



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R1–ES–2023–0074; FXES11130100000–245–FF01E00000]

RIN 1018–BG89

### Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bear in the North Cascades Ecosystem, Washington State

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), establish a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) within the U.S. portion of the North Cascades Ecosystem (NCE) in the State of Washington under section 10(j) of the Endangered Species Act of 1973, as amended (Act or ESA). Establishment of this NEP is intended to support reintroduction and recovery of grizzly bears within the NCE and provide the prohibitions and exceptions under the Act necessary and appropriate to conserve the species within a defined NEP area. The geographic boundary of the NEP includes most of the State of Washington except for an area in northeastern Washington that encompasses the Selkirk Ecosystem Grizzly Bear Recovery Zone. The best available data indicate that reintroduction of the grizzly bear to the NCE, within the NEP area, is biologically feasible and will promote the conservation of the species.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Information Collection Requirements:* If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget

(OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after the date of publication of this rule in the *Federal Register*.

Therefore, comments should be submitted to OMB by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This final rule, public comments on our September 29, 2023, proposed rule, a final environmental impact statement, and the record of decision, are available on the internet at <https://www.regulations.gov> at Docket No. FWS–R1–ES–2023–0074.

*Information Collection Requirements:* Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) (email). Please reference “OMB Control Number 1018–0199” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 1009 College Street SE, Lacey, WA 98503; telephone 360–753–9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States.

**SUPPLEMENTARY INFORMATION:** The Service is establishing a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) within the U.S. portion of the North Cascades Ecosystem (NCE) in the State of Washington under section 10(j) of the Act.

**Previous Federal Actions**

In November 2022, the National Park Service (NPS) and Service jointly initiated the process for developing an Environmental Impact Statement (EIS)/Grizzly Bear Restoration Plan for the North Cascades Ecosystem. On September 28, 2023, the draft Environmental Impact Statement (EIS) was published (88 FR 67277). One of three alternatives assessed in the draft EIS proposed to restore grizzly bears to the NCE through reintroduction of grizzly bears and designation of an NEP under the Act. On September 30, 2023, the Service published a proposed rule pursuant to section 10(j) of the Act (hereafter, a “10(j) rule”) to reintroduce grizzly bears to a portion of the NCE in Washington State as an NEP and manage them in accordance with a proposed zoned management approach (88 FR 67193). For a description of previous Federal actions concerning this species, please refer to the proposed rule or to our Environmental Conservation Online System (ECOS) species profile for the grizzly bear at <https://ecos.fws.gov/ecp/species/7642>.

## **Peer Review**

In accordance with our joint policy on peer review published in the *Federal Register* on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review, we solicited independent scientific review of the proposed rule (USFWS in litt. 2016, entire). We invited six independent peer reviewers and received three responses. The peer reviews can be found at <https://www.regulations.gov> and <https://fws.gov/library/categories/peer-review-plans>. In preparing this final rule, we incorporated the results of these reviews, as appropriate, into this final rule. A summary of the peer review comments, and our responses can be found in the Summary of Comments and Recommendations below.

## **Summary of Changes from the Proposed Rule**

As a result of comments, additional data received during the comment period, and additional analysis, we made several changes to the rule we proposed on September 29, 2023 (88 FR 67193). In addition to updating information, correcting errors, clarifying descriptions, and providing additional details and context in this final rule, we:

- Changed the names of Management Zones 1, 2, and 3 to Management Areas A, B, and C to avoid potential confusion with numbered management zones in other parts of the species' range.
- Specified that, within the NEP boundary, Management Area C would comprise all non-Federal lands within the NCE Recovery Zone and all other lands outside of or not otherwise included in proposed Management Areas A and B.
- Specified that should a grizzly bear be found in the NEP area before our initial translocation of a grizzly bear into the NEP (e.g., a grizzly bear moving from Canada to the United States), it would be managed under the grizzly bear section 4(d) rule (50 CFR 17.40(b)).
- Added allowance in all Management Areas of the NEP for preemptive relocation of grizzly bears by authorized agencies to prevent imminent conflict or habituation.
- Added a provision for individuals to lethally take grizzly bears in Management Area C if the bear is in the act of attacking livestock (including working dogs) on private lands and added definitions of “in the act of attacking” and “working dogs.”
- Reduced the timeframe for authorization to individuals for lethal take of a grizzly bear in Management Areas B and C from 2 weeks to 5 days.
- Added definitions for “demonstrable and ongoing threat,” “human-occupied areas,” and “threat to human safety” in relation to provisions for conflict management; added a definition of “lasting bodily injury” relative to the limits of actions to deter grizzly bears; and clarified the meaning of “humane” when lethally removing a grizzly bear.
- Clarified several aspects of the rule, including the following:

- The ‘no net loss’ of core area requirement for the incidental take exception applies to U.S. Forest Service (USFS) actions on National Forest System lands in Management Area A only.
  - We will attempt to capture 3 to 7 bears per year (rather than 5 to 7 bears) to establish the initial target population of 25 bears.
  - Authorized agencies may relocate bears to a remote area that is not specific to a certain management area.
  - Individuals are authorized to deter grizzly bears to promote human safety, prevent conflict, or protect property, including individuals such as forest managers, loggers, and others conducting otherwise lawful forest management activities.
  - Reporting requirements for take do not apply to incidental take resulting from habitat modification; such reporting may otherwise be addressed as a result of section 7(a)(2) consultation when applicable.
  - USFS-issued road use permits that include hauling on non-Federal lands are included in Federal actions that are exempt from section 7(a)(2) consultation requirements.
- Provided clearer definitions or enhanced discussion of the following terms: “deterrence,” “conflict bears,” “humane lethal take,” and “authorized agency.”

### **Summary of Comments and Recommendations**

In the proposed rule published on September 29, 2023 (88 FR 67193), we requested that all interested parties submit written comments on the proposal by November 13, 2023. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We invited all federally recognized Tribes in the State of Washington to consult on the development of the 10(j) rule, and this invitation was also sent to Tribal governments near potential source populations of grizzly

bears in the Northern Continental Divide Ecosystem (NCDE) and Greater Yellowstone Ecosystem (GYE). An informational virtual presentation was held online on October 17, 2023, with agency staff describing the proposed rule and answering questions submitted by the public. An informational presentation was also posted online for the public to view. Four in-person public meetings to present information and obtain feedback were held around the ecosystem between October 30 and November 3, 2023. News releases were published online announcing the proposal and the public meetings. During the 45-day comment period, we received over 12,200 comments on the proposed 10(j) rule and over 12,700 comments on the draft EIS.

Below, we summarize the substantive comments pertinent to the rulemaking and our responses to those comments. We considered substantive comments to be those that provided information relevant to our requested action, such as data, pertinent anecdotal information, or opinions backed by relevant experience or information, and literature citations. Due to the similarity of many comments, we combined multiple comments into a single, synthesized comment for many issues. We considered nonsubstantive those comments that expressed a statement or opinion without providing supporting information or relevance, or restated data or information that we already have but without an alternate perspective to consider. We also considered comments that sought actions beyond the scope of our proposal or authority to be nonsubstantive but have provided a response as needed in some instances to explain our rationale. Substantive comments from peer reviewers, Federal agencies, congressional representatives, State agencies, and Tribes are grouped separately. Comments common to multiple groups are presented first. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below.

### **Comments Common to Multiple Groups**

*Comment:* One peer reviewer questioned whether the NEP designation was necessary, and asked whether the Service had a summary of other species designated as NEPs and whether

they were successful. Another commenter stated that the current 4(d) rule is sufficient as it already allows for management of bears involved in conflict, noting that the Service is under no obligation to issue a new rule to expand allowable take.

*Response:* Based on our extensive outreach efforts with Federal and State agencies, Tribes, local governments, and interested parties, as well as public comments received in the EIS process, we have concluded that an NEP designation is an important tool in this instance to build social tolerance and support for grizzly bear conservation in the NCE. In our experience managing grizzly bears under the 4(d) rule, by limiting impacts to property and safety and providing more tools to address threats, the public's receptivity and tolerance to having grizzly bears on the landscape is likely to improve.

The Service has discretion on whether to designate experimental populations of listed species, and how to tailor protections and management of grizzly bears designated as an experimental population. The Service and NPS considered an alternative in the EIS that would reintroduce grizzly bears with existing ESA protections under the current 4(d) rule, but for the reasons discussed further in the final EIS (NPS and USFWS 2024, entire) and our Record of Decision (e.g., likelihood of successful grizzly bear restoration, public safety, long-term management, and impacts on natural and socioeconomic resources), we selected Alternative C: Restoration with ESA section 10(j) designation as preferred over reintroduction under the 4(d) rule.

*Comment:* Commenters expressed concern about the size and placement of the NEP boundary and its relation to the NCE Recovery Zone. A commenter stated that the NEP boundary should be smaller (extending no more than 25 mi (40 km) beyond the eastern side of the NCE Recovery Zone) to provide full ESA protections to grizzly bears in the Selkirk Recovery Zone. Another commenter stated that the NEP boundary should be larger to include the States of Idaho and Oregon.

*Response:* Grizzly bear recovery zones were established by the Service to delineate areas in the lower 48 States that have sufficient habitat to support recovery for grizzly bear populations. The NCE Recovery Zone is not a regulatory boundary for the purposes of the 10(j) rule, but is used as a reference for delineating Management Area A. The NEP boundary encompasses not only the NCE Recovery Zone, but also areas outside of the NCE Recovery Zone through which reintroduced grizzly bears may potentially pass or periodically use at some point in the future, and where their presence may necessitate increased management flexibility. The NEP boundary and the Management Area boundaries are clearly identified in figure 2 and in the text of the final rule. The NCE Recovery Zone is also shown in figure 2 for context. Based on verified grizzly bear occurrence data and information on grizzly bear dispersal distances, we anticipate the separation of the Selkirk Recovery Zone from the NEP boundary (see *Where is the grizzly bear North Cascades NEP?*, in § 17.84 **Species-specific rules—vertebrates** in the rule portion of this document), will be sufficient to protect grizzly bears from the Selkirk ecosystem. We did not include adjacent States in the NEP boundary, as reintroduced grizzly bears are unlikely to disperse as far as Idaho or Oregon in the near future due to limited habitat connectivity (e.g., human population centers, highways, Columbia River).

*Comment:* Commenters recommended various areas be changed to a different Management Area designation based on perceived importance or lack of importance to grizzly bears, and based on the perceived default bear management that would likely follow under a specific Management Area designation. Commenters, including a peer reviewer, suggested that State lands (specifically Loomis State Forest, Colockum Wildlife Area, and Loup Loup State Forest), should be included in Management Areas A or B, as they contain suitable grizzly bear habitat. One commenter suggested including a size comparison between the NCE Recovery Zone and Management Area A to emphasize the limited difference between the two (i.e., removal of State and private lands had limited impact to the overall size of the NCE Recovery Zone). One

commenter requested all Management Areas allow for management practices allowed in Management Area C.

Commenters expressed concern that the characterization of Management Area B as having limited human influence did not reflect recreational or other multiple uses on these lands. They also expressed concern that Management Area B did not appear to be grounded in the biological needs of grizzly bears. Taken in combination, they expressed concern that the NEP delineation could be interpreted by the public as seeking to determine land uses on National Forest System lands, which could impact social acceptance of expansion of grizzly bear populations in similar areas outside of the NEP boundary. One commenter stated that the Management Area descriptions imply recovery and occupancy is expected only on Federal lands within the NCE Recovery Zone boundary, and that the Service should be more explicit about how it will manage for grizzly bears.

A commenter requested clarification for why the Olympic Peninsula and Columbia Plateau are included in Management Area C.

One commenter requested further information about how the Bear Management Units informed the designation of Management Area boundaries, expressed concern about proximity of urban growth areas to Management Area A, and expressed concern that private lands would become ecological sinks.

*Response:* The primary grizzly bear recovery effort within the NCE Recovery Zone should be focused on Federal lands because these lands provide adequate secure habitat (large tracts of relatively undisturbed land), which is the most crucial element in grizzly bear recovery. Management Area A, which includes NPS and National Forest System lands, encompasses approximately 85 percent of the NCE Recovery Zone. These Federal lands support grizzly bear diet, habitat, and reproduction needs (see *Behavior and Life History*, below). Federal land protections, such as motorized restrictions, the Wilderness Act, and Inventoried Roadless Areas (IRAs) help ensure secure habitat on Federal lands for grizzly bears into the future (USFWS

2022, p. 8). To successfully recover and manage reintroduced grizzly bears and their progeny over time, the rule provides a graduated approach to management flexibility while focusing recovery efforts for grizzly bears on Federal lands within the NCE Recovery Zone (see *Management Areas*, below). Management Areas are based on suitability for occupancy by grizzly bears and the likelihood of human–bear conflicts.

Although we acknowledge other landownerships within the NCE Recovery Zone contain suitable grizzly bear habitat, at least allowing for greater management flexibility is appropriate on those non-Federal lands within the NCE Recovery Zone by including those under Management Area C. However, our State partners or other authorized agencies will not necessarily act on that greater management flexibility, especially in areas where suitable habitat could complement recovery efforts for grizzly bears in the NCE and in areas less likely to result in human–grizzly bear conflicts. Not all management areas allow for the management practices that are allowed in Management Area C, as requested by the commenter, because Management Area A serves as core habitat for the survival, reproduction, and dispersal of the NEP, and Management Area B is meant to accommodate natural movement or dispersal by grizzly bears.

The Service included Federal lands in Management Area B to acknowledge their greater potential for use by grizzly bears than most areas in Management Area C and because the Federal lands can complement the recovery within the NCE Recovery Zone. The primary difference in management between Management Areas B and C and Management Area A is the additional allowance of authorized conditioned lethal take by an individual within Areas B and C.

The delineation of Management Areas does not alter or affect any National Forest System land management decision or activity. Rather, the delineation provides different tools in managing grizzly bears in accordance with the specific Management Area. The 10(j) rule provides for greater flexibility in management of grizzly bears on these lands than without the

10(j) rule. The framework of the 10(j) rule is designed for restoration of grizzly bears in the NCE Recovery Zone and solely applies to the area within the NEP boundary within Washington State.

The need for the tools and flexibilities that a 10(j) experimental population designation provides has been a recurring theme in public comment and community conversations starting with the previous North Cascades Grizzly Restoration Plan/EIS process that was terminated in 2020 (85 FR 41624, July 10, 2020). The intent of the 10(j) rule is to limit the potential impacts of reintroduction of this listed species to improve tolerance.

Grizzly bears reintroduced into the NCE Recovery Zone are highly unlikely to disperse to the Olympic Peninsula due to the distance, geographic barriers, and human population centers. Grizzly bears similarly would also need to cross significant barriers to reach the Columbia Plateau. Including these areas in the Management Area C does not mean that we intend on reintroducing or recovering populations there. However, including these areas within the NEP boundary and under Management Area C serves to ensure we account for any unexpected dispersal of bears to those areas and to allow for the greatest level of management flexibility should that occur. If those regions of Washington were not included as part of the NEP area, any grizzly bears that dispersed to these areas would be managed as threatened under the 4(d) rule.

Bear management units are delineated within recovery zones as part of recovery planning and used in aid of habitat and population monitoring; they were not used to designate management areas. All the bear management units for the NCE Recovery Zone are included in Management Area A. While management flexibilities available on private lands may provide for additional lethal take, the Service will monitor all lethal take and will not consider lethal take a first resort for conflict management particularly on public lands, which comprise the bulk of the NCE Recovery Zone.

*Comment:* Commenters, including Representative Dan Newhouse, expressed concern that the proposed restoration plan does not comply with Washington State Law (RCW 77.12.035).

*Response:* Washington State law does not preclude the NPS and the Service from reintroducing grizzly bear as proposed. The Washington State Office of the Attorney General has interpreted the provision to prohibit only the Washington Department of Fish and Wildlife (WDFW) from transplanting or introducing bears into the State (see *Federalism (E.O. 13132)*, below, for further discussion of co-management with Washington).

*Comment:* Commenters expressed concern about adequate funding for agency staffing, outreach and education, nonlethal control measures (e.g., electric fences, bear-resistant garbage containers), conflict management, livestock depredation compensation, improvements to sanitation, and food storage infrastructure. One commenter suggested conservation organizations should be encouraged to provide those funds.

*Response:* The final EIS (NPS and USFWS 2024) includes further analysis of costs associated with the restoration of grizzly bear in the NCE in Appendix C. The Service will develop memorandums of understanding with Federal, State, and Tribal agency partners to document roles and responsibilities and identify sources for support in implementing the rule (see *Management Restrictions, Protective Measures, and Other Special Management*, below). Funding for programs, including outreach and education, nonlethal control measures, conflict management, livestock depredation compensation, and improvements to sanitation and food storage infrastructure is often in partnership with other agencies, States, Tribes, and nongovernmental organizations. The Service will work with partners to model programs in the NCE after similar successful programs in other grizzly bear ecosystems. In the NCE, efforts are ongoing by WDFW, USFS, the North Cascades NPS complex, and several nongovernmental organizations to provide communities with resources, technical support, and education. We will work with partner agencies and nongovernmental organizations to identify funding needs and priorities, as well as potential sources.

*Comment:* A commenter expressed concern that the NCE grizzly bear restoration plan is being proposed despite the need for the Service to prioritize numerous other species with their

limited resources, and suggested a focus on land protection, habitat restoration, and grants to enhance species recovery. Commenters also stated that NCE recovery efforts should not reduce resources supporting current and ongoing grizzly bear recovery efforts in other ecosystems.

*Response:* The Service has established recovery plans for multiple species including grizzly bear and works with partners to implement recovery actions identified in the recovery plans. Funding of recovery actions is provided by a combination of Federal appropriations to the Service and other Federal agencies and from partner contributions. The Service annually prioritizes and adjusts investment level in recovery actions across multiple species based on multiple factors including available Federal and partner funding. The Service seeks to recover grizzly bears in all six recovery zones consistent with its Grizzly Bear Recovery Plan (revised, USFWS 1993, entire) (hereafter Recovery Plan). The NCE Recovery Zone has been managed to protect and secure habitat for grizzly bears since 1997 (USFWS 1997, entire). Restoration efforts will be carried out jointly between NPS and the Service and interested partners. The Service will continue to work with our Federal, State, Tribal, and other partners to prioritize Service staff time to conduct grizzly bear outreach and education, provide technical assistance, and assist with conflict management.

*Comment:* Multiple commenters expressed concerns about impacts to the recovery of source populations. The State of Idaho Governor's Office of Species Conservation (Idaho OSC), the Idaho Department of Fish and Game (Idaho DFG), and Montana Fish, Wildlife, and Parks (Montana FWP) stated concerns about impacts to U.S.-based source populations of NCE and restoration efforts in GYE and NCDE and concerns about coordination with responsible authorities in areas of potential source populations. Another commenter suggested that source populations of bears should not be in the lower 48 States and that bears should not come from coastal food economies, while another opposed the transfer of fully protected grizzlies from other States to the NCE, emphasizing the importance of keeping grizzlies in their native habitats where they are not yet fully recovered.

*Response:* As described in the rule, the Service expects to obtain grizzly bears for reintroduction based on source populations that have a positive growth rate, could withstand the loss of bears to support the NCE, and have similar food economies to the NCE. The Service will consider bears from a number of source populations, including British Columbia, NCDE, and GYE. Implementation of the rule is not expected to result in meaningful impacts to source populations (see *Effects on Wild Populations*, below). Any bears sourced from the NCDE or GYE Demographic Monitoring Areas will count against the mortality thresholds addressing those populations. The Service will contact the relevant authorities to develop specific plans for bear captures for translocation to the NCE Recovery Zone before captures are implemented.

*Comment:* Commenters, including Montana FWP, commented on issues related to the number of bears in a restoration population. Montana FWP stated that recovery criteria are not established for the NCE Recovery Zone and that the 200–400 grizzly bear carrying capacity number cited in our proposed rule may not be adequate for recovery and delisting in the NCE Recovery Zone, and questioned whether genetic connectivity or genetic augmentation will be required. Another commenter stated that the restoration population of 200 bears in the NCE is too low and instead should be 1,000 bears to ensure long-term genetic viability.

*Response:* The section 10(j) rule does not set recovery criteria or goals for the grizzly bear listed entity, nor is it required to do so. Rather, the section 10(j) rule helps to implement recovery guidance contained in the NCE supplement to the Grizzly Bear Recovery Plan (USFWS 1997, entire), which recommended consideration of translocations in aid of recovery (see “Recovery Efforts to Date” below). The Service will take into account the need for genetic diversity as part of the restoration effort starting with selection of source populations that have high heterozygosity. The restoration plan and 10(j) rule include monitoring of genetic diversity and adaptive management through additional translocations if necessary to enhance heterozygosity and long-term genetic viability of the NEP (see *Capture and Release Procedures*, below).

*Comment:* Many commenters, including Tribes, raised concern over human safety and the risk grizzly bears may pose for people living, working, and recreating in the North Cascades. Other commenters identified the need for additional education and outreach related to bear safety and conflict prevention, with some commenters highlighting the importance of signage, grant opportunities, and direct engagement with communities.

*Response:* While grizzly bear attacks on humans are rare, they can occur and can have serious consequences. While precautions must be taken, our experience with grizzly bears in other ecosystems demonstrates that human–bear conflict can be minimized with a variety of tools, including the securing of attractants and maintaining awareness of surroundings. Many of the precautions needed for living and recreating among grizzly bears are also the same as for black bears, which are already present in the ecosystem. The 10(j) rule includes provisions affirming the ability of individuals to take bears in self-defense and to allow individuals to deter bears out of close proximity to people or property.

The Service will continue to provide information and education for the public and affected communities about best practices for grizzly bear safety. Education and outreach about how to minimize conflict is an important part of project implementation, and we will work with partners to increase outreach to people who live, work, and recreate in the NCE and surrounding areas. Outreach and education efforts will be modeled after similar efforts and practices developed in other grizzly bear recovery ecosystems over multiple decades.

*Comment:* Commenters suggested that using grizzly bear forage estimates from the Cabinet-Yaak Ecosystem (CYE) may be problematic, and could lead to increased movements, human conflicts, and mortality resulting from diet limitations. One commenter suggested that British Columbia would be a better analog for climate and food selection than the CYE or the diet of males in the NCDE and GYE that were referenced in the proposed rule.

*Response:* The EIS includes an analysis of habitat suitability and grizzly bear foods and vegetation types in the North Cascades. Many of the vegetation types and available foods in the

North Cascades are similar to the CYE where grizzly bear food habits have been studied. This makes the CYE a good analog to the NCE for evaluating potential grizzly bear food use. We have also added a reference to grizzly bear diets and dominant food sources in British Columbia (see *Behavior and Life History*, below).

*Comment:* Commenters expressed concern over the possible impact that grizzly bear restoration could have on salmon, game, and listed species.

*Response:* Because grizzly bears historically occupied the ecosystem, other species of fish and wildlife historically coinhabited the NCE with grizzly bears. Restoring grizzly bears in the NCE will contribute to restoring missing ecological interactions that help to shape fish and wildlife habitat through seed dispersal, increasing nutrient availability, and predator–prey dynamics (see van Manen et al. 2017, pp. 75–90). The final EIS provides a detailed assessment of habitat suitability, predator–prey interactions, and food and vegetation types, including elk and other ungulates, salmon, and federally listed species (NPS and USFWS 2024, chapter 3: “Grizzly Bears” and “Other Wildlife and Fish” sections).

In addition, the Service undertook an intra-service consultation and a consultation with the National Marine Fisheries Service under section 7(a)(2) and determined that the reintroduction of grizzly bears under the rule is not likely to jeopardize grizzly bear or any other ESA-listed species, including whitebark pine and ESA-listed salmon, nor result in the destruction or modification of any designated critical habitat for ESA-listed species.

*Comment:* One commenter stated the Service should consider how the regulation should adapt as the grizzly bear population grows and expands. One commenter asked that we consider including specific triggers, derived from proposed monitoring information, that would prompt specific changes in program implementation. One peer reviewer suggested that we more clearly define adaptive management and provide additional details on how adaptive management will be applied. One commenter asked for more details on interagency coordination in implementing monitoring and adaptive management.

*Response:* We updated the adaptive management section to clarify that we are using the term adaptive management in the broad sense of applying management interventions, monitoring outcomes, and modifying future management actions to achieve grizzly bear restoration objectives and maximize social tolerance. Based on our experience in other ecosystems, this flexible approach to adaptive management (for both management interventions and interagency coordination) is necessary given that we are working in complex ecological and social systems where management interventions are often context dependent.

*Comment:* Commenters stated that the 10(j) rule does not detail monitoring methods and resources and stated that data sharing in other recovery zones is helpful for outreach and management.

*Response:* Below, we describe how we intend to monitor reintroduced grizzly bears (see *Monitoring and Evaluation*, below). Prior to implementation of reintroduction, a strategy for monitoring will be developed with further details of responsibilities between the Service and other participating agencies, including how we will manage and share data.

*Comment:* We received several comments relating to the 1997 agreement on ‘No net loss of existing core area within any bear management unit’ (hereafter ‘no net loss’ agreement) with the NPS and USFS. One commenter stated that the existing habitat protections for core grizzly bear habitat reflected in the ‘no net loss’ agreement may not be sufficient. Other commenters noted that the ‘no net loss’ agreement will require monitoring, that data sets analyzing core habitat and trail use need to be updated, and that the agencies should work toward improving habitat connectivity. Several commenters stated that the ‘no net loss’ agreement should be extended to lands in Management Area B or beyond to facilitate connectivity or prevent habitat degradation.

*Response:* The Service is currently coordinating with the NPS and USFS through the Interagency Grizzly Bear Committee (IGBC) North Cascades Subcommittee Technical Team to update the baseline and memorialize the ‘no net loss’ agreement for the U.S. portion of the NCE

Recovery Zone. We expect the baseline update will include metrics such as core habitat and trail data. We clarify in the final rule that the intent is for the ‘no net loss’ agreement as to NPS and National Forest System lands to apply only within Management Area A, the focal area for recovery of an NCE grizzly bear population.

### **Peer Reviewer Comments**

As discussed in “Peer Review” above, we received comments on our proposed rule from three peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the proposed rule. We summarize substantive peer reviewer comments below that are not included in “Comments Common to Multiple Groups.” The peer reviewers generally concurred with our methods and conclusions and provided additional literature, information, clarifications, and suggestions to improve the final rule. For example, all three peer reviewers agreed that our description and analysis of the biology, habitat, population trends, conservation status, and distribution of the species were accurate and that our conclusions were accurate and supported by the provided evidence, although one peer reviewer questioned the exclusion of specific State lands from Management Area B. All three peer reviewers shared that our proposed rule did not have any significant oversights, omissions, or inconsistencies. Finally, the peer reviewers provided additional literature for our consideration, such as additional citations, and we incorporated the recommended clarifications and literature, as needed.

### **Federal Agency Comments**

One Federal agency, the Pacific Northwest Region of the USFS, provided comments on the proposed rule. We summarize substantive comments below that are not included in “Comments Common to Multiple Groups.”

*Comment:* USFS stated the Service's summary of access management in the rule is too simplistic and should be deleted or changed.

*Response:* The access management definitions from the IGBC Task Force Report on Grizzly Bear/Motorized Access Management (USFS 1997, entire; IGBC 1998, entire) describe motorized access management across all grizzly bear recovery zones; revising those definitions is outside the scope of this rulemaking process. However, the Service has updated its summary description of 'no net loss', which requires maintenance of the core grizzly bear habitat area and limits net gain of the road network within the NCE, as recommended.

*Comment:* The USFS stated that some areas in Management Area B have not yet adopted measures intended to reduce human-bear conflicts as in other recovery zones where bears are present. The USFS provided as one example, the Gifford Pinchot National Forest (NF), which may not have food storage orders in place. The USFS stated that even on forests where food storage orders exist, different measures need to be implemented based on risk.

