Petition for a Revised Reintroduction Rule for the Grizzly Bear in the Selway-Bitterroot Ecosystem

PETITIONER

CENTER FOR BIOLOGICAL DIVERSITY

"There seems to be a tacit assumption that if grizzlies survive in Canada and Alaska, that is good enough. It is not good enough for me…. Relegating grizzlies to Alaska is about like relegating happiness to heaven; one may never get there."

– Aldo Leopold

December 18, 2014

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Dan Ashe
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, D.C. 20240

Re: Petition to the U.S. Department of Interior and U.S. Fish and Wildlife Service to Establish Regulations to Reinitiate the Grizzly Bear Reintroduction Program in the Selway-Bitterroot Ecosystem under Section 10(j) of the Endangered Species Act.

Dear Secretary Jewell and Director Ashe:

Pursuant to 16 U.S.C. § 1533(f) of the Endangered Species Act and section 5 U.S.C. § 553(e) of the Administrative Procedure Act ("APA"), the Center for Biological Diversity ("Center") hereby petitions the U.S. Department of the Interior ("DOI"), by and through the U.S. Fish and Wildlife Service ("Service"), to establish new regulations consistent with 50 C.F.R. § 17.84(*l*), as revised below, establishing the Selway-Bitterroot Grizzly Bear Experimental Population Area under Section 10(j) of the Endangered Species Act ("ESA") and to reinitiate the process to restore grizzly bears to central Idaho and western Montana.

The Selway-Bitterroot ecosystem is one of six grizzly bear recovery areas established by the 1993 recovery plan for the species, and is unique in that it is the only one that currently lacks any bears.[1] Under Section 10(j) of the ESA, the Service may authorize the release of an "experimental population" of an endangered species outside its current range if it determines that such release will further the conservation of such species.[2] To encourage these reintroductions, an experimental population can be designated as "essential" or "nonessential," thereby providing additional layers of management flexibility to address potential conflicts during the reintroduction process.[3]

The Service determined that release of an experimental population would further the conservation of grizzly bears in the lower 48, and thus in 1996 the Service developed a recovery chapter for the Selway-Bitterroot ecosystem that called for issuing a proposed rule under section 10(j) ("10(j) rule") of the ESA to create an experimental nonessential population through reintroduction of bears to the area.[4] In 2000, the Service issued a 10(j) rule establishing a nonessential experimental population and completed the required analysis under the National Environmental Policy Act.[5]

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[1] SERVHEEN, CHRISTOPHER, U.S. FISH AND WILDLIFE SERV., GRIZZLY BEAR RECOVERY PLAN SUPPLEMENT: BITTERROOT ECOSYSTEM RECOVERY PLAN CHAPTER (SEPT. 11, 1996).
[2] 16 U.S.C. § 1539(j)(2).
[3] Id. § 1539(j)(2)(B).
[4] GRIZZLY BEAR RECOVERY PLAN SUPPLEMENT, *supra* note 1.
[5] Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana, Final Rule, 65 Fed. Reg. 69,624 (Nov. 17, 2000) (codified at 50 C.F.R. § 17.84(l)).

With the change in administration in 2001, however, Gail Norton, the new Secretary of Interior, issued a proposed rule to remove the 10(j) rule from the Code of Federal Regulations.[6] Although this rule was never finalized, the Service nevertheless put the reintroduction program on hold indefinitely. Fourteen years after the 10(j) rule was issued, not a single action has been taken to reintroduce bears into one of the largest areas of suitable habitat in the western United States.

The regulatory language to restore grizzlies to the Selway-Bitterroot ecosystem, currently found at 50 C.F.R. § 17.84(*l*), is still technically in effect. However, the regulatory provisions are outdated and thus may be invalid. Additionally, the provisions call for unwieldy implementation measures that will cause further delay to an already defunct reintroduction process. Accordingly, we hereby petition the Service to issue a new 10(j) rule to create an experimental population of grizzly bears to begin the process of returning bears to the Selway-Bitterroot ecosystem.

The Service recently reaffirmed its commitment to "recovery in all six ecosystems identified and covered by individual chapters in the recovery plan," including the Selway-Bitterroot ecosystem.[7] This petition merely requests the Service to move forward with the rulemaking necessary to effectuate this commitment.

We ask you to respond to this petition expeditiously to inform us that you are commencing a process to complete a new experimental population regulation in the Selway-Bitterroot ecosystem for the grizzly bear species, and moreover, that you include a timeline by which you will conduct and complete this process and commence implementation of all necessary recovery strategies for the grizzly bear species with all deliberate speed.

Sincerely,

Andrea Santarsiere

Andrea Santarsiere
Staff Attorney
Center for Biological Diversity

[6] Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Removal of Regulations, 66 Fed. Reg. 121 (proposed June 22, 2001).
[7] Letter from Acting Regional Director, Region 6, U.S. Fish and Wildlife Service to Noah Greenwald, Center for Biological Diversity (Sept. 22, 2014).

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EXECUTIVE SUMMARY

Grizzly bears once ranged throughout most of western North America, from the high Arctic to the Sierra Madre Occidental of Mexico, and from the coast of California across most of the Great Plains.[8] By the middle of the 20th Century, grizzly bears had been nearly extirpated from the lower 48 States, with the last populations confined to Yellowstone National Park in Wyoming and the northern Rocky Mountains of Montana and Idaho. As a result of its precipitous decline, the grizzly bear was listed in the lower 48 states as a threatened species under the Endangered Species Act in 1975.[9]

Today there are only 1,500 to 1,800 grizzly bears left in the lower 48 states—less than 4 percent of the species' likely historic abundance. And while some progress has been made recovering two populations of grizzly bears - Greater Yellowstone and Northern Continental Divide ecosystems - very little progress has been made recovering grizzly bears elsewhere in the United States. More importantly, the grizzly bear populations in the United States remain largely isolated, with no connectivity between populations to enhance genetic diversity.

Reintroducing bears to the Selway-Bitterroot region provides a promising opportunity to regain the connectivity that is needed to truly recover the species. Totaling at least 16 million acres and centered around the Selway-Bitterroot Wilderness Area and the Frank Church-River of No Return Wilderness Area, the Selway-Bitterroot represents one of the largest, contiguous areas of suitable habitat for grizzly bears in the lower 48 States, and could easily support hundreds of grizzly bears today. Within the species' historic range, this area also provides the most likely path for genetic connectivity between grizzly bears in the Northern Continental Divide and Greater Yellowstone ecosystems, where the bear populations have been isolated from each other for over 100 years.

