

thorized use pursuant to the provisions of any other Act.

(c) The licensee shall comply with all applicable State and local regulations and standards as prescribed by the authorized officer and, where appropriate, surface managing agency, including the regulations in Parts 23, 3041, 3500, 3600 of this chapter and 30 CFR Parts 211 and 231.

(d) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this subpart without an exploration license shall be subject to the provisions of § 9239.5-3(f) of this chapter.

2. Paragraph (b) (3) of 43 CFR 9239.0-3 be amended to read as follows:

§ 9239.0-3 Authority.

(b) \*\*\*

(3) Coal trespass. 18 U.S.C. 1851; 30 U.S.C. 201(b) (4).

3. 43 CFR 9239.5-3 be amended by adding a new paragraph (f) to read as follows:

§ 9239.5-3 Coal.

(f) Penalties for unauthorized exploration for coal. (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under Subpart 3507 of this chapter shall be subject to a fine of not more than \$1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to Part 4 of this chapter.

Dated: November 2, 1976.

W. W. LYONS,  
Deputy Under Secretary.

[FR Doc. 76-32606 Filed 11-4-76; 8:45 am]

#### Fish and Wildlife Service

#### [50 CFR Part 17]

#### ENDANGERED AND THREATENED WILDLIFE AND PLANTS

#### Proposed Determination of Critical Habitat for the Grizzly Bear

The Director, United States Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a proposed rulemaking which would determine Critical Habitat for the Grizzly Bear (*Ursus arctos horribilis*) in the 48 conterminous States of the United States. This proposal is issued pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543, 87 Stat. 884; hereinafter the Act).

#### BACKGROUND

In the FEDERAL REGISTER of July 28, 1975, (40 FR 31734-31736) the Director

issued a final rulemaking determining the Grizzly Bear in the 48 conterminous States of the United States to be a Threatened species, pursuant to the Act. This rulemaking stated that one of the major reasons for the Threatened status of this bear was the following factor given in Section 4(a) of the Act: "the present or threatened destruction, modification, or curtailment of its habitat or range."

Shortly after the Grizzly Bear in the 48 conterminous States was listed as Threatened, the Service began to assemble data that could be utilized as the basis for a proposed determination of Critical Habitat. On April 21-22, 1976, a major meeting on this subject was held in Missoula, Montana. Approximately 50 persons attended this meeting, including representatives of the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Forest Service, private conservation organizations, universities, and the Idaho, Montana, and Washington Fish and Game Departments.

On the basis of the information presented at the meeting, and obtained from other sources, the Service is proposing that the areas delineated below be determined as Critical Habitat. These areas are described below State by State, but they actually merge to form four zones which are located in (1) the region where Wyoming, Montana, and Idaho come together, in Yellowstone National Park and adjacent areas, including parts of Custer, Shoshone, Teton, Beaverhead, and Gallatin National forests, and part of Grand Teton National Park; (2) northwestern Montana, in Glacier National Park, the Bob Marshall Wildness Area, most of the Flathead National Forest, and adjacent areas, including parts of the Lewis and Clark, Helena, and Lolo National forests, and small parts of the Blackfoot and Flathead Indian reservations; (3) extreme northwestern Montana and northern Idaho, in the Cabinet Mountains, mostly in the Kootenai, Kaniksu, and Lolo National Forests; and (4) extreme northern Idaho and northeastern Washington, mostly in the Kaniksu National Forest.

These areas coincide approximately with the present regular distribution of the Grizzly Bear in the 48 conterminous States, and are the only remnants of the original range of the species which once covered a region approximately 50 times as great, from Canada to Mexico, and from the Great Plains to the Pacific. These areas contain the only significant Grizzly population south of Canada, and, insofar as is known, provide all biological, physical, and behavioral requirements of those populations. Among the important characteristics of these areas is their relative inaccessibility and lack of the kinds of human developments and activities that tend to result in conflicts between the bears and man. This degree of isolation and freedom from excessive human presence seems critical to the survival of the Grizzly. It is true that there are many natural or man-made sites scattered over these areas

that are seldom or never utilized by the Grizzly Bear. It would not be possible, however, to attempt to identify all of these sites and exclude them from the overall designation.

It is emphasized that the areas delineated below may not necessarily include all of the potential Critical Habitat of the Grizzly Bear in the 48 conterminous States, and modifications may be proposed in the near future. At the present, the Service and other governmental agencies are studying particular areas which have the potential of being determined as Critical Habitat for the Grizzly. These areas include:

(1) A block of the Kootenai National Forest at the extreme northwestern corner of Montana;

(2) Several relatively small segments of land adjoining or near the presently proposed Critical Habitat in northwestern Montana, including portions of the Blackfoot and Flathead Indian reservations, and portions of the Helena and Lolo National forests;

(3) A section of land along the Continental Divide in west-central Montana, at the junction of the Deerlodge, Bitterroot, and Beaverhead National forests;

(4) Several relatively small segments of land adjacent to the presently proposed Critical Habitat in the Yellowstone region, including portions of the Gallatin, Custer, and Shoshone National forests;

(5) A section of land in the Bridger and Shoshone National forests to the west of the Wind River Indian Reservation; and

(6) Parts of the Selway-Bitterroot area in east-central Idaho and western Montana.