*Response:* We clarify that food storage orders are a requirement for national forests and NPS lands only within Management Area A for the purpose of incidental take allowance (see *Incidental Take*, below). Food storage orders and other methods of securing attractants are important tools for preventing human-wildlife conflict with many species (e.g., black bears), not just grizzly bears. We recognize that improved sanitation and updated food storage infrastructure will be important for reducing potential human-bear conflicts in Management Areas B and C into the future.

### **Comments from States**

We received comments from three State wildlife agencies, one jointly with the Idaho State Governor's Office of Species Conservation, which we summarize here and provide detailed responses to below. As previously noted, the WDFW is a cooperating agency in the planning process and the Service consulted with WDFW in the development of the proposed rule. The

WDFW expressed that, if an action alternative of the FEIS is chosen, they support finalizing the rule to designate an NEP and encouraged NPS and the Service to implement releases only on NPS lands. Montana FWP expressed concern regarding potential negative impacts on grizzly bear recovery efforts in other States from grizzly bear restoration efforts in the NCE and establishing an NEP. Idaho OSC and Idaho DFG opposed NCE restoration efforts and the establishment of an NEP. We summarize substantive comments below that are not included in “Comments Common to Multiple Groups.”

*Comment:* Montana FWP commented that the proposed rule was contradictory in stating that recovery of grizzly bears in each of the six recovery zones is necessary while also stating that the NCE population is not essential to the survival of the species in the wild.

*Response:* Reintroductions are, by their nature, experiments, the fate of which is uncertain. However, it is always our goal for reintroductions to be successful and contribute to recovery. The importance of reintroductions to recovery does not necessarily mean these populations are “essential” under section 10(j) of the Act. In fact, Congress’ expectation was that “in most cases, experimental populations will not be essential” (H.R. Conference Report No. 97-835 at 34). The preamble to our 1984 publication of ESA 10(j) implementing regulations reflects this understanding, stating that an essential population will be a special case, and not the general rule (49 FR 33885 at 33888, August 27, 1984). The Service’s objective to recover grizzly bears in each of the six recovery zones is not in conflict with the Service’s determination that the North Cascades NEP will contribute to that recovery but is not essential for the survival of grizzly bears in the wild (see *Is the Experimental Population Essential to the Continued Existence of the Species in the Wild?*, below).

*Comment:* Montana FWP disagreed with the use of the phrase “excessive human-caused mortality” in the proposed rule and stated that extensive efforts in Montana and other States have minimized human-caused mortality to ensure it is not “excessive.” Montana FWP noted that current levels of human-caused mortality of grizzly bears in the NCDE and GYE are not

considered excessive because these mortalities are below mortality thresholds at sustainable levels.

*Response:* We revised our discussion of threats to reflect that while human-caused mortality is a primary threat, mortality thresholds currently in place have mitigated this threat in those ecosystems such that grizzly bear populations have increased in number and range (see *Threats*, below). Mortality thresholds for the NCDE are documented in the Recovery Plan (USFWS 1993, pp. 33–34) and in the NCDE Conservation Strategy (NCDE Subcommittee 2019, entire). Thresholds for the GYE are documented in the GYE Recovery Plan Supplement: Revised Demographic Criteria (USFWS 2017, p. 6) and in the 2016 GYE Conservation Strategy (YES 2016, p. 48).

*Comment:* Idaho OSC and Idaho DFG stated there was a lack of coordination with ESA delisting petitions and efforts to develop conservation strategies in other grizzly bear recovery zones, including efforts by the Selkirk Cabinet-Yaak Subcommittee of the IGBC, or the current EIS process considering grizzly bear restoration in the Bitterroot Ecosystem (BE). Commentors stated the eastern boundary of the NCE NEP makes unsupported assumptions about these recovery efforts.

*Response:* We developed the final rule based on the current listed entity of the grizzly bear under the Act (i.e., as a threatened species in the lower 48 States). The rule does not preclude the Service from making future revisions to the listed entity. If the Service revises the grizzly bear listed entity, the effect on this NEP, if any, would be addressed at that time. The Service developed the eastern boundary of the NEP based on grizzly bear data, human populations, and readily discernable features (e.g., roads, Federal land boundaries). The 10(j) rule does not interfere with or preclude developing a conservation strategy by the IGBC Selkirk Cabinet-Yaak Subcommittee or considering alternatives for addressing grizzly bear restoration to the BE.

*Comment:* Idaho OSC and Idaho DFG questioned to which listed DPS of grizzly bear the experimental population belongs and what criteria would be used to determine whether that DPS is recovered. They expressed concerns that the NEP would not itself qualify as a DPS and that establishing an NEP in the NCE could preclude determinations regarding delisting of the grizzly bear.

*Response:* An experimental population is not a separate listed entity (i.e., a DPS, subspecies, or species), but instead is considered part of the listed entity (in this case, the grizzly bear lower-48 DPS). The reintroduction of an experimental population is intended to further the recovery of the listed entity to which it belongs. We anticipate that a restored grizzly bear population in the NCE will contribute to the recovery of the listed entity, which includes grizzly bears throughout the conterminous United States, by providing additional population redundancy and representation. The NEP is part of the current listed entity of the grizzly bear and does not preclude the Service from revising the listed entity in the future, at which time the effect, if any, on the NCE NEP will be considered. See *Recovery Efforts to Date and Effects of the Experimental Population on Grizzly Bear Recovery* for additional details on the recovery plan and efforts. If grizzly bears are recovered and delisted under the Act, the experimental population designation and associated regulation will also be removed as part of the delisting rulemaking (see *Exit Strategy*, below).

*Comment:* Montana FWP states they are hesitant to support removing grizzly bears from the NCDE or GYE to support the reintroduction of bears into the NCE because of the likelihood the bears could come into conflict due to the NCE's proximity to the large human population of the Puget Sound and because of the concern that the rule does not provide adequate support for conflict prevention measures.

*Response:* We acknowledge that NCE is adjacent to the Puget Sound region, which is densely populated by humans. However, several factors support our determination that the NCE can support a viable grizzly bear population that is no more susceptible to conflict than other

grizzly bear populations. First, the gradual reintroduction of grizzly bears will provide agencies additional time to further develop conflict prevention efforts and practices employed in other recovery areas. Second, even at the eventual restoration population, the NCE will have substantially lower grizzly bear population densities than either the GYE or NCDE. Third, the NCE contains sufficient habitat and resources to support the restoration population and is composed predominantly of wilderness and IRAs that helps reduce the potential for conflict as compared with, for example, grizzly bears in areas of subpar habitat (often on private land, with high road densities). As noted above, we expect to support the efforts necessary for the successful reintroduction and management of this grizzly bear NEP through a combination of resources from the Service and other partner Federal agencies, WDFW, interested Tribes, and nongovernmental organizations.

*Comment:* Montana FWP suggested the Service consider more flexible criteria for determining grizzly bears for translocation to the NCE Recovery Zone (e.g., bears with some conflict history, bears from dissimilar food economies).

*Response:* Translocating grizzly bears with no conflict history and grizzly bears from similar food economies produces a greater chance of success in the placement of these animals in the NCE Recovery Zone. This approach has been successful with augmentation efforts in the Cabinet Mountains in the GYE and is identical to the Montana FWP proposal for moving bears with no history of conflicts to the GYE.

*Comment:* WDFW stated that releasing bears on non-NPS lands (e.g., USFS) could be more administratively complex for WDFW than releasing bears on NPS lands because in WDFW's view the NPS Organic Act provides clearer Federal support for releasing bears on NPS lands. In the scenario of releases off NPS lands, WDFW stated it would need to consider their position regarding RCW 77.12.035 and their role and responsibility to permit the importation and release of wildlife in the State of Washington. They encourage NPS and the Service to implement releases only on NPS lands.

*Response:* The Service and NPS will prioritize release sites on NPS lands but retain the option to conduct initial releases of grizzly bears on National Forest System lands if unforeseen circumstances prevent access to release sites on NPS lands (e.g., due to aircraft issues). We will work with WDFW and the associated land management partner, whether it is NPS or USFS, to avoid administrative complications as appropriate.

### **Comments from Tribes**

We received comment letters from two Tribes, the Sauk-Suiattle Indian Tribe and the Upper Skagit Indian Tribe. The Sauk-Suiattle Indian Tribe expressed general opposition to grizzly bear restoration efforts as described in the draft EIS. The Upper Skagit Indian Tribe expressed support for grizzly bear restoration with the designation of a nonessential experimental population (Alternative C in the draft EIS (NPS and USFWS 2023)). We summarize substantive comments below that are not included in “Comments Common to Multiple Groups.”

*Comment:* The Sauk-Suiattle Tribe highlighted concerns over the threats that grizzly bears may pose to treaty rights, especially regarding resource competition for salmon and berries.

*Response:* We discuss the potential effects of grizzly bear restoration specific to Tribal lands and treaty right activities in chapter 3 of the EIS, in the “Ethnographic Resources” section. The effects on salmon and game are further addressed in chapter 3 of the final EIS (NPS and USFWS 2024), in the “Other Wildlife and Fish” section.

Although grizzly bears forage on foods that the Sauk-Suiattle Tribe gathers, the low number of grizzly bears spread across the NCE will have a minimal effect on those food resources, including fish, wildlife, and roots or berries. Preliminary results from northwest Montana and north Idaho suggest grizzly bear diets, on average, are composed of at least 20 percent berries during the summer months (USFWS 2019, p. 15). At that rate, we estimate an adult female grizzly bear typically consumes an average of 2.5 gallons of huckleberries per day. The bears, and this level of consumption, are expected to be distributed across the NCE

Recovery Zone rather than concentrated in one area. Only minimal impacts on berry availability to humans are anticipated from the consumption of berries by the initial population levels of 25 bears and the eventual restoration population of 200 bears.

*Comment:* The Upper Skagit Indian Tribe requested that Tribal consultation be conducted throughout the reintroduction implementation process.

*Response:* The Service and the NPS will engage with and involve affected Tribes throughout the implementation of grizzly bear restoration to the NCE. Given the unique responsibility and government-to-government relationship that the Federal Government has with individual Tribal nations, Tribal consultation is always an ongoing process and will continue for the duration of grizzly bear recovery efforts in the NCE.

*Comment:* The Upper Skagit Indian Tribe highlighted the traditional cultural connections between grizzly bears and the Upper Skagit Indian Tribe and requested consideration of this traditional ecological knowledge and history in support of draft EIS alternative C, including designation of an NEP.

*Response:* The Service agrees that cultural connections and traditional ecological knowledge are important considerations and have factored these into the development of the rule. The traditional ecological knowledge of Tribes and First Nations has provided some of the evidence of historical grizzly bear presence in the NCE, and the important cultural connections underscore the importance of restoring and conserving a grizzly bear population in the ecosystem.

## **Congressional Comments**

One Federal congressional representative, Congressman Dan Newhouse, representing the 4<sup>th</sup> District of Washington, provided comments on the proposed rule. We summarize substantive comments below that are not included in “Comments Common to Multiple Groups.”

*Comment:* Congressman Newhouse stated that the NPS and the Service are not taking into the account the concerns of local communities. The commenter expressed concerns about the format of the October 17, 2023, virtual public meeting and the information presented in it, particularly that the Service's and NPS's definition of "substantive comments" limits public comment.

*Response:* During the public scoping period and comment period on the proposed rule, nine public meetings took place, both virtually and in-person, and the public was able to provide comment through a variety of methods. (See "Consultation with State, Local, Tribal, Federal, and Affected Private Landowners," below, for more information).

As noted in the proposed rule and in the virtual public meeting, comments merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination or changes to the rule. Similar guidance on what constitutes substantive comment is included in NEPA handbooks for both the Service (USFWS 2014, p. 29) and the NPS (NPS 2015, p. 65). While agencies consider only substantive comments regarding the NEPA document for formal response, we do not discourage anyone from submitting their thoughts on the proposed rule. Through the public comment process, the agencies are made aware of stakeholder sentiment and factor that perspective into the decision-making process.

*Comment:* Congressman Newhouse stated the concurrent release of the draft EIS and proposed 10(j) rule indicates the agencies had already made a decision.

*Response:* A decision had not been made with the concurrent release of the draft EIS and proposed 10(j) rule. The proposed 10(j) rule is a part of the Federal proposed action to restore grizzly bear to the North Cascades. As such, the proposed 10(j) rule, and the environmental effects of that proposed rule, are appropriately considered concurrently. In the previous North Cascades Grizzly Restoration Plan/EIS process, stakeholders repeatedly asked for more detailed information about what possible management under a 10(j) experimental population designation

would entail. The proposed 10(j) rule was responsive to those concerns and provided a specific framework for what management of an experimental population could look like. Without both documents being released simultaneously, the public would not be able to fully evaluate the alternative in the draft EIS that includes designation of an experimental population.

## **Public Comments**

We received over 12,200 comments from the public, including nongovernmental organizations, trade associations on behalf of their memberships, local governments, and individual members of the public. Comments included both opposition to and support for grizzly bear restoration efforts in the NCE Recovery Zone and the designation of an NEP, as well as specific provisions of the rule. We summarize substantive comments below that are not included in “Comments Common to Multiple Groups.”

*Comment:* Some commenters were concerned that prevention of human–bear conflict will result in travel restrictions, bear-proofing requirements, and permitting requirements. One commenter noted the possibility of restrictions on National Forest System lands outside of the NCE Recovery Zone. Another commenter recommended prioritizing efforts to provide bear-resistant food storage and bear-resistant garbage containers at NPS and USFS campgrounds.

*Response:* While short-term closures of areas may occur to prevent conflict (e.g., trail closure for several days because of a grizzly bear known to be feeding on a carcass in the area), no long-term closures or travel restrictions are planned (see *Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094*, below). The NPS and USFS are currently working to improve sanitation and update food storage infrastructure and implement food storage orders where they are not already in place (see *Management Efforts in the NCE and NCE Recovery Zone*, below). We clarify that food storage is a requirement for National Forest System lands only within Management Area A for the purpose of the incidental take exception to the general prohibition against take (see *Incidental Take*, below).

*Comment:* A commenter stated that no bear should be preemptively relocated if the bear is not a threat to human safety, particularly if the bear has not become habituated or food-conditioned, or when nonnatural foods/attractants have not been properly secured. Commenters suggested that the Service should require the use of nonlethal conflict-reduction measures, including securing attractants, bear-resistant garbage containers, bear-resistant food cannisters, electric fences, use of guard animals or other nonlethal methods for managing conflict with livestock and domestic animals before bears are relocated or lethally removed. One commenter suggested livestock owners must be able to document and demonstrate the use of nonlethal deterrents. Commenters suggested that relocation or lethal removal of bears should only be considered after nonlethal management methods have been exhausted. Commenters stated that lethal removal should not be allowed for livestock depredations occurring on public lands.

*Response:* Relocation of bears should and will be a tool only used when warranted, but bears may be relocated preemptively when appropriate for recovery purposes. Relocating a bear before they become habituated, food-conditioned, or a threat to human safety is sometimes the best course of action to avoid human–bear conflict and improve the likelihood of grizzly bear survival (see *Management Restrictions, Protective Measures, and Other Special Management*, below). Throughout the NEP area, we will consider lethal removal as a management tool only when it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capture and release of the grizzly bear unharmed. Lethal take in self-defense or defense of others remains an exception throughout the NEP area. We will employ methods and tools developed in other ecosystems to reduce human–grizzly bear conflict (including depredations) and/or increase the likelihood of finding and documenting depredation events. Livestock conflicts are not always preventable. Grizzly bears can cause significant losses in some instances, but a quick management response can increase social (or public) tolerance for grizzly bears. We will not prohibit lethal removal for livestock depredation on public lands, but it should not be the first choice.

*Comment:* One commenter requested a definition for the phrase “lasting bodily injury” in reference to injuries a bear might sustain during deterrence and hazing activities. One commenter requested the 5-day window for reporting injuries be changed to 24 hours.

*Response:* We added a definition for “lasting bodily injury” to the final rule. The 5-day reporting window is consistent with our practices under the existing 4(d) rule for the grizzly bear outside the NEP, and we retain that reporting window for this NEP. In other grizzly bear ecosystems with this same 5-day reporting requirement, partners report this type of injury immediately. We would anticipate the same response in the NCE but include a 5-day reporting window in recognition that reporting an injury within 24 hours is not always feasible.

*Comment:* A commenter expressed concern that unintentional lethal take may occur when hazing grizzly bears and requested specific guidance on acceptable and unacceptable hazing methods.

*Response:* We have added some specific examples of what deterrence methods are considered acceptable, and which ones are not (see *Deterrence*, below).

*Comment:* One commenter stated that the 10(j) rule does not provide enough flexibility for agricultural producers. The commenter stated that requiring confirmation of depredation in Management Area B and determination of a demonstrable and ongoing threat in Management Area C will result in harm to producers. Two commenters requested detail on what an “ongoing threat” means in regard to grizzly bear conflict with livestock.

*Response:* In the final rule we clarified and defined what we mean by “demonstrable and ongoing threat” and “in the act of attacking” (see § 17.84 **Species-specific rules—vertebrates**, in the rule portion of this document). The Service or authorized agencies will respond to conflicts in all Management Areas and will determine the best management action moving forward, including lethal control. Lethal take authorization with conditions will be evaluated on a case-by-case basis. Individuals can also conduct intentional nonlethal deterrence and employ preventative tools (e.g., electric fences) to prevent conflicts prior to a confirmed depredation or a human

safety threat. In addition, we added a provision allowing lethal take of bears in the act of attacking livestock, including working dogs, if it occurs on private lands in Management Area C (see *Management Area Management Actions*, below).

*Comment:* A commenter requested that forest managers, loggers, and others conducting otherwise lawful forest management activities be included in the list of those authorized to conduct nonlethal deterrence activities.

*Response:* We updated the rule to confirm that individuals, which includes forest managers, loggers, and others conducting otherwise lawful forest management activities, may take nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property (see *Management Restrictions, Protective Measures, and Other Special Management*, below).

*Comment:* One commenter expressed concern that lethal take would occur near logging operations. Other commenters disagreed with exemption of incidental take in the 10(j) rule, particularly lethal incidental take allowed as part of forestry actions, because it could seemingly affect an unlimited number of bears in a variety of unspecified scenarios.

*Response:* Based on our experience in other recovery zones, we expect lethal take as part of forestry actions to be very rare. The highest quality grizzly bear habitat and the location of most release sites are expected to be in wilderness where logging activities do not occur. If grizzly bears do overlap with logging operations, we expect most take to be in the form of harassment rather than lethal take. The Service and NPS considered an alternative in the EIS that would reintroduce grizzly bears with existing ESA protections, including the general prohibition against incidental take. As discussed further in the final EIS and our Record of Decision, we selected Alternative C: Restoration with ESA section 10(j) designation as the preferred approach as it allows for take in various circumstances to reduce the regulatory burden associated with reintroduction. The Grizzly Bear Recovery Plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones (USFWS 1993, pp. 20–21). Because we

anticipate the NCE population to remain low for the near future, we will attempt to keep human-caused mortality to zero. However, zero mortalities may not be practical given the need to protect human safety and property, and due to accidental mortalities (e.g., vehicle collisions).

*Comment:* One commenter requested more detail on what “humane manner” means, in terms of lethal removal of grizzly bears. Another commenter requested we remove the term humane and asserted that it is not possible to humanely remove, i.e., kill, an animal.

*Response:* We revised the rule to clarify that “humane” means with compassion and consideration for the bear and minimizing pain and distress. We consider it possible to humanely treat an animal when lethally removing it and therefore decline to remove the term or the requirement.

*Comment:* A commenter stated that baited foot snares should not be used to capture bears intended for reintroduction to the NCE. Another commenter requested that we develop a humane capture and handling protocol due to the potential for injury and stress, particularly with foot snare traps.

*Response:* While trapping is expected to occur largely with culvert traps, foot snares have been used safely for research captures of grizzly bears in other areas and may be the source of trapping for some bears for this restoration effort. Culvert traps are not as portable as foot snares, which offer more opportunities to trap in remote locations where we would expect to locate bears without a history of conflicts. Agencies currently capture and handle grizzly bears humanely using the techniques such as culvert traps or foot snares followed by anesthetization and radio collaring (Jonkel 1993, entire).

*Comment:* Two commenters stated that a quick response is essential when responding to livestock depredations and expressed concern that government delays will hamper response. One commenter requested that authorizing conditioned lethal take should be allowed in all three management areas. One commenter requested that conditioned lethal take authorization last 4

weeks rather than 2 weeks. One commenter expressed concern about the length of time allowed for time-limited authorization.

*Response:* A quick response is important when responding to livestock depredations. We currently work closely and effectively with authorized agencies in four ecosystems in Idaho, Montana, and Wyoming to ensure minimal delay. We expect to establish the same relationships and protocols with authorized agencies in the NCE. Authorized agencies may remove grizzly bears in conflict in all Management Areas of this NEP if the bear meets the criteria for removal. However, as Management Area A is entirely public land and core recovery habitat, we will not support authorizing bear removals in Management Area A by individuals other than the Service or a Federal, State, or Tribal authority of an authorized agency and expect to work with the affected Federal land managers to address any conflict concerns.

In response to the comments, we reevaluated the timeframes for lethal take authorization. In the proposed rule, we proposed a 2-week timeframe; however, we reconsidered because of the potential for killing the wrong bear with an extended timeline. With a longer timeline, the greater the possibility bears may move, and different bears may enter the area. As a result, we are not extending the timeline but instead are reducing it to 5 days. The Service may extend authorization of lethal take to individuals for an additional 5 days if there are additional grizzly bear depredations or injuries to livestock and circumstances indicate the offending bear can be identified.

*Comment:* Several commenters stated the provisions or sideboards describing when lethal removal of bears involved in conflict is allowed are unclear, and it is unclear as to when and why it might not be “reasonably possible to otherwise eliminate the threat by non-lethal deterrence or live capturing and releasing the grizzly bear unharmed in a remote area.” One commenter requested uniformity across all three Management Areas for decisions about lethal removal.

*Response:* Determining whether to lethally remove a grizzly bear is a complex decision process, involving highly variable and fact-specific situations. As such, it is impossible to

identify parameters to account for and describe all possible scenarios in the rule. Decisions on lethal removal will be based on many factors, including the ability to identify a particular bear (e.g., markings, collars, track size, canine spacing), the individual bear involved (e.g., sex, age, presence of dependent young, conflict history), relevant conflict history in the immediate area, and number of bears in the area. The Service has a history of making well-informed and timely decisions about lethal removal across four ecosystems with multiple authorized agencies in Idaho, Montana, and Wyoming. We expect to establish similar practices and protocols in the NCE. The Service also revised the final rule to improve clarity regarding the circumstances in which we will authorize lethal removal but retained the “not reasonably possible” language allowing for appropriate judgment and discretion based on the circumstances.

*Comment:* Many commenters opposed lethal control authorizations for livestock owners or private individuals, citing public safety risks, likelihood of accidental wounding of bears, and potential for taking the wrong bear. Commenters stated that lethal control should be performed only by the Service or authorized agency personnel. One commenter suggested instead supplying ranchers with tranquilizer darts, whereby bears would await relocation by Federal officials, if a threat to livestock were posed.

*Response:* Nonlethal actions (e.g., relocation, securing attractants, or deterrence) are always the first options to address conflicts, and authorization of lethal take for individuals will be considered only after these options had failed or were deemed nonviable by the Service or an authorized agency. The two exceptions are when individuals kill a bear in defense of self or others, or the limited conditioned exception for take of a bear in the act of attacking livestock or working dogs on private lands in Management Area C. The final rule affirms that authorization of lethal take will be issued only after depredations are confirmed by the Service or an authorized agency and if the Service or authorized agency concludes an ongoing threat to human safety, livestock, or other pertinent property exists. As discussed in the previous response, the Service will authorize lethal take based on many factors. The Service expects to outline these factors and

communication and coordination support with authorized agencies in the agency-specific Memoranda of Understanding (MOUs). If the Service decides to authorize lethal removal, that authorization will carry clear conditions and be time-limited. Lethal removal for conflicts (other than in cases of self-defense, or for the limited exception in Management Area C described) must be performed by the Service, a Federal, State, or Tribal authority of an authorized agency in accordance with the Service–agency MOU, or via prior written authorization to the individual in accordance with the rule.

*Comment:* Several commenters indicated that the nonlethal incidental take reporting requirements due to ‘habitat modification resulting from otherwise lawful activities’ are impractical and should be exempted from reporting.

*Response:* We did not intend for the general reporting requirements for nonlethal take to apply to incidental take in the form of harm via habitat modification; rather, we require reporting when lethal or nonlethal take occurs as a result of direct interactions with the grizzly bear (e.g., through self-defense, deterrence, conflict management, or vehicle collision, etc.) and clarified the reporting requirements accordingly. Incidental take of a grizzly bear in the form of harm via habitat modification is not prohibited within the NEP area. Habitat modification impacts will still be identified as a result of Federal actions on NPS or NWRS lands for which section 7(a)(2) consultation requirements remain. Any recommended reporting of habitat modification impacts will be part of the associated section 7(a)(2) biological opinion if applicable. Relatedly, as incidental take is not prohibited as a result of USFS actions within Management Area A provided the USFS maintains its ‘no net loss’ agreement as it pertains to securing grizzly bear habitat, and the USFS is not required to consult under section 7(a)(2) on its proposed actions in the NEP area, we expect the USFS will maintain appropriate records on its ‘no net loss’ agreement to confirm its actions are within the 10(j) rule incidental take exception.

*Comment:* A commenter stated that the Service failed to provide any analysis to explain how lethal take of grizzly bears on Federal public lands to protect livestock grazing on public

lands serves a conservation purpose. In addition, they stated that the proposed rule and draft EIS lacked adequate consideration of alternative mechanisms for Federal lands that would better take into account the authority that Federal land managers have to protect the reintroduced population, better fulfill the conservation purpose of section 10(j), and better align with the duty imposed on such agencies under section 7(a)(1) of the Act to further conservation of the species.

*Response:* When we assess the conservation value of designating an experimental population and reintroducing a listed species, we evaluate the totality of the conservation and management actions associated with that designation, recognizing that some flexibility in managing the reintroduced population may be necessary to build support for the reintroduction. Lethal take on Federal lands in Management Area A is limited to the Service and authorized agencies only if it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed and the taking is done in a humane manner. This is similar to the management of grizzly bears listed as threatened under the Act in other ecosystems under the 4(d) rule. Therefore, the NEP designation does not represent a substantial change to the way grizzly bears are managed in relation to grazing allotments on Federal lands under the 4(d) rule.

*Comment:* One commenter requested that the 10(j) rule authorize a grizzly bear hunting season.

*Response:* The rule does not address or authorize grizzly bear hunting. Hunting regulations in Washington are established by State and Tribal authorities. Grizzly bears are currently listed as a State endangered species in Washington, and we do not expect that, even with this reintroduction, grizzly bear populations will become large enough to sustain recreational harvest anytime in the near future.

*Comment:* A commenter noted that in the preamble of the proposed rule and draft EIS that we specified unintentional incidental take would be exempted provided such take is

nonnegligent but noted that we did not specify it in the text of the rule itself; they considered this to misleadingly describe a more protective rule.

*Response:* We updated the exceptions to the general take prohibition in the rule to clarify that take must be unintentional and nonnegligent for the incidental take exception to apply.

*Comment:* One commenter expressed concern that reintroducing grizzly bears would require additional regulations that would hamper forestry activities and wildfire response on Federal and non-Federal lands. Another commenter recommended clarifying that permissible incidental take should include any habitat modification from otherwise lawful forest management activities consistent with the Forest Practices Act and pursuant to an approved habitat conservation plan, section 10(a)(1)(A) permit, or similar authorization.