Restoring grizzly bears to the Selway-Bitterroot ecosystem is integral to the long-term viability of grizzly bears in the western United States. Without the Selway-Bitterroot, it is likely that the Service will need to periodically move grizzly bears into Yellowstone through artificial translocations to prevent the loss of genetic diversity and inbreeding within that population. The Selway-Bitterroot also would provide a potential path for grizzly bears to move north into two other highly imperiled grizzly bear ecosystems: the Cabinet-Yaak and the Selkirk.

The Service has consistently identified the Selway-Bitterroot ecosystem, including in the Service's original 1982 grizzly bear recovery plan and again in the 1993 revision of the plan, as important for grizzly bear recovery. The 1993 plan, for example, noted that "the Bitterroot evaluation area contains sufficient amounts of quality habitat to warrant grizzly bear recovery" and recommended that a reintroduction program be implemented there to enhance grizzly bear recovery opportunities.[10]

Following the publication of the Recovery Plan in 1993, the Service produced the Bitterroot Ecosystem Recovery Plan Chapter, which called for the reintroduction of grizzly bears into the

[8] SERVHEEN, CHRISTOPHER, U.S. FISH AND WILDLIFE SERVICE, GRIZZLY BEAR RECOVERY PLAN 9 (SEPT. 10, 1993).
[9] 40 Fed. Reg. 31,734 (July 28, 1975).
[10] GRIZZLY BEAR RECOVERY PLAN, *supra* note 8, at 12.

Selway-Bitterroot ecosystem as an experimental, nonessential population under section 10(j) of the ESA.[11] A public participation and interagency coordination program was developed to identify issues and alternatives to be considered and a Notice of Intent concerning grizzly bear recovery in the Selway-Bitterroot ecosystem was published on January 9, 1995.[12]

After a series of public meetings, in 1997 the Service published a proposed rule and a draft environmental impact statement (DEIS) that presented a range of alternatives for reintroduction under Section 10(j) of the ESA.[13] Following the release of the DEIS, the Service held additional hearings on the proposed reintroduction and solicited public comment. A final environmental impact statement and regulatory structure for the reintroduction was published on March 24, 2000, setting forth a reintroduction plan to rebuild a population of at least 280 grizzly bears that, by its own account, would take 50-100 years to fully accomplish. The Service, however, abandoned the project in 2001 before it ever started due to political interference. Following the switch of administrations in 2001, Secretary of Interior Norton ordered the 10(j) regulations revoked.[14] Despite this order, however, the regulations never were revoked and remain on the books today. See 50 C.F.R. § 17.84(*l*).

For a variety of reasons, however, we are petitioning for a new rule. First, the environmental analysis and public outreach were completed more than 14 years ago and thus much of the information and many of the key players from state, tribal and federal agencies have changed. The environmental analysis therefore is stale and outdated. A new revised version of the rule and new environmental analysis could incorporate new information about the bear's status and reengage the public and key stakeholders in reintroduction.

Second, increased threats to the grizzly bear from climate change and continued human population growth and development, as well as the continued poor status and isolation of some existing grizzly bear populations, underscore the immediate need for reintroduction of bears to the Selway-Bitterroot ecosystem to ensure the resiliency, representation and redundancy of the grizzly bear in the lower 48 states. New information as to the occupancy of grizzly bears in the northwest will further demonstrate why the Selway-Bitterroot may provide a critical connectivity corridor for bears to help maintain genetic diversity.

Third, the previous rule relied on a "citizen management committee" to oversee the reintroduction—an approach that has never been utilized for any other reintroduction under the ESA in 40 years and threatens to stall reintroduction efforts. Under the current regulations, this committee was given a wide range of authority and power for shaping the reintroduction program. Although we recognize that the Service will need partners to move reintroduction forward, the composition of this committee or the committee structure itself may no longer be appropriate.

Finally, based on new modeling, there is new information on the extent of suitable grizzly bear habitat surrounding the Selway- Bitterroot, which may call for extending the boundaries of the

[11] GRIZZLY BEAR RECOVERY PLAN SUPPLEMENT, *supra* note 1.
[12] 60 Fed. Reg. 2399 (Jan. 9, 1995).
[13] 62 Fed. Reg. 35,762 (July 2, 1997).
[14] 66 Fed. Reg. 121 (proposed June 22, 2001).

originally delineated experimental population area. Giving reintroduced bears a larger area to roam in and around Idaho will promote more opportunities for connectivity and genetic exchange.

For all of these reasons, a new reintroduction rule is needed to guide reintroduction of the grizzly bear to the Selway-Bitterroot ecosystem.

STANDING TO FILE

The Center for Biological Diversity ("Center") is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy and environmental law. The Center has more than 800,000 members and supporters dedicated to the protection and restoration of endangered species and wild places. The Center has worked for many years to protect imperiled plants and wildlife — including grizzly bears — as well as open space, air and water quality, and overall quality of life.

The Center and its members are "interested persons" within the meaning of the APA, and hence petition the Service for a comprehensive recovery strategy for the grizzly bear pursuant to the APA and in accordance with the ESA. See 5 U.S.C. § 553(e) (granting any "interested person the right to petition for the issuance, amendment, or repeal of a rule"); id. § 551(4) (a "rule" is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy"). For all of the reasons set forth in this petition and as a matter of law, the Service is required to respond to this petition by updating and completing 50 CFR 17.84 (*l*), establishing an experimental grizzly bear population in the Selway-Bitterroot ecosystem.

Should the Service fail to comply with these mandatory obligations, the Center may pursue relief from a federal district court. 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."); id. § 551(13) ("agency action" includes "the whole or a part of an agency rule, … or the equivalent or denial thereof, or failure to act"); id. § 706(1) and (2)(A) (granting a reviewing court the authority to "compel agency action unlawfully withheld or unreasonably delayed" and/or to "hold unlawful and set aside agency action … found to be … arbitrary, capricious, an abuse of discretion"); see also 16 U.S.C. § 1540(g)(1)(C) ("any person may commence a civil suit on his own behalf" "against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 4 which is not discretionary with the Secretary").

A NEW RULE IS NECESSARY TO REINTRODUCE GRIZZLY BEARS TO THE SELWAY-BITTERROOT ECOSYSTEM

A. The Current Regulations That Provide for Reintroduction of Grizzly Bears to the Selway-Bitterroot Ecosystem are Stale and Outdated.

According to a 2011 five-year review, the 2000 reintroduction rule for the Selway-Bitterroot ecosystem "remains in effect."[15] Much has changed, however, in the 14 years since the rule was passed, including changes in the status of existing populations, improved understanding of effective grizzly bear management and suitable habitat, changes in key players in federal, state and tribal agencies that will participate in reintroduction, and changes in threats to grizzly bears, such as increased human population growth and development and impacts from climate change on grizzly bear food sources.

