

 Charlie Scott

02/04/2000 11:10
AM

To: Johnna Roy, Susan Linner, Chuck Davis, Jill Parker,
grizz@selway.umn.edu, MARGOT ZALLEN

cc:

Subject: bitterroot reg. section

Attached for your review and comment is the revised regulation section of the final rule. This is the section that I have spent the most time on revising and reorganizing. I wanted to give you a chance to start reviewing it now. I'm still working on the preamble, including adding edits Johnna sent yesterday. Should have it done later today and then will transmit the entire revised rule.

Some explanation of revisions:

1. You will notice the new paragraph for 50 CFR 17.84 is (l) not (j) - the next XPOP slot is (l) - [last published XPOP - Mex. wolf - was (k)]
2. Order of the reg. sections has changed - for instance: where the rule applies (area delineated), legal status, prohibitions, allowances are now in the front of the reg. The parts of the reg on CMC and definitions are behind these sections.
3. section (2)(i) - boundaries of the XPOP - the last two sentences from your original of this section have been moved to "legal status" - specifically (4)(iii) and (4)(iv). I think this makes the boundary description cleaner and simpler and these two sentences seemed to fit better under status than the XPOP boundary description.
4. There is a new introductory statement (4)(i) which is consistent with other recent XPOP's.
5. New language on geographically separate , etc. now in (4)(ii)
6. All prohibited actions language combined under one Question.
7. All allowed actions language combined under one Question.
8. Clarification on type of "harass" added - "opportunistic, noninjurious" - taken from Mex. wolf XPOP. Your original used "not lethal or physically injurious" but didn't address "opportunity" - I thought the new term effectively combined the two "actions" - your call to keep or reject -
9. The paragraph from your original (p. 58) called "Recovery Goal" was deleted - not necessary or appropriate here. Plus this topic is covered under paragraph (9)(xvi) in CMC section.
10. The CMC section was reorganized for form, flow, and clarity.
11. All of the revisions transmitted to me from Johnna have been incorporated, but please double check them.

Charlie Scott

(See attached file: gbspec.wp)

§ 17.84 Special rules--vertebrates

* * * * *

(1)(1) What species is covered by this special rule?

(i) Grizzly bear (*Ursus arctos horribilis*)

(2) Where does this special rule apply?

(i) The designated recovery area classified as a Nonessential Experimental Population (NEP) for the grizzly bear in paragraph (1) of this section is within the species' historic range and is defined as follows:

The boundaries of the Bitterroot Grizzly Bear Experimental Population Area are 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; and Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; and 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

(3) Where will grizzly bears be released, and where will recovery be emphasized?

(i) All reintroductions will take place in the Selway-Bitterroot Wilderness unless the Committee determines that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. Recovery will be emphasized in the Bitterroot Grizzly Bear Recovery Area which consists of the Selway-Bitterroot Wilderness and the Frank Church River of No Return Wilderness. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this rule to change the definition of the Recovery Area.

(4) What is the legal status of the species described in the rule?

(i) The species identified for reintroduction in paragraph (1)(1)(i) of this section is listed as "threatened" and protected under 50 CFR 17.11 (h). The grizzly bear identified in paragraph (2)(i) of this section, is a nonessential experimental population.

(ii) We have determined there is no existing grizzly bear population in the Experimental Population Area. We find, under 50 CFR 17.81 (b) that the reintroduction of nonessential experimental grizzly bears, as defined in paragraph (2) of this section will further the conservation of the species, and will be consistent with provisions of section 10(j) of the Act; specifically, that experimental grizzly bears must be geographically separate from other

non-experimental populations. We also find, under 50 CFR 17.81 (c) (2) that the experimental population is not essential to the continued existence of the species in the wild.

(iii) Grizzly bears within the Experimental Population Area defined in paragraph (2)(i) of this section and the Recovery Area defined in paragraph (3)(i) of this section will be accommodated through management provisions provided for in this rule and through management plans and policies developed by the Committee. After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a nonessential experimental animal.