*Response:* The final rule is not expected to hamper forestry activities or response to wildfires on Federal or non-Federal lands. Under the 10(j) rule, as with all designated NEPs, consultation under section 7(a)(2) of the Act is not required for Federal actions if they do not occur on a National Wildlife Refuge or NPS land. On National Forest System lands, this means consultation under section 7(a)(2) is not required, even if the proposed Federal action may affect grizzly bears of the NEP; however, Federal agencies including the USFS are still required to confer with the Service, consistent with section 7(a)(4), for any agency action that is likely to jeopardize the continued existence of the listed species. In addition, provided the USFS retains its agreement regarding maintaining core secure habitat in Management Area A, incidental take from a USFS action in Management Area A is allowed. On all non-Federal land, including State-managed lands, take of a grizzly bear is allowed if the take is incidental to, and not the purpose of, an otherwise lawful activity, and reported in accordance with the rule. Private land and State-managed lands within the NEP are in Management Area C, with the most flexibility in regard to grizzly management tools. We do not expect the NEP to hamper or substantially modify forest health treatments or otherwise lawful forestry activities, including those consistent with the

Forest Practices Act, on Washington Department of Natural Resources (WDNR) and National Forest System lands.

*Comment:* A commenter requested that road use permits granted by the USFS on non-Federal lands be exempt from section 7(a)(2).

*Response:* In accordance with our general section 10(j) regulations, USFS proposed actions, including the proposed issuance of USFS permits, will not require consultation under section 7(a)(2) within the NEP area when authorizing activities under USFS permits, which includes road use permits on non-Federal lands.

*Comment:* One commenter recommended that section 7(a)(1) be applied only to the NCE Recovery Zone rather than the entire proposed NEP boundary, noting that the proposed rule recognized Management Area C as possibly unsuitable for grizzly bear.

*Response:* Section 7(a)(1) of the Act requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Under the Act, section 7(a)(1) remains applicable to all Federal agencies regardless of an NEP designation (see section 10(j)(2)(C)(i)). However, Federal agencies have broad discretion in how they fulfill their responsibilities under section 7(a)(1), and for grizzly bears within the NEP boundary, we anticipate that most agencies will focus their efforts within the NCE Recovery Zone.

*Comment:* Two commenters stated that the Service provides no evidence to the claim that added flexibility under the 10(j) rule would increase social tolerance and therefore success of the population.

*Response:* The need for the tools and flexibilities that a 10(j) experimental population designation provides was a recurring theme in public comment and community conversations beginning with the previous North Cascades Grizzly Restoration Plan/EIS process that was terminated in 2020. In our experience, by limiting impacts to property and safety, and providing more tools to address threats, the public's receptivity and tolerance to having grizzly bears on the landscape is likely to improve.

In the GYE, residents involved in resource extraction industries, livestock operators, and hunting guides were opposed to land-use restrictions that were perceived to place the needs of grizzly bears above human needs (Kellert 1994, p. 48; Kellert et al. 1996, p. 984). Surveys of these user groups have shown that they tolerate large predators when they are not seen as direct threats to their economic stability or personal freedoms (Kellert et al. 1996, p. 985). By increasing management flexibility, including allowing private citizens to take bears in certain situations, we believe the 10(j) rule will reduce conflicts and increase acceptance of grizzly bears.

*Comment:* Several commenters were concerned about the impacts of black bear hunting on grizzly bears due to mistaken identification, and that accidental killing of grizzly bears due to mistaken identity could result in prosecution under the Act. Other commenters stated that the 10(j) rule should not include a reference to the potential for mistaken shooting prosecution because of the “McKittrick Policy.” Commenters stated concerns about the potential for hound hunting of black bears being extended to grizzly bears as allowed by recent legislation in Montana and Idaho.

*Response:* The WDFW implemented a regulation that requires black bear hunters to take and pass a bear identification test when hunting black bears in specific areas within grizzly bear recovery zones, with the intent of minimizing the potential for accidental killings of grizzly bears due to mistaken identification (see *Management Efforts in the NCE and NCE Recovery Zone*, below). As to potential prosecution for mistakenly shooting a grizzly bear, the Service retains the general prohibitions against take of grizzly bears of the NEP other than as excepted by the 10(j) rule and retains the language that taking a grizzly bear that is wrongfully identified as another species is not considered “incidental take” and is not allowed under the rule. The determination of whether the shooting of a grizzly bear is a mistake is a fact-specific inquiry subject to investigation, which is not precluded by the McKittrick Policy (which is addressed to Federal prosecutors regarding appropriate jury instructions, see *WildEarth Guardians v. U.S. Dep’t of*

*Justice*, 752 Fed. Appx. 421 (9<sup>th</sup> Cir. 2018)). The decision to pursue prosecution is subject to the discretion of the applicable authority. The McKittrick Policy would not apply to prosecution determinations by the State of Washington under State law. As such, we retain the language that prosecution may result. As to the concern about hound hunting, Washington State law prohibits the use of hounds for hunting of black bear (see Washington Administrative Code 220–413–060).

*Comment:* One commenter suggested tools and actions used to address future impacts be based on prior large carnivore restoration efforts. One commenter requested we consider management tools described in the Colorado gray wolf NEP.

*Response:* We evaluated a range of management tools, including those described in the Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado (88 FR 77014, November 8, 2023). Grizzly bears present different management challenges than wolves because of their life-history traits, such as long time to parturition, slow reproducing, and sensitivity to mortality. The management tools we selected were chosen to facilitate grizzly bear recovery in a landscape shared with people.

*Comment:* A commenter suggested that species protections under a 10(j) rule are not adequate because the rule reduces habitat protections and may result in more bears being killed than under the 4(d) rule. One commenter stated that the 10(j) rule does not analyze how much more lethal take will occur under the rule compared to the 4(d) rule. One commenter stated that the Service should not rely on information from the NCDE and GYE to assess potential impacts to a reintroduced grizzly bear population in the NCE as the 10(j) regulation will provide less protection to the NCE population than the NCDE and GYE populations receive under the 4(d) rule.

*Response:* As previously noted, the Service is currently coordinating with the NPS and USFS to update the baseline and memorialize the ‘no net loss’ agreement for the U.S. portion of the NCE Recovery Zone, providing for the habitat security needed in support of grizzly bears in

the Management Area A, the focal area for recovery of an NCE grizzly bear population. It is possible that more grizzly bears may be killed in the NCE under the 10(j) rule than had the Service decided to reintroduce grizzly bears to the ecosystem under the current 4(d) rule given the greater restrictions on lethal removal for grizzly bears under the 4(d) rule, but this is not a certainty. While designation as an NEP provides greater management flexibility than the existing 4(d) rule, that greater flexibility does not necessarily mean increased lethal take of grizzly bear. The management tools of the 10(j) rule are designed in large part to help the Service and authorized agencies to intervene to avoid situations that are likely to result in human–bear conflicts in the first place. Also, the additional management flexibility provided in the 10(j) rule is optional, not required, and lethal removal in particular is still subject to prior Service approval, with limited exceptions. In addition, the recovery plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones (USFWS 1993, p. 20). Because we anticipate the NCE population to remain low for the near future, we will attempt to keep human-caused mortality to zero.

In terms of relying on information from the NCDE and GYE to assess potential impacts to the reintroduced population, the Service has tailored the 10(j) rule to focus on the NCE Recovery Zone, where protections similar to the 4(d) rule will apply. Therefore, we can use our experience managing grizzly bear populations in other ecosystems to assess potential effects to a reintroduced population in the NCE, particularly in Management Area A where the recovery effort is targeted. In addition, our experience managing grizzly bears under the 4(d) rule in the NCDE and GYE helped inform what additional flexibility for the NEP would be valuable in helping address issues with grizzly bears on the landscape.

*Comment:* A commenter stated that the Wildlife Crossings Program needs to be implemented with any translocation to reduce the threat that car or train collisions pose to grizzly bears.

*Response:* Part of what makes the NCE quality grizzly bear habitat is its large contiguous blocks of wilderness with comparatively few roads and railways, such that wildlife crossings may be less of an issue than in other areas, although the threat is not eliminated given the non-wilderness areas within the NCE. We will use a mortality management framework to ensure that total mortality rates do not approach an unsustainable level, and will limit discretionary mortalities (i.e., management removals) if total mortality numbers (including any mortalities due to vehicle or train collisions) do not support an increasing population. Currently, more than 20 crossing structures over or under highways have been completed in Washington on the southern edge of the NCE Recovery Zone connecting areas south of I-90 to the NCE Recovery Zone (WSDOT 2023). Washington State Department of Transportation, their partners, and working groups continue to prioritize wildlife connectivity in Washington with special focus on I-90 and connecting the Cascades to the Kettle Mountain Range and Rocky Mountains (WSDOT 2023; Conservation Northwest 2023a; Conservation Northwest 2023b).

*Comment:* A commenter requested that the EIS and 10(j) rule describe habitat management components outside of travel management (i.e., motorized road management) and should include habitat management components that support prey species, such as elk and other big game species. They also recommended that the EIS and 10(j) rule include a summary of active projects designed to improve habitat for wildlife, fuels reduction, timber management, etc., within the NCE and proposed NEP boundary, and an assessment of how grizzly bear restoration will affect active forest management projects.

*Response:* Consistent with other recovery areas, the Service's focus is on securing core habitat for grizzly bears, using motorized road management as the principal metric. This does not preclude partner agencies such as the NPS and USFS from providing other habitat management components, such as for prey species, through their planning processes, but these are beyond the scope of this rulemaking. The final EIS includes a cumulative effects analysis which addresses in part other ongoing and reasonably foreseeable planned projects that may affect the grizzly bear

restoration plan; based on this analysis, we do not expect this NEP to affect active forest management projects.

*Comment:* A commenter stated that the EIS and 10(j) rulemaking process should be delayed allowing for additional modeling of high-value grizzly bear habitat outside of the NCE Recovery Zone. Several commenters expressed concerns about the lack of more specific demographic goals and clear recovery criteria for the NCE Recovery Zone.

*Response:* Recovery zones represent the Service's expectation of core areas for grizzly bear recovery in part because of their high-value habitat for grizzly bear. At approximately 9,500 mi<sup>2</sup> (25,000 km<sup>2</sup>) in size, the NCE Recovery Zone is the largest of six recovery zones and represents an area large enough and of sufficient habitat quality to support a recovered grizzly bear population. While bears will likely disperse from and occupy areas outside the NCE Recovery Zone in the future, we expect recovery actions to remain focused there due to the quality and quantity of habitat. The NCE supplement to the Grizzly Bear Recovery Plan provides general demographic and habitat assumptions and goals, including that the population will be considered recovered when it is large enough to offset human-caused mortality, and when reproducing bears are distributed throughout the recovery area (potentially between 200–400 grizzly bears) (USFWS 1997, p. 3).

*Comment:* One commenter questioned the projected annual growth rates (2–4 percent) for the reintroduced population of grizzly bears in the rule, particularly with a starting population of only 25 bears.

*Response:* To estimate the number of reintroduced bears needed to reach an initial population of 25 bears, we used the survival rates of bears placed in the CYE through augmentation. This survival rate of CYE augmented bears is the best available information for the initial phase of NCE reintroduction. We use the 2–4 percent projected annual growth rate as only a range of possible growth rates based on other populations in the CYE, GYE, NCDE, and Selkirk Ecosystem. Once the population reaches 25 bears, the annual growth rate will be largely

dependent upon reproduction and survival of those 25 bears with occasional additions to replace bears lost due to mortality or to maintain genetic diversity.

*Comment:* A commenter suggested including additional metrics to emphasize grizzly bear mortality and adaptation resulting from climate-induced stressors. They suggested the following potential metrics: availability of food source susceptible to adverse effects due to climate change such as whitebark pine, body fat composition, hibernation den entry and exit patterns, length and elevation of hibernation, and climate-change-induced grizzly bear habitat changes.

*Response:* We will monitor the reintroduced population (see *Monitoring and Evaluation*, below). If we observe changes to bear mortality rates or other characteristics mentioned in this comment, we may adjust our management or monitoring accordingly to ensure conservation of the population (see *Adaptive Management*, below).

*Comment:* One commenter stated that the 10(j) rule does not allow State game agencies to manage the population of grizzly bears from the time of reintroduction to when population goals are met. They indicated there is too much time between when the Federal Government releases control to States and the implementation of a management plan.

*Response:* The Service retains the lead in management of grizzly bears in the NEP as they are part of the overall efforts to recover the federally listed grizzly bear in the United States. The Service will continue to partner with the WDFW and coordinate with the IGBC as the Service implements the 10(j) rule. The Service expects this collaborative management to occur until the grizzly bear is recovered and no longer requires listing under the Act. States that seek to manage grizzly bears can speed that timeline to delisting by supporting recovery efforts, including providing State management plans and regulations that will protect the grizzly bear in absence of the Act's protection.

*Comment:* A commenter suggested that a faster timeline for the translocation of bears may be better biologically and more cost effective than the 5–10 years proposed.

*Response:* The capture of bears within specific sex/age categories and bears with no history of conflicts limits the number of bears available or able to be captured in a given year. The adaptive management framework provides an opportunity to adjust our methods as results indicate.

*Comment:* Commenters asked what actions will be taken to ensure that relocated bears remain in the relocation area, requested more clarification about agency roles and responsibilities for the management of grizzly bears that leave the NEP area or Washington State, and expressed concern about the safety of bears emigrating into neighboring States in the event of a delisting of other distinct population segments.

*Response:* If a grizzly bear needs to be relocated within the NEP, relocation sites will be identified in remote areas away from homes, developed areas, and concentrated human use (see *Management Restrictions, Protective Measures, and Other Special Management*, below). Relocated grizzly bears will be able to move freely, and the location of collared bears will be monitored via radio collars. Grizzly bears that come into conflict may be relocated to remote locations as warranted based on the type of conflict involved. Some reintroduced bears will likely leave the NCE, but due to the large distances and relatively low landscape permeability of the habitat between reintroduction areas and surrounding States, we think few bears will emigrate into adjacent States in the near future. However, if a grizzly bear from the NCE migrates into adjacent States, it will be managed by State, Federal, or Tribal authorities based on the listing status of bears in that location. Grizzly bears from the U.S. portion of the NCE emigrating into Canada will be managed by Canadian authorities.

*Comment:* One commenter said the Service should commit to returning dispersing grizzly bears back to the NEP area and allow other agencies to facilitate the return of such bears to the NEP area.

*Response:* Aside from grizzly bears that may move north to the NCE in Canada, it is unlikely that reintroduced grizzly bears will disperse outside of the NEP in the near future due to

the limited habitat connections and to human barriers. However, in the Cabinet Mountains augmentation program, several translocated bears left the target area, likely in attempt to return home. Some translocated bears in the NCE will likely attempt to travel home; however, the distance to potential source populations is much greater than in the Cabinet Mountains program, which may limit dispersal attempts. The NCE in the United States contains large blocks of unoccupied suitable habitat with adequate food resources and relatively low landscape permeability to areas outside of the NEP area. In the unlikely event that grizzly bears move outside of the U.S. portion of the NEP during population establishment, we will work with the relevant authorities to determine the best course of action given the specific context of the situation.

*Comment:* Commenters stated that notification on release sites and dates, and updates on the movement of collared bears, must be shared with agricultural producers. One commenter expressed concerns about collar technology not providing real-time data for proactive grizzly bear management. One commenter provided suggestions on how translocated bears should be monitored, pairing radio-transmitting Very High Frequency (VHF) devices with Global Navigation Satellite System Ultra High Frequency devices. Another commenter asked if translocated bears would have ear tags.

*Response:* Prior to releases, the Service will coordinate with relevant land management agencies, including local staff, to ensure that no people or livestock are in close proximity to release sites. The Service will provide periodic updates on bear movements to the public, and for situations where collared grizzly bears are in areas likely to result in conflict, the Service or the authorized agency will work closely with the affected parties to reduce the potential for conflict. If collar data is available for a bear involved in conflict, current technology often allows managers to find the bear from the ground and track its movements in real time. Remote monitoring is limited by the frequency of satellite fixes (a tradeoff to battery life); therefore, bear location information is more delayed. GPS radio telemetry devices currently used by the Service

already have a VHF component that can provide other means of radio tracking in the event of a satellite transmission failure. Translocated bears will have ear tags.

*Comment:* A commenter stated that a quarantine and decontamination protocol should be established for any bears considered for translocation to prevent the spread of noxious weeds.

*Response:* Grizzly bears selected for translocation will typically come from backcountry areas that are limited in invasive weed presence. Bears will be held in a culvert trap after capture and during transport, which should allow any ingested material to pass through the gastrointestinal tract and be voided prior to release.

*Comment:* A commenter requested that a management plan be developed to ensure a smooth and timely transition from Federal management under the Act to State management upon reaching grizzly bear population objectives.

*Response:* As stated in the final rule, if grizzly bears are recovered and delisted under the Act, the experimental population designation and associated regulation will also be removed as part of the delisting rulemaking. In the event grizzly bears are considered for delisting due to recovery, we will work with the appropriate States and Tribes to develop plans for a smooth and timely transition of management responsibilities.

*Comment:* A commenter suggested that bears with a history of human contact may be better suited for translocation than those without.

*Response:* Bears with a history of human contact may be more prone to seek out anthropogenic foods and come into conflict. We want to give reintroduced bears the best chance to act as wild bears and avoid humans and human-occupied areas. Therefore, we retain the bear selection criteria described in *Effects on Wild Populations*.

*Comment:* Multiple commenters questioned if the NEP might be modified based on various factors. One commenter asked whether, if public tolerance rises to sufficient levels over the course of the restoration, could the ESA listing status of the population be changed. Another commenter noted that if bear mortality is too high the population will not be able to recover and

suggests a threshold of zero human-caused mortalities in Management Area A. Yet another commenter questioned if the reintroduction effort would be stopped or the population re-designated as essential if the mortality reaches a certain threshold.

*Response:* As stated in the final rule, we will consider removing the NEP designation only if (a) the reintroduction has not been successful, in which case the NEP boundaries might be altered or the regulations in the rule might be removed; or (b) the grizzly bear is recovered and delisted in accordance with the Act (see *Exit Strategy*, below). While zero human-caused mortalities is best, zero mortalities may not be practical given the need to protect human safety and property, and due to accidental mortalities (e.g., vehicle collisions). As discussed above, the recovery plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones. Because we anticipate the NCE population to remain small for the near future, we will attempt to keep human-caused mortality to zero. If grizzly bears of the NEP experience unexpectedly high natural mortality, if donor bears are not available, or if we conclude that we and our partners have insufficient funding for an extended period to support management of the NEP, we may consider ending the releases and removing the NEP designation. This would be done only after coordination with partners and a new public process where we would evaluate the NEP designation before making any decisions to exit the restoration program and remove or revise the 10(j) rule as appropriate.

*Comment:* One commenter requested that the 10(j) rule include an “escape clause” that authorizes the State to lethally remove all grizzly bears in the NEP if the Service’s nonessential determination for the NEP is at risk due to litigation challenging that determination.

*Response:* The Service does not consider an “escape clause” appropriate for the NCE grizzly bear NEP. Lethal removal of all grizzly bears of the NEP is inconsistent with our goal of restoring grizzly bears to the NCE. If litigation results in the Service being required to reevaluate its nonessential determination for the NCE experimental population, we will evaluate our management options at that time.

*Comment:* Commenters stated that we cannot designate an experimental population because the NCE is not outside of the current range or wholly geographically separate from nonexperimental populations. One commenter cited the possible presence of three female grizzly bears north of the border in British Columbia. Another commenter stated that the NCE includes land in Canada and, therefore, introducing an experimental population of grizzly bears lacks justification under the Act because it would not be wholly geographically separate from other populations of the species.

*Response:* In our most recent status review, we concluded that the NCE Recovery Zone no longer contains a grizzly bear population (88 FR 41560 at 41579, June 27, 2023). We summarize why this experimental population designation would be wholly separate from nonexperimental populations in the *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* section, below).

*Comment:* One commenter stated that the proposal to make the 10(j) rule's management provisions effective regardless of whether any reintroduction of grizzly bears into the NCE has occurred yet is inconsistent with section 10(j) of the Act and would violate NEPA because this was not evaluated in the draft EIS.

*Response:* The 10(j) rule, consistent with the Act, defines how the NEP can be identified, in this case by geographic area—the NEP area. This is also consistent with the NEPA analysis, which has an alternative (Alternative C) that includes restoration of grizzly bears with a 10(j) nonessential population designation using geographic location to identify members of the NEP. Nevertheless, in response to this comment, we carefully reviewed how we will treat any bears in the NEP area before and after translocation and have determined that it is appropriate to change our approach.

The Act and our regulations define an experimental population as a population (and any offspring arising solely therefrom) authorized for release as experimental, but only when and at such times as the population is wholly separate geographically from nonexperimental

populations. Likewise, experimental population releases are required to be outside the current range of the species, and the Act and our regulations require that we provide a means to identify the experimental population. The purpose of these provisions is to ensure that nonexperimental populations do not receive the reduced protections associated with the NEP designation (49 FR 33885, August 27, 1984). Based on the Act, our regulations, and the legislative history, we have determined that the experimental population designation should not apply before any individuals are released.

Therefore, the Service has changed its approach in this final rule to better align with the intent and purpose of identifying the experimental population, as reflected in our regulations. Any grizzly bears that are found in the NCE NEP area before the Service has translocated grizzly bears into the NEP area will be managed in accordance with the 4(d) rule. However, after our initial release of one or more grizzly bears into the NEP area, any grizzly bears—including those moving from Canada into the NEP area—will be treated as part of the NEP while they are present within the NEP area, with all of the associated ESA protections and exceptions that apply to the experimental population. As discussed under *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?*, we have concluded that it is unlikely that bears will move into the NEP area from other U.S. populations and it is, therefore, reasonable that any bears found after the initial release originated from the release.

*Comment:* One commenter requested that the EIS and 10(j) rulemaking process be put on hold until 12-month findings are issued by the Service in response to petitions requesting the Service delist grizzly bears from the Act in the GYE and NCDE.

*Response:* The Service's response to petitions requesting that we remove the grizzly bear from the List of Endangered and Threatened Wildlife is outside the scope of the rule. The 10(j) rule does not preclude revisions to the listed entity. If the Service revises the grizzly bear listed entity, the effect on this NEP, if any, will be addressed at that time.

*Comment:* One commenter stated that, during grizzly bear mating seasons, a moratorium on off-highway vehicle (OHV) use should be enforced to ensure that the grizzly bears have the best chance of reproducing.

*Response:* Management Area A, which is the core area targeted for recovery of grizzly bears, is already largely composed of designated wilderness, which precludes motorized access generally. In addition, for those areas outside of wilderness, the ‘no net loss’ agreement by NPS and USFS within Management Area A will provide for the habitat security needed in support of grizzly bears in this portion of the NEP area. A moratorium on OHV use is not necessary to support the restoration program in the NCE.

## **Final Rule Issued Under Section 10(j) of the Act**

### **Background and Biological Information**

We provide detailed background information on grizzly bears in a separate Species Status Assessment (SSA) (USFWS 2022, entire). Information in the SSA is relevant to reintroduction efforts for grizzly bears that may be undertaken in Washington, and it can be found along with this final rule at <https://www.regulations.gov> in Docket No. FWS–R1–ES–2023–0074 (see *Supporting and Related Material*). We summarize relevant information from the SSA below.

#### ***Taxonomy and Species Description***

Grizzly bears are a member of the brown bear species (*U. arctos*) that occurs in North America, Europe, and Asia. In the lower 48 States, the grizzly bear subspecies occurs in a variety of habitat types in portions of Idaho, Montana, Washington, and Wyoming. Grizzly bears weigh up to 800 pounds (363 kilograms) and live more than 25 years in the wild. Grizzly bears are light brown to nearly black and are so named for their “grizzled” coats with silver or golden tips (USFWS 2022, p. 40).

#### ***Historical and Current Range***

Historically, grizzly bears occurred throughout much of the western half of the lower 48 United States, central Mexico, western Canada, and most of Alaska. Prior to European settlement, an estimated 50,000 grizzly bears were distributed in one large contiguous area throughout all or portions of 18 western States (i.e., Washington, Oregon, California, Idaho, Montana, Wyoming, Nevada, Colorado, Utah, New Mexico, Arizona, North Dakota, South Dakota, Minnesota, Nebraska, Kansas, Oklahoma, and Texas). Populations declined in the late 1800s with the arrival of European settlers, government-funded bounty programs, and the conversion of habitats to agricultural uses. Grizzly bears were reduced to less than 2 percent of their former range in the lower 48 States by the time the species was listed as a threatened species under the Act in 1975, with an estimated population (in the lower 48 States) of 700 to 800 individuals (USFWS 2022, p. 4). The grizzly bear is listed under the Act in the conterminous United States, which comprises the lower 48 States. Unless specified otherwise, we use the term “the grizzly bear in the lower 48 States” to refer to the entity currently listed as a threatened species under the Act.

Since their listing under the Act, grizzly bear populations in the lower 48 States have expanded in number and range. Current populations combined contain approximately 2,200 bears and occupy portions of Idaho, Montana, Wyoming, and Washington. Outside the lower 48 States, approximately 55,000 grizzly bears exist in the largely unsettled areas of Alaska and western Canada.

### ***Grizzly Bear Ecosystems and Recovery Zones***

The recovery plan refers to six grizzly bear ecosystems identified to target the species’ recovery (USFWS 1993, p. 10). Currently, approximately 2,200 grizzly bears exist primarily in 4 ecosystems in the lower 48 States: the NCDE, the GYE, the CYE, and the Selkirk Ecosystem. There are no known grizzly bear populations in the remaining two ecosystems, the NCE and BE, nor any known populations outside these ecosystems, although we have documented bears, primarily solitary, outside the NCE and BE. Current populations in the NCDE, Selkirk

Ecosystem, and CYE extend into Canada to varying degrees. Although there is currently no known population in the NCE, it constitutes a large block of contiguous habitat that spans the international border. The Service has not explicitly defined ecosystem boundaries, but we have identified recovery zones at the core of each ecosystem (USFWS 2022, p. 56) (figure 1).

Therefore, each recovery zone pertains to a specific area within the larger ecosystem.