Populations in both the Northern Continental Divide and Greater Yellowstone ecosystems have seen steady growth since 2000 and have expanded to new areas where they were not found in 2000.[16] This new information is critical to understanding the capacity of bears to expand to suitable habitat and highlights the opportunity for the Selway-Bitterroot area to serve as a critical connectivity corridor for bears.

Additionally, since 2000, dozens of studies on the status, ecology and management of grizzly bears have been published (see http://nrmsc.usgs.gov/science/igbst/detailedpubs). In particular, much has been learned about managing bear-human conflicts. As but one example, Gunther et al. (2004) evaluated all documented bear-human conflicts from 1992-2000 in the Greater Yellowstone ecosystem and determined among other things that incidents involving bears obtaining anthropogenic foods were an important source of conflict and were concentrated to particular areas during portions of the year, leading the authors to recommend that orders for food and garbage storage be expanded to include additional areas.[17] This research could and should inform a new reintroduction rule. For example, a new rule will be developed with the recognition that human-bear conflict areas are likely to be very location specific, and thus regulations should ensure that ordinances for storing food and garbage are developed.

The Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, the Nez Perce Tribe and the Forest Service all participated in the development of the previous rule and are hopefully still interested in supporting reintroduction, but it is quite likely that many of the agency staff involved in the past rule have since turned-over. Development of a new rule would allow reengagement of the various agencies in the reintroduction effort. Additionally, a new rule with a new environmental process will offer members of the public the opportunity to reengage in the reintroduction efforts.

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[15] U.S. FISH AND WILDLIFE SERVICE, GRIZZLY BEAR 5 YEAR REVIEW: SUMMARY AND EVALUATION 5 (AUG. 2011).
[16] "When the grizzly bear was listed in 1975, the population estimate in the GYA ranged from 136 to 312 individuals." 72 Fed. Reg. 14866, 14869 (Mar. 27, 2009) (citations omitted); see also NCDE Grizzly Bear Conservation Strategy (DRAFT April 2013), at ii (noting increasing population from 2004-2011).
[17] Gunther et al. (2004).

B. New Information on the Distribution of and Threats to Grizzly Bears Underscores the Need for a Timely Implementation of a New Reintroduction Rule.

1) New and Increased Threats to Grizzly Bears

Threats to grizzly bears, and our knowledge of what may threaten grizzly bear survival and recovery, have increased since 2000. In particular, the human population has grown substantially in the northern Rockies region. Hernandez (2004) notes, for example, that the human population surrounding the Greater Yellowstone ecosystem grew by 60% to approximately 370,000 people since 1970, and that much of this development consisted of rural subdivisions with large-lots that magnify habitat loss.[18] Similar growth has likely occurred in and around the Selway-Bitterroot and will need to be accounted for in any reintroduction rule.

Likewise, scientists have a better understanding of the threat of climate change to bears and their habitat since 2000. The effects of climate change are already being seen in the Greater Yellowstone ecosystem, where one of the grizzly bears' most important food sources, whitebark pine seeds, have seen catastrophic declines.[19] An estimated 80 percent to 90 percent of current whitebark pine range is expected to be lost over the next 100 years due to climate change, with further losses catalyzed by disease, insects, fire and failed recruitment.[20] A revised reintroduction rule needs to consider the impacts of ongoing changes in habitat caused by climate change.

Finally, some grizzly bear populations have been fraught with lethal removal due to an increase in livestock conflicts as grizzly bears try to expand into new areas. In the Upper Green River drainage of the Greater Yellowstone ecosystem, for example, there have been 445 recorded conflicts with livestock since 1999, leading to 36 bear relocations and 17 lethal removals.[21] In response to these conflicts, the Service has issued several renditions of a Biological Opinion and Incidental Take Statement for the region, each time increasing the anticipated amount of take of grizzly bears. This is just one example of the increased threats that bears are facing as they try to expand their habitat.

2) The Genetic Diversity of Grizzly Bears is at Risk

At the time of passage of the ESA and the listing of the grizzly bear as a threatened species in 1975, bears were known to still be present in Wyoming, Montana, and Idaho, including the Selway-Bitterroot ecosystem[22] No resident grizzly bears have been found in the Selway-Bitterroot ecosystem in Idaho and Montana since the time of listing, although the Service considers it to be one of the six grizzly bear recovery ecosystems where bears persisted and should be recovered. The last verified grizzly bear death in the Selway-Bitterroot ecosystem was

[18] Hernandez (2004).
[19] Mattson et al. (2004); Felicetti, et al. (2003).
[20] Chang et al. (2013); Warwell et al. (2007); Bartelain et al. (1997); Romme & Turner (1991).
[21] U.S. Forest Service and U.S. Fish and Wildlife Service, Endangered Species Act Section 7 Consultation Biological Opinion for the 2014 Supplement to the 2013 Supplement and 2010 Amendment to the 1999 Biological Assessment for Livestock Grazing on the Northern Portions of the Pinedale Ranger District (Sept. 3, 2014), Appendix A at A-7, Table A-1.
[22] 40 Fed. Reg. 31,734 (July 28, 1975).

in 1932, and the last confirmed indication of occupancy was tracks found in 1946.[23] Since 2000, there have been verified reports of two grizzly bears crossing from occupied grizzly bear habitat in the western portion of Montana into the western portion of the Selway-Bitterroot ecosystem in Montana.[24] Of these two reported grizzlies, one was killed and the other disappeared.[25]