(iv) In the conterminous United States, a grizzly bear that is outside the NEP identified in paragraph (2)(i) of this section will be considered as threatened unless it is marked or otherwise known to be an experimental animal.

(5) What activities are prohibited?

(i) You may not "take" [see definition in paragraph 15 of this section] any grizzly bear in the NEP area, except as provided in this rule. 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, from the NEP that are taken or possessed in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

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

(6) What activities are allowed?

(i) For purposes of this special rule, 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 15 of this section] of grizzly bears within the NEP area when such take is incidental to a legal activity, not resulting in negligent conduct lacking reasonable due care and due care was exercised to avoid taking a grizzly bear, including activities conducted in accordance with plans of the Committee, and provided that such taking shall be reported with 24 hours to appropriate authorities as listed in paragraph (6)(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 responsible 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 the us may take grizzly bears in the NEP 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 this population and with applicable State fish and wildlife conservation laws and regulations.

(iii) You may take grizzly bears in the NEP area in self defense or defense of the lives of others. Such taking shall 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, 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 be issued a permit by us, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks, and appropriate tribal authorities to "harass" [see definition in paragraph 15 of this section] grizzly bears found in the NEP area that are actually pursuing or killing livestock (to include permitting the use of livestock guard dogs around livestock to harass such grizzly bears), provided documentation of pursuit or killing of livestock must be made by authorized State, Federal, or tribal officials prior to issuance of such a permit, and provided that all such harassment is by an opportunistic, noninjurious method [see definition of "opportunistic, noninjurious harassment" in paragraph 15 of this section] to the grizzly bear and such harassment is reported within 24 hours as to date, exact location, and circumstances to the authorities listed under paragraph (6)(iii) of this section.

(v) Livestock owners may be issued a permit by us, the Idaho Department of Fish and Game, or the Montana Department of Fish, Wildlife and Parks to take grizzly bears on private lands found in the NEP area to protect livestock actually pursued or being killed on private property, provided documentation of pursuit or killing of livestock must be made by authorized State, Federal, or tribal officials prior to issuance of such a permit, and after any response protocol established by the Committee has been satisfied and efforts to capture depredating grizzly bears by Service or State or Tribal wildlife agency personnel have proven unsuccessful, provided that all such taking shall be reported as to date, exact location, and circumstances within 24 hours to the authorities listed under paragraph (6)(iii) of this section.

(vi) Any authorized employee or agent of ours 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 NEP 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 non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property and after it has been demonstrated that it has not been possible to eliminate such threat by live capturing and releasing the grizzly bear unharmed in the area defined in paragraph (3)(i) of this section or other areas approved by the Committee;

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

(E) Relocate a grizzly bear to avoid conflict with human activities. Grizzly bears in the Experimental 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 private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), are an area where any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in these areas and grizzly bears will be captured and returned to the Recovery Area, or destroyed, or placed in captivity depending on the history of each bear. If a grizzly bear enters the Bitterroot Valley (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 updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Area that in the judgement of the management agencies or Committee presents a clear threat to human safety or where there is indication that it may become habituated to humans, may be relocated by management agencies.

(F) Relocate grizzly bears within the Experimental Area to improve grizzly bear survival and recovery prospects.

(7) How will local citizens be involved in the management of the Bitterroot nonessential experimental grizzly bear population?

(i) A Citizen Management Committee (Committee) will be established and shall be authorized management implementation responsibility by the Secretary as described in paragraph (9)(i) of this section, in consultation with the Governors of Idaho and Montana, for the Bitterroot grizzly bear experimental population. As soon as possible after the effective date of this rule, the Committee shall be organized by requesting nominations of citizen members from the Governors of Idaho and Montana, the Nez Perce Tribe, and nomination of agency members by represented agencies.

