Source of flooding and location	# Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
North Sand Branch:			
Approximately 40 feet upstream of the confluence with Sand Branch.	•1,768	•1,767	Raleigh County (Unincorporated Areas).
Approximately 3.9 miles upstream of the confluence with Sand Branch.	None	•2,281	
Sycamore Creek:			
At the confluence with Clear Fork	None	•1,020	Raleigh County (Unincorporated Areas).
Approximately 2.2 miles upstream of the confluence with Clear Fork.	None	•1,230	
Tributary 1 to Breckenridge Creek:			
At the confluence with Breckenridge Creek	None	•1,973	Raleigh County (Unincorporated Areas).
Approximately 0.4 mile upstream of the confluence with Breckenridge Creek.	None	•1,990	
Tributary 2 to Breckenridge Creek:			
At the confluence with Breckenridge Creek	None	•1,976	Raleigh County (Unincorporated Areas).
Approximately 700 feet upstream of the confluence with Breckenridge Creek.	None	•1,983	
Tributary 3 to Breckenridge Creek:			
At the confluence with Breckenridge Creek	None	•1,981	Raleigh County (Unincorporated Areas).
Approximately 1,000 feet upstream of the confluence with Breckenridge Creek.	None	•1,987	
White Oak Creek:			
Approximately 650 feet upstream of the confluence with Clear Fork.	None	•1,336	Raleigh County (Unincorporated Areas).
Approximately 3.3 miles upstream of the confluence with Clear Fork.	None	•1,827	

City of Beckley

Maps available for inspection at the Beckley City Municipal Building, 409 South Kanawha Street, Beckley, West Virginia.
Send comments to The Honorable Emmett S. Pugh, III, Mayor of the City of Beckley, P.O. Box 2514, Beckley, West Virginia 25802.

Raleigh County (Unincorporated Areas)

Maps available for inspection at the Raleigh County Commission Building, 16 1/2 North Herber Street, Beckley, West Virginia.
Send comments to Mr. John Aliff, Raleigh County Commission President, 215 Main Street, P.O. Drawer AN, Beckley, West Virginia 25802.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 3, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2259 Filed 2–15–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF21

Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period with new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to remove the bald eagle (*Haliaeetus leucocephalus*) from the List of Endangered and Threatened Wildlife in the lower 48 States of the United States, under the Endangered Species Act of 1973 (ESA), as amended. The proposed delisting rule for the bald eagle was published on July 6, 1999 (64 FR 36454). Comments previously submitted on the July 6, 1999, proposed rule need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period, and they will be fully considered in the preparation of the final rule. In reopening the comment period, we provide new information, respond to the comments we received in the proposed rule, and further clarify our reasons for proposing to delist the species.

The best available scientific and commercial data available indicates that the bald eagle has recovered. The bald eagle population in the lower 48 States has increased from approximately 487 active nests in 1963, to an estimated minimum 7,066 breeding pairs today. The recovery of the bald eagle is due in part to habitat protection and management actions, and the reduction in levels of persistent organochlorine pesticides (such as DDT) occurring in the environment. This rule will not affect protection provided to the species under the Bald and Golden Eagle Protection Act (BGEPA) or the Migratory Bird Treaty Act (MBTA).

In addition, the Bald and Golden Eagle Protection Act will continue to provide protection to the bald eagle, if delisting under the ESA is found to be warranted. To help clarify the BGEPA protections provided to the bald eagle, the Service is also soliciting public comments on two related draft bald eagle documents under the BGEPA that are being published simultaneously with this proposed delisting rule. First,

we are publishing a notice of availability and request for public comments on draft National Bald Eagle Management Guidelines (Guidelines). The Guidelines provide guidance on how to comply with the requirements of the BGEPA by avoiding disturbance to bald eagles under different land use scenarios. Second, we are publishing a proposed rule to add the definition of "disturb" to our regulations at 50 CFR 22.3, which implement the BGEPA. These two documents are published separately in this part of today's **Federal Register** and include additional information about submitting comments on them.

DATES: We must receive comments by May 17, 2006 in order to ensure their consideration in our final decision. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: You may submit comments and other information, identified by RIN 1018–AF21, by any of the following methods:

- Mail: Michelle Morgan, Chief, Branch of Recovery and Delisting, Endangered Species Program, U.S. Fish and Wildlife Service, Headquarters Office, 4401 N. Fairfax Drive, Room 420, Arlington, Virginia 22203. Attn: RIN 1018–AF21.
- Hand Delivery/Courier: Same address as above.
- E-mail: *baldeagledelisting@fws.gov*. Include "RIN 1018-AF21" in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments, file format and other information about electronic filing, and additional information on the rulemaking process, see the "Public Comments Solicited" heading of the **SUPPLEMENTARY INFORMATION** section of this document. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received for this rule will be available for public inspection, by appointment, during normal business hours at the above address after the close of the comment period. Call (703) 358–2061 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Mary Klee, Biologist, at the Headquarters Office (see **ADDRESSES** section), or via e-mail at *Mary_Klee@fws.gov*; telephone (703) 358–2061.