#### EFFECTS OF THE RULEMAKING

The effects of this determination are involved primarily with Section 7 of the Act, which states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs or survival of that species; (2) actions by a Federal agency affecting

## PROPOSED RULES

Critical Habitat of a species would not conform with Section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and is essentially an official notification to Federal agencies that Section 7 of the Act applies to their activities within that area.

A Critical Habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a critical habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat.

## PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted be as accurate as possible in delineating the Critical Habitat of the Grizzly Bear. The Director therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party on these proposed rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this proposal.

## NOTICE OF PUBLIC HEARING

The Service is interested in obtaining as wide and comprehensive public par-

ticipation as possible on the delineation of Critical Habitat for the Grizzly Bear. Therefore, the Service hereby announces that public hearings will be held on this proposed rulemaking at the dates and locations set forth below.

## Dates, locations, and contact person for public hearings

Date and time	Location	Contact
Nov. 8, 1976, 1 p.m. to 4 p.m., 7 p.m. to 9 p.m.	-----	John Davis, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25488, Denver Federal Center, Denver, Colo. 80223. Phone (303) 234-4600.
Nov. 10, 1976, 1 p.m. to 4 p.m., 7 p.m. to 9 p.m.	-----	Do.
Nov. 12, 1976, 1 p.m. to 4 p.m., 7 p.m. to 9 p.m.	-----	Philip A. Lehenbauer, Region 1, U.S. Fish and Wildlife Service, P.O. Box 3737, Portland, Ore. 97208. Phone (503) 429-4041.
Nov. 17, 1976, 9 a.m. to 4 p.m.	-----	Robert Jacobsen, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Phone (202) 343-5637.

## SUBMITTAL OF WRITTEN COMMENTS

In addition to oral or written comments presented in person at the public hearings, individuals may forward written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, PO Box 19183, Washington, D.C. 20036. All relevant comments received no later than February 9, 1977, will be considered and incorporated into the records of the hearings. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1612 K Street, NW., Washington, D.C.

Dated: November 2, 1976.

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

Accordingly, it is hereby proposed to amend 50 CFR Part 17 by determining that the following areas are Critical Habitat for the Grizzly Bear.

1. Amend Subpart F, 50 CFR Part 17, by adding the following new § 17.60b

Subpart F—Critical Habitat

Sec. \* \* \* \* \*

17.60b Grizzly Bear  
Subpart F—Critical Habitat  
§ 17.60b Grizzly Bear.

The following areas (exclusive of those man-made structures or settlements which are not necessary to the normal needs or survival of the species) are Critical Habitat for the Grizzly Bear (*Ursus arctos horribilis*) in the 48 contiguous States of the United States.

**Montana.** (1) An area of land, water, and airspace, with the following boundary (Principal Meridian): Beginning at the northeastern corner of Glacier National Park; then southerly along the eastern boundary of said park to State Highway 17; thence southeasterly along State Highway 17, U.S. Highway 89, and State Highway 49 to the town of East Glacier Park; thence southeasterly along the secondary road through Heart Butte and Bynum Reservoir to the east line of R7W; thence southerly along the east line of R7W to the south line of T24N;

Views and opinions of any person, presented either orally or in writing, are hereby solicited on this proposal. If there are questions concerning these public hearings, the appropriate person listed below under "contact" should be consulted.

thence westerly along the south line of T24N; to the west line of R7W; thence southerly along the west line of R7W to the south line of T21N; thence easterly along the south line of T21N to the east line of R7W; thence southerly along the east line of R7W to State Highway 434; thence southerly along State Highway 434 to State Highway 20; thence southerly along State Highway 20 to the south line of T16N; thence westerly along the south line of T16N to the boundary of the Helena National Forest; thence westerly along said boundary to the boundary of the Lolo National Forest; thence northwesterly along the south boundary of the Lolo National Forest to the south line of T17N; thence westerly along the south line of T17N to 114° W longitude; thence northerly along 114° W longitude to the north line of T22N; thence easterly along the north line of T22N to the western boundary of the Flathead National Forest; thence northerly along said boundary to the west line of R18W; thence northerly along the west line of R18W to the boundary of the Flathead National Forest; thence northwesterly along said boundary to the 8th Standard Parallel; thence westerly along said parallel to U.S. Highway 93; thence northwesterly along U.S. Highway 93 to the U.S.-Canada border; thence easterly along said border to the point of beginning.