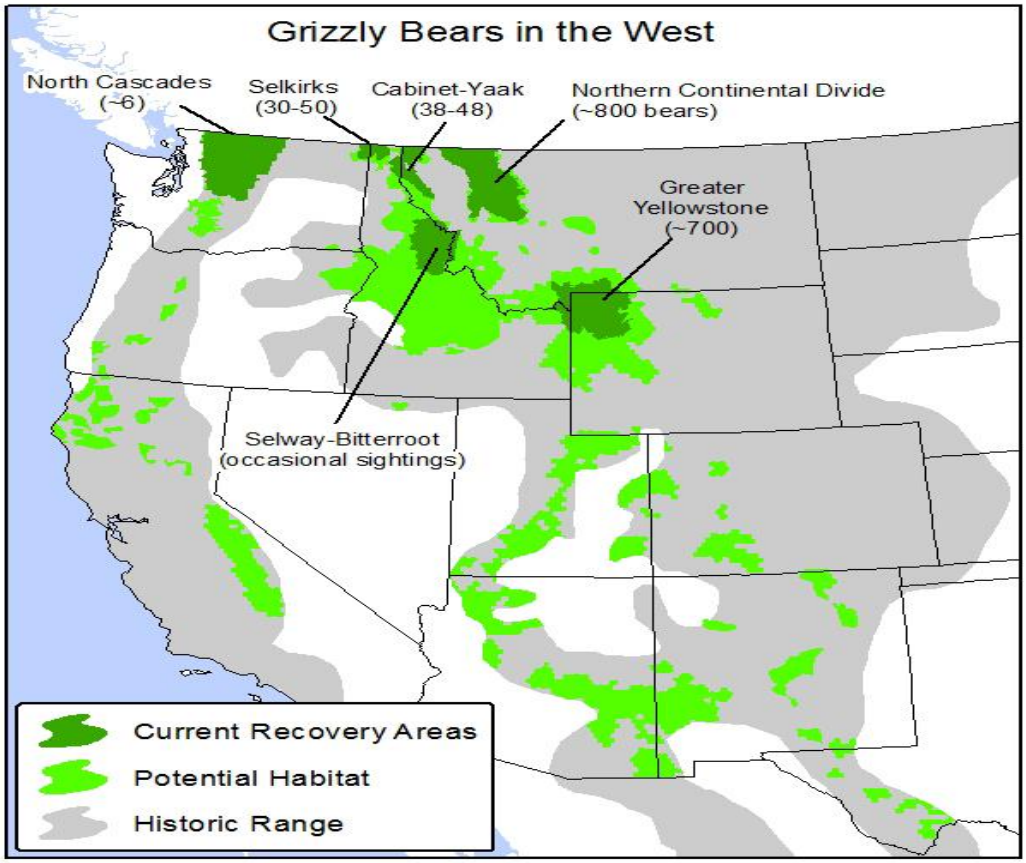

Figure 1. Map displaying historic range, potential habitat, and current recovery areas for grizzly bears in the lower 48 states.

Today, grizzly bears survive in just five ecosystems, which harbor at most between 1,500 and 1,800 bears, and occupy less than one percent of the species' historic range in the lower 48 States. The vast majority of remaining bears are confined to the Greater Yellowstone and North Continental Divide ecosystems (Table 1). The other four recovery areas identified in the 1993 recovery plan are 50 percent larger than Greater Yellowstone and North Continental Divide combined, and at least across the northern Rockies have the potential to create an interconnected meta-population that provides greater security for the species as a whole and a buffer against the projected adverse effects of climate change, nonnative species, and genetic depression.

[23] Interagency Grizzly Bear Committee, Bitterroot Subcommittee (Sept. 14, 2012, 10:14 PM), found at http://www.igbconline.org/index.php/who-we-are/igbc-membership/ecosystem-subcommittees/bitterroot (last visited Dec. 17, 2014).
[24] Id.
[25] Id.

Table 1. Modeled area of suitable habitat and estimated grizzly populations for the grizzly bear recovery areas identified by the 1993 recovery plan.

Recovery Zone	States	Habitat Area (sq mi)	Abundance	Trend Since Listing
Greater Yellowstone	MT, WY, ID	27,599	741 (660-821)[26]	Increased
North Continental Divide	MT	8,836	765 (715-831)[27]	Increased
Selkirk Mountains	ID, WA	1,739	30-50	Unchanged
Cabinet-Yaak	ID, MT	2,747	38-48	Unchanged
North Cascades	WA	8,638	~6	Unchanged
Selway-Bitterroot	ID, MT	~41,403	0	Unchanged

Perhaps the most troubling aspect of grizzly bear recovery is the fact that the Greater Yellowstone and North Cascades ecosystems remain completely isolated from other populations, creating significant concerns about genetic diversity and the survival of these populations. The 2007 Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area noted that genetic issues were "of concern for the Yellowstone grizzly bear population" due to its isolation.[28] While the Interagency Conservation Strategy Team noted that "[n]atural gene flow involving bears moving across the landscape and entering the GYA may be several years away" because "[t]he obstacles to achieving natural connectivity are substantial," the team found that reintroduction in the Selway-Bitterroot area would help establish a necessary connectivity corridor.[29] It concluded:

> A sound policy to ensure the survival of the Yellowstone grizzly bears is to focus on maintaining the Yellowstone area and NCDE grizzly populations at or above their current sizes and to encourage range expansion through natural dispersal and/or reintroduction in suitable areas such as the Bitterroot Ecosystem. This approach will improve the demographic security of grizzly bears south of the Canadian border as well as address long-term genetic concerns.[30]

Without connectivity and dispersal, "artificial transplantation" may be necessary to maintain genetic diversity.[31]

In addition to concerns about the genetic diversity of these populations, the Cabinet-Yaak and Selkirk populations are small enough to be at risk of extinction without increased connectivity with other populations. Unlike the populations in the Greater Yellowstone and North Continental Divide ecosystems, the Cabinet-Yaak and Selkirk have not seen steady population growth to alleviate these concerns. These realities highlight the critical need for reintroduction

[26] Interagency Grizzly Bear Study Team, Yellowstone Grizzly Bear Investigations 2013 (2013 Annual Report), at 17, Table 7. at http://www.nrmsc.usgs.gov/files/norock/products/IGBST/2013report.pdf.
[27] Kendall et al. (2009).
[28] Interagency Conservation Strategy Team, Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area (March 2007), at 37.
[29] Id.
[30] Id.
[31] Id.

to the Selway-Bitterroot on an aggressive timeline because of its potential to connect existing populations and serve as a large source population and connectivity corridor to support these smaller populations to the north.

The Selway-Bitterroot ecosystem is the lynchpin to this potential meta-population because it is critical to connecting the Greater Yellowstone population to other populations. As depicted by the map below (Figure 2), if grizzly bears were to inhabit the Selway-Bitterroot area, it may be possible for the Greater Yellowstone population to regain connectivity with the Selkirk, Cabinet-Yaak, and Northern Continental Divide populations. Several scientific studies show the area could support a robust population ranging from 300-600 bears, depending on the extent of the area considered.[32] With more than 16 million acres of potential habitat, it is the biggest remaining area of suitable yet unoccupied bear habitat not just in the northern Rockies, but in the entire range of the grizzly bear in the western lower 48 states.[33]