At the time of the original recovery plan, grizzly bear distribution within the lower 48 States was primarily within and around areas identified as recovery zones (USFWS 1993, pp. 10–13, 17–18). The Service identified the six recovery zones, which correspond with the six ecosystems. These recovery zones and the most recent grizzly bear population estimates for each zone are as follows:

(1) The GYE Recovery Zone in northwestern Wyoming, eastern Idaho, and southwestern Montana (9,200 mi<sup>2</sup> (24,000 km<sup>2</sup>)) at approximately 965 individuals inside the Demographic Monitoring Area (Gould et al. 2023, p. 37);

(2) the NCDE Recovery Zone of north-central Montana (9,600 mi<sup>2</sup> (25,000 km<sup>2</sup>)) at approximately 1,138 individuals (Costello et al. 2023, p. 10);

(3) the NCE Recovery Zone of north-central Washington (9,500 mi<sup>2</sup> (25,000 km<sup>2</sup>)), although no functional population of grizzly bears currently exists in the NCE (see *Status of Grizzly Bears in the North Cascades Ecosystem*, below);

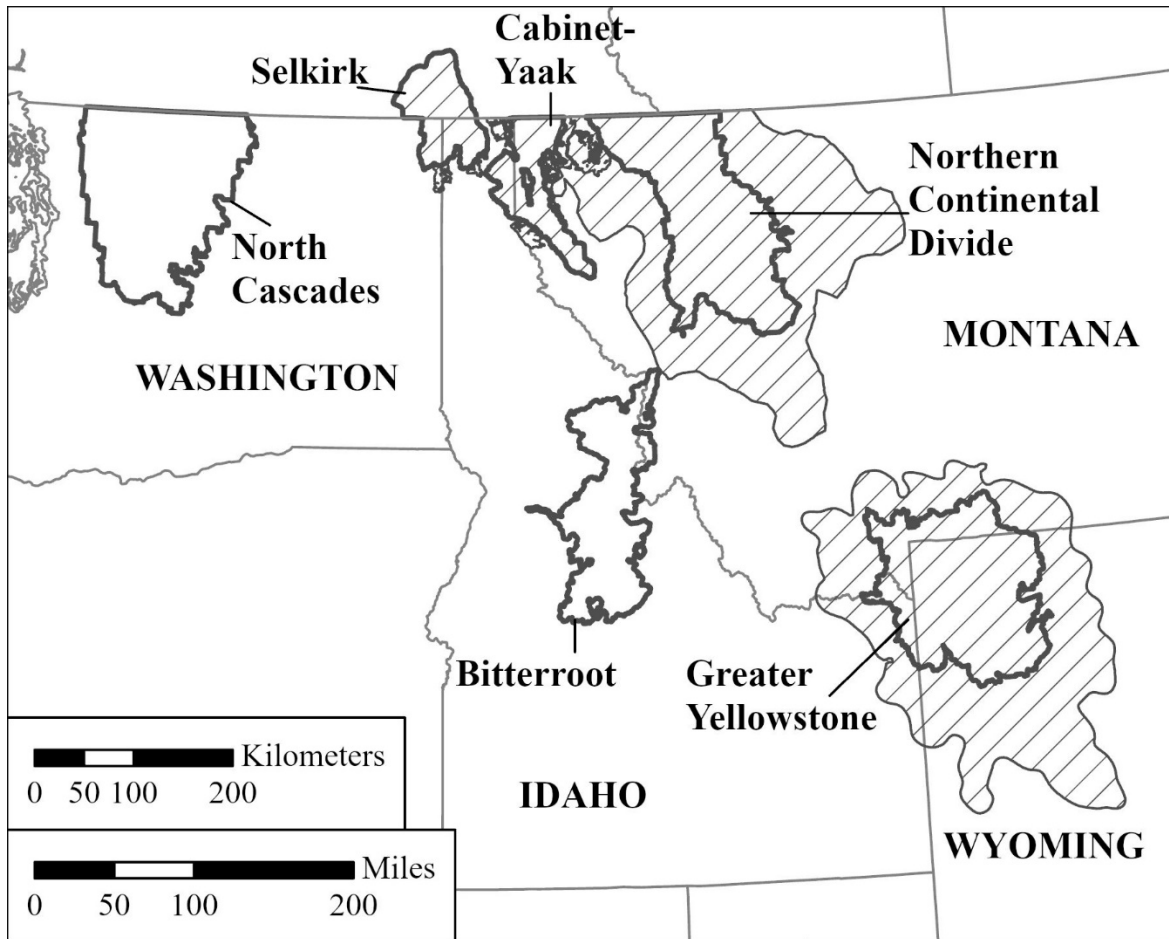
(4) the Selkirk Ecosystem Recovery Zone of northern Idaho, northeastern Washington, and southeastern British Columbia (2,200 mi<sup>2</sup> (5,700 km<sup>2</sup>)) at approximately 83 individuals (Proctor et al. 2012, p. 31). An updated British Columbia-only estimate of 69 was made in 2022 though it includes some bears with home ranges in the United States (Proctor et al. 2023 p. 2);

(5) the CYE Recovery Zone of northwestern Montana and northern Idaho (2,600 mi<sup>2</sup> (6,700 km<sup>2</sup>)) at approximately 60–65 bears (Kasworm et al. 2023a, p. 43); and

(6) the BE Recovery Zone of central Idaho and western Montana (5,830 mi<sup>2</sup> (15,100 km<sup>2</sup>)), although no functional population of grizzly bears currently exists in the BE.

*NCE and NCE Recovery Zone Relation to the Experimental Population*

Although the Service considers the North Cascades *Ecosystem* to include areas within Canada, the North Cascades *Recovery Zone* is a component of the ecosystem and occurs only within the United States. Throughout this final rule, we will reference the broader North Cascades Ecosystem, which includes habitat in Canada, as the “NCE” and reference its recovery zone (solely within the United States) as the “NCE Recovery Zone.” The nonessential experimental population area (see “Experimental Population” below) in this rulemaking action encompasses the entire NCE Recovery Zone and the portion of the larger NCE within the United States.






-  Recovery Zones
-  Estimated occupied range lower-48 States
-  State boundaries

Figure 1. Current estimated distribution of grizzly bears in the lower 48 States and grizzly bear recovery zones based on 2008–2022 data.

### ***Behavior and Life History***

Adult grizzly bears are normally solitary except when females have dependent young, but they are not territorial and home ranges of adult bears frequently overlap. Home range sizes vary among ecosystems because of population densities and habitat productivity. Average home range size for males varies from 183 to 835 mi<sup>2</sup> (475–2,162 km<sup>2</sup>) and for females from 50 to 138 mi<sup>2</sup> (130–358 km<sup>2</sup>) across the recovery areas in the United States (USFWS 2022, p. 44).

Grizzly bears have a promiscuous mating system. Mating occurs from May through July with a peak in mid-June. Average age of first reproduction can vary from 3 to 8 years of age. Litter sizes range from one to four cubs, although two is the most common. Cubs are typically born in the den in late January or early February and typically remain with the female for 2.5 years, making the average time between litters (i.e., the interbirth interval) approximately 3 years. Grizzly bears have one of the slowest reproductive rates among terrestrial mammals, resulting primarily from the late age of first reproduction, small average litter size, and the long interbirth interval. A population is made up of numerous overlapping generations. It is possible for mothers, daughters, and granddaughters to be reproductively active at the same time. Grizzly bear females typically cease reproducing some time in their mid-to-late 20s (Schwartz et al. 2003a, pp. 109–110; USFWS 2022, pp. 44–45).

Grizzly bears hibernate for 4 to 6 months each year in winter to cope with seasons of low food abundance. Grizzly bears in the lower 48 States typically enter dens between October and December. In the 2 to 4 months before den entry, bears increase their food intake dramatically during a process called hyperphagia. Grizzly bears must consume foods rich in protein and carbohydrates during this time (between August and November) in order to build up fat reserves to survive denning and post-denning periods. Grizzly bears typically hibernate alone in dens, except for females with young and subadult siblings who occasionally hibernate together. Most dens are located at higher elevations, above 8,000 feet (ft) (2,500 meters (m)) in the GYE and

above 6,400 ft (1,942 m) in the NCDE and on slopes ranging from 30 to 60 degrees. Grizzly bears exit their dens between March and May; females with cubs exit later than other adults (Mace and Waller 1997, p. 37; Haroldson et al. 2002, p. 29; Kasworm et al. 2021a, pp. 51–54; Kasworm et al. 2021b, pp. 33–36; USFWS 2022, pp. 45–46).

When not hibernating, grizzly bears use a variety of cover types to rest and shelter. Grizzly bears often select bed sites with horizontal and vertical cover, especially at day bed sites, suggesting that bed site selection is important for concealment from potential threats. The relative importance of cover to grizzly bears was documented in a 4-year study of grizzly bears in the GYE. Of 2,261 aerial radio signals from 46 instrumented bears, 90 percent were located in forest cover too dense to observe the bear (Blanchard 1978, pp. 27–29).

Grizzly bears make seasonal movements within their home ranges to locations where food is abundant (e.g., ungulate winter ranges and calving areas, talus slopes). They are opportunistic omnivores and display great diet plasticity, even within a population, shifting their diet according to foods that are most nutritious (i.e., high in fat, protein, and/or carbohydrates) and available (USFWS 2022, pp. 47–48). They will consume almost any food available including living or dead mammals or fish, insects, worms, plants, human-related foods, garbage, livestock, and agricultural crops. Cattle and sheep depredation rates are generally higher where bear densities are higher and in later summer months (Wells et al. 2018, pp. 5–6). In areas where animal matter is less available, berries, grasses, roots, bulbs, tubers, seeds, and fungi are important in meeting protein and caloric requirements (USFWS 2022, pp. 47–48; LeFranc et al. 1987, pp. 111–114; Schwartz et al. 2003b, pp. 568–569).

In general, an individual grizzly bear's habitat needs and daily movements are largely driven by the search for food, water, mates, cover, security, or den sites. Grizzly bears display dietary adjustability across ecosystems and exploit a broad diversity of habitat types. Large intact blocks of land directly influence the quality and quantity of the species' resource needs, highlighting the importance of this habitat factor to all life stages. The larger, more intact, and

ecologically diverse the block of land, it follows that high-caloric foods, dens, and cover would be more readily available to individuals. Grizzly bears also need large, intact blocks of land with limited human influence and thus low potential for displacement and human–bear or livestock–bear conflict that could result in human-caused mortality. Grizzly bears in the lower 48 States need multiple resilient ecosystems distributed across a geographical area to reduce the risk of catastrophic events. A wide distribution of multiple ecosystems ensures that all ecosystems are not exposed to the same catastrophic event at the same time, thereby reducing risk to the species. Grizzly bears also need genetic and ecological diversity across their range in the lower 48 States to adapt to changing environmental conditions (USFWS 2022, pp. 98–100).

Kasworm et al. (2014, entire) evaluated grizzly bear food data from the CYE. The CYE has a Pacific maritime climate that may be similar to the climate in the central and western Cascade Mountains. Therefore, an evaluation of grizzly bear food selection in the CYE could be useful for predicting food habits of grizzly bears in the NCE. Huckleberry (*Vaccinium* spp.) is an important component of the grizzly bear’s diet in the CYE. Data were collected over several years, using both isotope analysis on hairs and scat. Isotope analysis showed a highly variable use of meat (6 percent to 37 percent of diet), and that meat was found in many scats in some months (40 percent of dry matter in April and May), including fall (carrion). Overall, mammals and shrubs (berries) constituted 64 percent of total dry matter annually. In a study analyzing grizzly bear habitat selection, fitness, and density, huckleberry patches were the most influential bottom-up factors (Proctor et al. 2023, p. 48). In a diet study of grizzly bears in several western ecosystems, researchers found that adult male grizzly bears were more carnivorous than any other age or sex class, with diets composed of around 70 percent meat (Jacoby et al. 1999, pp. 924–926). Other sex and age groups of grizzly bears displayed diets similar to black bears living in the same areas reflective of diets described by Kasworm et al. 2014 (Jacoby et al. 1999, pp. 924–926). Grizzly bear source populations may also include interior British Columbia. Grizzly bear female diets in the interior of British Columbia were based largely on plant material (58

percent) and terrestrial meat (31 percent) (Adams et al. 2017, pp. 7–10). Male diets were similar but had a higher proportion of plants (63 percent) and less terrestrial meat (8 percent). These amounts are similar to those of the CYE diets, which were largely plants (66 percent) and a lesser amount of terrestrial meat (26 percent).

### *Threats*

Excessive human-caused mortality, including “indiscriminate illegal killing,” defense of life and property mortality, accidental mortality, and management removal, was the primary factor contributing to rangewide grizzly bear decline during the 19th and 20th centuries, eventually leading to their listing as a threatened species in 1975 (40 FR 31734, July 28, 1975). Habitat destruction, modification, and isolation and conflict resulting from human access to formerly secure habitat were also identified as threats in the 1975 listing. In the State of Washington, the northwest fur trade was probably the primary driver of rapid grizzly bear decline in the period 1810–1870. In addition to the influx of trappers, resource extraction and livestock production fragmented and degraded grizzly bear habitat in Washington; a mining boom in the early 1800s created a rapid increase in human activity and habitat alteration to accommodate mining infrastructure and human settlements. In the NCE, grizzly bears were also regularly shot and removed by herders of sheep and cattle, and by the late 1800s habitat fragmentation and isolation of the ecosystem accelerated due to the dominance of logging, as well as the expansion of rural development, road and railway access, and orchards (Almack et al. 1993, p. 3; Rine et al. 2020, pp. 5–13; USFWS 2022, p. 143).

Though human-caused mortality has been greatly reduced since the 1800s, human-caused mortality is still currently the primary factor affecting grizzly bears at both the individual and ecosystem levels (USFWS 2022, p. 7). However, mortality thresholds currently in place have mitigated this threat such that grizzly bear populations have increased in number and range in the lower 48 States. Human-caused mortalities of grizzly bears currently include: (1) management removals; (2) defense-of-life-killings; (3) illegal killings or poaching; (4) accidental killings; and

(5) mistaken-identity killing (USFWS 2022, pp. 144–145). Human activities are the primary factor currently impacting habitat security and the ability of bears to find and access foods, mates, cover, and den sites. Users of public lands and recreationists in grizzly bear habitat often increase the risk of human–bear conflict by leaving containers of food, garbage, and other bear attractants open or unstored (Gunther et al. 2004, pp. 13–14). However, road access to grizzly bear habitat likely poses the most imminent current threat to grizzly bears by reducing the availability of the necessary large, intact blocks of land; increasing disturbance and displacement of individual bears through increased noise, activity, or human presence; and increasing mortality of individual bears through vehicle strikes or other activities associated with human-caused mortality (Proctor et al. 2019, p. 19; Schwartz et al. 2010, p. 661, USFWS 2022, p. 117).

While existing motorized access levels are unknown on National Forest System lands within the NCE (USFWS 2022, p. 212), there have been prior assessments (Lyons et al. 2018, entire; Gaines et al. 2003, entire; IGBC-NCE 2001, entire). However, the primary factors related to past destruction and modification of grizzly bear habitat have been reduced through changes in management practices that have been formally incorporated into regulatory documents. In the NCE Recovery Zone, approximately 64 percent of the public lands are designated Wilderness Areas or IRAs, and the remaining Federal lands are managed under a ‘no net loss’ agreement that supports core habitat. Across the grizzly bear range, all data collected by Federal, State, and Tribal agencies is used to help identify where human–bear conflicts occur and compare trends in locations, sources, land ownership, and types of conflicts to inform proactive management of human–bear conflicts.

Fire is a natural part of all grizzly bear ecosystems, but fire frequency, severity, and burned area may increase with late-summer droughts predicted under climate change scenarios (Nitschke and Innes 2008, p. 853; McWethy et al. 2010, p. 55; Halofsky et al. 2020, p. 10; Whitlock et al. 2017; pp. 123–131, 216, XXXII). In the North Cascades, wildfire is projected to burn nearly four times more area by the 2080s compared to the historical period of 1980 to 2006

(Halofsky et al. 2020, p. 10). High-intensity fires may reduce grizzly bear habitat quality immediately afterwards by decreasing hiding cover, changing movement patterns, and delaying regrowth of vegetation. Predators with large territories, like grizzly bears, have more flexibility to exploit resources in burned and unburned landscapes (as cited in Nimmo et al. 2019, p. 986). Moreover, in conifer-dominated forest ecosystems, wildfires transition forest to earlier succession stages, which can increase prey densities due to increases in the availability of vegetative food resources (Snobl et al. 2022, pp. 14–15; Lyons et al. 2018, p. 10).

Even if cover is lost, movement is changed, and vegetation growth is delayed, depending on their size and severity, fires may have only short-term adverse impacts on grizzly bears while providing more long-term benefits. For example, fire plays an important role in maintaining an open forest canopy, shrub fields, and meadows that provide for grizzly bear food resources, such as increased production of forbs, root crops, and berries (Hamer and Herrero 1987, pp. 183–185; Blanchard and Knight 1996, p. 121; Apps et al. 2004, p. 148; Pengelly and Hamer 2006, p. 129). Because grizzly bears have shown resiliency to changes in vegetation resulting from fires, we do not expect altered fire regimes predicted under most climate change scenarios to have significant negative impacts on grizzly bear survival or reproduction, despite the potential short-term effects on vegetation important to grizzly bears. Climate models predict that the NCE will experience substantial vegetation changes from longer growing seasons, drier summer months and wetter winter and spring months, decreased snowpack, and an increased number of disturbance events that are expected to improve food resources for grizzly bears and thus increase habitat quality (Ransom et al. 2018, p. 26). Modeling of grizzly bear habitat in the North Cascades under various projected climate change scenarios shows increased carrying capacity and increased potential grizzly bear density estimates under all scenarios (Ransom et al. 2023, pp. 6–8; USFWS 2022, table 27, p. 243). The complex relationship between changes in climate, natural processes, and natural and anthropogenic features will ultimately determine the future quality of grizzly bear habitat across the ecosystem (Ransom et al. 2018, entire).

## *Status of Grizzly Bears in the North Cascades Ecosystem*

In the Service's 2023 status review, we determined that the NCE no longer contained a population of grizzly bears (88 FR 41560 at 41579, June 27, 2023). We also indicated that we were continuing to evaluate options for restoring grizzly bears to the NCE (88 FR 41560 at 41580, June 27, 2023).

Factors contributing to the extirpation of a functional population of grizzly bears from the NCE include historical habitat loss and fragmentation and human-caused mortality (USFWS 2022, pp. 49–51). Historical records indicate that grizzly bears once occurred throughout the NCE (Bjorklund 1980, p. 7; Sullivan 1983 p. 4; Almack et al. 1993 p. 2, Rine et al. 2020, pp. 10–13). There has been no confirmed evidence of grizzly bears within the U.S. portion of the NCE since 1996 when an individual grizzly bear was observed on the southeastern side of Glacier Peak within the Glacier Peak Wilderness Area in the northern Cascade Mountains of Washington State. The most recent direct evidence of reproduction in the U.S. portion of the NCE was a confirmed observation of a female and cub on Lake Chelan in 1991 (Almack et al. 1993, p. 34).

In the United States, most habitat within the NCE Recovery Zone is federally owned and managed by the NPS including North Cascades National Park, Ross Lake National Recreation Area (NRA), and Lake Chelan NRA, and the USFS including parts of the Mount Baker Snoqualmie NF and Okanogan-Wenatchee NF. Sixty-four percent of the NCE Recovery Zone is protected from motorized routes due to designation as Wilderness or protected from roads due to designation as IRAs. Despite the lack of recent observations, five studies have evaluated portions of the NCE for grizzly bear habitat suitability (Agee et al. 1989, entire; Almack et al. 1993, entire; Gaines et al. 1994, entire; Lyons et al. 2018, entire; Ransom et al. 2023, entire), and all conclude that the U.S. portion of the NCE has the habitat resources essential for the maintenance of a grizzly bear population.

Grizzly bear populations in Canada are not part of the U.S. listed grizzly bear entity. However, suitable habitat within the NCE spans the international border. The NCE within

Canada is relatively isolated from other ecosystems with grizzly bear populations in Canada (Morgan et al. 2019, p. 3). The current range of grizzly bears in British Columbia is divided into 55 grizzly bear population units (GBPUs) that are used for monitoring and management. The British Columbia North Cascades GBPU is immediately north of the U.S. portion of the NCE and is isolated and small, with several surveys (DNA sampling, live-trapping effort, aerial survey for a helicopter darting attempt) between 1998 and 2003 yielding only one DNA sample and one sighting that included a female with offspring (USFWS 2022, appendix E, p. 321). To the north and west of this GBPU lie the Stein-Nahatlach and Garibaldi-Pit GBPUs, which are also small and largely isolated with estimated female populations of 12 and 2, respectively (Morgan et al. 2019, p. 19). All three of these units are ranked as being of extreme management concern (Morgan et al. 2019, p. 21) using the NatureServe methodology, integrating rarity (e.g., range extent, population size), population trend, and severity of threats to produce a conservation status rank for discrete geographical units (Morgan et al. 2019, p. 6). The International Union for the Conservation of Nature classified these populations as critically endangered on their Red List due to small size and isolation (McLellan et al. 2017, p. 2). The Kettle-Granby GBPU lies 60 mi (97 km) to the northeast of the NCE across the Okanogan River in British Columbia with an estimated female population of 48 grizzly bears in 2018 (Morgan et al. 2019, p. 19). Based on this information there appears to be little demographic or genetic connectivity from other GBPUs to the North Cascades GBPU or to the NCE Recovery Zone.

### ***Recovery Efforts to Date***

In accordance with section 4(f)(1) of the Act, the Service completed the grizzly bear recovery plan in 1982 (USFWS 1982, entire) and released a revised recovery plan in 1993 (USFWS 1993, entire; other revisions and supplements affecting other populations can be found in ECOS). Recovery plans serve as “road maps” for species recovery—they lay out where we need to go and how to get there through specific actions. Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, other Federal agencies,

States, Tribes, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved.

In 1993, the Service revised the grizzly bear recovery plan to include additional tasks and new information that increased the focus and effectiveness of recovery efforts (USFWS 1993, pp. 41–58). In 1997, we released a supplemental chapter to the recovery plan to guide recovery in the NCE Recovery Zone (USFWS 1997, entire). In our recovery plan supplement for the NCE Recovery Zone, we outlined the following recovery goals for the U.S. portion of the NCE:

(1) that the population is large enough to offset some level of human-induced mortality despite foreseeable influences of demographic and environmental variation; and

(2) reproducing bears are distributed throughout the NCE Recovery Zone. Such a population may comprise 200–400 grizzly bears in the U.S. portion of the ecosystem (USFWS 1997, p. 3).

This supplement to the recovery plan supported fostering grizzly bear restoration in the NCE Recovery Zone, specifically identifying translocations as an alternative for recovering this population (USFWS 1997, pp. 24–25).

#### *Interagency Grizzly Bear Committee*

In 1983, the IGBC was established “to ensure recovery of viable grizzly bear populations and restoration of their habitats in the lower 48 States through interagency coordination of policy, planning, management and research” (IGBC 1983, entire). The IGBC consists of representatives from the Service, USFS, NPS, the Bureau of Land Management, the U.S. Geological Survey, and representatives of the State wildlife agencies of Idaho, Montana, Washington, and Wyoming. At the ecosystem level, Native American Tribes that manage grizzly bear habitat and county governments are represented, along with other partners.

The IGBC NCE subcommittee guides and coordinates habitat management and conflict prevention for grizzly bears in the NCE Recovery Zone (USFWS 1997, p. 8). In 1997, the North Cascades NP Superintendent and three NF Supervisors (Mount Baker Snoqualmie NF,

Okanogan NF, and Wenatchee NF) agreed to a ‘no net loss’ agreement within any bear management unit to protect and secure grizzly bear core area habitat in the NCE Recovery Zone (see USFS 1997, entire), and they have managed the NPS and National Forest System lands using that guidance since. Under this approach, “core area” is defined as the area more than 0.3 mi (500 m) from any open-motorized access route or high-use nonmotorized trail (more than 20 parties per week).

#### *Management Efforts in the NCE and NCE Recovery Zone*

A number of habitat management measures have been implemented within the NCE Recovery Zone to improve habitat connectivity, habitat security, and safety for grizzly bears and humans, in areas where encounters are likely. These measures include management of human access to grizzly bear habitat and improved sanitation and food storage measures to prevent or minimize human–grizzly bear conflict.

Management of human access is one of the most important and significant management strategies for grizzly bears (Proctor et al. 2019, pp. 22–33). It includes balancing the need for road and motorized trail access with providing secure areas for grizzly bears. Access management in the NCE Recovery Zone is guided by the ‘no net loss’ agreement described above (USFS 1997, entire). In simple terms, this approach indicates that if a road is constructed or opened to motorized travel, another road must be closed to motorized use in order to maintain core habitat. Essentially, the open motorized access network is managed for ‘no net loss’ of core area habitat, which can entail a variety of management strategies.

In an effort to minimize the potential for human-caused mortality of grizzly bears, substantial outreach efforts have been put in place by the NPS and USFS over the last 30 years to reduce unsecured attractants (e.g., garbage, anthropogenic food) and provide the public with tips on identifying and managing with grizzly bears on the landscape (e.g., Western Wildlife Outreach 2023; Braaten et al. 2013, pp. 7–8). The NPS has service-wide food storage regulations (36 CFR 2.2(a), 2.10(d), and 2.14(a)), including requiring campers to use food storage canisters

or park-provided food storage lockers at the North Cascades NPS Complex. The Colville NF has a forest-wide, seasonal (April 1 – December 1) food storage order in place. Mount Baker Snoqualmie NF has a forest-wide, year-round food storage order. Okanogan-Wenatchee NF does not currently have food storage restrictions; however, developing a food storage order is part of its 2024 Program of Work, and NF employees continue to place bear-resistant facilities, including food storage lockers, at campgrounds.

It is illegal to negligently feed, attempt to feed, or attract large carnivores to land or a building in Washington State (see Revised Code of Washington (RCW) 77.15.790). There are exceptions for individuals engaging in acceptable practices related to waste disposal, forestry, wildlife control, and farming or ranching operations. Any person who intentionally feeds or attempts to feed or attracts large carnivores to land or a building is guilty of a misdemeanor (see RCW 77.15.792). The WDFW has also implemented a regulation that requires black bear hunters to take and pass a bear identification test when hunting black bears in specific areas, with the intent of minimizing the potential for accidental killings of grizzly bears because of mistaken identification (WDFW 2023, p. 70).

#### *State and Canadian Protections*

Grizzly bears are State-listed as an endangered species in Washington (RCW 77.12.020; Washington Administrative Code 220–610–010; Lewis 2019, p. 1). In British Columbia, grizzly bears are ranked as “Special Concern” by both the British Columbia Conservation Data Centre and federally under Canada’s Species at Risk Act (B.C. Conservation Data Centre 2023; SARA 2018). The International Union for Conservation of Nature (IUCN) identifies four populations within British Columbia on the IUCN Red List of Threatened Species, including three that border Washington State with Red List Categories reflecting heightened extinction risk (North Cascades–Critically Endangered, South Selkirk–Vulnerable, and the Yahk/Yaak–Endangered, McLellan et al. 2016, pp. 1–2).

The feasibility of recovering grizzly bears in the Canadian portion of the NCE is under consideration in British Columbia. First Nations have declared grizzly bears within the North Cascades GBPU as in immediate need of restoration and protection (ONA 2014, entire; Piikani Nation 2018, entire). The British Columbia Government in collaboration with Canadian First Nations have established a Joint Nation partnership to outline population recovery objectives and strategies in a North Cascades Grizzly Bear Stewardship Strategy (in review). The team is also developing a communication strategy to assess public reception for recovery in the area. Additionally, the Provincial Government has identified management options for all grizzly bear populations as outlined in the British Columbia Grizzly Bear Stewardship Framework (in review). Should augmentation efforts occur in British Columbia, some grizzly bears reintroduced into the Canadian portion of the ecosystem may move into the NEP area in the United States, either as transients that return to Canada or that ultimately remain in the United States.

### **Statutory and Regulatory Framework**

Section 9 of the Act (16 U.S.C. 1538) sets forth the prohibitions afforded to species listed under the Act. Section 9 of the Act prohibits take of endangered wildlife. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for populations of listed species planned to be reintroduced to be designated as “experimental populations.” The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties by giving the Secretary of the Interior greater regulatory flexibility and discretion in managing the reintroduced species to encourage recovery in collaboration with partners, especially private landowners. The Secretary may designate as an experimental population a population of endangered or threatened species that will be released into habitat that is capable of supporting the experimental population outside the species’ current range. Under section 10(j) of the Act, we must make a determination as to whether or not an experimental population is essential to the continued existence of the species based on best available science. Our regulations define an essential population as one whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are classified as nonessential (50 CFR 17.80(b)).

We treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations under section 4(d) of the Act with respect to that population (50 CFR 17.82). We may apply any of the prohibitions of section 9 of the Act to the members of an experimental population, including the prohibitions against the sale or possession, import and export, or “take” (50 CFR 17.82). The designation as an experimental population allows us to develop tailored “take” prohibitions that are necessary and advisable to provide for the conservation of the species. The protective regulations adopted for an experimental population will contain applicable prohibitions as appropriate, and exceptions for that population, allowing us discretion in devising management programs to provide for the conservation of the species.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued

existence of a listed species or adversely modify its critical habitat. We treat an NEP as a threatened species when the population is located within the National Wildlife Refuge System (NWRS) or unit of the NPS, and those programs are required to consult with us under section 7(a)(2) of the Act (50 CFR 17.83; see 16 U.S.C. 1539 (j)(2)(C)(i)). When NEPs are located outside of an NWRS or NPS unit, for the purposes of section 7, we treat the population as proposed for listing and only sections 7(a)(1) (50 CFR 17.83) and 7(a)(4) (50 CFR 402.10) of the Act apply (50 CFR 17.83). In these instances, NEPs allow additional flexibility in managing the nonessential population because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find by regulation that such release will further the conservation of the species. In making such a finding the Service uses the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see *Effects on Wild Populations*, below);

(2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see *Likelihood of Population Establishment and Survival*, below);

(3) the relative effects that establishment of an experimental population will have on the recovery of the species (see *Effects of the Experimental Population on Grizzly Bear Recovery*, below); and

(4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see *Actions and Activities in Washington That May Affect Reintroduced Grizzly Bears*, below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

(1) appropriate means to identify the experimental population, including but not limited to its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population (see *Means To Identify the Experimental Population*, below);

(2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see *Findings*, below);

(3) management restrictions, protective measures, or other special management concerns for that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from nonexperimental populations (see *Management Restrictions, Protective Measures, and Other Special Management*, below); and

(4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see *Review and Evaluation of the Success or Failure of the NEP*, below).