Additional information is also available on our World Wide Web site at *http://www.fws.gov/migratorybirds/BaldEagle.htm*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Note: Unless otherwise noted with specific citations, the following life history information is derived from our five recovery plans for the bald eagle and from Gerrard and Bortolotti (1988) (see References).

Current data indicate that the bald eagle in the lower 48 States has recovered. The bald eagle population in the lower 48 States has increased from approximately 487 active nests in 1963 to an estimated minimum 7,066 breeding pairs today. The recovery of the bald eagle is due in part to habitat protection and management actions, and the reduction in levels of persistent organochlorine pesticides (such as DDT) occurring in the environment.

The bald eagle is well known as our Nation's symbol. Its appearance is distinguished in adult birds by its white head and tail contrasting against its dark brown body. Its Latin name, *Haliaeetus leucocephalus*, literally means sea eagle with a white head. The bald eagle is the only species of sea eagle native to North America, and was first described in 1766 as *Falco leucocephalus* by Linnaeus. This South Carolina specimen was later renamed as the southern bald eagle, subspecies *Haliaeetus leucocephalus leucocephalus* (Linnaeus) when Townsend identified the northern bald eagle as *Haliaeetus leucocephalus alascanus* in 1897 (Peters 1979). By the time the bald eagle was listed throughout the lower 48 States under the ESA, subspecies of the bald eagle were no longer recognized by ornithologists (American Ornithologists Union 1983).

The bald eagle is a bird of aquatic ecosystems, frequenting large lakes, rivers, estuaries, reservoirs and some coastal habitats. It feeds primarily on fish, but waterfowl, gulls, cormorants, and a variety of carrion may also be consumed. Adult birds are brown with a white head and tail, while the sub-adult's plumage varies. Female bald eagles usually weigh 10 to 14 pounds and are larger than the males, which usually weigh 8 to 10 pounds.

Bald eagles usually nest in trees near water, but may use cliffs in the southwest United States, and ground nests have been reported from Alaska. Nests are usually built in large trees along shorelines, but may be up to one-half mile or more from the shoreline. The nest is often 4 to 6 feet wide, and after years of use, may weigh 1,000 pounds. Adults use the same breeding territory, and often the same nest, year after year. They may also use one or more alternate nests within their breeding territory.

Bald eagles are relatively long lived. The longest living bald eagle known in the wild was reported near Haines, Alaska, as 28 years old (Schempf 1997). It is thought that bald eagles may live even longer in captivity. It is presumed that bald eagles mate for life, though if a member of a pair is lost, the survivor will find another partner. Courtship begins about a month prior to egg-laying, with eagles in southern latitudes beginning as early as September, and the northern latitudes, as late as May. The nesting season is approximately 6 months. Eggs are incubated for approximately 35 days, and fledging takes place at 11 to 12 weeks old. Parental care may extend 4 to 11 weeks after fledging (Wood, Collopy, and Sekerak 1998). Between fledging and adulthood, the bald eagle's plumage changes from solid dark brown as fledglings to include the distinctive white head and tail as mature adults at age 4 to 5. The timing and distance of dispersal from the breeding territory varies. Some bald eagles stay in the general vicinity while some migrate up to hundreds of miles to their wintering grounds and remain there for several months. Young eagles may wander randomly for years before returning to nest in their natal areas. In Arizona, most bald eagles return to within 124 miles of their natal areas to breed (Terry Johnson, pers. comm.).

Eagles seek wintering (non-nesting) areas offering an abundant and readily available food supply with suitable night roosts. Night roosts typically offer isolation and thermal protection from winds. Northern bald eagles winter in areas such as the Upper Mississippi River and Great Lakes area. For mid-continent bald eagles, wintering grounds include the southern States. Southern bald eagles nest during the winter months, and may utilize foraging areas of Chesapeake Bay and Yellowstone National Park during the summer.

The first major decline in the bald eagle population probably began in the mid to late 1800s. Widespread shooting for feathers and trophies led to extirpation of eagles in some areas. Shooting also reduced part of the bald

eagle's prey base. Waterfowl, shorebirds, and small mammals were also reduced in numbers. Carrion treated with strychnine, thallium sulfate, and other poisons was used as bait to kill livestock predators and ultimately killed many eagles as well. These were the major factors, in addition to loss of nesting habitat from forest clearing and development, which contributed to a reduction in bald eagle numbers through the 1940s.