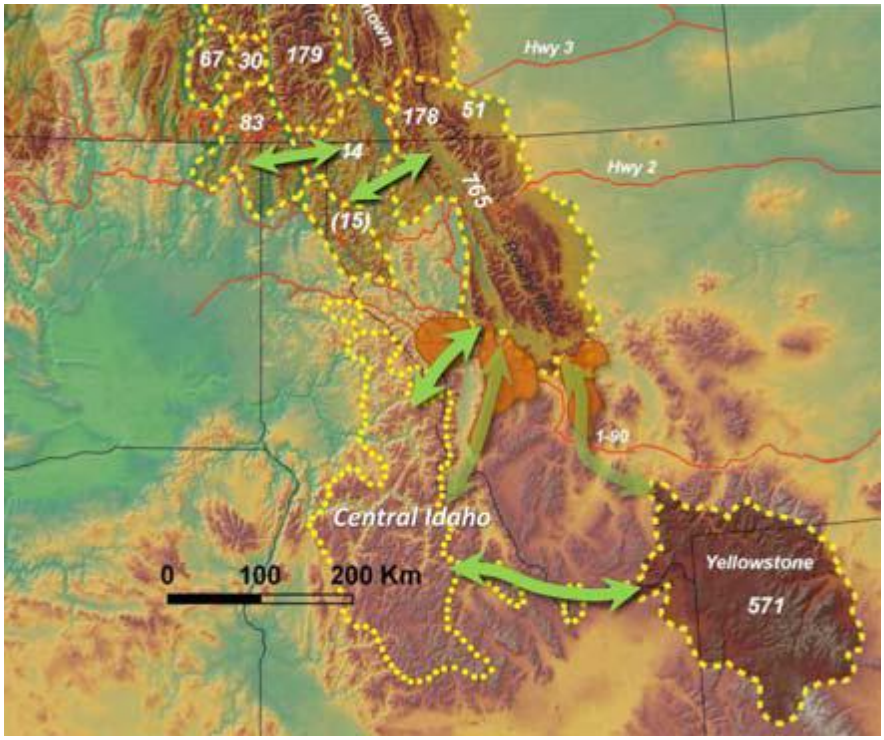

Figure 2. Grizzly bear population fragments identified by Proctor et al. (2012) and potential linkages shown in green together with potential grizzly bear habitat in central Idaho.

C. A Citizen Management Committee is Unnecessary and Impractical for Grizzly Bear Reintroduction Efforts in the Selway-Bitterroot Ecosystem.

The 2000 reintroduction rule called for formation of a citizen management committee to oversee the reintroduction, although a committee was never formed. The Service has never before or since utilized such a committee to oversee reintroduction of a species. The rule specified that the committee would be comprised of 15 members, including seven members recommended by the

[32] Mowat et al. (2013); Boyce & Waller (2003); Merrill et al. (1991).
[33] Id.

Governor of Idaho, five recommended by the Governor of Montana, one member representing the Nez Perce Tribe, one member representing the Forest Service, and one member representing the Service. We have serious concerns that such a large committee, in which a majority of members are appointed by the Governors of Idaho and Montana, who may or may not support grizzly bear recovery or have the requisite scientific knowledge to properly manage grizzly bear reintroduction efforts, will preclude the Service from executing a successful and legally valid reintroduction effort. Reintroduction of grizzly bears to the Selway-Bitterroot has already been met with significant delay and political interference, and such a committee threatens to further halt reintroduction efforts. The following flow chart from the original 2000 Rule demonstrates just how difficult and unmanageable this committee process would be:

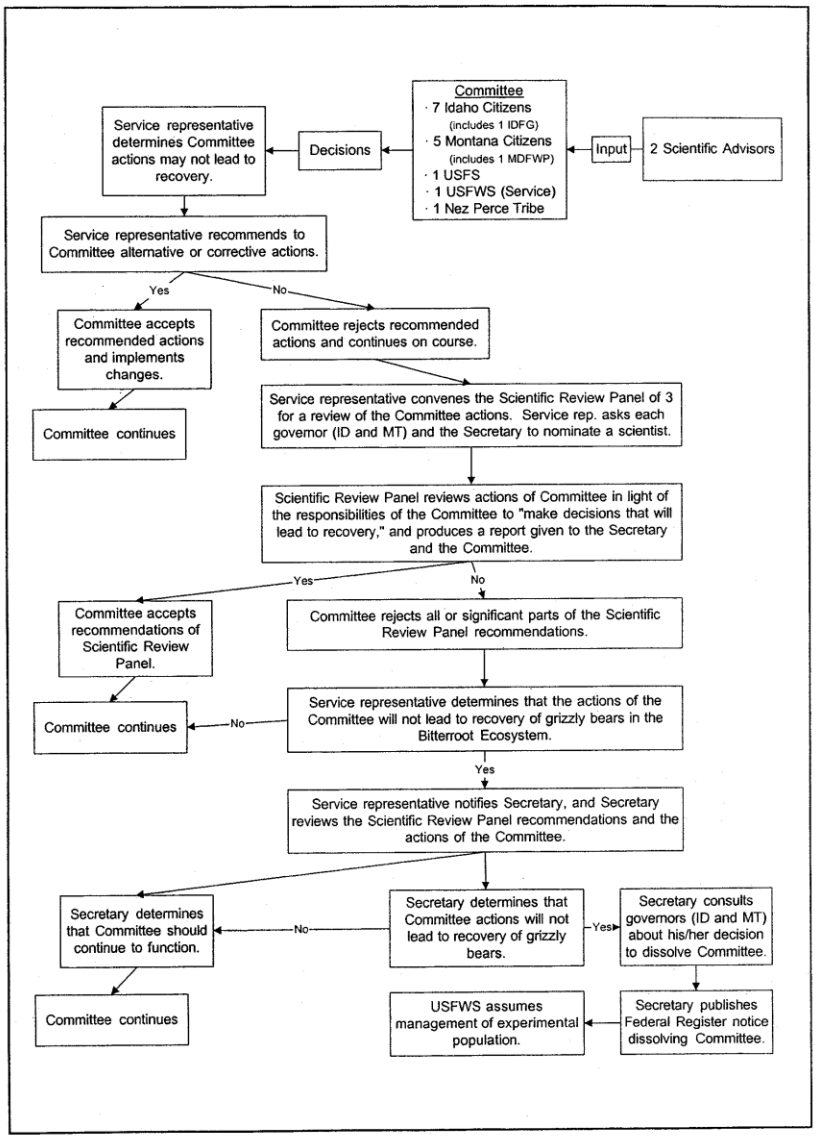

Figure 1. Scientific Review Panel process.

We therefore request development of a new rule with a reconceived management structure.

D. The Boundaries of the Original Experimental Population Area Should Be Expanded.

Since the original rule was finalized in 2000, several scientists have modeled suitable grizzly bear habitat in the western United States. Figure 3 below, for example, depicts potential habitat as determined by several scientists.