Under 50 CFR 17.81(e), the Service must consult with appropriate State fish and wildlife agencies, affected Tribal governments, local government agencies, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules.

To the maximum extent practicable, rules issued under section 10(j) of the Act represent an agreement between the Service, the affected State and Federal agencies, Tribal governments, local governments, and persons holding any interest in land or water that may be affected by the establishment of an experimental population. Hereafter in this document, we refer to the regulations for establishing the NEP of the grizzly bear within the U.S. portion of the NCE as the “10(j) rule.”

## **Experimental Population**

### ***Experimental Population Area***

The geographic area for the grizzly bear NEP occurs within the U.S. portion of the NCE and encompasses the entire NCE Recovery Zone. It also includes all of Washington State except an area in northeastern Washington around the Selkirk Ecosystem Recovery Zone where there is currently a population of grizzly bears (see figure 2). The northeastern boundary of the NEP is defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington–Idaho border. We are designating an NEP area beyond the NCE Recovery Zone to allow management of grizzly bears within the NCE Recovery Zone as well as grizzly bears that move outside of the NCE Recovery Zone.

In the U.S. portion of the NCE, the majority of land is under Federal ownership managed primarily by the USFS, including portions of the Mount Baker Snoqualmie NF and the Okanogan-Wenatchee NF, and the NPS. The North Cascades NPS complex includes North Cascades NP, Ross Lake NRA, and Lake Chelan NRA.

In drawing the NEP area and management area boundaries, we considered the following: Those areas where a population of grizzly bears could be successfully established; an evaluation of the opportunities for grizzly bears to move between blocks of high-quality grizzly bear habitat in Washington (Singleton et al. 2004, p. 96, USFWS 2022, pp. 305–309, Kasworm et al. 2022a,

entire); the potential for human–bear conflicts; grizzly bear movement data from other populations; the location of the closest existing grizzly bear populations and historical observations of dispersers from those populations; ease of implementation (using readily discernible features for management area boundaries such as roads and Federal land ownership boundaries); and input from NPS, WDFW, USFS, and the public.

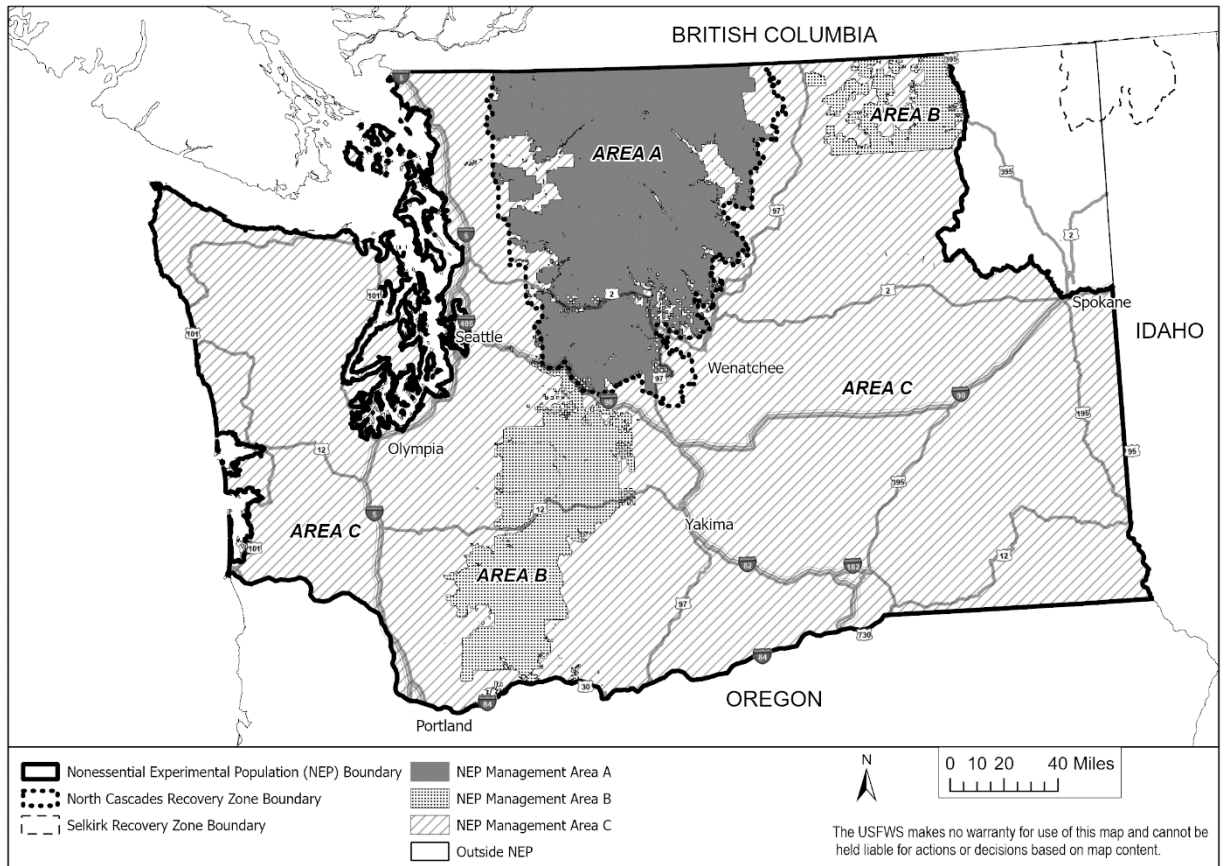


Figure 2. Map of grizzly bear North Cascades NEP and NEP management areas.

### *Management Areas*

Within the NEP area, we identified three management areas (see figure 2) based on suitability for occupancy by grizzly bears and the likelihood of human–bear conflicts, which are often associated with private lands. We are establishing these management areas to help focus grizzly bear conservation within the NCE Recovery Zone and to allow more flexible management in the remaining portion of the NEP. Details of the management regulations for

each management area are provided below in *Management Restrictions, Protective Measures, and Other Special Management*.

Management Area A includes the Mount Baker Snoqualmie NF, Okanogan-Wenatchee NF, and Colville NF north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades NPS complex. To define the Management Area A boundary, we used the NCE Recovery Zone but then excluded State-owned and private lands so that it is easily identifiable. Management Area A is the primary area for the experimental population restoration and serves as core habitat for survival, reproduction, and dispersal of the NEP. Management Area A primarily consists of remote Federal lands that support grizzly bear diet, habitat, and reproduction needs (see *Behavior and Life History* section above). Therefore, Management Area A serves as the core habitat for grizzly bear reintroductions, where all release sites would occur (see *Release Areas*, below).

Management Area B includes the Mount Baker Snoqualmie NF and Okanogan-Wenatchee NF south of Interstate 90, Gifford Pinchot NF, and Mount Rainier NP. Management Area B also would include the Colville NF and Okanogan-Wenatchee NF lands east of Washington State Route 97 within the experimental population boundary, though it is less likely that bears will disperse into this area due to the distance from Management Area A to the west. Management Area B is meant to accommodate natural movement or dispersal by grizzly bears. We expect some level of grizzly bear transience as well as occupancy in Management Area B because of the existing habitat on public lands with limited human influence, resulting in lower potential levels of human–bear conflict (due to food storage regulations and limited human-attractants).

Management Area C comprises all other lands in the NEP outside of Management Area A and B, including non-Federal lands within the NCE Recovery Zone. Although some areas within this management area are capable of supporting grizzly bears, Management Area C contains large areas that may be incompatible with grizzly bear presence due to high levels of

private land ownership and associated development and/or potential for bears to become involved in conflicts and resultant bear mortality. The intent of Management Area C is to allow more management flexibility to minimize impacts of grizzly bears on landowners and other members of the public.

The NEP area contains human infrastructure and activities that pose some risk to the success of the restoration effort from human-caused mortality of grizzly bears. These activities include both controllable and uncontrollable sources of mortality. Controllable sources of mortality are discretionary, can be limited by the managing agency, and include authorized take and direct agency control. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population size and include things such as natural mortalities, illegal take, and accidental deaths (e.g., vehicle collisions, capture-related mortalities, defense-of-life kills) (USFWS 2022, pp. 144–145). Accidental mortality caused by vehicle collision is difficult to control but is not anticipated to be a significant cause of mortality in the NCE. The main types of human-caused mortality in the GYE, NCDE, CYE, and Selkirk Ecosystem Recovery Zones result from human site conflicts (e.g., when grizzly bears are drawn to areas with unsecured chickens, garbage, or bird and livestock feed where individuals attempt to deter the bear or protect themselves), self-defense, mistaken-identification kills, and illegal kills, some of which can be partially mitigated through management actions (Servheen et al. 2004, p. 21; USFWS 2022, p. 144). We expect the same types of human-caused mortality identified within other ecosystems to occur within the NEP.

Despite these human-caused mortalities, grizzly bear populations in other ecosystems have continued to increase in size and expand their current distribution (USFWS 2022, pp. 167–168). The NEP would build on continuing success in recovering grizzly bears through longstanding cooperative and complementary programs by a number of Federal, State, and Tribal agencies. In particular, through coordination of policy, planning, management, and research, and communication between Federal, State, Tribal and Provincial agencies, the IGBC has proven to

be a successful model for agencies working cooperatively and coordinating recovery efforts over multiple jurisdictions; substantial progress has been made toward recovering the species in other ecosystems. With continued coordination through the IGBC NCE subcommittee, we do not expect Federal, State, Tribal, or private actions and activities in Washington to have significant adverse effects on grizzly bears within the NEP area.

For management of grizzly bears on Tribal lands, we expect to defer monitoring and management of grizzly bears, consistent with this 10(j) rule, to the relevant Tribe if they have the interest and capacity to undertake that management. Otherwise, we expect that the Service and/or other Federal and/or State bear management staff could assist in grizzly bear management on these Tribal lands. The Service would coordinate with the affected Tribe regarding Service grizzly bear management actions on Tribal lands and could develop a memorandum of understanding to further document expectations and roles for agency involvement on Tribal lands if requested.

Grizzly bears in Washington State that are not within the NEP area, i.e., grizzly bears that are within and around the Selkirk Ecosystem Recovery Zone (see figure 2), would not be subject to management under this final rule; they are subject to the existing species-specific rule for grizzly bears under section 4(d) of the Act, found at 50 CFR 17.40(b).

#### *Release Areas*

Grizzly bear release areas would be limited to Federal lands and include portions of North Cascades NP and Ross Lake NRA, administered by NPS, and Glacier Peak, Pasayten, and Stephen Mather Wilderness areas, administered by USFS. The Service will prioritize release sites on NPS lands but retains the option to conduct initial releases of grizzly bears on National Forest System lands if unforeseen circumstances prevent access to release sites on NPS lands (e.g., aircraft issues). We will work with WDFW and the associated land management partner (such as the USFS) to avoid administrative complications as appropriate. Primary release sites would be remote areas that could be accessed by helicopter and capable of accommodating

helicopter support staging areas (NPS and FWS 2024, p. 30). Secondary release sites would be remote areas that could be accessed by vehicle or boat transportation and capable of accommodating appropriate staging areas. Secondary release sites would be considered if helicopter sites were not available due to weather limitations affecting flight safety or due to other logistical issues. Staging areas would be identified in previously disturbed areas large enough for the safe landing of a helicopter, parking for a fuel truck, and any other grizzly bear transport and handling needs.

Release sites would be chosen based on habitat suitability, connectivity to other release sites within the NEP, and the need to have released grizzly bears in close proximity to one another to facilitate interaction and breeding. Additional criteria for acceptable release sites include the following:

- Areas that consist largely of high-quality seasonal habitat; specifically, areas that contain readily available berry-producing plants that are known grizzly bear foods.
- Areas that are largely roadless, are an adequate distance from high visitor use and motorized areas, and have low human use.
- Areas with a suitable helicopter landing site or a suitable vehicle- or boat-accessible site with little public use.

Sites for subsequent releases of grizzly bears would be chosen based on the criteria listed above and limited to Federal lands, unless otherwise authorized by relevant authorities and landowners. Future additional release sites would be informed by grizzly bear resource selection as determined through monitoring of grizzly bears previously released into the NEP.

#### *Capture and Release Procedures*

Grizzly bears will be captured using culvert traps as a primary method, but foot snares may be used in some capture locations. Culvert traps provide the option of releasing non-candidate bears without anesthetization. All bears will be captured and handled humanely using established protocols (Jonkel 1993, entire) and with effort to minimize restraint time (Cattet et al.

2003, 651; Dickens et al. 2010, entire). Helicopters will be used to transport culvert traps from which grizzly bears would be released. It is possible that helicopter support will also be used for the capture of grizzly bears through use of helicopter-based capture darting. The capture and release of grizzly bears will take place during the summer (June–September), depending on the selected capture and release site(s) and food availability. Grizzly bears will be moved and transported from capture locations to release staging areas by vehicle. Grizzly bears will then be transported from staging areas to remote release sites by helicopter or by vehicle or boat on NPS or National Forest System lands in Management Area A (NPS and USFWS 2024, pp. 30–31). Each release could take up to 8 hours (1 day) depending on the distance between staging and release areas, potentially resulting in 5 to 10 days of helicopter use per year for releases. Helicopters could make up to four round trip flights, traveling approximately 500 ft (150 m) above the ground, and make up to four landings in wilderness per release, which would be necessary for the release of each grizzly bear and drop-off and retrieval of staff and the culvert trap. All operations would be conducted during daylight hours.

We will attempt to capture three to seven bears per year. Capture success and availability of bears will govern the exact annual numbers captured and source population(s). Additional grizzly bears could be needed depending on a variety of factors, including human-caused mortality, genetic limitations, population trends, and the population's sex ratio. Population modeling indicates the need for release of 36 bears into the NEP to obtain an initial population of 25 individuals in approximately 8–9 years (NPS and USFWS 2024, p. 32). Until a population of 25 individuals is reached, we will capture and release grizzly bears to replace any previously released grizzly bears that die. We expect additional releases to maintain genetic diversity in this population as determined by long-term monitoring. Bears released would be roughly 60 percent or greater females, and ages of all released animals (males and females) are expected to be 2–6 years old.

## **How Does the Experimental Population Contribute to the Conservation of the Species?**

Under 50 CFR 17.81(b), before authorizing the release as an experimental population, the Service must find by regulation that such release will further the conservation of the species. We explain our rationale for making our finding below. In making such a finding, we must consider effects on donor populations, the likelihood of establishment and survival of the experimental population, the effects that establishment of the experimental population will have on recovery of the species, and the extent to which the experimental population will be affected by Federal, State, or private activities.

### ***Effects on Wild Populations***

Our regulations at 50 CFR 17.81 require that we consider any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere. The preferred donor populations for the reintroduction of grizzly bears to the NEP occur in south-central British Columbia or in the United States, such as the NCDE or GYE. We will seek source areas that have a healthy grizzly bear population so that removal of grizzly bears would not affect population viability, as the capture and removal of grizzly bears would be considered a loss for the source population.

Sourcing NEP grizzly bears from NCDE, GYE, and/or south-central British Columbia populations will not negatively affect the donor populations for the following reasons. The NCDE and GYE demonstrate stable to slightly increasing demographic trends with an estimated 1,114 grizzly bears in the NCDE and 965 bears in the GYE in 2021. Further, grizzly bear distribution has expanded well beyond these recovery zones (figure 1; USFWS 2022, pp. 63–67). Given the demonstrated resilience and recovery trajectory of these populations in the United States and Canada, and the limited number of grizzly bears that will be translocated (36 grizzly bears to obtain an initial population of 25 individual bears), we expect the donor populations in the NCDE and the GYE to remain stable and persist despite the translocation of these 36 individuals for the NEP. Further, the number of individuals necessary for the NEP is minimal in

relation to the demographic recovery criteria and the annual mortality of the NCDE and GYE populations; therefore, we do not expect translocations to the NCE to cause population-level effects or impede connectivity from the NCDE to the GYE. Further, the Service will coordinate with States to ensure NCE translocations are balanced with other management needs (e.g., augmentation programs from NCDE to GYE and GYE). South-central British Columbia has several GBPU's with a sufficient number of bears and conservation status secure enough to use as sources. Wells Gray, North Purcells, Central Rockies, and North Selkirk GBPU's have a combined total estimated grizzly bear population of 1,100, and populations are stable or increasing (Environmental Reporting BC, 2020, entire).

In addition to sourcing NEP grizzly bears from healthy populations, we will prioritize source areas that are ecologically similar to the NCE area and will only select grizzly bears that do not have a history of coming into conflict with humans. We will attempt to capture grizzly bears that share a similar ecology and food economy to potential release areas. Food economy refers to the dominant foods available to grizzly bears in a given area. Dominant foods in the NCE are expected to be similar to the west side of the NCDE in northwestern Montana, adjacent grizzly bear habitat in British Columbia, Canada, and grizzly bear habitat in south-central interior British Columbia. In these areas, berries are the dominant food source providing calories and ultimately fat production necessary for a grizzly bear to successfully hibernate and reproduce. As a result, these areas will most likely be selected for capturing grizzly bears for release into the NEP as compared, for example, to areas where grizzly bears rely predominately on salmon (Adams et al. 2017, pp. 6–9). However, mortality thresholds in these source populations may limit the number of grizzly bears available for the NEP reintroduction effort, and other ecosystems, such as the GYE, may be considered in those circumstances. If the number of mortalities in a source population is close to or at the allowable threshold for that year, we would not take bears from that source population in that year.

Lastly, the entities managing the source area must also be willing to donate grizzly bears that meet the selection criteria described above and allow trapping of an adequate number of grizzly bears. We will coordinate in advance with the relevant authorities managing the potential source populations before seeking to capture and translocate grizzly bears. All applicable regulatory requirements would be fulfilled prior to translocation of grizzly bears.

### ***Likelihood of Population Establishment and Survival***

In our findings for designation of an experimental population, we must consider if the reintroduced population will become established and survive in the foreseeable future. In this section of the preamble, we address the likelihood that populations introduced into the NEP area will become established and survive. The term “foreseeable future” appears in the Act in the statutory definition of “threatened species.” However, the Act does not define the term “foreseeable future.” Similarly, our implementing regulations governing the establishment of experimental populations under section 10(j) of the Act use the term “foreseeable future” (50 CFR 17.81(b)(2)) but do not define the term. Our implementing regulations at 50 CFR 424.11(d), regarding factors for listing, delisting, or reclassifying species, set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions as it relates to life history of the species and its response to threats. While we use the term “foreseeable future” here in a different context (to determine the likelihood of experimental population establishment and to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Our analysis of the foreseeable future uses the best scientific and commercial data available and considers the timeframes applicable to the relevant effects of release and management of the species and to the species’ likely responses in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors

such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

For the purposes of this final rule, we define the foreseeable future for our evaluation of the likelihood of survival and establishment of this NEP as approximately 30–45 years. We selected this timeframe because it captures approximately two to three generation intervals for the grizzly bear. A generation interval is the approximate time that it takes a female grizzly bear to replace herself in the population. Given the longevity of grizzly bears, two to three generation intervals represent a time period during which a complete turnover of the population would have occurred and any positive or adverse changes in the status of the population would likely be evident. Additionally, because human-caused mortality is the primary threat to the species, this timeframe considers the possibility that USFS land management plans, the primary regulatory mechanism managing human access to grizzly bear habitat on Federal lands outside of designated wilderness or NPS lands, could go through at least one revision.

In evaluating the likelihood of establishment and survival of this NEP in the foreseeable future, we consider the extent to which causes of extirpation in the NEP area have been addressed, habitat suitability and food availability within the NEP area, and existing scientific and technical expertise and experience with reintroduction efforts. As discussed below, we expect that grizzly bears will become established during the foreseeable future.

#### *Addressing the Causes of Extirpation in the Experimental Population Area*

In the NEP, the northwest fur trade was probably the primary driver of rapid grizzly bear decline, while the effects of mining, logging, livestock production, agriculture, and development also fragmented and degraded grizzly bear habitat and increased conflict-related mortality (Almack et al. 1993, p. 3; Rine et al. 2020, pp. 5–13; USFWS 2022, p. 143). By 1975, grizzly bear populations in the U.S. portion of the NCE had been reduced in number and restricted largely to remote areas (USFWS 2022, p. 52). Though the NEP currently contains one of the largest contiguous blocks of Federal land remaining in the lower 48 States, diminished grizzly

bear numbers from past intensive killing and isolation from other grizzly bear populations contributed to the extirpation of the historic population and the low likelihood of natural recolonization (Lewis 2019, p. 7; USFWS 2022, p. 52; 88 FR 41560, June 27, 2023).

Regulation of human-caused mortality has substantially reduced the number of grizzly bear mortalities caused by humans. Because road access was identified by the IGBC as one of the most imminent threats to grizzly bears, the recovery plan recommended that road management be given the highest priority for grizzly bear recovery (USFWS 1993, pp. 21–22; USFWS 2022, p. 52). Land management agencies across the grizzly bear range have incorporated habitat management guidance from the recovery plan (USFWS 1993, entire). In addition to road access, the IGBC and member entities identified and implemented conflict prevention measures in the U.S. portion of the NCE including sanitation measures, signage about grizzly bears and sanitation on NPS and National Forest System lands, and funding for education and outreach programs (IGBC 2019, p. 9). North Cascades NP and several nonprofit organizations provide resources, educational material, and workshops to the public to prevent human–bear conflict in the NCE. Regulating human-caused mortality through habitat management and conflict prevention are effective approaches to reduce negative effects to grizzly bear populations, as evidenced by increasing grizzly bear populations in the lower 48 States (USFWS 2022, p. 7). We will consider using a range of conflict prevention efforts, such as securing of attractants (e.g., bird feeders, pet food, garbage containers, barbeque grills), electric fences and electric mats, animal husbandry practices (range riders, human presence), and bear aware education. The best available data indicate that, due to ongoing conservation efforts in the GYE, NCDE, CYE, and Selkirk Ecosystem, grizzly bear population trends in these ecosystems are stable or increasing, and range extent has continued to expand (figure 1; USFWS 2022, p. 208). Given the intent to implement similar conservation efforts in the NCE Recovery Zone as guided by the IGBC, we can expect human-caused mortality and direct and indirect effects of

human activity for the NEP to be managed in a way so that these threats would not prevent population growth and stability.

### *Habitat Suitability*

As noted above (in *Status of Grizzly Bears in the North Cascades Ecosystem*), five studies conclude that the U.S. portion of the NCE has the habitat resources essential for the maintenance of a grizzly bear population (Agee et al. 1989, entire; Almack et al. 1993, entire; Gaines et al. 1994, entire; Lyons et al. 2018, entire; Ransom et al. 2023, entire). The IGBC NCE Subcommittee had two separate research teams (Almack et al. 1993, entire; Gaines et al. 1994, entire) evaluate an area encompassing more than 10,000 mi<sup>2</sup> (25,900 km<sup>2</sup>) of the NCE for grizzly bear habitat types and foods. The survey area included all of the North Cascades NPS complex and most of Mount Baker Snoqualmie NF and Okanogan-Wenatchee NF. Each team evaluated the survey area for viable grizzly bear habitat using common criteria, including the presence, abundance, and diversity of grizzly bear foods; habitats of seasonal importance and their distribution; and delineation of human activities (i.e., roads, habitation, timber harvest, recreation). In addition to these criteria, Almack et al. (1993, p. 22) evaluated the study area for grizzly bear habitat according to the seven characteristics identified by Craighead et al. (1982, p. 10): space, isolation, denning, safety, sanitation, vegetation types, and food.

The results of these surveys were presented to a technical review team, which ultimately determined based on the available data, that the U.S. portion of the NCE could support a viable grizzly bear population of 200 to 400 individuals (Servheen et al. 1991, p. 7). More recent work using a suite of spatially explicit, individual-based population models that integrate information on habitat selection, human activities, and population dynamics estimated a mean carrying capacity for grizzly bears in the U.S. portion of the NCE between 250 and 300 grizzly bears (Lyons et al. 2018, entire). Using the modeling framework developed in Lyons et al. (2018, entire), Ransom et al. (2023, entire) evaluated grizzly bear habitat quality and carrying capacity across a range of future climate scenarios through 2099. The net amount of high-quality habitat

was shown to increase across all modeled future scenarios as compared to current conditions. Assuming a home range size of 108 mi<sup>2</sup> (280 km<sup>2</sup>), carrying capacity increased from a baseline of 139 female bears under current conditions to 241–289 female bears (Ransom et al. 2023, p. 6).

Almack et al. (1993, pp. 7–10) and Gaines et al. (1994, pp. 534–356) used Landsat multispectral scanner imagery and field observations to produce vegetation cover maps of the study area according to vegetation structure (e.g., forest, shrub, and barren rock) and community composition. The teams also identified 124 plant species known to be grizzly bear foods through an exhaustive review of sighting reports, scat analysis, and studies conducted on grizzly bears south of Alaska. Analysis of the vegetation maps indicated that 100 of the 124 identified plant species exist in the U.S portion of the NCE, and every vegetation cover type contained some plants that were on the list. The teams also mapped ranges of wildlife prey species known to occur in the NCE. Salmonid species were more abundant in streams on the western slope of the NCE, and ungulates were dispersed relatively evenly throughout. These results led both teams to conclude that sufficient vegetative grizzly bear foods are readily available in the U.S. portion of the NCE, and the occurrence of wildlife prey species can sustain a grizzly bear population (Almack et al. 1993, pp. 21–22; Gaines et al. 1994, p. 544).

Some developed areas outside of the NCE Recovery Zone but within the NEP, such as industrial timber lands, agricultural areas, and towns and cities, contain habitat resources for grizzly bears. Although these areas may be capable of supporting grizzly bears, human influences may make those areas not conducive or compatible with persistent grizzly bear occupation. Our zoned management approach is intended to allow additional management options for grizzly bears that may move into these areas.

#### *Translocation Expertise and Experience*

Similar grizzly bear translocations to those we will conduct for the NEP have been conducted in the Cabinet Mountains portion of the CYE since the 1990s. Specifically, researchers and managers have been augmenting the CYE's small grizzly bear population by

introducing one to two grizzly bears per year in the period 1990–1994 and from 2005 to the present. All augmented bears have originated from the NCDE and British Columbia. The success of the CYE augmentation pilot program of four bears prompted additional augmentations between populations in the United States. In the period 2005–2021, in cooperation with Montana Department of Fish, Wildlife and Parks, 10 female bears and 8 male bears were moved from the Flathead River to the Cabinet Mountains (Kasworm et al. 2022b, pp. 25–33). Analysis of DNA from hair corrals has been occurring since 2000 and from rub trees since 2012. Based on this analysis, three females and two males are known to have produced at least 15 first-generation, 23 second-generation, and 4 third-generation offspring. Of 22 bears released through 2020, 8 are known to have left the target area (1 was recaptured and brought back, 2 returned in the same year, and 1 returned a year after leaving), 3 were killed within 4 months of release, and 1 was killed 16 years after release (Kasworm et al. 2022b, p. 26). Annual survival rates of augmentation bears (0.784) are lower than native subadult female CYE bears (0.852) (Kasworm et al. 2022b, pp. 37–38).

Data collected since the 1988 population estimate now suggest the CYE population may have been even smaller than previously thought with an estimated 15 or fewer individuals in 1988. However, recent data also suggest that the number of grizzly bears in the Cabinet portion of the CYE has increased. Current population size for the CYE is estimated to be 60–65 bears with approximately half this number in the Cabinet Mountains (Kasworm et al. 2022b, p. 42). The population increase in the Cabinet Mountains has occurred almost exclusively through the augmentation effort and reproduction from those individuals (Kasworm et al. 2022b, pp. 31–33). Grizzly bears in the CYE are expected to continue to increase in population and resiliency with ongoing augmentation efforts (USFWS 2022, pp. 229–242).