(ii) The Committee shall be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement. Membership shall consist of seven individuals appointed by the Secretary based upon the recommendations of the Governor of Idaho, five members appointed by the Secretary based upon the recommendations of the Governor of Montana, one member representing the U.S. Forest Service appointed by the Secretary of Agriculture or his/her designee, and one member representing the

Service (our representative) appointed by the Secretary or his/her designee, and one member representing the Nez Perce Tribe appointed by the Secretary based on the recommendation of the Nez Perce Tribe. Members recommended by the Governors of Idaho and Montana shall be based on the recommendations of the interested parties and shall include at least one representative each from the appropriate State fish and wildlife agencies. If either Governor fails to make recommendations, the Secretary (or his/her designee) shall accept recommendations from interested parties. In their recommendations to the Secretary, the Governors of Idaho and Montana shall attach written documentation of the qualifications of those nominated relating to their knowledge of and experience in a variety of natural resource issues and their commitment to collaborative decision making. The Committee shall consist of a cross-section of interests reflecting a balance of viewpoints, be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision making. Except for the representatives from Federal agencies, the Committee shall be selected from communities within and adjacent to the Recovery and Experimental Areas. The Secretary shall fill vacancies as they occur with the appropriate members based on the recommendation of the appropriate Governor or the Nez Perce Tribe.

(iii) Two scientific advisors will be appointed by the Secretary to the Committee as non-voting members to attend all meetings of the Committee and to provide scientific expertise in support of Committee management recommendations. These scientific advisors will not be employed by Federal agencies involved in grizzly bear recovery. The Secretary is to contact the Wildlife Society Chapters in Idaho and Montana and the Universities of Idaho and Montana for nominations and he/she will select one wildlife scientist representing each State, and will appoint them as advisors to the Committee.

(8) What is the overall mission of the Committee, and how will it operate?

(i) The mission of the Committee is to facilitate recovery of the grizzly bear in the Bitterroot Ecosystem by assisting in implementing the Bitterroot Chapter of the Recovery Plan. Regarding the land and wildlife management agencies, the role of the Committee is to make recommendations to them that the Committee believes will lead to recovery of the grizzly bear. Decisions on, and implementation of these recommendations is the responsibility of the land and wildlife management agencies.

(ii) The Committee will meet a minimum of two times per year and meetings will be open to the public. Additionally, the committee will provide reasonable public notice of meetings, produce and provide written minutes of meetings to interested persons, and involve the public in its decision-making process. This public participation process will allow members of the public and/or special interest groups to have input to Committee decisions and management actions."

(9) What authority will the Committee have, and what will be its primary tasks?

(i) Developing a process for obtaining the best biological, social, and economic data, which shall include an explicit mechanism for peer-reviewed, scientific articles on grizzly bears

and their management to be presented to and considered by the Committee, as well as periodic public meetings (not less than every 2 years) in which qualified scientists may submit comments to and be questioned by the Committee. The two Scientific Advisors will lead this process. The Committee will base its decisions upon the best scientific and commercial data available. All decisions of the Committee including components of its management plans must lead toward recovery of the grizzly bear and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species.

(ii) Soliciting technical advice and guidance from outside experts.

(iii) Implementing the Bitterroot chapter of the Grizzly Bear Recovery Plan consistent with this special rule. The Committee will develop recommendations on existing management plans and policies of land and game management agencies, as necessary, for the management of grizzly bears in the Experimental Area. The Committee will make recommendations to land and game management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. If the Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the requirements of the National Environmental Policy Act may apply. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee shall give full consideration to our comments and opinions and those of the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(iv) Providing means by which the public may participate in, review, and comment on the decisions of the Committee. The Committee must thoroughly consider and respond to public input prior to its decisions.

(v) Developing its internal processes, where appropriate, such as governance, decision making, quorum, officers, meeting schedules and location, public notice of meetings, minutes, etc. Given the large size of the Committee, an affirmative vote by a simple majority is sufficient to approve any Committee decisions.

(vi) Requesting staff support from us, the Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, U.S. Forest Service, other affected Federal agencies, and the Nez Perce Tribe, when necessary to perform administrative functions and to reimburse Committee members for costs associated with meetings, travel, and incidentals.

