear-human interactions that pose a risk to the main grizzly population. Therefore, this rule will stop hunting in some areas, open it in others, and prohibit it altogether once the known total number of grizzlies killed in one year within the range of the main population, exclusive of Glacier National Park, reaches 21 minus the annually estimated unknown kill in the area, or once the number of female grizzlies killed reaches 6. The estimated annual unknown kill will be set at 7 bears, and thus the total known kill set at 14, until new data show a need for revision.

EFFECTIVE DATE: This rule is effective on September 23, 1986.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Regional Endangered Species Office, Fourth Floor, 134 Union Boulevard, Lakewood, Colorado 80228.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Roybal, Staff Biologist, Endangered Species Office, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236-7398 or FTS 776-7398).

SUPPLEMENTARY INFORMATION:

Background

The grizzly bear (*Ursus arctos*) originally occurred throughout western North America from Alaska to central Mexico. Its populations in the conterminous United States are now apparently restricted to northwestern and northeastern Washington, northern and eastern Idaho, western Montana, and northwestern Wyoming. Fewer than 1,000 individuals are thought to survive in these areas, most of them in northwestern Montana. In the **Federal Register** of July 28, 1975 (40 FR 31734-

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revision of Special Regulations For the Grizzly Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service revises the special regulations for the threatened

31736), the Service determined threatened status for the grizzly in the conterminous U.S., pursuant to the Endangered Species Act of 1973. Special regulations were issued in conjunction with that determination, and were incorporated into 50 CFR 17.40(b). These rules provided general protection to the species, but allowed taking under certain conditions to defend human life, to eliminate nuisance animals, and to carry out research. In addition, a limited sport hunting season was authorized in a specified portion of northwestern Montana. In the *Federal Register* of August 29, 1985 (50 FR 35086-35089), the Service issued an emergency rule modifying the regulations for this hunting season. That rule recently expired, and experience with various other aspects of the special regulations has shown them to not be fully sufficient for the conservation needs of the grizzly. Thus, it is now necessary to issue permanent revisions that will clarify and/or strengthen the regulations in the four major ways described below. Several minor adjustments and corrections also have been made to the regulations. All of these changes were proposed in the *Federal Register* of July 17, 1986 (50 FR 25914-25919), along with an additional measure on commercial transactions that has not been made final.

Reporting of Taking to Appropriate Authorities

Successful prosecution for illegal taking of grizzly bears is dependent upon a timely, professional investigation. Until now, wording of § 17.40(b)(1)(i)(B), (C), and (E) and (ii) (A) did not provide for timely notification of Regional law enforcement agents of the U.S. Fish and Wildlife Service concerning possible illegal taking. New language requires reporting of the taking of any grizzly bear, within five days of occurrence, to the Assistant Regional Director of the Service's Division of Law Enforcement in Denver, Colorado, or Portland, Oregon. This requirement will provide centralized reporting and there will be no further need to report taking to the Service's Washington, DC offices. The stipulation to report to State authorities will be maintained, but with the added requirement that any taking during the sport hunting season in Montana be reported to the State within 48 hours. In addition, if a grizzly bear is taken on an Indian reservation, it must also be reported to Tribal law enforcement authorities.

Addition of Tribal Authorities to Those Persons Allowed to Take Grizzly Bears

Until now, regulations did not address the need of Indian Tribal authorities to remove nuisance grizzly bears on reservation lands, to carry out research, and to handle unlawfully taken bears. Grizzlies occur on the Flathead and Blackfoot Indian Reservations in Montana. Tribal authorities require authorization to take nuisance bears, when necessary, as part of Tribal management programs. Such authorization will not conflict with State or Federal authorization. The Service therefore amends § 17.40(b)(1)(i)(C)(2) to allow authorized Tribal personnel to take nuisance grizzlies on their respective reservations; amends § 17.40(b)(1)(i)(D) to allow such authorities to take grizzlies for research purposes, provided that such taking does not result in death or permanent injury to the involved bears; and amends § 17.40(b)(1)(ii)(B) to allow such authorities to possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzlies for scientific or research purposes.

Resolution of Jurisdictional Problems With the "Double-take" Theory

Pursuant to § 17.40(b)(1)(i)(B), grizzly bears may be taken legally in self-defense or in defense of others. Until now, persons could recover parts of such bears and lawfully possess them under the legal defense that if the taking of the animal is legal, the taking of its parts can not be illegal. Such a situation may have encouraged the deliberate hunting of inoffensive bears, and the false claim that self-defense was involved. To prevent such taking of parts, the Service now provides explicitly that grizzlies or their parts taken in self-defense may not be possessed, delivered, carried, transported, shipped, exported, or sold, except by authorized Federal, State, or Tribal officers.