These data demonstrate our technical expertise, experience, and success with grizzly bear translocations. We will rely on the same measures for the NEP translocations, and we anticipate grizzly bear translocations in the NEP to be as successful as those conducted in these other areas.

Based on the available data from other grizzly bear populations, we modeled annual population growth rates of 2 to 4 percent and estimated there will likely be 46–81 grizzly bears (2 percent annual growth) or 62–146 grizzly bears (4 percent annual growth) in the NEP area 30–45 years after translocations are initiated (Costello et al. 2023, pp. 10–11; Kasworm et al. 2023b, pp. 41–42; Kasworm et al. 2023b, pp. 28–29; Haroldson et al. 2022, pp. 12–18).

### *Summary*

The best available scientific data indicate that the restoration of grizzly bears into the NEP is biologically feasible and would promote the conservation of the species. Specifically, we anticipate that grizzly bears can be successfully reestablished in the NEP for the following reasons:

(1) The reintroduced population will receive ongoing demographic support (population augmentation) from source populations to replace bears that die or are killed until a population of 25 individuals is achieved and to maintain genetic diversity in this population as determined by long-term monitoring (NPS and USFWS 2024, p. 32).

(2) The primary causes of historical grizzly bear extirpation from the region (direct killing by humans and habitat loss as a result of conversion to agriculture and resource extraction) are now regulated to ensure the population will survive and grow (Lewis 2019, pp. 8–9).

(3) An established IGBC NCE Subcommittee can help guide the restoration effort. This subcommittee helps coordinate policy, planning, management, and research with the Federal and State agencies responsible for grizzly bear recovery and management (IGBC 2019, pp. 9–10). Tribal governments are also represented on IGBC subcommittees and engage as desired, although there are no Tribal governments currently represented on the NCE subcommittee.

(4) Landscape-scale modeling and studies of available habitat and food resources indicate the NEP area has the capacity to support a population of grizzly bears (Almack et al. 1993, pp. 21–22; Gaines et al. 1994, p. 544; Lyons et al. 2018, p. 29; Ransom et al. 2023, p. 6).

(5) We have experience in successfully translocating grizzly bears in other areas and have established effective protocols (Kasworm et al. 2007, pp. 1262–1265; Kasworm et al. 2022b, pp. 31–33) that we will apply to NEP reintroductions.

Based on these considerations, we anticipate that the reintroduced population of grizzly bears is likely to become established and persist in the NEP.

### ***Effects of the Experimental Population on Grizzly Bear Recovery***

Restoring the grizzly bear to the NEP area and establishing the associated protective measures and management practices under this final rule would further the conservation of grizzly bears by establishing another population in a portion of the species' historical range where the species is presently functionally extirpated. Our recovery plan includes a recovery objective to recover grizzly bears in all of the ecosystems known to have suitable space and habitat (USFWS 1993, pp. 15–16). The NEP area contains one of the largest remaining areas of high-quality habitat for the grizzly bear in the lower 48 United States (USFWS 1997, p. 1). Reintroducing grizzly bears into the NEP area and establishing a grizzly bear population focused on the NCE Recovery Zone fulfills an important recovery need for the grizzly bear in the lower 48 United States.

We assess species' viability through the lens of the conservation biology principles of resiliency, redundancy, and representation (collectively known as the "3Rs") (USFWS 2016, entire). Resiliency describes the ability of the species to withstand stochastic disturbance events, which is associated with population size, growth rate, and habitat quality. Redundancy is the ability for the species to withstand catastrophic events, for which adaptation is unlikely, and is associated with the number and distribution of populations. Representation is the ability of a species to adapt to changes in the environment and is associated with its ecological, genetic, behavioral, and morphological diversity. Resiliency of grizzly bear ecosystems is measured using both habitat and demographic factors. Despite the moderate condition of habitat, without a known population, the NCE currently has no resiliency, and as a result does not currently

contribute to redundancy and representation of grizzly bears in the lower 48 United States (USFWS 2022, pp. 10–14). If successful, reintroduction in the NCE would improve resiliency by reestablishing a population of the species within its historical range that is demographically viable. Successful reintroduction would also improve redundancy by further reducing the likelihood that any one catastrophic event would affect all populations. It would also increase the ecological diversity of the habitats occupied by the species and improve representation by facilitating adaptation to a variety of ecological settings and potentially increasing the future genetic diversity of grizzly bears. For these reasons, reestablishment of a population of grizzly bears in the NCE as an NEP, if implemented and successful, would increase resiliency, redundancy, and representation, and hence viability, of the currently listed lower 48 States entity.

#### ***Actions and Activities in Washington That May Affect Reintroduced Grizzly Bears***

Although the NEP area contains a variety of land ownership types (see *Experimental Population Area*, above), it contains large blocks of land with limited ongoing human influence, such as remote Federal lands (including those managed as designated wilderness), some State lands, and lands acquired for conservation by nongovernmental organizations. These areas provide sufficient high-quality habitat for grizzly bears, and low potential for both displacement and human–bear conflict. However, grizzly bears will likely use other lands within the NEP, depending on human development and other human activities.

Primary land uses on lands in Management Area A (see *Management Areas*, above) include protection and conservation of natural and cultural resources, non-motorized land-based recreation (hiking, climbing, skiing, cycling, camping, hunting), motorized land-based recreation (off-highway vehicle and snowmobile riding), water-based recreation (boating, fishing), hydropower production, timber harvest, mineral extraction, livestock grazing, research, and education. Although much of Management Area A is public land, is largely unavailable and/or unsuitable for intensive development, and contains an abundance of wild ungulates, livestock grazing does occur within the Area, which may increase the potential for mortality of grizzly

bears via lethal control of depredating bears. There are 62 total grazing allotments representing 19.5 percent of the total acreage in Management Area A. Of those allotments, 30 are currently active, representing 9 percent of the total acreage in Management Area A. Most of these permits are for grazing cattle, and five allotments allow for sheep grazing, all of which are in the southern half of Management Area A close to Wenatchee and Cle Elum (USDA 2023, entire). Similar land management practices in the GYE and NCDE, and the expanding grizzly bear populations in those areas, indicate that livestock allotments and associated habitat loss are not limiting grizzly bear populations (USFWS 2022, p. 124).

Primary land uses in Management Area B (see *Management Areas*, above) are similar to those in Management Area A. As described in Management Area A, these activities pose some risk to grizzly bears, but will not likely preclude grizzly bear presence in Management Area B.

Management Area C (see *Management Areas*, above) contains a mixture of land ownerships and uses, including developed areas, and areas where agricultural and industrial uses predominate. Large areas in this management area may be incompatible with grizzly bear presence due to relatively high amounts of private land ownership and associated development and/or potential for bears to become involved in conflicts and resultant bear mortality. Grizzly bears may still occupy portions of Management Area C, but human activities will limit their presence.

## **Experimental Population Regulation Requirements**

Our regulations at 50 CFR 17.81(c) include a list of what we should provide in regulations designating experimental populations under section 10(j) of the Act. We explain what our regulations include and provide our rationale for those regulations, below.

### ***Means To Identify the Experimental Population***

Our regulations require that we provide appropriate means to identify the experimental population, which may include geographic locations, number of individuals to be released,

anticipated movements, and other information or criteria. The purpose of this requirement is to ensure that nonexperimental populations of the same species receive the appropriate level of protection afforded to the species by its listing under the Act. In other words, it ensures that the special regulations issued under section 10(j) apply only to the designated experimental population and not to other populations of the same species. We recognize that it would not be possible for members of the public to determine the origin of any individual grizzly bear. As discussed below, we conclude that, once we have released a grizzly bear, it is highly likely that any grizzly bears found in the NEP area will have originated from and be members of the NEP. Therefore, we will use geographic location to identify members of the NEP. The NEP area encompasses the entire State of Washington except for the area within and around the Selkirk Ecosystem Recovery Zone (figure 2). After we have released one or more grizzly bears for reintroduction into the NEP area, any grizzly bear within the NEP area, regardless of origin, will be treated as part of the experimental population. Any grizzly bears found in the NCE NEP area before the Service has one or more grizzly bears into the NEP area will be managed in accordance with the existing 4(d) rule (50 CFR 17.40(b)). After our initial release of one or more grizzly bears into the NEP area, any grizzly bears, including those moving from Canada into the NEP area, will be treated as part of the NEP while they are present within the NEP area, with all the associated ESA protections and exceptions of the experimental population under this 10(j) rule. However, currently, no population of grizzly bears exists within the NEP area, and the likelihood of a grizzly bear moving into the NEP area from the nearest population of ESA-listed grizzly bears in the Selkirk Ecosystem is small (see *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* below).

We anticipate that eventually some grizzly bears may move between portions of the NCE in Canada and the United States (see *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* below). As stated above, bears entering the NEP area prior to our initial release will be managed in accordance with the existing 4(d) rule. After

our initial release of one or more grizzly bears into the NEP area, any grizzly bears moving from Canada to the NEP area will be treated as part of the NEP and addressed under the 10(j) rule while they are within the NEP area. Likewise, a bear originating in the NEP but located in the British Columbia portion of the ecosystem would be managed in accordance with appropriate Canadian regulations.

***Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?***

Section 10(j) of the Act requires that an experimental population of a listed species be wholly geographically separate from other populations of the same listed species. Grizzly bears reintroduced in the NEP would be separated from the nearest population of bears in the United States, located in the Selkirk Ecosystem. The NEP is approximately 100 mi (161 km) to the west of the Selkirk Ecosystem, which contains approximately 83 individuals, and the NEP is 75 mi (121 km) from any verified grizzly bear observations to the west of the Selkirk Ecosystem (Proctor et al. 2012, p. 31). The area between the two populations also contains significant portions of human-altered landscape (e.g., major roads, agricultural lands, rural/urban development) or major natural landscape features (e.g., Columbia River) that reinforce continued geographic separation (Singleton et al. 2004, pp. 95–101). Due to the highly fragmented landscape between these areas, as well as the distance between these ecosystems, which is beyond the average female dispersal distance of 6.1–8.9 mi (9.8–14.3 km) (McLellan and Hovey 2001, p. 842; Proctor et al. 2004, p. 1108), we conclude the NEP to be wholly separate from all other extant populations of grizzly bears in the United States. Dispersal between the NEP and other U.S. populations or the likelihood of overlap is low; therefore, we do not expect natural recolonization of the NEP area could happen on its own.

As noted above, the Act requires that an experimental population of a listed species be wholly geographically separate from other populations of the same listed species. In this case, the listed species is the grizzly bear in the lower 48 States, and thus the NEP is required to be

wholly geographically separate only from other populations of the ESA-listed species, that is, other populations within the United States. However, the NEP is also currently separated from any known grizzly bear populations in Canada, which are not part of the listed species.

Connectivity from the east in Canada is unlikely as the nearest population is over 62 mi (100 km) across the heavily human-settled Okanagan Valley (North Cascades Grizzly Bear Recovery Team 2004, p. 7, McLellan et al. 2017, p. 2).

The closest GBPUs to the north include the Canadian North Cascades GBPU (adjacent to the U.S. portion of the NCE) and the Stein-Nahatlatch GBPU (22 mi (37 km) from NCE). The North Cascades GBPU grizzly bears (with no confirmed sighting in over a decade) is isolated from other populations, and there is no known reproduction. The Stein-Nahatlatch hosts a very low estimated bear density and very low genetic diversity (USFWS 2022, appendix E, p. 323). Both units are designated as M1, the highest level of conservation concern, according to British Columbia's conservation ranking assessment (Morgan et al. 2020, pp. 19–24) and are designated as “Critically Endangered” by the IUCN Red list (McLellan et al. 2017, p. 2). While the Stein-Nahatlatch GBPU is within the dispersal distance of both male (18.6–26 mi (29.9–41.9 km)) and female (6.1–8.9 mi (9.8–14.3 km)) grizzly bears (McLellan and Hovey 2001, p. 842; Proctor et al. 2004, p. 1108) to the North Cascades GBPU, only the northern half of the Stein Nahatlatch GBPU is occupied by grizzly bears (Apps et al. 2008, p. 25; Apps et al. 2014, p. 30). The distance between the North Cascades GBPU and the occupied portion of the Stein-Nahatlatch GBPU is significant and consists of the large Fraser River valley and canyon, the heavily travelled Trans-Canada Highway, two railways, human settlements, and other developments (USFWS 2022, pp. 321–324; McLellan et al. 2017, entire). Therefore, dispersal of grizzly bears from the Stein-Nahatlatch GBPU to the NEP is unlikely.

As discussed above, restoring a grizzly bear population in the Canadian portion of the NCE through augmentation by the Canadian Government is under consideration. Should those augmentation efforts occur in British Columbia, some grizzly bears reintroduced into the

Canadian portion of the ecosystem may likely move into the NEP area in the United States, either as a transient that returns to Canada or that ultimately remains in the United States. A restored population of grizzly bears in British Columbia would not affect the designation of a section 10(j) experimental population of grizzly bear listed in the United States because the “wholly geographic” separation requirement does not apply to populations that are not a part of the listed species. After our initial release of one or more grizzly bears into the NEP, any bears entering the NEP area from Canada will be managed under this final 10(j) rule.

***Is the Experimental Population Essential to the Continued Existence of the Species in the Wild?***

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential to the continued existence of the species in the wild. This determination is based solely on the best scientific and commercial data available. Our regulations state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild (50 CFR 17.80(b)). All other populations are considered nonessential. Although the experimental population in the U.S. portion of the NCE will contribute to the recovery of the grizzly bear in the United States, several factors suggest the restored population is not essential to the grizzly bear’s continued existence in the wild:

(1) Approximately 2,200 grizzly bears exist in other ecosystems in the contiguous United States that are intensively monitored and managed (USFWS 2022, p. 61, see *Historical and Current Range and Grizzly Bear Ecosystems and Recovery Zones*;

(2) We are proposing to capture and translocate a relatively small number of grizzly bears (up to three to seven per year) from populations that are demographically healthy and therefore will not be measurably affected by this removal (see *Effects on Wild Populations*);

(3) The experimental population is not expected to provide demographic support to the existing grizzly bear populations in the lower 48 United States due to geographic distance and existing barriers to dispersal (see *Status of Grizzly Bears in the North Cascades Ecosystem*); and

(4) The experimental population will be established from extant grizzly bear populations (see *Effects on Wild Populations*) and therefore will not possess any unique genetic or adaptive traits that are critical to the survival of the species.

For these reasons, the loss of the experimental population would not appreciably reduce the likelihood of survival of that species in the wild. Therefore, as required by 50 CFR 17.81(c)(2), we find that the experimental population is not essential to the continued existence of the species in the wild, and we designate the experimental population in the U.S. portion of the NCE as an NEP.

#### ***Management Restrictions, Protective Measures, and Other Special Management***

Authorized Federal, State, and (as desired) Tribal agencies will manage the reintroduced grizzly bears in the NEP. These entities will collaborate on monitoring, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful management of the NEP consistent with a Service-partner agency MOU specific to implementing this 10(j) rule. Specific management considerations related to the experimental population, including prohibitions and exceptions involving the taking of individual animals, are addressed below. Unless otherwise agreed to by the Service in the provision of the applicable MOU, management actions involving capturing, relocating, or lethally taking a grizzly bear must be approved by the Service with limited exceptions as described in the rule.

Section 9 of the Act prohibits various actions regarding species listed as endangered, which may be applied as part of protective regulations for experimental populations. Section 9 prohibitions include among other things prohibition against the import or export of species, restrictions on possession, sale, and transport (whether commercial or otherwise), and the prohibition against “take” of any such species. Section 3(19) of the Act defines “take” as “to

harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Experimental population rules may contain specific prohibitions and exceptions, including regarding take; these rules help the reintroduction and management of an experimental population to be compatible with most routine human activities in the expected reestablishment area. This section 10(j) rule generally prohibits the take of any grizzly bear in the NEP area, with exceptions as follows:

*Defense of life*—A grizzly bear in the NEP may be taken in self-defense or in defense of others, based on a good-faith belief that the actions are necessary to protect any individual from bodily harm.

*Deterrence*—“Deterrence” means an intentional, nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property. Any deterrence must not cause lasting bodily injury to any grizzly bear (i.e., permanent damage or injuries that limit the bear’s ability to effectively move, obtain food, or defend itself for any length of time), or death to the grizzly bear. Any person who deters a grizzly bear must use discretion and act safely and responsibly in confronting grizzly bears. Acceptable deterrence techniques may include non-projectile auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, and noise-making projectiles. Unacceptable deterrence methods include screamers/whistlers, rubber bullets/batons, and bean bag and aero sock rounds. For more information about appropriate nonlethal deterrents, individuals can contact the Service for the most current Service-approved guidelines. Anyone is allowed to deter a grizzly bear in the case of self-defense (e.g., using bear spray or loud noises). Bear spray is an effective deterrent that has a higher success rate at stopping dangerous bear behavior and preventing human injury compared to firearms (Smith et al. 2008, p. 645; Smith et al. 2012, p. 12). An individual may not bait, stalk, or pursue a grizzly bear for the purposes of deterrence. Pursuit is defined as deterrence carried out beyond 200 yards (183 m) of a human-occupied area or lawfully present livestock.

*Incidental take*—“Incidental take” is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; it must be unintentional and not due to negligent conduct. Individuals will not be in violation of the Act for taking a grizzly bear of the NEP, provided that: (1) the take is incidental to, and not the purpose of, an otherwise lawful activity; (2) they promptly report the take to the Service; and (3) if the take occurs due to USFS actions within National Forest System lands in Management Area A, that the USFS has maintained its ‘no net loss’ agreement and implemented food storage restrictions throughout USFS-managed lands in Management Area A. The ‘no net loss’ agreement is described above under *Threats*. Given the importance of maintaining core habitats and restricting human disturbance in these habitats for grizzly bear population establishment and persistence, we are tailoring the exception to the prohibition against incidental take by USFS actions on lands managed by the USFS as National Forest System lands under this 10(j) rule to be contingent upon maintenance and implementation of that longstanding approach within the NCE Recovery Zone. This exception would apply only to actions authorized, funded, or implemented by the USFS on lands managed by the USFS as National Forest System lands in Management Area A. We are currently coordinating with the USFS to memorialize the ‘no net loss’ agreement for Management Area A in an updated MOU.

*Research and recovery actions*—Any employee or agent of the Service, or any employee or agent of another Federal, State, or Tribal entity defined in a current MOU with the Service who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears (which we define as a Federal, State, or Tribal “authority”), may, when acting in the course of official duties and with prior authorization from the Service, take a grizzly bear in the NEP area consistent with this rule and the applicable MOU if such action is necessary for: scientific purposes; to aid a sick or injured grizzly bear, including euthanasia if it is unlikely to survive or poses an immediate threat to

human safety; to salvage a dead specimen that may be useful for scientific study; to dispose of a dead specimen; or to aid in law enforcement investigations involving the grizzly bear.

*Relocation and management actions*—As detailed more specifically in the regulation that follows, any employee or agent of the Service, or any employee or agent of another Federal, State, or Tribal entity defined in a current MOU with the Service who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears (which we define as a Federal, State, or Tribal “authority”), may, when acting in the course of official duties, take a grizzly bear in the wild in the NEP area with prior authorization from the Service consistent with this rule and the applicable MOU if such action is necessary to accomplish the following:

- Avoid conflict with human activities;
- Prevent a grizzly bear from becoming habituated to humans;
- Improve grizzly bear survival;
- Release or relocate nontarget grizzly bears that have been incidentally trapped;
- Aid a law enforcement investigation;
- Salvage a dead bear; or
- Euthanize a grizzly bear that has been wounded severely enough such that it is unlikely to survive or poses an immediate threat to human safety.

Relocation sites will be identified in remote areas away from homes, developed areas, and concentrated human use. When a grizzly bear is captured, the employee or agent will consult with the appropriate land management agency to determine a relocation site that is most suitable for the bear, considering age/sex of the bear, conflict history, and current human use at available relocation sites. Such taking must be coordinated with the Service. Non-Service or other non-authorized personnel must acquire a permit from the Service for these activities.

*Removal of grizzly bears involved in conflict*—Grizzly bears can cause substantial property damage, including depredation, or pose a threat to human safety if they become food

conditioned, i.e., if they have learned to associate human presence with anthropogenic food because of repeatedly being rewarded with food without consequence (Beausoleil et al. 2022, p. 96). When it is not reasonably possible to eliminate such threat by securing attractants, nonlethal deterrence, or relocation, we may allow lethal removal of a grizzly bear involved in conflict under certain conditions. Lethal removal of grizzly bears involved in conflict in Management Area A may be conducted by authorized Federal, State, or Tribal authorities with prior approval by the Service in accordance with the provisions of this rule and the applicable MOU. Decisions on lethal removal will be based on many factors, including the ability to identify a particular bear (e.g., markings, collars, track size, canine spacing), the individual bear involved (e.g., sex, age, presence of dependent young, conflict history), relevant conflict history in the immediate area, and number of bears in the area.

To become an “authorized” Federal, State, or Tribal authority, we must have a written agreement, i.e., an MOU, addressing grizzly bear management roles and responsibilities consistent with this 10(j) rule between the Service and the other Federal, State, or Tribal agency. While we may provide for grizzly bear management in the NEP area via other regulatory processes (such as a conference opinion issued by the Service to a Federal agency pursuant to section 7(a)(4) of the Act, an agreement under section 6 of the Act as described in 50 CFR 17.31 for State game and fish agencies with authority to manage grizzly bears, or a valid permit issued by the Service pursuant to 50 CFR 17.32), a prior written agreement is required to be considered an “authorized” Federal, State, or Tribal authority under this 10(j) rule.

In Management Areas B and C, the Service may authorize conditioned lethal take for individuals after a livestock depredation has been confirmed by the Service or authorized agency and if it is not reasonably possible to otherwise eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. In Management Area C, the Service may authorize conditioned lethal take to individuals if the Service or an authorized agency determines both of the following: grizzly bears present a demonstrable and ongoing threat to

human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property and it is not reasonably possible to otherwise eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. Also in Management Area C, any individual may take (injure or kill) a grizzly bear in the act of attacking livestock, including working dogs, on private land under certain conditions.

#### *Management Area Management Actions*

Management Area A (see *Management Areas* above) management actions include:

- Take of bears in self-defense or defense of others;
- Take resulting from otherwise lawful activities (e.g., timber harvest, road construction, recreation), with the proviso that take resulting from otherwise lawful USFS activities on National Forest System lands in Management Area A are contingent on the USFS having maintained its ‘no net loss’ agreement and implemented food storage restrictions throughout Management Area A;
- Deterrence of bears;
- Take associated with research and recovery actions;
- Relocation or deterrence of bears by Federal, State, or Tribal authorities for recovery purposes, including as a preemptive action to prevent conflict; and
- Lethal removal by authorized Federal, State, or Tribal authorities of grizzly bears involved in conflict as defined in this 10(j) rule, including that it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed.

Management Area B (see *Management Areas* above) management actions include all actions authorized for Management Area A, plus the ability for the Service to issue written time-limited conditioned lethal take authorization to an individual if all the following conditions exist: a depredation of livestock has been confirmed by the Service or authorized agency, the Service or authorized agency determine a bear is a demonstrable and ongoing threat, and it is not

reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed.

Management Area C (see *Management Areas* above) management actions include all actions authorized for Management Areas A and B, plus the ability for the Service to issue written time-limited conditioned lethal take authorization to an individual to kill a bear under the following conditions: the Service or an authorized agency identifies the bear as an ongoing threat to human safety, livestock, or other property (e.g., compost, chickens, beehives); and it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. Also in Management Area C, any individual may take (injure or kill) a grizzly bear in the act of attacking livestock on private lands under specified conditions, including the absence of excessive unsecured attractants (e.g., carcasses or bone piles), no intentional feeding or baiting of the grizzly bear or wildlife, prompt reporting of the take, and no disturbance of the area to allow for review.

#### *Prohibited Activities*

This rule prohibits all take of grizzly bear unless expressly excepted, as well as the possession, sale, delivery, carrying, transporting, shipping, or exporting, by any means whatsoever, any grizzly bear or part thereof from the experimental population taken in violation of the rule or in violation of applicable Tribal or State laws or regulations or the Act. This rule also makes it unlawful for individuals to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in the rule.

To avoid illegally shooting a grizzly bear, persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting. The act of taking a grizzly bear that is wrongfully identified as another species is not considered incidental take and may be referred to appropriate authorities for prosecution.

#### *Public Awareness and Cooperation*

Coinciding with the November 14, 2022, publication in the *Federal Register* of the notice of intent to prepare an EIS (87 FR 68190), we issued a joint news release with the NPS announcing the EIS process and proposed section 10(j) rulemaking and sought comments as part of the EIS scoping phase. The news release was shared directly with counties and municipalities in the NCE, nongovernmental organizations, and other stakeholders. During the 30-day scoping phase, four informational virtual public meetings were held, inviting the public to ask questions about the EIS process, section 10(j) experimental populations, and grizzly bear recovery. Representatives from the Service and NPS also participated in numerous news media interviews to raise awareness about the EIS process, section 10(j) rulemaking, and associated public comment period.

Similar outreach techniques were used during the 45-day comment period for the proposed 10(j) rule and draft EIS to increase awareness and engage the public. These techniques included the distribution of a news release, participation in media features, and the direct sharing of information. One informational virtual meeting took place on October 17, 2023, and four in-person public meetings were held, on October 30, 2023, in Okanogan, WA, November 1, 2023, in Newhalem, WA, November 2, 2023, in Darrington, WA, and November 3, 2023, in Winthrop, WA. Video of an informational presentation was also posted online for the public to review.

Further public outreach and education will occur, both in the media and in the community, as grizzly bears are moved into and establish in the ecosystem. Education and outreach about how to minimize conflict, for the safety of both humans and bears, will be an important part of implementation. The Service will work with partners to increase outreach to people who live, work, and recreate in the NCE and surrounding areas. Outreach and education efforts will be modeled after similar efforts and practices developed in other grizzly bear ecosystems over multiple decades. Direct outreach and briefings to local governments and community organizations are also anticipated. Many different Federal, State, Tribal, and local

government agencies and organizations in the State of Washington have wildlife education programs that can be partnered with and supported.

### *Interagency Consultation*

As stated above under *Statutory and Regulatory Framework*, for purposes of section 7(a)(2) of the Act, our section 10(j) regulations (50 CFR 17.83) provide that NEPs are treated as species proposed for listing under the Act except when on NPS and NWRS lands, where they are treated as a threatened species for the purposes of section 7(a)(2) consultations. Therefore, Federal agency actions not affecting NPS lands or NWRS lands would be required to confer with the Service under the terms of section 7(a)(4) of the Act. On the other hand, Federal agency actions affecting grizzly bears within the experimental population area on NPS lands or NWRS lands would be required to consult with the Service under section 7(a)(2) of the Act. The provisions of section 7(a)(1) of the Act would still apply within the NEP area.

### ***Review and Evaluation of the Success or Failure of the NEP***

#### *Monitoring and Evaluation*

All translocated grizzly bears will be fitted with global positioning system (GPS) collars and ear tags prior to release to aid in monitoring habitat use and spatial distribution, and tissue samples will be collected to establish baseline information for genetic monitoring purposes. Monitoring of the releases and subsequent population monitoring will follow radio collaring and genetic monitoring techniques used in the Cabinet Mountains grizzly bear augmentation effort (Kasworm et al. 2022b, pp. 9–16). Periodic recaptures will be conducted to maintain a GPS-collared sample of the population. Other monitoring will include habitat and resource selection, survival metrics, reproductive success, rate of population growth, genetic composition of the population, and instances of conflicts between humans and grizzly bears. Radio collars that communicate locations from satellites to biologists via periodic downloads will limit the need for aircraft monitoring. However, periodic use of fixed-wing aircraft will be necessary to determine reproductive status. Camera stations and hair-snagging corrals will also be established in remote

locations to monitor grizzly bear presence and gather genetic information that could also be used to assess reproductive contributions and monitor genetic diversity.