(vii) Reviewing existing grizzly bear standards and guidelines utilized by the U.S. Forest Service and other agencies and landowners. The Committee review of grizzly bear mortalities will be the primary mechanism to assess the adequacy of existing management techniques and standards. If the Committee deems such standards and guidelines inadequate for recovery of grizzly bears, the Committee may recommend changes to the U.S. Forest Service and other agencies and landowners.

(viii) Developing grizzly bear guidance for proper camping and sanitation within the

Experimental Area and making recommendations for adoption of such guidelines. Existing grizzly bear camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(ix) Developing and making recommendations on response protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Area. Any response protocol developed by the Committee will have to undergo public comment and be revised as appropriate based on comments received. Any conflicts or mortalities associated with these activities will result in review by the Committee to determine any recommendations that the Committee may make to help prevent future conflicts or mortalities. The Committee will recommend as necessary, policy changes on trail restrictions for human safety to appropriate wildlife and land management agencies.

(x) Recommending changes to recovery criteria including mortality limits, population determinations, and other criteria for recovery as appropriate.

(xi) Reviewing all human-caused grizzly bear mortalities during the first 5 years to determine whether new measures for avoiding future occurrences are required, and to make recommendations on such measures to appropriate wildlife and land management agencies. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the Fish and Game Departments in both Idaho and Montana to develop solutions to minimize conflicts between grizzly bears and black bear hunting.

(xii) Developing strategies to emphasize recovery inside the Recovery Area and to accommodate grizzly bears inside the Experimental Area. Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Area. The Committee will not recommend that bears be disturbed or moved unless conflicts are both significant and cannot be corrected as determined by the Committee, including conflicts associated with livestock, in which case the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Area. Unless the Committee determines otherwise, this rule provides that private lands outside the national forest boundary in the Bitterroot Valley, Montana, (exclusion area) is an area where any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in these areas and grizzly bears will be captured and returned to the Recovery Area. 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 updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Area that in the judgement of the management agencies or Committee presents a clear threat to human safety or where there is indication that it may become habituated to humans, may be relocated by management agencies.

(xiii) Establishing standards for determining whether or not the experimental reintroduction has been successful and making recommendations to us on the inclusion of such standards in the Grizzly Bear Recovery Plan. It is recognized that absent extraordinary

circumstances, these standards will reflect that the success or failure of the program cannot be measured in less than 10 years. General guidelines for such standards include one or more of the following conditions:

(A) If, within the number of years established by the Committee following initial reintroduction, no relocated grizzly bear remains within the Experimental Area and the reasons for emigration or mortality cannot be identified and/or remedied;

(B) If, within the number of years established by the Committee following initial reintroduction, no cubs of the year or yearlings exist and the relocated bears are not showing signs of successful reproduction as evidenced by no cubs of the year or yearlings.

(xiv) Developing procedures for the expeditious issuance of permits described in paragraphs (6)(iv) and (6)(v) of this section, and making recommendations on such procedures to appropriate agencies.

(xv) Developing 2-year work plans for submittal to the Secretary pursuant to paragraph (11)(i) of this section.

(xvi) The Committee may recommend refined interim recovery goals for the Bitterroot Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available. Sufficient information is currently not available to develop a scientifically sound final recovery goal. As this information becomes available, the Committee may recommend the recovery goal to the Secretary and procedures for determining how this goal will be measured. The recovery goal for the Bitterroot grizzly bear population will be consistent with the habitat available within the Recovery Area. Additional adjacent areas of public land can be considered for contribution of suitable habitat when setting the recovery goal if it is shown to be necessary by the best scientific and commercial data available. Any recommendations for revised recovery goals developed by the Committee will require public review and our formal approval as required for the revision of any recovery plan. Grizzly bears outside the Recovery Area and within the Experimental Area will contribute to meeting the recovery goal if there is reasonable certainty of their long-term occupancy in such habitats outside the Recovery Area.

(10) What agencies will be responsible for day-to-day management activities?