Adjustment of Hunting Boundaries and Quotas

The original special regulations issued on July 28, 1975, provided for hunting of the grizzly bear in the Flathead National Forest, the Bob Marshall Wilderness Area, and the Mission Mountains Primitive Area (now Mission Mountains Wilderness Area) of northwestern Montana. Such hunting was to cease once the number of grizzly bears killed throughout northwestern Montana during any one year, from all causes, reached 25. The known grizzly kill in this area has averaged 20 per year since, 1976, including an average annual

hunting kill of 10.6. Prior to 1975, the average annual grizzly mortality in the area was 28 (Montana Department of Fish, Wildlife and Parks 1986).

The largest grizzly population in northwestern Montana, and in the conterminous United States, is that of the Northern Continental Divide Ecosystem (NCDE) (U.S. Fish and Wildlife Service 1982). This ecosystem includes Glacier National Park; the Flathead National Forest and adjoining portions of the Helena, Kootenai, Lewis and Clark, and Lolo National Forests (including the Bob Marshall, Great Bear, Mission Mountains, and Scapegoat Wilderness Areas); and some adjacent Bureau of Land Management, State, private, and Indian Reservation lands. Based on a number of recent studies, the Montana Department of Fish, Wildlife and Parks (1986) has estimated the grizzly bear population of the NCDE to contain 549 individuals, of which 356 are found outside of Glacier National Park. The Service is using this estimate in formulating the modification of § 17.40(b)(1)(i)(E) now being implemented. In the remainder of northwestern Montana, there may be no more than a dozen individual bears.

The status of the grizzly varies from place to place within the NCDE. Studies undertaken in various parts of the NCDE indicate that grizzly bear numbers are stable or increasing in some areas, but are decreasing in others (Aune and Stivers 1982, Aune *et al.* 1984, Claar 1985, Mace and Jonkel 1980, Martinka 1974, McLellan 1984, Servheen 1981, 1983). All but one of these studies postdate the original special regulations, which were published in 1975. The Service considers that the new information developed in these studies demonstrates the need to revise the original regulations in order to (1) adjust the boundaries of the areas within which hunting is allowed, and (2) change the level of maximum allowable annual kill, which is currently set at 25. The Service considers that these revisions are required to ensure the continued conservation of the species in all areas where it occurs.

The original regulations allowed for hunting in the Mission Mountains Wilderness Area. The studies indicate, however, that grizzly bear numbers in the Mission Mountains currently are declining. The Service therefore is now revising the regulations so as not to allow for grizzly bear hunting in this area. A different situation exists along the Rocky Mountain Front in the eastern part of the NCDE. The original regulations did not provide for hunting in the east front area beyond the

Flathead National Forest and the Bob Marshall Wilderness Area. Grizzlies consistently use areas along the border of the Flathead National Forest in the Bob Marshall Wilderness Area, and frequent private lands in their movement through cover along riparian zones to low elevations. This movement may be attributable to one or a combination of factors, such as availability of bear foods along riparian zones, artificial food sources (livestock carcass dumps, beehives, etc.), climatic changes, loss of previously utilized habitat, or an actual increase in the size of the overall bear population and consequent dispersal. In any case, grizzly bears in this area prey on livestock and destroy property, and thus pose a possible threat to human safety. Such difficulties are leading to confrontations between people and bears, confrontations that may result in the destruction of the latter. Live-trapping and relocation of bears preying on livestock and damaging property has met with only limited success. Moreover, the processes of trapping, immobilizing, handling, and relocating the animals (usually by helicopter) pose considerable risks to the bears themselves as well as the bear handlers. In 1985, 11 grizzlies were captured in such control measures in the Choteau area of the Rocky Mountain east front; 2 of these animals died as a result of this action, 1 was placed in a zoo, and 8 were released in other parts of the NCDE. Only a single grizzly was removed by control operations in the Choteau area from 1980 to 1984. The 1985 loss represents a new and serious escalation of bear-human conflicts along the east front. Present indications are that such problems will continue to intensify. Already this year, bears are frequenting ranch lands on the east front, exhibiting little fear of humans, damaging beehives, and preying on livestock. As of June 6, 1986, two grizzlies had been relocated or removed from this area.

Because of the two different critical situations described above—the decline of the grizzly population in the Mission Mountains and the escalation of bear-human conflicts on the eastern front of the Rocky Mountains—the Service considers that expedited action is required to alleviate a significant risk to the well-being of the grizzly. In the *Federal Register* of August 29, 1985 (50 FR 35086–35089), the Service issued an emergency rule adjusting the boundaries and quotas for the grizzly hunting season. That rule subsequently expired, and in the *Federal Register* of July 17, 1986 (50 FR 25914–25919), the Service

proposed permanent regulations to deal appropriately with the hunting season. The Service acted under an abbreviated schedule because of the escalation in bear-human conflicts on the eastern front of the Rocky Mountains and because of the need to reinstate the conservation-based revisions in the hunting boundaries and quotas established by the August 29, 1985, emergency rule. Differences between the emergency and permanent rules were derived from information that has been newly obtained or more precisely interpreted and applied.