(II) An area of land, water, and airspace, with the following boundary (Principal Meridian): Beginning at the point where the Great Northern Railroad line intersects the Montana-Idaho border near the town of Yakt; thence easterly along said railroad line to the west line of R31W; thence southerly along the west line of R31W to the south line of T29N; thence easterly along the south line of T29N to the west line of R30W; thence southerly along the west line of R30W to the south line of T27N; thence easterly along the south line of T27N to the west line of R29W; then southerly along the west line of R29W to the south line of T25N; thence easterly along the south line of T25N to the west line of R27W; thence southerly along the west line of R27W to the north line of T22N; thence southeasterly along the boundary of the Lolo National Forest to the south line of T22N; thence westerly along the south line of T22N to the western boundary of the Lolo National Forest; thence northwesterly along said boundary to State Highway 200; thence northwesterly along State Highway 200 to the Montana-Idaho border; thence northerly along said border to the point of beginning.

(III) An area of land, water, and airspace, with the following boundary (Principal Meridian): Beginning at the point common to the borders of Montana, Wyoming, and Idaho; thence northwesterly along the Montana-Idaho border to the western boundary

of the Gallatin National Forest; thence northerly along said boundary to the western boundary of the Beaverhead National Forest; thence northerly along the western boundary of the Beaverhead National Forest to the north line of T7S; thence easterly along the north line of T7S to U.S. Highway 191; thence northeasterly along U.S. Highway 191 to Swan Creek; thence easterly along Swan Creek to the headwaters of Swan Creek; thence southeasterly in a straight line to the southeast corner of T5S R6E; thence easterly in a straight line to Arrow Peak; thence northeasterly in a straight line to the northwest corner of T4S R15E; thence southerly along the Stillwater-Sweet Grass county line to the boundary between Gallatin and Custer National Forests; thence southeasterly along said Forest boundary to the Montana-Wyoming border; thence westerly and southerly along said border to the point of beginning.

*Wyoming.* An area of land, water, and airspace with the following boundary (6th Principal Meridian): Beginning at the northwestern corner of Wyoming; thence easterly along the Wyoming-Montana border to the eastern boundary of the Shoshone National Forest; thence southerly along said boundary to the point where said boundary intersects the 13th Guide Meridian in Sec. 36, T50N R105W; thence southerly along the 13th Guide Meridian to the 11th Standard Parallel North; thence westerly along said parallel to the west line of R106W; thence southerly along the west line of R106W to the south line of T44N; thence westerly along the south line of T44N to the west line of

R109W; thence southerly along the west line of R109W to the north line of T41N; thence easterly along the north line of T41N to the east line of R109W; thence southerly along the east line of R109W to the south line of T41N; thence westerly along the south line of T41N to the east line of R111W; thence southerly along the east line of R111W to the south line of T40N; thence westerly along the south line of T40N to the west line of R113W; thence northerly along the west line of R113W to the northwest corner of T40N R113W; thence northwesterly in a straight line to the southwest corner of T43N R114W; thence northerly along the west line of R114W to U.S. Highway 89; thence northerly along U.S. Highway 89 to the south line of T46N; thence westerly along the south line of T46N to the Wyoming-Idaho border; thence northerly along said border to the point of beginning.

*Idaho.* (i) An area of land, water and airspace, with the following boundary (Boise Meridian): Beginning at the point where State Highway 287 crosses the Idaho-Montana border; thence easterly along said border to the Idaho-Wyoming border; thence southerly along the Idaho-Wyoming border to Bitch Creek; thence westerly along said creek to the boundary of the Targhee National Forest; thence northwesterly along said boundary to the Union Pacific Railroad line; thence northerly along said line to State Highway 84; thence westerly along State Highway 84 to U.S. Highway 191; thence northerly along U.S. Highway 191 to State Highway 287; thence northwesterly along State Highway 287 to the point of beginning.

(ii) An area of land, water and airspace with the following boundary (Boise Meridian): Beginning at the point where the western boundary of the Kootenai National Forest intersects the Great Northern Railroad line in T61N R3E; thence easterly along said railroad line to the Idaho-Montana border; thence southerly along said border to the western boundary of the Kootenai National Forest; thence northerly along said boundary to the point of beginning.

(iii) An area of land, water, and airspace with the following boundary (Boise Meridian): Beginning at the point where the Idaho-Washington border intersects the U.S.-Canada border; thence easterly along the U.S.-Canada border to the eastern boundary of the Kanku National Forest in T65N R2W; thence southerly along said boundary to the south line of T63N; thence westerly along the south line of T63N to the Idaho-Washington border; thence northerly along said border to the point of beginning.

*Washington.* An area of land, water, and airspace with the following boundary (Willamette Meridian): beginning at the point where the west line of R44E intersects the U.S.-Canada border; thence easterly along said border to the Washington-Idaho border; thence southerly along the Washington-Idaho border to the south line of T39N; thence westerly along the south line of T39N to the west line of R44E; thence northerly along the west line of R44E to the point of beginning.

[FR Doc.76-32607 Filed 11-4-76;8:45 am]