



*Nez Perce*

TRIBAL EXECUTIVE COMMITTEE  
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August 20, 2001

Assistant Regional Director  
Ecological Services  
U.S. Fish and Wildlife Service  
Box 25486 DFC  
Denver, Colorado 80225

**RE: Nez Perce Tribe's Comments in Opposition to Proposal To Select No Action Alternative for Grizzly Bear Recovery**

Dear Assistant Regional Director:

The Nez Perce Tribe appreciates this opportunity to comment on the Reevaluation of the Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) and Selection of Alternative for Grizzly Bear Recovery in the Bitterroot Ecosystem. After re-reviewing the ROD, FEIS, and the Notice of Intent to Select the No Action Alternative, the Nez Perce Tribe (Tribe) strenuously opposes the decision to select the No Action alternative and recommends that the Final Rule choosing the Preferred Alternative (Alternative 1 in the FEIS) to establish a non-essential experimental population of grizzlies in the Bitterroot Ecosystem be fully implemented without further delay.

The Tribe incorporates by reference our comments submitted throughout the public comment period during the development of the Draft EIS and culminating in the FEIS for grizzly bear recovery. The Tribe maintains active management interests in the natural resources that lie within our treaty lands, which include the grizzly bear recovery area in the Bitterroot Ecosystem. The Tribe fully supports the U.S. Fish and Wildlife Services's (FWS) efforts to recover the grizzly while ensuring adequate local participation in the management of the species. As such, the Tribe pursued, and continues to pursue, an active management role in the recovery of the grizzly bear for both the ecological benefits of returning the bear to its rightful place and the cultural benefits recovery would provide to the Nez Perce people.

The Tribe hopes that the following comments will aid FWS in its decision regarding grizzly bear recovery. The Tribe maintains that no new information is available to affect the decision selecting the Preferred Alternative. The Preferred Alternative represents a recovery strategy that

properly balances the needs of grizzly bear with the citizens of the United States. Crafted after seven years scientific peer review, public comments, and public meetings, the Preferred Alternative represents sound science and sound policy, recovering the grizzly while granting unprecedented authority to local citizens to manage and oversee the recovery program.

## SPECIFIC COMMENTS

The Tribe has numerous concerns with FWS's decision to withdraw the final rule implementing the Preferred Alternative and, as described in detail below, opposes the decision to pursue the No Action alternative .

1. *No Reason Is Provided for Selecting the No Action Alternative.*

As a threshold matter, no reasoning is provided in the Notice of Intent dated June 22, 2001 for withdrawing the Final Rule. Simply stating that FWS "has determined that it is not prudent" to recover grizzly bears in the Bitterroot ecosystem is unsatisfactory. Without further analysis or explanation behind FWS's decision, this action is arbitrary and capricious and otherwise not in accordance with applicable laws.

2. *The Tribe Was Not Consulted Prior to Initiation of This Action.*

The Notice of Intent states: "we strongly believe that the only way to effectively recover grizzly bears is with the help and support of affected States. In order to achieve this, we will continue to work in close cooperation and consultation what States and local governments." This statement is both factually and legally inaccurate.

First, in addition to consultation with states and local governments, the FWS has an obligation to engage in meaningful government-to-government consultation with affected tribes. As the Tribe was to be a member of the Citizen Management Committee that was created to oversee the recovery operations and because the recovery operation will affect treat-protected resources within the Tribe's ceded territory, consultation, prior to the issuance of the Notice of Intent, was required. Not only did this consultation not occur, the Notice of Intent fails to recognize the necessity of future consultation with Tribe during any further discussions regarding grizzly bear recovery. This contradicts the Final Rule's guarantee that grizzly bear recovery will be undertaken "in cooperation with . . .the Nez Perce Tribe." Final Rule at 8. Should any additional discussion regarding grizzly bear recovery take place, the Tribe must be consulted and be involved in all decision making regarding the future of grizzly bear recovery operations.

Second, as a factual matter, the Notice of Intent seems to indicate that the choice of the Preferred Alternative was made without adequate input from local citizens and states. This is simply not true. As indicated in the Executive Summary accompanying the Draft EIS, the public comment period extended from January 1995 through 1997, and included seven public hearings in affected local communities taking place from October 1 through October 8, 1997. These hearings drew



1,367 local citizens, of whom, 294 directly testified as to the Draft EIS. In addition, over 24,000 responses were received. Without question, local citizens had an ample opportunity to comment on the proposed recovery plan. Moreover, the Preferred Alternative assured local input into all recovery decisions through the Citizen Management Committee. Rather than following this approach, the Notice of Intent eschews public comment by adopting an alternative which is unsupported by science and public sentiment.

3. *The Decision to Select the No Action Alternative is Not Supported by the ROD.*

In deciding to select the Preferred Alternative, the ROD states: “The selected alternative represents the environmentally preferable alternative which balances the biological needs of recovering grizzly bears and public concerns about the potential management of non-experimental grizzly bear populations under the ESA . . . This alternative offers the most efficient and realistic plan to result in the recovery of grizzly bears in the Bitterroot Ecosystem, given concerns of local residents over grizzly bear restoration.” ROD at 5. Moreover, the ROD finds that the Citizen Management Committee under the Preferred Alternative will “allow for flexible and responsive management” to handle the concerns of local citizens. Id.