In accordance with section 4(d) of the Act, special regulations on threatened species must be "necessary and advisable to provide for the conservation of such species." Section 3(3) defines conservation, essentially, as measures that are beneficial to the species, and contribute to its recovery and ultimate removal from the List of Endangered and Threatened Wildlife. Special regulations for the grizzly bear, therefore, must be beneficial to the species and be aimed at the particular factors that threaten it.

In its original determination of threatened status of the grizzly, on July 28, 1975, the Service decided that strictly controlled hunting would be a necessary element in the conservation program for the species. The Service continues to hold that regulated hunting is necessary and advisable for the conservation of the grizzly in northwestern Montana, and considers that such hunting should now be applicable in portions of the Rocky Mountain east front. Such hunting would tend to eliminate those bears that are unwary of humans and thus most likely to come into conflict with people. The remaining bears would likely be wary of humans and less likely to become involved in depredations or bear-human conflicts that would lead to control actions and possible mortality. This last point is supported by the studies of Elgmork (1978) and Mysterud (1977), who provided evidence that brown bear populations, long-exposed to human exploitation, did exhibit wariness, and by the work of Herrero (1985), who reported that bear-human confrontations are associated more frequently with un hunted, rather than hunted, bear populations. To help reduce the further escalation of problems on the east front, and in other areas, hunting also should continue in the Flathead National Forest (except that portion including the Mission Mountains) and the Bob Marshall Wilderness Area, and should be extended into the adjoining Scapegoat Wilderness Area and some adjacent

lands. In order to more precisely delineate the involved areas, and to facilitate their identification on the ground, the Service is now using mainly highways as boundaries for these areas (see accompanying map).

The Montana Department of Fish, Wildlife and Parks (1986), in developing its proposed levels of hunting, and female quotas, reviewed data from several studies and determined that the average annual human-induced mortality allowable to maintain a stable population was 6.5 percent. However, in order to achieve recovery of the grizzly population in the NCDE, the conservation program must be geared toward increasing the existing population rather than just maintaining stability. This population is estimated to contain 356 bears, exclusive of Glacier National Park. Computer simulations have indicated that, if an annual human-induced mortality of 6 percent per year occurs, this population could still experience a general increase in numbers (Montana Department of Fish, Wildlife and Parks 1986). Six percent of 356 is approximately 21 bears, but it is also known, based on recovery of dead radio-collared grizzlies, that there is now an unknown, unreported kill in the NCDE. Therefore, the new regulations set the maximum allowable known kill be set at 21 minus a figure representing the annual estimated unknown, unreported kill. The State of Montana, in agreement with the Service, will have the authority to adjust the latter figure, based on new scientific information, as it becomes available, and thus to adjust the allowable known kill (within the maximum limit of 21). The present estimate of annual unknown human-induced mortality in the NCDE is 7, and that estimate will be used until new data show a need for revision. Therefore, the known annual kill limit for the NCDE will be initially set at 14 grizzlies.

Under the revised regulations, the known number of grizzly bears killed or removed during any calendar year will include not more than six females. This figure is based on records indicating that annual mortality from hunting, from 1957 to 1984, averaged 40 percent female, and on the presumption that a greater rate of female mortality would be damaging to a grizzly population (Montana Department of Fish, Wildlife and Parks 1986). The State of Montana will propose grizzly hunting regulations to minimize the kill of female grizzly bears. The new quota of six females known killed per year is an upper limit, and State conservation measures and regulations will seek to maintain a

female kill not to exceed that limit. The apportionment of the female kill into subunits of the NCDE will be at the discretion of the State of Montana through its annual hunting regulations. To further reduce the likelihood of female mortality, there will be no hunting of grizzly bears accompanied by young in any part of northwestern Montana, as such grizzlies would in all likelihood be females.

The Service recognizes that hunting or depredation hunts may be necessary and advisable in the future in other portions of the species' range, such as the Yellowstone region of Wyoming, as grizzly numbers increase in response to conservation efforts. Depredation hunts would involve the taking of grizzly bears, deemed nuisance animals and unsuitable for further relocation, by licensed hunters accompanied by authorized State personnel. Further determinations to open a hunting season or implement a depredation hunt would be based on the most current data regarding grizzly numbers and population status, and would require publication in the *Federal Register* of a proposed rule for public comment.