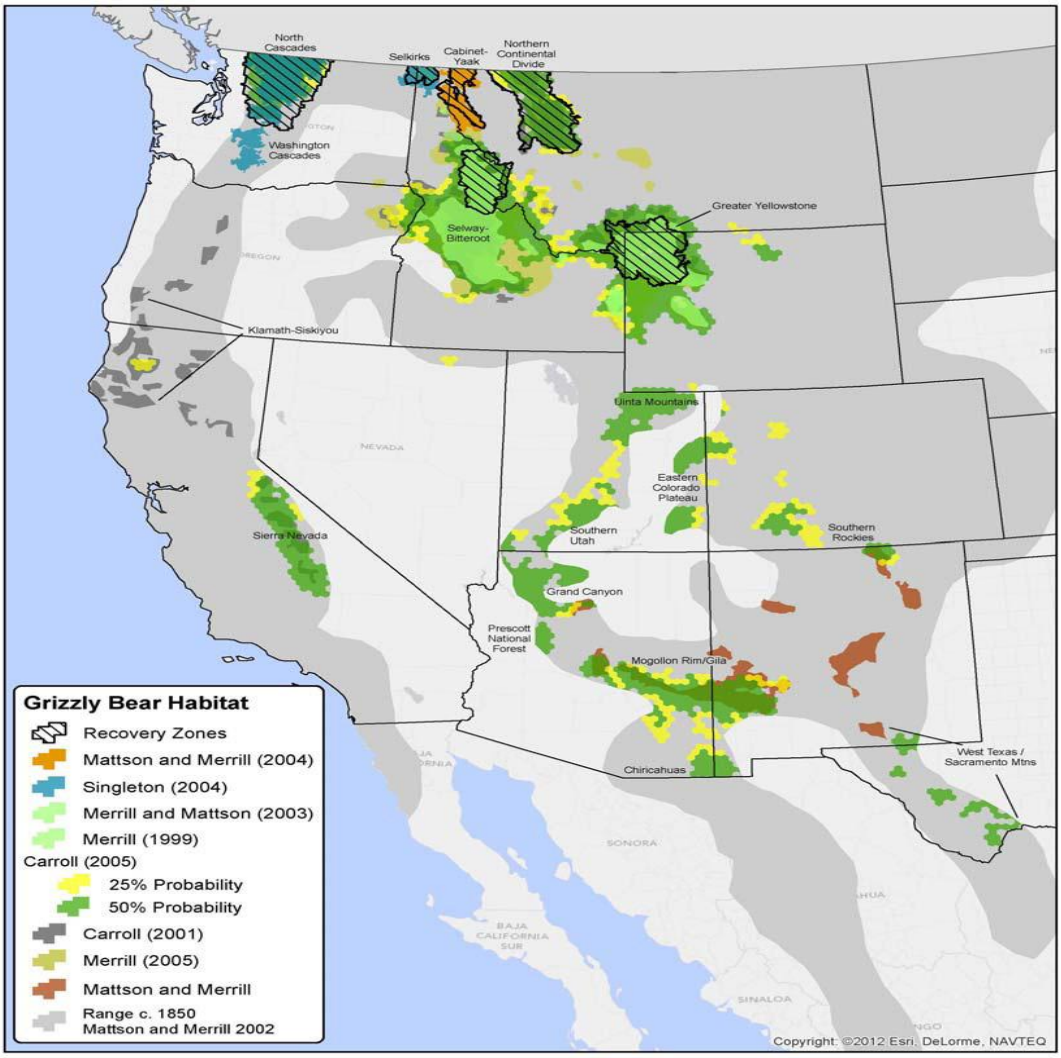

Figure 3. Map displaying recovery zones, including the Selway-Bitterroot, along with probable, potential, and historic grizzly bear habitat as analyzed by a range of scientists.

This modeling demonstrates that there is suitable habitat surrounding the original Selway-Bitterroot experimental population area that should be included in a new reintroduction rule. The Service should consider expanding the boundary to include more suitable lands in the Salmon-Challis, Boise, Sawtooth, and the Idaho Panhandle National Forests in Idaho. The Service should also determine whether there is suitable habitat in the Lolo National Forest in Montana and the Wallowa-Whitman National Forest in Oregon and Washington that should be

included in the experimental population area. Figure 4 below depicts possible expanded boundaries of the Selway-Bitterroot experimental population area.