(i) The Idaho Department of Fish and Game and/or the Nez Perce Tribe, the Montana Department of Fish, Wildlife and Parks, and the U.S. Forest Service, in coordination with us, will exercise day-to-day management responsibility within the Experimental Area in accordance with this rule. The Service and these cooperating agencies will share management responsibility as per agreements with, and in consideration of, recommendations from the Committee.

(11) How will progress of the Committee be monitored; and what process will be followed by the Secretary to resolve disputes over whether Committee actions are leading to recovery?

(i) The Secretary or our representative shall review 2-year work plans to be submitted by the Committee which outline the directions for the Bitterroot recovery effort. If the Secretary determines, through our representative on the Committee that the decisions of the Committee, the management plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the Experimental Area or are not in compliance with this special rule, our representative on the Committee shall solicit from the Committee a determination whether the decision, the plan, or implementation of components of the plan are leading to recovery or why it believes it is in compliance with this special rule. Notwithstanding a determination by the Committee that a decision, plan, or implementation of a plan is leading to recovery of the grizzly bear within the Experimental Area or is in compliance with this rule, the Secretary, who necessarily retains final responsibility and authority for implementation of the Endangered Species Act, may find that the decision, plan, or implementation of a plan is inadequate for recovery or is not in compliance with this rule, and may resume lead management responsibility.

(ii) Our representative will consider Committee input before making any determination that Committee actions are not leading to recovery or why it believes it is in compliance with this special rule. In the event that our representative on the Committee determines that the actions of the Committee are not leading to recovery of the Bitterroot grizzly bear population or are not in compliance with this rule, then he/she shall recommend to the Committee, based on the best scientific and commercial data available, alternative or corrective actions and provide a 6-month time frame in which to accomplish those actions. Should the Committee reject those alternatives, our representative will convene a Scientific Review Panel of three and then will submit for peer review to the panel those Committee actions or decisions upon which his/her decision is based that the actions or decisions of the Committee are not leading to recovery or are at variance with this special rule. The Service representative will consider the views of all Committee members prior to making a recommendation on initiating a Scientific Review Panel.

(iii) Members of the Scientific Review Panel will be professional scientists who have had no involvement with the Committee and will not be employed by Federal agencies responsible for grizzly bear recovery efforts. The Secretary will select one member of the panel, and the Governors of Idaho and Montana in consultation with the Universities of Idaho and Montana (respectively), are to select one panel member each. The Scientific Review Panel will review issues, solicit additional information if necessary, and using the best scientific and commercial data available, make timely recommendations to the Committee as to whether Committee actions, decisions, and/or processes are in compliance with the special rule and will lead to recovery of the grizzly bear in the Bitterroot ecosystem. Examples of Committee actions or lack of actions, decisions, and/or processes that could be evaluated by the Scientific Review Panel include, but are not limited to: sufficiency of public involvement in Committee activities; specific decisions involving sanitation and outreach activities; management of nuisance bears; adequacy of recommendations to land and game management agencies; and adequacy of Committee actions in addressing issues such as excessive human-caused grizzly bear mortality, and other actions that are important in leading to recovery of the grizzly bear in the Bitterroot ecosystem. The basis for the recommendations of the Scientific Review Panel will be Committee adherence to this Special Rule and grizzly bear recovery goals.

(iv) If, after timely review, the Committee rejects the recommendations of the Scientific Review Panel, and our representative determines the Committee actions are not leading to recovery of the Bitterroot population, he/she will notify the Secretary. The Secretary will consider the panel's recommendations, and if he/she nevertheless decides to resume lead management responsibility, he/she will seek consultation with the Governors of Idaho and Montana to review with them the reasons for his/her decision and further attempt to resolve the discrepancies between the suggested alternatives and the actions or decisions of the Committee. If, after that consultation, the Secretary resumes lead management responsibility, he/she will take appropriate actions to assure there is an adequate regulatory process relating to Department of the Interior management of grizzly bears, and will publish a Notice in the Federal Register explaining the rationale for the determination and notify the Governors of Idaho and Montana. The Committee will disband and all requirements identified in the special rule regarding the Committee will be nullified. If the Secretary does not resume lead management responsibility, the Committee shall continue until the recovery objectives have been met and the Secretary has completed delisting.