The State of Montana normally opens its grizzly bear hunting season in northwestern Montana from mid-September to early October. The State bases its hunting regulations on the quotas and boundaries set forth in the Service's special regulations. In order to assure adequate conservation of the grizzly bear, the Service must issue its revised special regulations prior to the opening of the State hunting season.

Summary of Comments and Recommendations

In the proposed rule of July 24, 1986, and associated notifications, the Service requested comments from the public by August 6, 1986. This abbreviated comment period was needed to allow time to issue the final rule prior to the opening of the State hunting season. The Service received 18 letters commenting on the proposed rule. Commenters included the Safari Club International; Wildlife Information Center, Inc.; Wildlife Management Institute; Chevron USA, Inc.; The Wildlife Legislative Fund of America; Montana Farm Bureau Federation; Rocky Mountain Oil and Gas Association, Inc.; National Park Service-Glacier National Park; National Audubon Society; Montana Department of Fish, Wildlife and Parks; Sierra Club Legal Defense Fund, Inc.; Defenders of Wildlife; the Great Bear Foundation; and several private individuals.

Nine letters were received in support of the proposal. In addition, many letters supported the majority of provisions in

the proposed rule, but expressed opposition to or concerns regarding the grizzly bear hunt in northwestern Montana. All comments received are available for public inspection (See **ADDRESSES**). Summaries of comments on the proposed rule and the Service's response to questions and comments follow (C=Comment; R=Service's Response).

Reporting of Taking to Appropriate Authorities

The majority of commenters on this issue supported the proposed changes in the reporting requirements. *C.* One individual stated that the 5-day period was too long to allow timely investigations. The National Audubon Society stated that there should be one clearinghouse/contact for all grizzly mortality information and that the State of Montana should assume this role. *R.* The 5-day requirement for reporting taking is realistic in view of the often remote locations of such incidents and is adequate to allow for timely, professional investigations. The rule does remove the existing requirements of reporting to the Service's office in Washington, DC, and establishes the Assistant Regional Director of the Service's Division of Law Enforcement in either Denver, Colorado, or Portland, Oregon, as the centralized contact point. The special regulations apply to grizzly bear populations throughout the species' range in the conterminous United States (including Montana, Wyoming, Idaho, and Washington). Because of the multi-State involvement and the possibility that taking will occur in all of these States, the Service considers it more prudent to establish a Federal agency as the central contact point.

Addition of Tribal Authorities to Those Persons Allowed to Take Grizzly Bears

The majority of commenters addressing this amendment supported the proposal. *C.* Several commenters stressed that actions authorized for Tribal authorities should be conducted in concert with other interagency actions. One commenter was concerned that currently there are no "interagency guidelines" covering the taking of nuisance grizzly bears outside of the Yellowstone ecosystem. *R.* The Service has participated in the formulation of interagency guidelines for management and control of nuisance grizzly bears for all ecosystems. In regard specifically to northwestern Montana, all agencies have been operating for several years under interagency guidelines similar to those developed for the Yellowstone area. These guidelines have been standardized and incorporated into the

"Interagency Grizzly Bear Guidelines." These revised guidelines have not, as of this writing, been published in the *Federal Register*. However, they were subjected to public review and revision, and have since been approved and printed. Thus, they are available to involved agencies. In recognition of the concern for tying control actions, etc. to established criteria and guidelines, as well as to accommodate the dynamic nature of grizzly bear management, the term "existing" § 17.40(b)(1)(i)(C)(2) has been changed to "current." *C.* One commenter recommended that taking for scientific or research purposes be limited to live-capture. *R.* The Service agrees and has modified § 17.40(b)(1)(i)(D) accordingly.

Resolution of Jurisdictional Problems With the "Double Take" Theory

Several commenters strongly supported this proposed amendment, and no letters received were in opposition to the proposed change.

Commercial Transactions

The Service proposed to modify § 17.40(b)(1)(iv) to authorize the sale of grizzly bears or their parts, including those taken illegally, by State and Tribal authorities in accordance with State and/or Tribal laws and regulations. *C.* All commenters who specifically addressed this modification opposed, either categorically or with qualifications, the sale of grizzly bears or their parts taken illegally or as nuisance bears, or taken in self-defense. Reasons for opposition to the proposed modification included: belief that the sale of grizzly bear parts would create an additional demand and thus result in additional bear mortalities; opposition to commercialization of wildlife, particularly threatened species; belief that the additional provisions would make it more difficult for law enforcement agents to detect and reduce illegal trade in bear parts and would encourage illegal killing of grizzly bears to satisfy market demand; lack of evidence that allowing such sale would aid in the conservation of grizzly bears; the small amount of net profit that would be derived from the sale; and the lack of assurance that the proceeds would be used for grizzly bear conservation. One commenter recommended prohibitions on the sale of all grizzly bear parts.