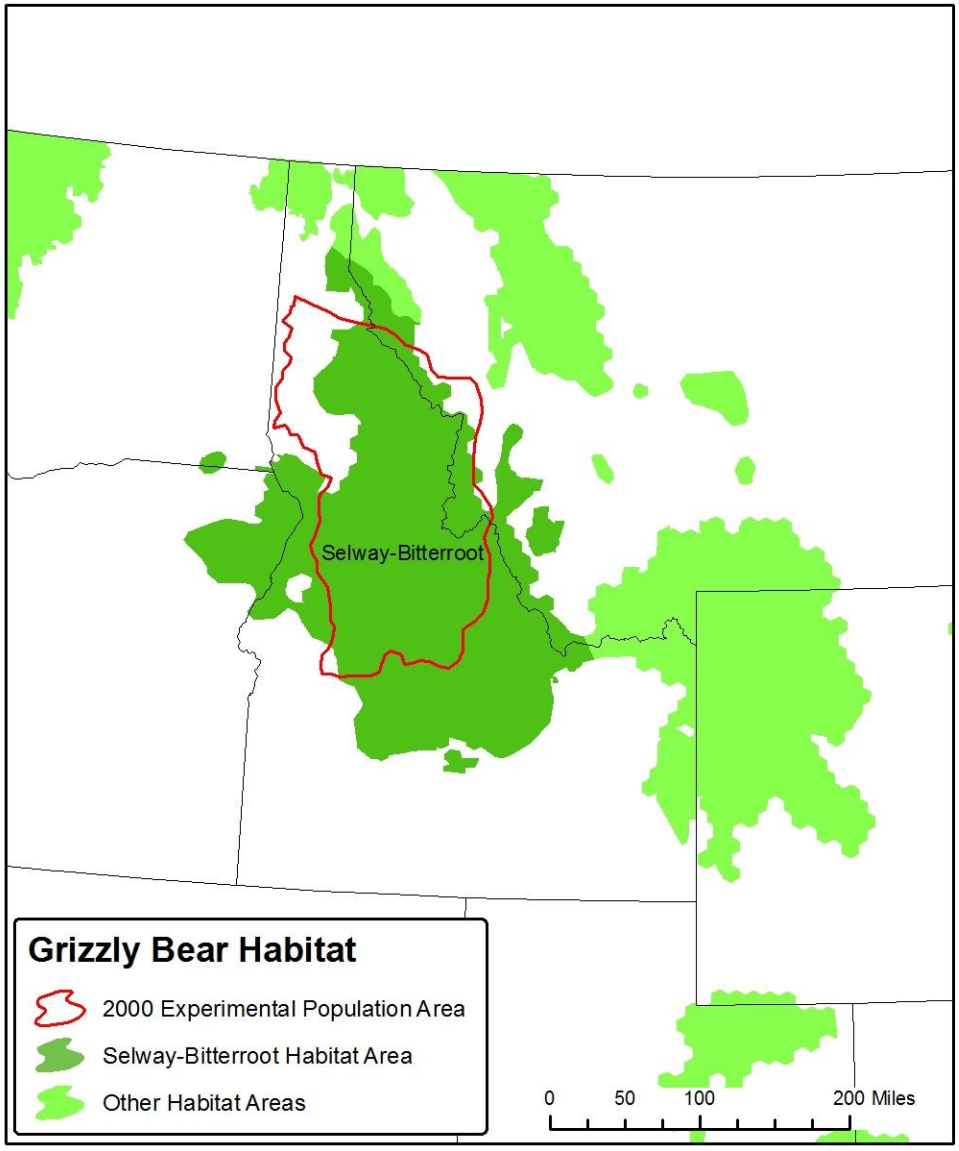

Figure 4. Map showing suitable habitat surrounding the original 2000 experimental population area that should be included in the new Selway-Bitterroot reintroduction rule.

A PROPOSED NEW RULE

The Center requests that the Service replace the regulatory language currently found in 50 C.F.R. § 17.84(*l*) and in its place, include the following language to guide a future reintroduction program in the Selway-Bitterroot ecosystem:

(l) Grizzly bear (*Ursus arctos horribilis*). (1) *Where does this special rule apply?* The special rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined as follows:

The boundaries of the Experimental Population Area are to be determined based on further analysis.~~delineated by U.S. 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).~~

(2) *What is the legal status of the grizzly bear?* (i) The grizzly bear is listed as "threatened" in §17.11 (h) and protected under this part. However, the grizzly bear population to which this paragraph (l) applies is considered a nonessential experimental population in accordance with section 10(j) of the Act.

(ii) We have determined that, as of December 1~~8~~, 2014~~00~~, no grizzly bear population exists in the Experimental Population Area. We find, in accordance with §17.81 (b), that the reintroduction of grizzly bears as a nonessential experimental population, as defined in §17.81 (b), will further the conservation of the species and will be consistent with provisions of section 10(j) of the Act, which requires that an experimental population be geographically separate from other nonexperimental populations of the same species. We also find, in accordance with §17.81 (c)(2), that the experimental population of grizzly bears in the Experimental Population Area is not essential to the survival of the species in the wild.

(iii) Grizzly bears within the Experimental Population Area and the Recovery Area will be accommodated through management provisions provided for in this paragraph (l) and through management plans and policies developed by the Secretary~~Citizen Management Committee (Committee; see paragraph (l)(6) of this section)~~. After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a member of the nonessential experimental population.

(iv) In the conterminous United States, a grizzly bear that is outside the Experimental Population Area identified in paragraph (l)(1) of this section will be considered as threatened.

(3) *Where will grizzly bears be released, and where will recovery be emphasized?* The Bitterroot Grizzly Bear Recovery Area identifies the area of recovery emphasis within the Experimental Population Area. The Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (See map at the end of paragraph (l) of this section). Reintroductions may take place in the Selway-Bitterroot Wilderness and the Frank Church River of No Return Wilderness ~~All reintroductions will take place in the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate~~. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Service~~Committee~~ may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this paragraph (l) to change the definition of the Recovery Area.

(4) *What activities are prohibited in the Experimental Population Area?* (i) You may not take (see definition in §10.12 of this subchapter) any grizzly bear in the Experimental Population Area, except as provided in this paragraph (l). We may refer unauthorized take of grizzly bears to the appropriate authorities for prosecution.

(ii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or parts thereof that are taken from the Experimental Population Area or possessed in violation of the regulations in this paragraph (l) or in violation of applicable State wildlife conservation laws or regulations or the Act.

(iii) You may not attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this paragraph (l).

(5) *What activities are allowed in the Experimental Population Area?* (i) For purposes of this paragraph (l), except for persons engaged in hunting or shooting activities, you will not be in violation of the Act for "unavoidable and unintentional take" (see definition in paragraph (l)(16) of this section) of grizzly bears within the Experimental Population Area when such take is incidental to a legal activity and is not a result of negligent conduct lacking reasonable due care, and when due care was exercised to avoid the taking. Any taking must be reported within 24 hours to appropriate authorities as listed in paragraph (l)(5)(iii) of this section. Persons lawfully engaged in hunting or shooting activities must correctly identify their target before shooting in order to avoid illegally shooting a grizzly bear. Shooting a grizzly bear as a result of mistaking it for another species is considered a lack of reasonable due care. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.

(ii) Any person with a valid permit issued by us may take grizzly bears in the Experimental Population Area for scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. Such permits must be consistent with the Act, with management plans adopted for the nonessential experimental population, and with applicable State wildlife conservation laws and regulations.

(iii) You may take grizzly bears in the Experimental Population Area in self-defense or in defense of the lives of others. Such taking must be reported within 24 hours as to date, exact location, and circumstances to the Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903); or the Assistant Regional Director for Law Enforcement, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125); or the Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540); and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208-334-3700); or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535); and Nez Perce Tribal authorities (208-843-2253) (as appropriate).

(iv) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, or appropriate Tribal authorities to harass (see definition in §17.3) grizzly bears found in the Experimental Population Area that are actually pursuing or killing livestock (to include permitting the use of livestock guard dogs around livestock to harass such grizzly bears). Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. All such harassment must be accomplished by an opportunistic, noninjurious method (see definition of "opportunistic, noninjurious harassment" in paragraph (l)(16) of this section) to the grizzly bear, and such harassment must be reported within 24 hours as to date, exact location, and circumstances to the authorities listed under paragraph (l)(5)(iii) of this section.

(v) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks or appropriate Tribal authorities to take grizzly bears on private lands found in the Experimental Population Area in a manner other than harassment as defined in this paragraph (l), in order to protect livestock actually pursued or being killed on private property. Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. Any response protocol established by the Service~~Committee~~ must have been satisfied and efforts to capture depredating grizzly bears by Service or State or Tribal wildlife agency personnel must have proven unsuccessful. All such taking must be reported as to date, exact location, and circumstances within 24 hours to the authorities listed under paragraph (l)(5)(iii) of this section.