The Service and authorized agencies will monitor the status of grizzly bears in the NEP annually. The Service will evaluate the status of grizzly bears in the NEP in conjunction with our species status assessments and status reviews of the grizzly bear. Evaluations in our status reviews will include, but not be limited to: a review of management issues; grizzly bear movements; demographic rates; causes of mortality; project costs; and progress toward establishing a population. The recovery plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones (USFWS 1993, p. 20). Because we anticipate the NCE population to remain low for the near future, we will attempt to keep human-caused mortality to zero. However, zero mortalities may not be practical given the need to protect human safety and property and due to accidental mortalities (e.g., vehicle collisions).

#### *Adaptive Management*

We anticipate that our management of grizzly bears of the NEP will be adaptive, meaning we will apply management interventions, monitor outcomes, and incorporate learning from these interventions and outcomes (Williams and Brown 2012, entire) to achieve grizzly bear restoration objectives while maximizing social acceptance. If modifications to grizzly bear monitoring and management are needed, we will coordinate closely with NPS, WDFW, USFS, Tribal Governments, and others to ensure progress toward achieving recovery goals while concurrently minimizing human–grizzly bear conflicts in the NEP area.

#### *Exit Strategy*

In light of the Service’s positive 90-day finding on two petitions to delist grizzly bears in the NCDE and the GYE (see “Previous Federal Actions,” above), we acknowledge that the boundaries of the listed entity of the grizzly bear in the United States may change in the future. We anticipate leaving this experimental population designation in place until all grizzly bears have been delisted due to recovery, regardless of whether the boundaries of the listed entity

change. However, if grizzly bears of the NEP experience unexpectedly high natural mortality, if donor bears are not available, or if we conclude that we and our partners have insufficient funding for an extended period to support management of the NEP, we may consider ending the releases and removing the NEP designation. This would be done only after coordination with partners and a new public process where we would evaluate the NEP designation before making any decisions to exit the restoration program and remove or revise the 10(j) rule as appropriate.

### **Consultation with State, Local, Tribal, Federal, and Affected Private Landowners**

In April 2018, the Service reached out to more than 90 agencies and organizations to discuss a potential section 10(j) experimental population rulemaking and a zoned management approach for possible grizzly bear restoration efforts in the NCE. These included Federal, State, and local elected officials; federally recognized Tribes in Washington and Montana; natural resource and land management agencies; interest groups (including those representing timber, ranching or farming, and recreation interests); and environmental and conservation organizations. Between May and July 2018, the Service held more than 30 meetings with representatives from 49 different agencies and organizations for receiving feedback on the management framework and the zoned management approach.

Since the start of the public scoping period in November 2022, agency representatives have held 28 different meetings with local governments, State agencies, Tribes (including federally recognized Tribes in Washington and Tribal governments near potential source populations in the NCDE and GYE, including in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming), nongovernmental organizations, and congressional staff to present information and answer questions.

Nine public meetings were also held, both virtually and in-person. During the comment period for the proposed rule, four in-person meetings were held in communities on both the east (two) and west (two) sides of the NCE Recovery Zone. Meeting attendees were able to provide

comments in writing or verbally to a stenographer, with options to do so privately and/or in front of other meeting attendees. Speakers were also encouraged to provide written comments by postal mail or online if 2 minutes was not sufficient for their verbal comment. At all four of these in-person meetings, everyone who requested to provide verbal comment was provided an opportunity to do so, and at all four meetings the list of speakers was exhausted, with additional time remaining. Before the public comment portion of each in-person meeting, attendees had the opportunity to review informational banners and ask agency staff questions. Throughout the public comment period, written comments on the draft EIS and proposed 10(j) rule were accepted online, by postal mail or hand-delivery, and at the in-person meetings.

Feedback from the dozens of outreach meetings dating back to 2018 were also used in the development of this final rule.

## **Findings and Regulatory Revisions**

Based on the best scientific information available, as described above and in accordance with 50 CFR 17.81, we find that releasing grizzly bears into the NCE with the regulatory provisions in this rulemaking will further the conservation of the species. The NEP status is appropriate for the introduced population; the potential loss of the experimental population would not appreciably reduce the likelihood of the survival of the species.

Therefore, as a result of the findings just described, we are amending the entry for the grizzly bear on the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to add an entry for the North Cascades NEP. We are also correcting the entry for the Bitterroot NEP of the grizzly bear. In the “Listing citations and applicable rules” column, the information for the Bitterroot NEP of the grizzly bear included an error. We are replacing the incorrect *Federal Register* citation, 70 FR 69854, 11/17/2005, with the correct citation for the final rule that established the Bitterroot NEP: 65 FR 69624, 11/17/2000.

As set forth in the rule portion of this document, we are revising 50 CFR 17.84 to add a new paragraph (y) to establish the North Cascades NEP of the grizzly bear. For the purpose of clarity, we are also revising the opening text of the regulations that set forth the Bitterroot NEP of the grizzly bear at 50 CFR 17.84(l). Currently, the regulations for the Bitterroot NEP begin with “Grizzly bear (*Ursus arctos horribilis*).” However, as stated above, through this rule we are adding another grizzly bear NEP to the regulations at § 17.84. To differentiate the regulations for the two grizzly bear NEPs in that section, we are revising the heading for the Bitterroot NEP at paragraph (l) to read: “Grizzly bear (*Ursus arctos horribilis*)—Bitterroot nonessential experimental population,” and the heading for the North Cascades NEP at paragraph (y) will read: “Grizzly bear (*Ursus arctos horribilis*)—North Cascades nonessential experimental population.”

## **Required Determinations**

### *Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094*

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rulemaking action is not significant.

The North Cascades Ecosystem Grizzly Bear Restoration Plan/final EIS (NPS and USFWS 2024) analyzed the potential impacts of restoration of grizzly bears to the North

Cascades including potential impacts to visitor use and recreational experience (NPS and USFWS 2024, pp. 115–130), human safety (NPS and USFWS 2024, pp. 130–139), and socioeconomic effects of the restoration of grizzly bear on various sectors in a seven-county area (including gateway communities) (NPS and USFWS 2024, pp. 139–156). The final EIS evaluation included the impacts of restoration of grizzly bear as managed under this final section 10(j) rule, which was the agencies’ preferred alternative (NPS and USFWS 2024, pp. 37–50).

The final EIS evaluated impacts to visitor use and recreational use experience qualitatively. Recreational use of Federal land in the NCE is estimated to be more than 8 million recreation visitor-days per year, most of which is associated with dispersed recreation rather than developed campgrounds or wilderness areas (NPS and USFWS 2024, p. 117). Potential beneficial and adverse impacts on visitor use and experience could result from the initial restoration of grizzly bears in the NCE, and visitation could increase or decrease depending on visitor interest in or aversion to them (NPS and USFWS 2024, p. 125). Benefits would be derived from the restoration of the grizzly bear population and the opportunity provided to visitors to see grizzly bears in their natural setting. Adverse impacts would include the potential for temporary closures lasting from a few hours to a few days, requiring some visitors to adjust their stay to avoid closed areas, and noise associated with helicopter operations. Compared to current conditions, these impacts, in addition to past, present, and reasonably foreseeable planned actions, would be beneficial. Restoration under this final rule would allow for greater wildlife management flexibility that would provide an additional increment of benefit to the visitor use and recreational experience by minimizing negative human–bear conflicts (NPS and USFWS 2024, p. 130).

For potential impacts to public and employee safety, the final EIS qualitatively addressed risks associated with human–grizzly bear encounters related to employees working to restore and manage bears, as well as risks to visitors and residents in and around the NCE (NPS and USFWS 2024, p. 130). Overall, restoration of grizzly bears would have adverse impacts on public and

employee safety in terms of potential conflicts with grizzly bears. However, the probability of adverse impacts occurring would be low for a variety of reasons. Restoration would begin in remote areas and occur in low density, and even as density increases as the restoration population is achieved, existing safety and related protocols would be implemented, such as food storage restrictions, general bear safety education, temporary public closures, and management protocols for the capture and release of bears. These tools have been demonstrated to be effective in reducing impacts to public safety, even in areas with a much higher density of grizzly bears than projected for the ultimate population targeted in this proposal (NPS and USFWS 2024, pp. 136–137). With the implementation of this final section 10(j) rule, additional management measures will be available to authorized agencies to use lethal and nonlethal measures to reduce impacts from grizzly bears that move outside the ecosystem, or to mitigate human–bear conflicts, including those associated with public safety. These management actions could further reduce the potential for human–bear conflicts and would contribute a reduced potential for adverse impacts on visitor and employee safety (NPS and USFWS 2024, p. 139).

The final EIS evaluated the socioeconomic impacts of the proposed restoration considering a seven-county region of influence (Chelan, King, Kittitas, Okanogan, Skagit, Snohomish, and Whatcom Counties) (NPS and USFWS 2024, p. 139), qualitatively assessing potential impacts to tourism, agricultural and livestock grazing, and timber harvest and mining, as well as the effects to employment in each of these categories. For tourism, occasional localized wilderness closures for public safety during release activities could occur, but these closures would be site-specific and short (hours to days). These closures are not expected to substantially affect tour operators or recreational visitors, including hunters or horseback riders. Any area closures are anticipated to be infrequent and small in scope; therefore, revenue and employment associated with tourism, including hunting, horseback riding, hiking, sightseeing, and tour operations, would not be noticeably affected as a result of implementing restoration under this final section 10(j) rule. Collaboration with potential user groups and public outreach

and education would likely mitigate many potential tourism-related concerns as wilderness users become accustomed to backcountry practices that reduce chances for human–bear conflict. Therefore, potential adverse tourism-related impacts would be mitigated to the extent that no adverse impacts on tourism are expected (NPS and USFWS 2024, p. 155).

Agriculture and livestock grazing operations could experience reduced employment or increased costs of operating cattle ranching operations. Direct impacts may occur through grizzly bear depredation of cattle or sheep. Impacts are somewhat less likely to occur given that no staging or release areas would be near active grazing allotments; in addition, we provided in the final rule that individuals such as livestock producers on private lands in Management Area C could take grizzly bear in the act of attacking livestock under certain conditions. Specific descriptions of the effects of potential livestock depredation are described in the final EIS on pages 143–146 and further analyzed in *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*, below. Impacts on timber harvesting and mining from restoration of grizzly bears are anticipated to be intermittent and short term, lasting minutes to hours, as workers become aware of grizzly bear presence in the area, and grizzly bears avoid areas of active timber harvest and mining (NPS and USFWS 2024, p. 156).

As to employment, restoration of bears could result in impacts on employment related to tourism (both positive and negative), agriculture, livestock grazing, mining, timber harvest, wildlife management, or Federal land management. Wildlife management and Federal land management may experience increases in employment resulting from implementation of this final section 10(j) rule as wildlife and Federal land managers capture and release grizzly bears and educate the public.

As displayed in the final EIS, implementation of a final section 10(j) designation is expected to reduce the potential for any adverse socioeconomic impacts as compared with other final restoration alternatives. The final section 10(j) designation allows for additional management measures for lethal and nonlethal actions to minimize and prevent human–bear

conflicts. Additionally, the section 10(j) designation eliminates the requirement for Federal agencies to consult with the Service under section 7(a)(2) of the Act for grizzly bears in the NEP (except on NPS or NWRS lands). Except for USFS actions on National Forest System lands in Management Zone A, all take of grizzly bears that is incidental to otherwise lawful activity is allowed. For USFS actions on National Forest System lands in Management Zone A, this final rule excepts all incidental take as long as the U.S. Forest Service has maintained its ‘no net loss’ agreement and implemented food storage restrictions throughout National Forest System lands in Management Area A. As a result, implementation of the final section 10(j) designation for grizzly bears would reduce the potential costs and operational constraints that may have temporarily affected regular business operations from the presence of grizzly bear.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this final rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents;

and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than \$7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Importantly, the impacts of a rule must be both significant and substantial to prevent certification of the rule under the Regulatory Flexibility Act and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the final rule, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Because of the regulatory flexibility provided by designating an NEP in the NCE, we do not expect this rule to have significant effects on any activities within Federal lands within the experimental population area. In regard to section 7(a)(2) of the Act, except on NPS and NWRS lands, the population is treated as proposed for listing; therefore, Federal action agencies are not required to consult on their activities. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing is unlikely to be required within the NEP. The USFS will not be required to consult under section 7(a)(2) about impacts to the NEP when authorizing activities under USFS permits, such as for grazing, mining, and

timber harvest activities, including permits for road hauling that may include travel on non-Federal lands. In addition, section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the experimental population area. As a result, and in accordance with these regulations and this final rule, some modifications to the Federal actions within the experimental population area may occur to benefit the grizzly bear, but we do not expect projects on Federal lands to be precluded or likely to be substantially modified as a result of these regulations.

However, this final rule authorizes and governs the management of reintroduced grizzly bears in the NCE. The presence of reintroduced grizzly bears has the potential to affect small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111) and sheep farming (business activity code NAICS 112410). Small businesses involved in ranching and livestock production may be affected by grizzly bears depredate on domestic animals, particularly beef cattle and sheep. Direct effects to small businesses could include forgone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd. However, as detailed further below, we do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector; in addition, the final rule designating the grizzly bears as experimental with this special management rule under section 10(j) is in part designed to help minimize the potential for conflicts that could increase costs to ranching and livestock production.

The small size standard for beef cattle farming entities and sheep farms as defined by the Small Business Administration are those entities with less than \$2.5 million for beef cattle ranching and \$3.5 million for sheep farming in average annual receipts (<https://www.sba.gov/document/support-table-size-standards>). As of 2017, there were approximately 9,088 cattle and calf farms and approximately 1,930 sheep farms in Washington

(USDA 2019, p. 181). Of these, 13 beef cattle farms and zero sheep farms had average annual receipts above the Small Business Administration thresholds for small entities (USDA 2019, p. 181). Therefore, we find the vast majority of cattle ranches and sheep farms in the State of Washington potentially affected by the reintroduction and management of grizzly bears to be small entities.

Because the reintroduction of grizzly bears will occur only on Federal lands within Management Area A, the NPS and FWS evaluated socioeconomic impacts in a seven-county region of influence (ROI), including Chelan, King, Kittitas, Okanogan, Skagit, Snohomish, and Whatcom Counties, centered on Management Area A (the focal point for grizzly bear recovery in the NCE). While these counties contain several larger cities, including Bellingham, Everett, Seattle, and Wenatchee, the NCE is located in a predominantly rural area away from large urban areas. The NCE is approximately 52 percent of the total land area of the ROI (NPS and USFWS 2024, p. 139). Approximately 25 percent of farms in the State of Washington occur in the ROI (NPS and USFWS 2024, p. 145). Therefore, we estimate approximately 2,272 cattle and calf farms and 483 sheep farms in the ROI. The actual number of farms that may be affected is far less than 25 percent because the grizzly bear release areas occur on Federal lands and do not overlap with active grazing allotments, the ROI includes several counties that extend beyond the borders of the NCE Recovery Zone, and the farms occur in areas where we do not expect grizzly bear occupancy due to low habitat suitability (NPS and USFWS 2024, p. 146).

As of 2015, 773,788 acres (313,141 hectares) of land were actively under permit for cattle and sheep grazing on Okanogan-Wenatchee NF, with 320,044 acres (129,517 hectares) occurring within the NCE Recovery Zone. Most of the acreage permitted on Okanogan-Wenatchee NF was for cattle grazing. There are no grazing permits on Mount Baker Snoqualmie NF. The 2015 Okanogan-Wenatchee Allotment Information Sheet reports that there were 4,151 animal unit months (AUMs) of permitted sheep and 47,686 AUMS of permitted cattle grazing on National Forest System lands within the NCE Recovery Zone. In 2015, 4,100 ewe/lamb pairs

were grazing, and 4,552 cow/calf pairs were authorized to graze during the summer on USFS allotments within the NCE Recovery Zone. No livestock were present within the North Cascades NPS complex as of 2015 (NPS and USFWS 2024, p. 145).

We assessed whether this final rule would have a significant economic impact by estimating the annual number of depredations we expect to occur when the grizzly bear population will be at the restoration population of 200 (which is not expected for several decades). Grizzly bear depredation is highly variable between and among years. Estimates of potential grizzly bear depredation were generated using grizzly bear population estimates for the NCDE and livestock losses of cattle and sheep, generating an estimated annual rate of livestock loss per grizzly bear of 0.093 cattle and 0.019 sheep. When these rates were applied to an NCE grizzly bear population of 25, annual livestock loss estimates were two to three cattle and up to one sheep. When these rates were applied to an NCE grizzly bear restoration population of 200, annual livestock loss estimates were 18 to 19 cattle and 3 to 4 sheep. Rates developed with these data may represent overestimates of expected livestock loss in restored populations of grizzly bears in the NCE if grizzly bears do not occupy private lands where more livestock may be present.

It is probable that the actual number of cattle and sheep killed per year would fall within the range of the 2 estimates (1 to 19 cattle per year, and 1 to 4 sheep per year). The number would likely fall on the lower end of the range because of a number of factors, including juxtaposition of grizzly bear habitat and grazing; type of grazing operation; distribution and abundance of other predators; and abundance and distribution of prey. Even with this uncertainty, the total number of cattle and sheep depredated within the NCE would result in minimal, adverse impacts on agriculture and the livestock grazing industry, contributing to less than 0.01 percent of the total number of cattle and sheep in the ROI.

To the extent that some cattle farms will most likely not be impacted by grizzly bear recovery because they are not located in suitable habitat but are included in the total estimate of

potentially affected farms, this estimate could understate the percentage of livestock potentially affected. However, for other reasons, this estimate could very well overstate the percentage of farms affected as we recognize that annual depredation events have not been, and may not be, uniformly distributed across the farms operating in occupied grizzly bear range. Rather, grizzly bears seem to concentrate in particular areas where concentrated attractants occur within productive grizzly bear habitat (Lamb et al. 2023, pp. 6–12; Wilson et al. 2005, entire; Wilson et al. 2006, entire). The extent of depredation would be most influenced by the extent that livestock overlap with grizzly bears, the size of the grazing operation, and the presence of attractants. Additionally, these impacts are somewhat less likely to occur given that no staging or release areas would overlap active grazing allotments.

As of 2017, 4,100 ewe/lamb pairs and 4,552 cow/calf pairs are authorized to graze during the summer on USFS allotments within the NCE Recovery Zone. Few livestock are present within the central portion of the NCE Recovery Zone because it is a national park. Because only approximately three to seven bears per year would initially be released into the NCE, we anticipate depredation events to be rare during the primary phase; however, depredation is likely to increase in frequency as the population grows over time during the adaptive management phase. Based on a weighted average market value for a depredated cow/calf of \$1,021.33 (\$2022) and for a depredated sheep of \$311.96 (\$2022), a total estimated depredation of 1 to 19 cattle per year and 1 to 4 sheep per year could result in a loss of revenue at auction ranging from \$1,021.33 to \$19,405.29 for cattle and \$311.96 to \$1,247.84 for sheep.

This final rule is assessed as alternative C in our final EIS, the preferred alternative for restoring grizzly bears to the NCE. Under this alternative, the designation of an experimental population with the special regulations of this final rule would allow several forms of take of grizzly bears on Federal and non-Federal land to address conflict situations between grizzly bears and livestock. These forms of take would generally not be allowed if reintroduced grizzly bears were not designated as an experimental population (another alternative that was considered

in our final EIS). Additionally, reintroduced grizzly bears would be released only into Federal lands in Management Area A. While we anticipate that bears will move into areas within Management Areas B and C, any grizzly bear in these areas posing a demonstrable threat to human safety, livestock, or property may be relocated or removed by the Service or authorized Federal, State, or Tribal authorities with prior approval by the Service and in accordance with the process for “removal of grizzly bears involved in conflict” as defined in this 10(j) rule.

Individuals may also nonlethally take grizzly bears for the purpose of deterrence to prevent conflict, provided the deterrence does not cause lasting bodily injury (i.e., permanent damage or injuries that limit the bear’s ability to effectively move, obtain food, or defend itself for any length of time), or death to the grizzly bear. In addition, with the final rule we authorize individuals to take a grizzly bear in the act of attacking livestock under certain conditions. These flexibilities further reduce the impacts to small businesses.

Agriculture and grazing operations located closest to release areas or high-quality grizzly bear habitat would be the most likely to be affected. However, adverse impacts on agriculture and livestock grazing would be limited compared to the total number of livestock present in or adjacent to the NCE. The potential for impacts would be further reduced by the implementation of this final rule, including associated conflict-prevention efforts such as the public outreach on minimizing unsecured attractants (e.g., Western Wildlife Outreach 2023; Braaten et al. 2013, pp. 7–8).

Based on the preceding information, we find that the impact of direct effects of grizzly bear depredations on livestock would not be significant. That is, less than 0.01 percent of the total number of cattle and sheep in the ROI could be affected, and the high end of the annual potential loss of revenue across all farms is estimated at approximately \$22,000. We do not consider either the number of potential livestock affected nor the potential loss of revenue to be a significant economic impact. Considering that less than 25 percent of the total farms in Washington occur within the ROI and no farms occur within final grizzly bear release areas, far

fewer than 25 percent of farms in Washington would be likely to experience economic impacts. While we are not able to quantify this number, we do find that there would not be a substantial number of small entities impacted.

For the above reasons and based on currently available information, we certify that the final nonessential experimental population designation of grizzly bears would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that, if adopted, this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. Small governments would not be affected because the final NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of \$100 million or greater in any year (i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act). This final NEP designation of the grizzly bear in the NCE would not impose any additional management or protection requirements on the States or other entities.

*Takings (E.O. 12630)*

In accordance with Executive Order 12630, the final rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act’s regulatory requirements regarding the reintroduced population are significantly reduced.

A takings implication assessment is not required because this final rule (1) would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not

deny all economically beneficial or productive use of the land or aquatic resources. This final rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

*Federalism (E.O. 13132)*

In accordance with Executive Order 13132, we have considered whether this final rule has significant federalism effects and have determined that a federalism assessment is not required. This final rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in Washington. Establishing an experimental population of grizzly bears in the NCE Recovery Zone would contribute positively toward the status of the species, which in turn would be factored into future assessments of the status of grizzly bears in the lower 48 States.

We acknowledge a Washington State law that addresses grizzly bear reintroduction in the State. Revised Code of Washington 77.12.035, Protection of grizzly bears—*Limitation on transplantation or introduction—Negotiations with Federal and State agencies*, provides as follows: “The commission shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington State may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with Federal and State agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section.”

This State law provision governs only the activities of the Washington Department of Fish and Wildlife (WDFW) and prohibits WDFW from transplanting or introducing grizzly bears into the State (see Washington State Office of the Attorney General memorandum to the WDFW (WA AG in litt. 2017)). Further, the State provision is interpreted to require WDFW to protect grizzly bears and develop programs that will encourage their natural regeneration on public lands with suitable bear habitat, and to allow for WDFW's engagement in monitoring, habitat enhancement, and response to grizzly bears that are endangering public safety or damaging private property.

We developed this final rule in cooperation with WDFW, and in consideration of this Washington State law, grizzly bear reintroduction would occur on Federal lands administered by the NPS or the USFS, and efforts from WDFW to transplant or introduce grizzly bears would not be required. In response to comments from WDFW on the proposed rule, in this final rule we confirm that we will prioritize reintroduction releases on NPS lands as encouraged by WDFW and will work with WDFW to avoid any administrative complications. The final rule provides for the State's participation in the management of bears introduced by Federal agencies on Federal lands within the State. For these reasons, no intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The final rule would operate to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Washington. Therefore, this final rule does not have significant federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of E.O. 13132.

*Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

## *Paperwork Reduction Act*

This final rule contains existing and new collections of information that require approval by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB has reviewed and approved the information collection requirements associated with the establishment of an NEP of the grizzly bear in the State of Washington, under section 10(j) of the Act, and assigned the OMB Control Number 1018–0199.

Experimental populations established under section 10(j) of the Act, as amended, require information collection and reporting to the Service. The Service would collect information on the grizzly bear NEP to help further the recovery of the species and to assess the success of the reintroduced populations. There are no forms associated with this information collection. The respondents would notify the Service when an incident occurs, so there would be no set frequency for collecting the information. Federal, State, and participating Tribal agencies would provide the Service with the vast majority of the information on grizzly bears within the NEP. However, the public also would provide some information to the Service. The final new information collection requirements identified below require approval by OMB:

1. ***Reporting requirements***—The respondents would notify the Service when an incident occurs and annually report the number of grizzly bears relocated and removed. The State and other Federal agencies would provide the Service with the vast majority of the information on experimental populations under interagency agreements for the conduct of the recovery programs. However, the public also would provide some information to the Service. Reporting parties would include, but would not be limited to, individuals or households, businesses, farms, nonprofit organizations, and State/Tribal governments. The Service would collect the information by means of telephone calls from the public. Standard information collected would include:

- a. Name, address, and phone number of reporting party.
- b. Species involved.
- c. Type of incident.
- d. Take (quantity).
- e. Location and time of reported incident.
- f. Description of the circumstances related to the incident.

Some of these contacts would be necessary followup reports under where the Service has authorized lethal take of experimental animals (e.g., livestock depredation). The Service would collect information in three categories:

- i. *Lethal take* must be reported by individuals within 24 hours to the Service's Ecological Services point of contact in this rule. Lethal take must be reported by a Federal, State, or Tribal authority of an authorized agency within 24 hours by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service.

- ii. *Nonlethal take that results in injury* by an individual must be reported within 5 days to the Service's Ecological Services point of contact in this rule. Nonlethal take that results in injury by a Federal, State, or Tribal authority of an authorized agency must be reported within 5 days by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service. Incidental take that results from indirect activities such as incidental take in the form of harm resulting from habitat modification does not need to be reported.

- iii. *Recovery or reporting of dead individuals and specimen collection from experimental populations.* This type of information is for the purpose of documenting incidental or authorized scientific collection. Most of the contacts with the public would deal primarily with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

2. ***Memorandums of Understanding (MOUs)***—The Service would enter into MOUs with Federal, State, or Tribal agencies to authorize grizzly bear management consistent with this 10(j) rule. The Service does not expect to enter into MOUs with local governments or authorities. We are not reporting burden for Federal agencies as they are exempt from the requirements of the PRA. The Service would collect information in two general categories from the relevant agencies in relation to these MOUs:

a. *Relocation of bears.* With prior approval from the Service, a Federal, State, or Tribal authority may live-capture any grizzly bear occurring in the NEP area and transport and release it in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land-managing agency.

b. *Removal of grizzly bears involved in conflict.* Authorized Service, Federal, State, or Tribal authorities may lethally take a grizzly bear in the NEP area with prior approval from the Service if the Service or an authorized agency determines it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed, and if the taking is done in a humane manner. Grizzly bears may be taken in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm.

3. ***Written Authorization—conditioned lethal take***—With prior written agreement from the Service, individuals may lethally take a grizzly bear within 200 yards (183 m) of legally present livestock in Management Areas B and C if a depredation has been confirmed by the Service or an authorized agency and it has been determined that it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. Additionally, the Service may issue written authorization to an individual to kill a grizzly bear in Management Area C if the Service or an authorized agency identifies the grizzly bear as an ongoing threat to human safety, livestock, or other property (e.g., compost, chickens,

beehives), and it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed.

This information collection was incorrectly listed as part of the MOU information collection in the proposed rule submission to OMB. It is a stand-alone information collection, not related to the MOUs.

4. ***Recovery or reporting of dead individuals and specimen collection from experimental populations***—This type of information would be for the purpose of documenting incidental or authorized scientific collection and surrender of grizzly bear carcasses as the result of lethal take. Most of the contacts with the public primarily would be with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

5. ***Obtaining Landowner/Land Management Entity Authorization***—Individuals requesting the written authorizations mentioned above must also obtain or confirm authorization from the landowner or land management entity, where appropriate.