R. Current statutes prohibit the sale of illegally taken endangered species, as well as interstate and foreign commerce in endangered species. Under the authority of the Endangered Species Act, regulations may prohibit, with

respect to threatened species, any act prohibited for endangered species. Consequently, the Service can restrict interstate and foreign commerce in legally taken grizzly bears and the possession and sale of illegally taken grizzly bears. However, at the present time, the transport of legally taken bears from Alaska and Canada is essentially unrestricted. Therefore, a legal source market for bear parts does currently exist. Intrastate commerce in legally taken grizzly bears and their parts is unrestricted by the statute (Endangered Species Act), and therefore can not be restricted by regulation. The proportion of grizzly bear parts taken from the contiguous 48 United States makes up only a minor portion of the total number of grizzly bear parts available and consequently would have, at most, only a minor effect on either the legal or illegal market. The sale of parts by State and/or Tribal authorities could be expected to have little effect on the demand from the illegal market. However, it would also generate little net revenue with no real assurance that this revenue would be used for the conservation of the grizzly bear. Therefore, because of the potential risk of increased illegal take, the confounding effect on law enforcement efforts, and the lack of any substantive conservation benefit to the species, the Service is withdrawing the proposed modification. Provisions in the original special regulations, which prohibit all commerce in illegally taken grizzly bears or their parts, and prohibit interstate and foreign commerce, are maintained.

Adjustment of Hunting Boundaries and Quotas

C. Eight commenters voiced opposition to the grizzly bear hunt in northwestern Montana. Three stated that it was preposterous, illogical, and inconsistent to permit hunting of a threatened species. One commenter stated that establishment of a sport hunt for grizzly bears does not constitute an act of conservation and is not necessary to foster recovery; therefore, it falls outside of the scope of activities that can be authorized. Two commenters pointed out the lack of evidence presented that grizzly population pressures in northwestern Montana have created extraordinary circumstances requiring a sport hunt, and that there is little conclusive data on the status of the grizzly bear in the NCDE (citing the Interagency Grizzly Bear Committee (IGBC) task force report, which found that available data did not permit the task force to estimate total numbers of bears, to detect any

significant trend, or even to confirm population stability in the NCDE). Both commenters felt that available data contradict the notion of population pressures and that the proposed rule calls for hunting in areas where populations are clearly not near carrying capacity. R. The Service recognizes that the hunting of a threatened species is a matter of concern and has allowed the hunt of the grizzly bear only with strict limitations upon the number of bears taken and the distribution of the kill. The particular habits of the grizzly bear, being a large, opportunistic omnivore capable of threatening humans and utilizing human foods in close proximity to people, make the management of this species a special case.

Strictly limited sport hunting will tend to eliminate those bears that are unwary of humans and those most likely to come into conflict with people. Bear-human conflicts have been the source of a large number of bear mortalities in the past. Such conflicts will continue to arise as people and their foods occupy larger portions of grizzly bear habitat.

The nature of the grizzly bear is such that some animals will investigate human-use areas. If they obtain human foods, such grizzlies will possibly become behaviorally adapted and thus continue to frequent such areas and seek further food rewards. Total protection of the species would lead to increasing conflicts resulting in bear deaths and negative reactions from the local public. Such would not benefit the conservation of the grizzly and might result in more illegal kills. People are intolerant of having grizzly bears in close proximity. Limited sport hunting provides an opportunity to remove those bears that have the tendency to come into conflict with people.

C. Some commenters noted that any sport hunt should be directed specifically at problem bears that have become a nuisance around human-use areas. R. Presumably these commenters were proposing that sport hunting either be directed at specific nuisance bears or that sport hunting be limited solely to those areas where bear/human conflicts have occurred. This type of management is reactive and requires that human/bear conflicts occur in order for hunting to be implemented. The Service, on the other hand, considers that a hunt distributed throughout major portions of the ecosystem on an annual basis will be a preventive conservation measure, which will eliminate those unwary animals most likely to come into conflict with human interests. While the service recognizes that a limited sport hunt will not eliminate all human/bear conflicts,

it does consider that a preventive program will not only eliminate a significant portion of the unwary bears on an annual basis, but will also promote a positive conservation ethic among persons who value the grizzly as a trophy animal. The Service further considers that the conservation of the grizzly is assured by the quota system, which rigorously records all human-induced mortalities and assures that hunting mortality, in combination with all other sources of human-induced mortality, such as control and illegal kills, does not exceed allowable mortality levels for the population.