(vi) Any authorized employee or agent of the Service or appropriate State wildlife agency or Nez Perce Tribe who is lawfully designated for such purposes, when acting in the course of official duties, may take a grizzly bear from the wild in the Experimental Population Area if such action is necessary to:

(A) Aid a sick, injured, or orphaned grizzly bear;

(B) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;

(C) Take a grizzly bear that constitutes a demonstrable but nonimmediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if otherwise eliminating such depredation or loss of personal property has not been possible, and after eliminating such threat by live-capturing and releasing the grizzly bear unharmed in the area defined in paragraph (l)(2) of this section or other areas approved by the Service~~Committee~~ has been demonstrated not to be possible;

(D) Move a grizzly bear for genetic management purposes;

(E) Relocate grizzly bears within the Experimental Population Area to improve grizzly bear survival and recovery prospects; or (F) Relocate a grizzly bear to avoid conflict with human activities. However, grizzly bears in the Experimental Population Area will not be disturbed unless they demonstrate a real and imminent threat to human safety, livestock, or bees. ~~Unless the Committee determines otherwise, this rule provides that on private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in the exclusion area, and grizzly bears found there will be captured and returned to the Recovery Area, or placed in captivity, or destroyed, depending on the history of each bear. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.~~

(6) ~~*How will local citizens be involved in the management of the Bitterroot nonessential experimental grizzly bear population*~~*How will the recovery efforts be implemented and monitored?* (i) The Service shall assume the lead role in management implementation responsibility and will consult with affected State and tribal representatives on management decisions where practicable.

(ii) Within six months following the publication of a final rule, the Service shall:

(A) Identify specific reintroduction locations for grizzly bears in the Selway-Bitterroot Wilderness Area and Frank Church-River of No Return Wilderness Area.
(B) Develop a timeline for the reintroduction of 50 grizzly bears within five years. Reintroductions will be divided roughly evenly between the two Wilderness Areas described in subsection (A) of this paragraph and roughly evenly for male and female grizzly bears.
(C) Develop a process for obtaining the best biological, social, and economic data, which shall include an explicit mechanism for peer-reviewed, upon which to base decisions for all components of management plans for grizzly bear recovery.
(D) Review and, if necessary, revise existing grizzly bear guidance for proper camping and sanitation within the Experimental Population Area.
(E) Develop response protocols for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Population Area.

(iii) Within one year following the publication of a final rule, the Service shall reintroduce 5-15 grizzly bears into the Experimental Population Area. The Service shall reintroduce a similar number of grizzly bears each year into the Experimental Population Area until the target of 50 grizzly bears is reached.

(iv) At the conclusion of the first five year period and each five year period after that, the Service shall:

(A) Review whether additional grizzly bears should be introduced into the Recovery Area in addition to the original 50 individuals required to increase the likelihood of recovery.
(B) Review mortality limits, population determinations, and other criteria for recovery as appropriate.
(C) Review all human-caused mortalities to determine whether new measures for avoiding future occurrences are required.
(D) Review existing guidelines and strategies to assess recovery obstacles within the Recovery Area and Experimental Population Area.

(7) *How will the Bitterroot grizzly bear population be monitored?* The reintroduced population will be monitored closely by Federal and State agencies in cooperation with the Service for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(8) *How will success or failure of the project be evaluated?* The status of Bitterroot grizzly bear recovery will be reevaluated separately by the Service and by the Secretary at 5-year intervals. This review will take into account the reproductive success of the grizzly bears released, human-caused mortality, movement patterns of individual bears, food habits, and overall health of the population and will recommend changes and improvements in the recovery program. Evaluating these parameters will assist in determining success or failure of the restoration.

(9) Recovery Goal. The Bitterroot Chapter of the Grizzly Bear Recovery Plan identifies a tentative recovery goal of 280 grizzly bears. Upon reaching this goal, the Service will conduct a status review to assess whether the species merits delisting in the Experimental Population Area.

(10~~6~~) *What are the definitions of key terms used in the special rule in this paragraph (l)?* In addition to terms defined in §10.12 and 17.3 of this subchapter, the following terms apply to this paragraph (l):

Accommodate means allowing grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock.

~~*Citizen Management Committee* (Committee) means that Committee described in paragraph (l)(6) of this section.~~

Current range means the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones or any area where there is a grizzly bear population, as defined in this paragraph (l)(16).

Exclusion area (Bitterroot Valley) means those private lands in Montana lying within the Bitterroot Experimental Population Area in the Bitterroot Valley outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass and west of Highway 93.

Experimental Population Area (Bitterroot Grizzly Bear Experimental Population Area) means that area delineated in paragraph (l)(1) of this section within which management plans developed as part of the Recovery Team~~Committee~~ described in paragraph (l)(9) of this section will be in effect. This area includes the Recovery Area. The Experimental Population Area is within the historic range of the grizzly bear, but geographically separate from the current range of the grizzly bear.

Geographically separate means separated by more than 10 miles. The term refers to “wholly separate geographically” in section 10(j)(2) of the Act. The Experimental Population Area and the recovery zone boundary of any existing grizzly bear population must be geographically separate.

Grizzly bear population is defined by verified evidence within the previous 6 years which consists of photos within the area, verified tracks, or sightings by reputable scientists or agency personnel of at least two different female grizzly bears with young or one female with different litters in 2 different years in an area geographically separate from other grizzly bear populations. Verifiable evidence of females with young, to be geographically separate, would have to occur greater than 10 miles from the nearest nonexperimental grizzly bear population recovery zone boundary.

Opportunistic, noninjurious harassment means harassment (see definition of “harass” in §17.3) that occurs when the grizzly bear presents itself (for example, the bear travels onto and is observed on private land or near livestock). This paragraph (l) permits only this type of harassment. You cannot track, attract, search out, or chase a grizzly bear and then harass it. Any harassment must not cause bodily injury or death to the grizzly bear. The intent of harassment permitted by this definitioin is to scare bears away from the immediate area.

Recovery Area (Bitterroot Grizzly Bear Recovery Area) means the area of recovery emphasis within the Experimental Population Area, and is delineated in paragraph (l)(2) of this section. This area consists of the Selway-Bitterroot and Frank Church-River of No Return Wilderness areas. The Recovery Area is within the historic range of the species.

Recovery emphasis means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of grizzly bears is planned to occur within the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness portions of the Recovery Area ~~unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate~~.

Unavoidable and unintentional take means accidental, unintentional take (see definition of take in §10.12 of this subchapter) that occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. An example would be striking a grizzly bear with an automobile. Taking a grizzly bear by shooting will not be considered unavoidable and unintentional take. Shooters have the responsibility to be sure of their targets.

CONCLUSION

The Center hereby petitions the Service to publish a new regulation designating the Selway-Bitterroot Grizzly Bear Experimental Population Area in the Selway-Bitterroot ecosystem. These should reflect the current realities of grizzly bear recovery in the lower 48 states, an expanded experimental population area boundary to reflect new information about suitable habitat, and ensure timely reintroduction to aid connectivity and recovery for bears.

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