The Service would use the information described above to document the locations of reintroduced animals, determine causes of mortality and conflict with human activities so that Service managers could minimize conflicts with people, and improve management techniques for reintroduction. The information would help the Service assess the effectiveness of management activities and develop means to reduce problems with livestock for those species where depredation is a problem. Service recovery specialists would use the information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved.

### **Changes Since Submission at the Proposed Rule Stage**

We initially proposed the following information collection at the proposed rule stage. However, we are no longer seeking approval of them for the reasons stated below:

**1. Appointment of Designated Agent**—A designated agent is an employee of a Federal, State, or Tribal agency that is authorized by the Service to conduct grizzly bear management. A prospective designated agent would submit a letter to the Service requesting designated agent status. The letter would include a proposal for the work to be completed and resume of qualifications for the work they wish to perform. The Service would then respond to the requester with a letter authorizing them to complete the work.

Reason for Discontinuance: We removed this information collection because it is redundant with the information collections for MOUs. Authorized individuals of an authorized agency would be reporting the information specified above under their agency-specific MOU.

**2. Memorandums of Understanding—Relocation of Bears** (Individual and Private Sector Respondents)

Reason for Discontinuance: We removed this information collection for individual and private sector respondent categories as they will not be authorized to relocate bears. This information collection applies only to State/Tribal governments.

**3. Memorandums of Understanding—Conditioned Lethal Take** (State/local/Tribal Govt and Private Sector)

Reason for Discontinuance: We removed this information collection because it is already addressed for State/Tribal government respondents under the **Memorandum of Understanding—Removal of Grizzly Bears** collection, and conditioned lethal take is not authorized for the private sector. We have also revised the title for information collection from individuals for conditioned lethal take accordingly.

**4. Memorandums of Understanding—Removal of Grizzly Bears** (Individuals and Private Sector)

Reason for Discontinuance: We removed the information collections for individual and private sector respondent categories as they will not be authorized to remove bears pursuant to

Memorandums of Understanding. This information collection applies only to State/Tribal governments.

*Title of Collection:* Endangered and Threatened Wildlife, Experimental Populations—Grizzly Bear (50 CFR 17.84).

*OMB Control Number:* 1018–0199.

*Form Numbers:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Individuals; private sector; and State/Tribal governments.

*Respondent’s Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually for annual report and on occasion for other requirements.

*Total Estimated Annual Nonhour Burden Cost:* None.

Requirement	Number of Annual Respondents	Number of Annual Responses Each	Total Annual Responses	Average Completion Time	Total Annual Burden Hours
<i>Notification–Lethal Take</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Tribal Gov’t	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Notification–Nonlethal Take</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Tribal Gov’t	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Notification–Recovery or Reporting of Dead Specimen and Specimen Collection</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Tribal Gov’t	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Memorandums of Understanding–Relocation of Grizzly Bears</i>					
State/Tribal Gov’t	1	1	1	30 min (reporting) 30 min (recordkeeping)	1

<i>Memorandums of Understanding–Removal of Grizzly Bears</i>					
State/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Written Authorization–Conditioned Lethal Take</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Obtaining Landowner/Land Management Entity Authorization</i>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<i>Totals:</i>	<i>15</i>		<i>15</i>		<i>15</i>

On September 29, 2023, we published in the *Federal Register* (88 FR 67193) a proposed rule (RIN 1018–BG89) to establish a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) in the NCE, under section 10(j) of the ESA. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on November 28, 2023. In response to that proposed rule, we received the following three comments that addressed the information collection requirements:

Comment 1: Electronic comment submitted via Regulations.gov (FWS-R1-ES-2023-0074-7310) on November 10, 2023, from the Sierra Club. The commenter expressed concern regarding the timeframe for reporting injuries (i.e., nonlethal take) compared to lethal take. The proposed rule required 24 hours for reporting lethal take and 5 days for reporting nonlethal take. The commenter recommended that nonlethal take also have a 24-hour reporting requirement in case the injury ultimately results in the death of the bear.

Agency Response to Comment 1: The 5-day reporting window is consistent with our practices under the existing 4(d) rule for the grizzly bear outside the NEP, and we retain that reporting window for this NEP. In other grizzly bear ecosystems with this same 5-day reporting requirement, partners report this type of injury immediately. We would anticipate the same response in the NCE but include a 5-day reporting window in recognition that reporting an injury within 24 hours is not always feasible, especially because the areas where bears are being

reintroduced are very remote, and individuals may be in the backcountry without access to telephones or internet.

Comment 2: Electronic comment submitted via Regulations.gov (FWS-R1-ES-2023-0074-12199) on November 12, 2023, from the American Forest Resource Council. The commenter indicated that the nonlethal incidental take reporting requirements due to ‘habitat modification resulting from otherwise lawful activities’ are impractical and should be exempted from reporting.

Agency Response to Comment 2: We did not intend for the general reporting requirements for nonlethal take to apply to incidental take in the form of harm via habitat modification; rather, we are requiring reporting when lethal or nonlethal take occurs as a result of direct interactions with the grizzly bear (e.g., through self-defense, deterrence, conflict management, or vehicle collision, etc.) and have clarified that nonlethal incidental take reporting is not required.

Comment 3: Electronic comment submitted via Regulations.gov (FWS-R1-ES-2023-0074-12015) on November 12, 2023, from the Washington Forest Protection Association. The commenter indicated that the nonlethal incidental take reporting requirements due to ‘habitat modification resulting from otherwise lawful activities’ are impractical and should be exempted from reporting.

Agency Response to Comment 3: We did not intend for the general reporting requirements for nonlethal take to apply to incidental take in the form of harm via habitat modification; rather, we are requiring reporting when lethal or nonlethal take occurs as a result of direct interactions with the grizzly bear (e.g., through self-defense, deterrence, conflict management, or vehicle collision, etc.) and have clarified that nonlethal incidental take reporting is not required.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection,

including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov). Please reference OMB Control Number 1018–0199 in the subject line of your comments.

### *National Environmental Policy Act*

In compliance with the National Environmental Policy Act of 1969 (NEPA), we have prepared, jointly with NPS, a final EIS to describe the impacts of restoring grizzly bears to the NCE and establishment of the restored population as experimental and managed in accordance

with this final rule, see 89 FR 20469 (March 23, 2024). The final EIS evaluated options for a regulatory framework, including a rule consistent with section 10(j) of the Act, for the reintroduction and management of grizzly bears in part of the species' historical range in Washington. The final EIS analyzed potential environmental impacts that may result from two action alternatives and the no-action alternative and includes relevant and reasonable measures that could avoid or mitigate potential impacts.

#### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

Throughout the development of this final rule, we sought the input of Tribal governments near the final release sites as well as Tribal governments near the potential source populations in the NCDE and GYE. In collaboration with the NPS, we extended an invitation for government-to-government consultation to all federally recognized Tribes in the NEP area and formally met with Tribes that requested government-to-government consultation. Corresponding with the start of the EIS process in November 2022, all federally recognized Tribes in Washington and the Nez Perce Tribe in Idaho were invited to consult on grizzly bear recovery and the draft EIS assessing options to restore grizzly bears to the NCE. An invitation to consult specifically on the development of the 10(j) rule was sent to all federally recognized Tribes in Washington in

February 2023. Invitations to consult were also sent in March 2023 to Tribal governments near potential source populations in the NCDE and GYE, including in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Corresponding with the release of the proposed rule and draft EIS in September 2023, notification of the publication of the documents and invitations to consult were sent to all federally recognized Tribes in Washington, as well as Tribal governments near potential source populations in the NCDE and GYE, including in the States of Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. We remain available to meet with other Tribes that request government-to-government or informal consultation and will fully consider information received through the consultation process as we implement this final rule.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This final rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

#### **References Cited**

A complete list of all references cited in this final rule is available upon request from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or online at <https://www.regulations.gov> in Docket No. FWS–R1–ES–2023–0074.

#### **Authors**

The primary authors of this final rule are staff of the Service’s Washington Fish and Wildlife Office, along with staff of the Service’s Grizzly Bear Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

#### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Final Regulation Promulgation**

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.11 paragraph (h) by revising the entry for “Bear, grizzly” under

MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* * * * *				
Bear, grizzly	<i>Ursus arctos horribilis</i>	U.S.A., conterminous (lower 48) States, except where listed as an experimental population	T	32 FR 4001, 3/11/1967; 35 FR 16047, 10/13/1970; 40 FR 31734, 7/28/1975; 72 FR 14866, 3/29/2007; 75 FR 14496, 3/26/2010; 82 FR 30502, 6/30/2017; 84 FR 37144, 7/31/2019; 50 CFR 17.40(b) <sup>4d</sup> .
Bear, grizzly [Bitterroot XN]	<i>Ursus arctos horribilis</i>	U.S.A. (portions of ID and MT; see § 17.84(l)).	XN	65 FR 69624, 11/17/2000; 50 CFR 17.84(l) <sup>10j</sup> .
Bear, grizzly [North Cascades XN]	<i>Ursus arctos horribilis</i>	U.S.A. (WA, except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to	XN	89 FR [INSERT <u>FEDERAL REGISTER</u> PAGE WHERE THE DOCUMENT BEGINS], [INSERT THE DATE OF

	<p>the Columbia River to its confluence with the Spokane River, then upstream on the Spokane River to the WA-ID border; see § 17.84(y)).</p>	<p><u>PUBLICATION IN THE FEDERAL REGISTER</u>]; 50 CFR 17.84(y)<sup>10j</sup>.</p>
<p>* * * * *</p>		

3. Amend §17.84 by:

- a. Revising paragraph (l) introductory text and paragraph (l)(1); and
- b. Adding paragraph (y).

The revisions and addition read as follows:

**§ 17.84 Species-specific rules—vertebrates.**

\* \* \* \* \*

(l) Grizzly bear (*Ursus arctos horribilis*)—Bitterroot nonessential experimental population.

(1) *Where does this rule apply?* (i) The 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 in paragraph (l)(1)(ii) of this section.

(ii) The boundaries of the 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; 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)).

\* \* \* \* \*

(y) Grizzly bear (*Ursus arctos horribilis*)—North Cascades nonessential experimental population.

(1) *Purpose.* The regulations in this paragraph (y) set forth the provisions of a rule to establish an experimental population of grizzly bears. The Service finds that establishment of an experimental population of grizzly bears as described in this paragraph (y) will further the conservation of the species.

(2) *Determinations.* The grizzly bears identified in this paragraph (y) constitute a nonessential experimental population (NEP) under § 17.81(c)(2). These grizzly bears will be managed in accordance with the provisions of this rule within the boundaries of the NEP area as identified in paragraph (y)(4) of this section. After our initial release of one or more grizzly bears into the NEP area, any grizzly bears found within the NEP area will be considered a member of the NEP.

(3) *Definitions.* Key terms used in this paragraph (y) have the following definitions:

*Authorized agency* means a Federal, State, or Tribal agency designated by the Service in a memorandum of understanding (MOU) to assist in implementing all or part of the specified actions in this paragraph (y).

*Demonstrable and ongoing threat* refers to a grizzly bear actively chasing or attacking livestock or lingering in close proximity to livestock following a depredation.

*Depredation* means the confirmed killing or wounding of lawfully present livestock by one or more grizzly bears. The Service or an authorized agency must confirm grizzly bear depredation on lawfully present livestock. Livestock trespassing on Federal, State, or private lands are not considered lawfully present.

*Deterrence* means an intentional action to haze, disrupt, or annoy a grizzly bear to move out of close proximity to people or property to promote human safety, prevent conflict, or protect property and that does not cause death or lasting bodily injury to the grizzly bear.

*Domestic animal* means an individual of an animal species that has been selectively bred over many generations to enhance specific traits for their use by humans, including for use as a pet or livestock.

*Federal, State, or Tribal authority* means an employee of a State, Federal, or federally recognized Indian Tribal government who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears.

*Grizzly bear involved in conflict* means a grizzly bear that has caused substantial property damage, obtained anthropogenic foods (e.g., pet food, livestock feed, garbage), killed or injured lawfully present livestock, damaged beehives, breached an intact structure or electrified perimeter to obtain fruit or crops (e.g., greenhouse, garden, orchard, field, stackyard or grain bin), shown repeated and persistent signs of habituation in proximity to human-occupied areas (e.g., has been repeatedly hazed or previously relocated), exhibited aggressive behavior (i.e., not acting in defense of offspring or food or in response to a surprise encounter), or has been involved in a human–grizzly encounter resulting in substantial human injury or loss of human life.

*Human-occupied areas* means any structures or areas currently used or inhabited by humans (e.g., homes, residential areas, occupied campgrounds or trailheads, job sites).

*In the act of attacking* means the actual biting, wounding, grasping, or killing of livestock (including working dogs) by a grizzly bear.

*Lasting bodily injury* refers to any permanent damage or injury that limits a grizzly bear's ability to effectively move, obtain food, or defend itself for any length of time.

*Livestock* means cattle, sheep, pigs, horses, mules, goats, domestic bison, alpacas, llamas, donkeys, and working dogs but not poultry, feral dogs, or domestic dogs (working or otherwise) that are not in close proximity to human-occupied areas or to lawfully present livestock.

*Threat to human safety* means a grizzly bear that exhibits aggressive (i.e., nondefensive) behavior towards humans.

(A) Grizzly bear presence alone does not constitute a threat to human safety.

(B) Grizzly bears less than 2 years of age with no history of food-conditioning are not considered a threat to human safety.

*Working dog* means a herding or guard dog that is actively herding or guarding in close proximity to human-occupied areas or to lawfully present livestock.

(4) *Where is the grizzly bear North Cascades NEP?* (i) The grizzly bear NEP area includes Washington State except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington–Idaho border. The area shown in figure 1 to paragraph (y)(4) of this section will remain designated as the experimental population area unless the Service determines in a future rulemaking that:

(A) The reintroduction has not been successful, in which case the NEP boundaries might be altered or the regulations in this paragraph (y) might be removed; or

(B) The grizzly bear is recovered and delisted in accordance with the Act.

(ii) Management Area A of the grizzly bear North Cascades NEP includes the Mount Baker Snoqualmie National Forest, Okanogan-Wenatchee National Forest, and Colville National Forest north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades National Park Service complex. Management Area A will be the primary area for restoration of grizzly bears and will serve as core habitat for survival, reproduction, and dispersal of the NEP.

(iii) Management Area B of the grizzly bear North Cascades NEP includes the Mount Baker Snoqualmie National Forest and Okanogan-Wenatchee National Forest south of Interstate 90, Gifford Pinchot National Forest, and Mount Rainier National Park. Management Area B also

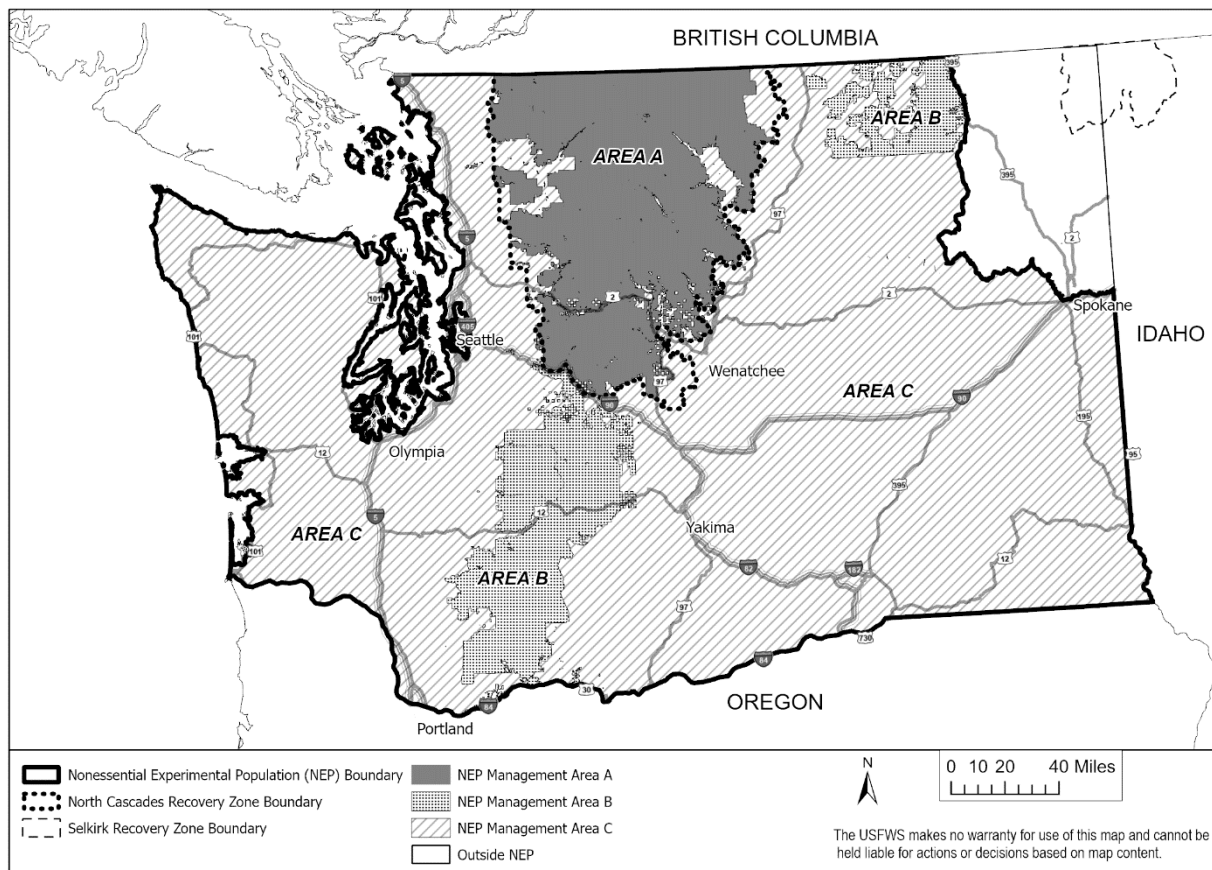
includes the Colville National Forest and Okanogan-Wenatchee National Forest lands east of Washington State Route 97 within the experimental population boundary. Management Area B includes areas that may be used for natural movement and/or dispersal by grizzly bears and that have a lower potential for human–bear conflicts.

(iv) Management Area C of the grizzly bear North Cascades NEP comprises all non-Federal lands within the North Cascades Ecosystem Recovery Zone and all other lands outside of or not otherwise included in Management Areas A and B within the NEP boundary.

Management Area C contains large areas that may be incompatible with grizzly bear presence due to high levels of private land ownership and associated development and/or potential for bears to become involved in conflicts with resultant bear mortality, although some areas within this management area are capable of supporting grizzly bears and grizzly bears may occur there.

(v) Map of the NEP area and associated management areas for the grizzly bear in the North Cascades Ecosystem follows:

Figure 1 to paragraph (y)(4)



(5) What take of the grizzly bear is allowed in Management Area A of the North Cascades NEP area? The exceptions to take prohibitions described in paragraphs (y)(5)(i) through (viii) of this section apply in Management Area A:

(i) *Defense of life.* Any person may take a grizzly bear in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm. Such taking must be reported as described in paragraph (y)(8) of this section.

(ii) *Deterrence.* Any person may take a grizzly bear for the purpose of deterrence (see definition in paragraph (y)(3)) of this section, under the provisions set forth in this paragraph (y)(5)(ii):

(A) Once a grizzly bear has moved out of close proximity, deterrence is unlikely to be effective and must cease.

(B) Any deterrence action must not cause lasting bodily injury or death to the grizzly bear.

(C) Deterrence must be by acceptable techniques, which include non-projectile auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, and noise-making projectiles. Unacceptable deterrence methods include screamers/whistlers, rubber bullets/batons, and bean bag and aero sock rounds. For more information about appropriate nonlethal deterrents, contact the Service for the most current Service-approved guidelines.

(D) A person may not bait, stalk, or pursue a grizzly bear for the purposes of deterrence. Pursuit is defined as deterrence carried out beyond 200 yards (183 m) of a human-occupied area or lawfully present livestock.

(E) Any person who deters a grizzly bear must use discretion and act safely and responsibly.

(iii) *Incidental take.* (A) Except as provided in paragraph (y)(5)(iii)(B) of this section, take of a grizzly bear is allowed if it is incidental to (i.e., unintentional and not the purpose of) an otherwise lawful activity and is not due to negligent conduct.

(B) Take of a grizzly bear resulting from U.S. Forest Service actions on National Forest System lands in Management Area A that is incidental to otherwise lawful activity is allowed if the U.S. Forest Service has maintained its 'no net loss' agreement and implemented food storage restrictions throughout National Forest System lands in Management Area A.

(iv) *Take under permits.* Any person with a valid permit issued under § 17.32 by the Service may take a grizzly bear pursuant to the terms of the permit.

(v) *Take under section 6 of the Act.* Any State conservation agency may take a grizzly bear under section 6(c) of the Act as described in § 17.31.

(vi) *Research and recovery actions.* With prior approval of the Service, an authorized agency as defined in paragraph (y)(3) of this section may take a grizzly bear if such action is necessary:

(A) For scientific purposes;

(B) To aid a sick or injured grizzly bear, including euthanasia if the grizzly bear is unlikely to survive or poses an immediate threat to human safety;

(C) To salvage a dead specimen that may be useful for scientific study;

(D) To dispose of a dead specimen; or

(E) To aid in law enforcement investigations involving the grizzly bear.

(vii) *Removal of grizzly bears involved in conflict.* With prior approval of the Service, a grizzly bear involved in conflict in the NEP area may be taken by an authorized agency, including by lethal removal, but only if:

(A) It is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed in a remote area agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land management agency; and

(B) The taking is done in a humane manner (with compassion and consideration for the bear and minimizing pain and distress) by a Federal, State, or Tribal authority of an authorized agency.

(viii) *Relocation of a grizzly bear.* With prior approval from the Service, an authorized agency may live-capture one or more grizzly bears and transport and release them in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land managing agency:

(A) For a grizzly bear involved in conflict;

(B) To prevent unnatural use of food materials that have been reasonably secured from the bear or unnatural use of anthropogenic foods;

(C) After aggressive (i.e., not defensive) behavior toward humans results in injury to a human or constitutes a demonstrable immediate or potential threat to human safety;

(D) As a preemptive action to prevent a conflict that appears imminent or in an attempt to prevent habituation of bears; or

(E) For any other conservation purpose for the grizzly bear as determined by the Service.

(ix) *Reporting requirements.* Any take pursuant to this paragraph (y)(5) resulting in lasting injury or death of a grizzly bear must be reported as indicated in paragraph (y)(8) of this section.

(6) *What take of the grizzly bear is allowed in Management Area B of the North Cascades NEP area?* Grizzly bears in Management Area B will be accommodated through take exceptions described in paragraph (y)(6)(i) of this section, in addition to those take exceptions allowed in Management Area A as set forth in paragraph (y)(5) of this section. “Accommodated” means a grizzly bear in Management Area B will not be disturbed unless it demonstrates a threat to human safety or to protect property.

(i) *Conditioned lethal take.* The Service may issue prior written authorization allowing an individual to kill a depredating grizzly bear within 200 yards (183 m) of legally present livestock. Such authorizations will be valid for 5 days, but the Service may extend the authorization of lethal take an additional 5 days if additional grizzly bear depredations or injuries to livestock occur and circumstances indicate that the offending bear can be identified. Such authorizations will be issued only if:

(A) A depredation has been confirmed by the Service or authorized agency;

(B) The Service or an authorized agency determines it is not reasonably possible to otherwise eliminate the threat by deterrence or live-capturing and releasing the grizzly bear unharmed;

(C) The taking is done in a humane manner (i.e., showing compassion and consideration for the bear and minimizing pain and distress);

(D) The taking is reported as indicated in paragraph (y)(8) of this section; and

(E) The grizzly bear carcass and any associated collars or ear tags are surrendered to the Service.

(7) *What take of the grizzly bear is allowed in Management Area C of the North Cascades NEP area?* In addition to the take exceptions described in paragraph (y)(7)(i) of this section, all take exceptions allowed in Management Areas A and B as set forth in paragraphs (y)(5) and (6) of this section are also allowed in Management Area C of the NEP.

(i) *Conditioned lethal take.* (A) The Service may issue prior written authorization allowing an individual to kill a grizzly bear in Management Area C when deemed necessary for human safety or to protect property. Such authorizations will be valid for 5 days, may be reissued by the Service if deemed warranted, and will be issued only if:

(1) The Service or authorized agency determines that a grizzly bear presents a demonstrable and ongoing threat to human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property and that it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed;

(2) The individual requesting the written authorization is the landowner, livestock producer, or designee (e.g., an employee or lessee);

(3) The taking is done in a humane manner;

(4) The taking is reported as indicated in paragraph (y)(8) of this section; and

(5) The carcass and any associated collars or ear tags are surrendered to the Service.

(B) Any individual may take (injure or kill) a grizzly bear in the act of attacking livestock on private lands (i.e., nonpublic lands) under the provisions set forth in this paragraph (y)(7)(i)(B):

(1) The individual is the landowner or livestock producer or a designee (e.g., an employee or lessee).

(2) Any grizzly bear taken is reported to the Service or authorized agency within 24 hours.

(3) The carcass of any grizzly bear and the surrounding area is not disturbed to preserve physical evidence of the attack.

(4) The Service or authorized agency is able to confirm that the livestock or working dog was injured or killed by a grizzly bear. The taking of any grizzly bear without such evidence may be referred to the appropriate authorities for prosecution.

(5) There is no evidence of excessive unsecured attractants (e.g., carcass piles or bone yards) or of intentional feeding or baiting of grizzly bears or wildlife.

(8) *What are the reporting requirements for take of grizzly bears in the North Cascades NEP?* (i) *Lethal take.* Any grizzly bear that is killed by an individual under the provisions of this paragraph (y) must be reported within 24 hours to the Service's Washington Fish and Wildlife Office special reporting hotline: (360) 800-7960. Any grizzly bear that is killed by a Federal, State, or Tribal authority of an authorized agency under the provisions of this paragraph (y) must be reported within 24 hours by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service.

(ii) *Nonlethal take resulting in injury.* Any direct take of a grizzly bear by an individual under the provisions of this paragraph (y) that does not result in death of a grizzly bear but causes lasting bodily injury must be reported within 5 calendar days of occurrence to the Service's Washington Fish and Wildlife Office special reporting hotline: (360) 800-7960. Any direct take of a grizzly bear by a Federal, State, or Tribal authority of an authorized agency under the provisions of this paragraph (y) that does not result in death of a grizzly bear but causes lasting bodily injury must be reported within 5 calendar days of occurrence by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service. Indirect incidental take, such as harm to a grizzly bear resulting from habitat modification, does not need to be reported under this provision.

(9) *What take of the grizzly bear is not allowed in the North Cascades NEP area?* (i) Other than expressly provided by the regulations in this paragraph (y), all take is prohibited and

considered a violation of section 9 of the Act. Take of a grizzly bear within the NEP area must be reported as set forth in paragraph (y)(8) of this section.

(ii) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any grizzly bear or part thereof from the NEP taken in violation of this paragraph (y) or in violation of applicable Tribal or State laws or regulations or the Act.

(iii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in paragraphs (y)(5) through (7) of this section.

(iv) To avoid illegally shooting a grizzly bear, persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting. The act of taking a grizzly bear that is wrongfully identified as another species is not considered incidental take and is not allowed under this rule and may be referred to appropriate authorities for prosecution.

(v) Any grizzly bear or grizzly bear part taken legally in accordance with the regulations in this paragraph (y) must be turned over to the Service unless otherwise authorized by the Service in writing.

(10) *How will the effectiveness of the grizzly bear restoration effort be monitored?* The Service will monitor grizzly bears in the North Cascades NEP annually and will evaluate the status of grizzly bears in the NEP in conjunction with the Service's species status assessments and status reviews of the grizzly bear. Evaluations in the Service's status reviews will include, but not be limited to, a review of management issues, grizzly bear movements, demographic rates, causes of mortality, project costs, and progress toward establishing a population.

**Stephen Guertin**  
*Acting Director, U.S. Fish and Wildlife Service.*