C. Some commenters noted that sport hunting has removed bears from the Bob Marshall Wilderness Area each year for the past 11 years, while there is little evidence that bear-human conflicts exist in that area. These commenters stated that the lack of bear-human conflicts in the wilderness indicates there should be no sport hunt in this area. R. The sport hunt in the Bob Marshall Wilderness, if limited by a quota system, has the potential to annually eliminate those unwary bears that could become problems. The lack of evidence of bear-human conflicts in the wilderness is, to a certain extent, the result of the annual hunt that has occurred in that area in the past.

C. Several commenters noted the importance of demonstrating that excessive population pressures exist for the grizzly prior to the initiation of any sport hunt. R. It is pertinent to understand that sport hunting already is occurring, pursuant to the original 1975 rule that determined threatened status for the grizzly, and designated special regulations for such hunting. This new rule actually sets more stringent requirements regarding the number of grizzlies that may be taken by such means. Moreover, in the original rule (40 FR 31735), the Service explained that grizzly population pressures in the NCDE were leading to serious bear-human conflicts, and that carefully regulated sport hunting was a necessary means of dealing with the situation. The Service continues to hold these views with respect to the overall status of the grizzly in the NCDE. The Service recognizes, however, that specific population data on the grizzly bear are not available for large parts of the NCDE. Such precise data are difficult if not impossible to obtain. The Service considers that the revised quota is a conservative approach that can only benefit the species.

C. Several commenters noted the need for annual review of Montana's hunting season by the Service as part of its

responsibilities under the Endangered Species Act. *R.* The Service recognizes that it is important to annually review the mortality data from the NCDE to ensure that the sport hunt does in fact meet its conservation objectives. Therefore, in close cooperation with the Montana Department of Fish, Wildlife and Parks, the Service will annually review these data to assess the impacts of mortalities in this ecosystem.

C. Four commenters perceived an inconsistency in placing restrictions on oil and gas development in grizzly bear habitat in order to protect grizzlies, while simultaneously proposing a sport hunt in the same areas. Some felt that a double standard was being set. *R.* The Service does not consider that coordination of multiple-use activities with grizzly bear habitat requirements and regulated hunting of the species presents a double standard. In order to achieve recovery, habitat capable of supporting the recovered population must be available and managed to sustain the species. Without this habitat, the species could not exist. One of the primary purposes of the Act is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. Some multiple-use activities, such as timber harvesting, mining, and oil and gas development, if not properly conducted, can adversely modify or destroy the habitat, rendering it incapable of supporting a recovered grizzly bear population. This may occur either directly or indirectly, or as the result of the cumulative effects of a number of human-caused disturbances. In addition to maintaining sufficient habitat to support a recovered population, the Service recognizes that human-caused mortalities, both legal and illegal, must be controlled to ensure that recovery of the species is not jeopardized. The Service is confident that the designated harvest, using both a total and female quota, will not preclude recovery of the NCDE grizzly population.

Quota

C. Several commenters questioned the basis for the hunting quota established by the Service. Specifically, commenters noted that the female subquota of 6 bears exceeded the "safe level of total female grizzly mortality" as derived from a computer model by Richard Harris cited in the Montana Department of Fish, Wildlife and Parks Environmental Impact Statement (EIS). *R.* The Service developed its proposed quota of 6 females per year by multiplying the population estimate of 356 bears by 6 percent (which is the

total human-induced mortality that would result in an increasing population) to yield 21.36 bears in the total quota. The estimated unknown, unreported annual mortality of 7 bears was then subtracted from 21.36 to yield 14.36 allowable, known, human-caused mortalities per year. To reach the female subquota, 14.36 was multiplied by 40 percent, which is the average annual female kill proportion in Montana for the last 10 years. This yielded an annual female subquota of 5.7 bears per year. The Service failed to note in the proposed rule that a certain proportion of the 7 unknown unreported bears killed each year would be females. If this 40 percent (the percentage of the kill that is known to be female) is applied to the 7 unknowns, 2.8 unknown unreported female mortalities could be expected each year. This unknown kill of 2.8, when added to the 5.7 known kill, yields 8.5 females killed per year.

The commenter, who suggested that this number exceeded a "safe" level of female mortality, used the estimate that no more than 3 percent of the female segment of the population could be killed each year. This 3 percent was estimated by Richard Harris as his idea of a conservative approach. In order to use the calculation of 3 percent of the female segment of the population, one must know the proportion of females in the total population. There are no empirical data on the proportion of females in the total population in the NCDE. Harris, as cited in the Montana Department of Fish, Wildlife and Parks EIS, estimated that 60 percent of the population was female. Using this estimate and the original estimate of 356 yields 213.6 females in the population. Three percent of 213.6 is 6.4 females, and that number could be considered a "safe" annual female mortality according to Harris. It is important to note, however, that the computer model actually yielded a nondeclining population when up to 3.5 percent of the female population segment was killed per year. Using this value of 3.5 percent of the female population yields 7.48 females that could be killed per year in a nondeclining population.