In contrast, the ROD’s discussion of the No Action alternative, provides a bleak picture for the future of bears and the ability of local citizens to manage their recovery. In particular, the ROD states that selection of this alternative would “likely result in no recovery of grizzly bears” and “would result in the less management flexibility for the Service to resolve local concerns.” Id. at 6. As such, the FWS decision to abandon the Preferred Alternative in favor of the No Action alternative stands in direct contradiction to the agency’s own ROD. Further, the ROD quite clearly discredits FWS’s statement in the Notice of Intent regarding their desire to withdraw the rule to allow for local concerns to be better taken into account.

4. *The Decision to Select the No Action Alternative Ignores Public Comment.*

During the public comment period preceding the Final Rule, approximately 76% of all form letters and petitions received were supportive of grizzly bear recovery in the Bitterroot. Summary of Public Comments at Intro 7, 9. However, when it came to differentiating between the proposed alternatives, while the Preferred Alternative received numerous comments, indicating the level of public input into the decision making process, the No Action alternative “received little attention when compared to the others. . . . It does not appear that the No Action alternative has received the same considerations as the other alternatives.” Id. at 2-1. Thus, not only was the No Action alternative rejected by the ROD, it was also rejected by concerned citizens, who chose to comment instead on alternatives that assured they would have a stake in the management of grizzly recovery.

5. *The Decision to Select the No Action Alternative Ignores the Best Available Science.*

As indicated in the Final Rule, the recovery of grizzly bears pursuant to section 10(j) of the ESA

is “necessary and advisable for the conservation of the grizzly.” Final Rule at 10. The Preferred Alternative provides the key to the long-term survival of grizzly bears in the lower 48 states. The Bitterroot Ecosystem contains excellent habitat and four million acres of designated wilderness. In addition, it is one of the largest contiguous blocks of federal land remaining in lower 48 states. More importantly, the Bitterroot provides the necessary bridge to link Yellowstone grizzly bears with populations to the north. Absent the reintroduction of the 25 bears, the grizzlies in Yellowstone will remain in genetic isolation. If new genes are not introduced within three to four generations, the bears could suffer from inbreeding, posing a serious threat of irreparable harm to the species within a few decades. The bears in Yellowstone are currently less genetically diverse than those in Montana’s Northern Rockies and in Canada.

The Bitterroot could potentially support approximately 280 bears, increasing the number of grizzly in the contiguous United States by 25-30%, and significantly increasing the potential for long-term conservation and recovery of the grizzly bear. The No Action alternative, on the other hand, will not aid in the recovery of the species. As such, the selection of this alternative is not based on the ESA’s standard of the “best scientific and commercial data available” and is unsupported by the ROD.

6. *The Decision to Select the No Action Alternative Ignores Common Sense.*

The Preferred Alternative ensures that the recovery area is in the most remote portions of the Bitterroot Ecosystem, far removed from national parks and inhabited areas. Due to the low density of bears being reintroduced, the risk of human-bear or bear-livestock interaction is even further removed. Grizzly bears are primarily vegetarians, and few documented cases of bear-induced human mortality exist. The FWS has projected that, based on 280 bears exiting in the Bitterroot by 2115, an estimated one injury will result per year and less than one grizzly bear-induced mortality every few decades. Final Rule at 21. In fact, horses cause greater human injury and mortality per year than grizzly bears.

Moreover, grizzly bears may eventually expand into the Bitterroot Ecosystem on their own. Should the bears return to their historic habitat, they will do so under conditions less favorable or controllable by local citizens or governments than those offered under the Preferred Alternative.

7. *The Citizen Management Committee Ensured Local Involvement.*

Only the Preferred Alternative adequately balanced the needs of the grizzly with the concerns of local citizens. These concerns were to be address through a fifteen member Citizen Management Committee whose mission was to facilitate recovery and make recommendations regarding management strategies. This fifteen member committee would comprise of individuals appointed by the Secretary of the Interior, the governors of Idaho and Montana, and one individual representing the Tribe, representing a diverse cross-section of community interests and viewpoints.



Moreover, the Citizen Management Committee represented a radical departure from the kind of heavy-handed federal decision making that has caused problems with the ESA in the past. Instead, individuals from all walks of life – ranchers, loggers, environmentalists, and others – worked in the spirit of cooperation and collaboration to develop a plan that would protect the grizzly and local interests. This innovative, grass-roots plan to save the grizzly bear received significant public support and complemented the science supporting grizzly bear reintroduction. The No Action alternative will not allow for similar local control and will sacrifice the efforts of numerous concerned citizens.

## CONCLUSION

The Tribe opposes FWS's decision to withdraw the Final Rule adopting the Preferred Alternative for grizzly bear recovery in the Bitterroot Ecosystem. The No Action alternative ignores the agency's own findings in the ROD, public sentiment, and sound science. As such, the Tribe urges FWS to implement the current Final Rule as written and restore the grizzly bear to east-central Idaho and a portion of western Montana as a non-essential experimental population.

Sincerely Yours,

A handwritten signature in cursive script that reads "Samuel N. Penney".

Samuel N. Penney  
Chairman