(12) How will the Bitterroot grizzly bear population be monitored?

(i) The reintroduced population will be monitored closely for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(13) How will success or failure of the project be evaluated?

The status of Bitterroot grizzly bear recovery will be reevaluated separately by the Committee 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. These parameters will be evaluated to assist in determination of success or failure of the restoration project.

(14) What process will be followed if the Secretary determines the project has failed?

(i) Determination of an Unsuccessful Reintroduction under Nonessential Experimental Designation by the Secretary. If, based on any of the criteria established by the Committee, unless the Secretary has resumed management under paragraph 11 of this section, the Secretary concludes, after consultation with the Committee, the States of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, that the reintroduction has failed to produce a self-sustaining population, no additional grizzly bears will be reintroduced into the area. Any remaining bears will retain their experimental status. Prior to declaring the experimental reintroduction a failure, we will conduct an evaluation into the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, we will consider continuing the recovery effort and maintaining the relocated population. If such reasonable measures cannot be identified and implemented, we will publish the results of our evaluation in the Federal Register in a proposed rulemaking to terminate the authority for additional experimental grizzly

bear reintroductions in the Bitterroot ecosystem.

(15) What are the definitions of key terms utilized in this special rule?

Accommodate means grizzly bears that move outside the Recovery Area onto public land in the Experimental Area will not be disturbed unless they demonstrate a real and imminent threat to human safety or livestock.

Bitterroot Grizzly Bear Experimental Population Area means that area delineated in paragraph (2)(i) of this section, which includes the Bitterroot Grizzly Bear Recovery Area, and within which management plans developed as part of the Citizen Management Committee (Committee) described in paragraph (9) of this section will be in effect. This area is within the historic range of the grizzly bear, but geographically separate from the current range of the grizzly bear.

Bitterroot Grizzly Bear Recovery Area (Recovery Area) means that area delineated in paragraph (3)(i) of this section within which a nonessential experimental population of grizzly bears is to be released. This area is the Selway-Bitterroot and Frank Church-River of No Return Wilderness areas and is the area of recovery emphasis. The Recovery Area is within the historic range of the species.

Bitterroot Valley means those private lands lying within the Bitterroot Experimental Population Area outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass.

Citizen Management Committee means that Committee described in paragraph (7) 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.

Geographically separate (refers to ESA section 10(j)(2) term "wholly separate geographically") means the Experimental Population Area and the recovery zone boundary of any existing grizzly bear population are separated by more than 10 miles.

Grizzly bear population is defined by verified evidence within the previous six years, consisting of photos within the area, verified tracks and/or sightings by reputable scientists or agency personnel, of at least two different female grizzly bears with young or one female seen with different litters in two different years in an area geographically distinct from other grizzly bear populations. Verifiable evidence of females with young, to be geographically distinct, would have to occur greater than 10 miles from the nearest non-experimental grizzly bear population recovery zone boundary.

Harass means "intentional or negligent act or omission which creates the likelihood of injury to the wildlife by annoying it to such an extent as to significantly disrupt normal

behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3). This experimental population rule permits only "opportunistic, noninjurious harassment" (see definition below).

Opportunistic, noninjurious harassment (see "harass") means as the grizzly bear presents itself (for example, the bear travels onto and is observed on private land or near livestock). This is the only type of harassment permitted by this rule. 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 basic intent of harassment permitted by this rule is to scare bears away from the immediate area.

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 bears will occur within the Recovery Area and all reintroduction will occur within the Selway-Bitterroot Wilderness portion of the Recovery Area.

Take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). Also see definition of "harass", "opportunistic, noninjurious harassment, and "unavoidable and unintentional take".

Unavoidable and unintentional take means accidental, unintentional take (see definition of "Take") which 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, accidental, or unintentional take. Shooters have the responsibility to be sure of their targets.