The Service recognizes that Harris' computer model is useful for the determination of mortality management strategies for the NCDE. However, considering the assumptions entering into the model, and that the model is of an isolated population while the quota is applied to one segment of a larger contiguous population that continues northward into Canada, the Service doubts that sufficient precision exists to change the female subquota by 1 or 2

bears based solely on the computer model. The Service believes that its current quota of 14 total or 6 female bears provides sufficient protection for the population and is warranted by the existing information. The State of Montana will attempt to further minimize the kill of females through specific regulations, which provide additional protection for females in this ecosystem.

Boundaries

C. Several commenters questioned the boundaries of the hunting area in the NCDE and/or whether the Mission Mountains segment should be eliminated from the hunting area. *R.* The Mission Mountains are located in the southwest corner of the NCDE. This mountain range runs north/south and is geographically separated from the rest of the NCDE by the Swan Valley, a semideveloped area that is the only access between the Missions and the Bob Marshall-Glacier Park section of the ecosystem. This means that the grizzly population in the Mission Mountains is basically insular and receives no influx of bears from other areas of the ecosystem. The grizzly bear density in the Mission Mountains is low and the population is thought to be declining due to habitat disturbance and bear-human conflicts, which result in illegal or control killing of bears. Although hunting has not been implicated as one of the factors affecting the decline of the grizzly in the Missions, the elimination of hunting in this area will remove the possibility that hunting could be an additive detrimental factor to this isolated population. No other area in the NCDE has the geographic characteristics of the Mission Range, characteristics which separate it and its grizzly bear population from the rest of the ecosystem. Therefore, the Service does not feel it is justified to categorically eliminate hunting in any other particular area of the ecosystem and will leave such restrictions to the discretion of the State.

C. Several commenters mentioned that the Badger-Two Medicine area should also be eliminated from the area to be hunted. *R.* The Badger-Two Medicine area includes a set of drainages that are contiguous with adjacent grizzly bear habitat in the Bob Marshall and Great Bear Wilderness areas to the west, the Rocky Mountain Front area to the south, and Glacier National Park to the north. There are no intervening valleys occupied by people, which geographically separate the Badger-Two Medicine area from contiguous populations. The Service is

confident that the State will fully exercise its management abilities regarding the sport hunting season in any areas where the population is thought to be affected by human impacts. The Montana Department of Fish, Wildlife and Parks's EIS on grizzly bear management states that, when information indicates that closing an area to hunting is necessary to protect a segment of the NCDE population, the Department is prepared to do so during the State's annual season setting process. The Service will continue to encourage the Department to develop monitoring procedures that will identify those areas that may require temporary closure to hunting.

Glacier Park Included in Quota

C. The National Park Service, which was one of the above parties arguing against all sport hunting of grizzlies, also recommended that the quota set for human-induced mortalities include mortalities that occur in Glacier National Park. The Service rejects this recommendation because the Park grizzly population was not included in the original calculation of the quota. Therefore, mortalities within the Park should not be counted against the quota. In addition, the Montana Department of Fish, Wildlife and Parks has no management jurisdiction within the Park and the grizzly is not hunted there.

National Environmental Policy Act

An environmental assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, has been prepared in conjunction with this rule and is available to the public at the Service's Denver Regional Office address listed above. The Service concludes that adoption of this revised final rule is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act. 42 U.S.C. 4332(2)(C).

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Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.40(b) is revised to read as follows:

§ 17.40 Special rules—mammals.

(b) Grizzly bear (*Ursus arctos*)—(1) *Prohibitions.* The following prohibitions apply to the grizzly bear:

(i) *Taking.* (A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported, within 5 days of occurrence, to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236-7540 or FTS 776-7540), if occurring in Montana or Wyoming, or to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1490, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/231-6125 or FTS 429-6125), if occurring in Idaho or Washington, and to appropriate State and Indian Reservation Tribal authorities. Grizzly bears or their parts taken in self-defense or in defense of others shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) *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, crops, or beehives 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, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(3) The taking is reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may take grizzly bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) *Northwestern Montana.* If it is not contrary to the laws and regulations of the State of Montana, a person may hunt grizzly bears, except a young grizzly bear or a grizzly bear accompanied by

young, in the area bounded on the north by the United States-Canada border, on the east by Interstate Highway 15, on the south by State Highway 200, on the west by a line extending from the U.S.-Canada border south along U.S. Highway 93 to its intersection with Montana State Highway 82, and then east and south along State Highways 82 and 83, except that this area shall not include Glacier National Park and the Blackfoot Indian Reservation, as defined as follows: Beginning at the intersection of the U.S.-Canada border and the western boundary of Glacier National Park, thence south and east along said boundary to its intersection with the border of the Blackfoot Indian Reservation, thence southeast in a straight line to Heart Butte, thence south along a straight line to the North Fork of Birch Creek, thence east to Swift Dam and along Birch Creek to Cut Bank Creek, thence north along Cut Bank Creek through and approximately 2¾ miles north of the town of Cut Bank, thence north along a straight line to the United States-Canada border, thence west along said border to the point of beginning; *Provided*, That if in any calendar year in question, in that part of Montana, exclusive of Glacier National Park, which is bounded on the north by the United States-Canada Border, on the east by Interstate Highway 15, on the south by State Highway 200, and on the west by U.S. Highway 93, the known number of female grizzly bears already killed or removed, for whatever reason, reaches 6, or if the known total number of grizzly bears already killed or removed, for whatever reason, reaches 21 minus a figure representing the annual unknown, unreported human-induced mortality in that same part of Montana, as estimated on the basis of scientific information by the State of Montana, in agreement with the U.S. Fish and Wildlife Service, then the Director of the Montana Department of Fish, Wildlife and Parks 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 the estimate of annual unknown, unreported human-induced mortality shall be 7 grizzly bears until new scientific data show, to the satisfaction of the U.S. Fish and Wildlife Service, in close consultation with the State of Montana, that this estimate should be revised: *Provided further*, That, in close cooperation with the Montana Department of Fish, Wildlife and Parks, the Service will annually review all grizzly bear mortality data from the area delineated above to assess the impact of

such mortality in this area: *Provided further*, That any legal taking of a grizzly bear in the above-described portion of Montana shall be reported within 48 hours of occurrence to the Montana Department of Fish, Wildlife and Parks, Helena, Montana 59601 (406/444-2535), and within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate Tribal authorities.

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

(ii) *Unlawfully taken grizzly bears*. (A) Except as provided in paragraphs (b)(1)(ii)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any unlawful taking of a grizzly bear shall be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(B) Authorized Federal, State, or Tribal employees, when acting in the course of their official duties, may, for scientific or research purposes, possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzly bears.

(iii) *Import or export*. Except as provided in paragraphs (b)(1)(iii)(A) and (B) and (iv) of this section, no person shall import any grizzly bear into the United States.

(A) *Federal, State, or Tribal scientific or research activities*. Federal, State, or Tribal authorities may import grizzly bears into the United States for scientific or research purposes.

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

(iv) *Commercial transactions*. (A) Except as provided in paragraph (b)(1)(iv)(B) of this section, no person shall, in the course of commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any grizzly bear.

(B) A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce.

(v) *Other violations*. No person shall attempt to commit, cause to be

committed, or solicit another to commit any act prohibited by paragraph (b)(1) of this section.

(2) *Definitions*. As used in paragraph (b) of this section:

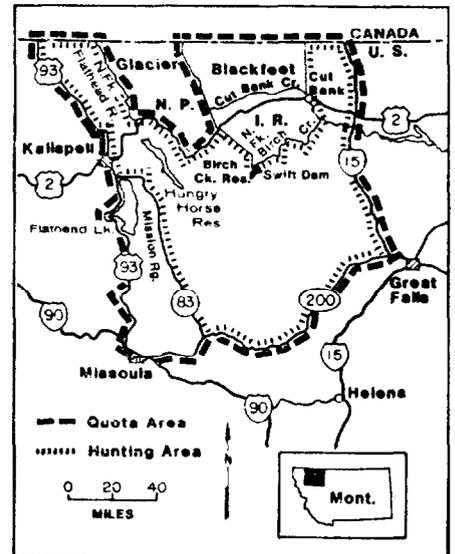
"Grizzly bear" means any member of the species *Ursus arctos* of the 48 conterminous States of the United States, including any part, offspring, dead body, part of a dead body, or product of such species.

"Grizzly bear accompanied by young" means any grizzly bear having offspring, including one or more cubs, yearlings, or 2-year-olds, in its immediate vicinity.

"Identified" means permanently marked or documented so as to be identifiable by law enforcement officials at a subsequent date.

"State, Federal or Tribal authority" means an employee of State, Federal, or Indian Tribal government who, as part of his/her official duties, normally handles grizzly bears.

"Young grizzly bear" means a cub, yearling, or 2-year-old grizzly bear.



* * * * *
Dated: September 15, 1986.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-21377 Filed 9-22-86; 8:45 am]

BILLING CODE 4310-55-M