In the late 1940s, shortly after World War II, the use of dichloro-diphenyl-trichloroethane (DDT) and other organochlorine pesticide compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitoes (Carson 1962). Later, it was widely used as a general crop insecticide. Dichlorophenyl-dichloroethylene (DDE), the principal metabolic breakdown product of DDT, devastated eagle productivity from the 1950s through the mid-1970s. DDE accumulated in the fatty tissue of adult female bald eagles, and impaired calcium metabolism necessary for normal eggshell formation, causing eggshell thinning. Many eggs broke during incubation, while others suffered embryonic mortality resulting in massive reproductive failure.

Breeding and productivity surveys have been conducted annually on a State-by-State basis since the early 1970s. Data collection methods vary, but generally include surveys by aircraft or ground observations each year during the breeding season to determine the number of occupied breeding areas; a second survey is conducted just before fledging to count the number of young produced at the site. Surveys continue to be conducted by the Service and cooperators, primarily the States and the U.S. Forest Service. However, recently some States have discontinued annual surveys. The last rangewide survey was conducted in 2000. Since that time, more than half of the States have updated their bald eagle population figures. Of the 48 States in which the bald eagle is listed, 30 States completed surveys in 2003, 5 States completed the last survey in 2002, and 9 States completed the last survey in 2001.

Previous Federal Actions

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) was passed in 1918. It implements various treaties and conventions between the U.S. and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful. Unless permitted by regulations, the MBTA provides that it is unlawful to pursue, hunt, take, capture, or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not.

The Bald Eagle Protection Act (16 U.S.C. 668–668d) was passed in 1940, specifically protecting bald eagles in the United States. A 1962 amendment to this Act included the golden eagle in this protection, and the amended statute became known as the Bald and Golden Eagle Protection Act (BGEPA). The golden eagle was given protected status because of population declines, value to agriculture in the control of rodents, and to afford greater protections to bald eagles because of the similarity of appearance to juvenile bald eagles. This law prohibits the take, possession, sale, purchase, barter, or offering to sell, purchase or barter, transport, export or import, of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a)). "Take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb (16 U.S.C. 668c; 50 CFR 22.3).

On March 11, 1967 (32 FR 4001), the Secretary of the Interior listed bald eagles south of 40 degrees north latitude as endangered under the Endangered Species Preservation Act of 1966 (Pub. L. 89–699, 80 Stat. 926) due to a population decline caused by DDT and other factors. Bald eagles north of this line were not included in that action because the northern populations had not experienced the same threats and population declines and, therefore, were not considered endangered in 1967.

On December 31, 1972, the U.S. Environmental Protection Agency canceled and suspended registration of DDT in the United States. The following year the Endangered Species Act of 1973 (16 U.S.C. 1531–1544) was passed. Among the purposes of the ESA are "* * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, and to provide a program for the conservation of such endangered and threatened species". 16 U.S.C. *Id.* At 1531(b). The ESA contains provisions for listing, protection, and recovery of imperiled species. An endangered species is defined under the ESA as a species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as any species that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The ESA and its implementing regulations prohibit the unauthorized take of any listed species. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these acts. The ESA also prohibits shipment in interstate commerce in the course of commercial activity or sale or offer for sale in interstate or foreign commerce.

In 1978, the Service listed the bald eagle as endangered under the ESA in 43 of the contiguous States, and threatened in the States of Michigan, Minnesota, Wisconsin, Oregon, and Washington (43 FR 6233, February 14, 1978). Sub-specific designations for northern and southern eagles were removed.

The protection available under the ESA and the banning of DDT and other harmful chemicals resulted in significant increases in the breeding population of bald eagles throughout the lower 48 States. In response to the increasing population, we published an advanced notice of a proposed rule on February 7, 1990, (55 FR 4209) to reclassify the bald eagle from endangered to threatened in the remaining 43 States where it had been listed as endangered and retained threatened status for the other 5 States. On July 12, 1994, we published a proposed rule to accomplish this reclassification (59 FR 35584), and the final rule was published on July 12, 1995, (60 FR 36000). Populations of bald eagles have continued to increase, and on July 6, 1999, we published a proposed rule to delist the bald eagle throughout the lower 48 States due to recovery (64 FR 36454).

Bald Eagle Recovery

Section 4(f) of the ESA directs us to develop and implement recovery plans for listed species. In some cases, we appoint experts to recovery teams to assist in the preparation of recovery plans. To facilitate the recovery of the bald eagle, we divided the lower 48 States into five recovery regions (Table 1). Separate recovery teams composed of experts in each geographic area prepared recovery plans for their region. The teams established recovery objectives and criteria and identified tasks to achieve those objectives. Coordination meetings were held regularly among the five teams to exchange data and discuss progress towards recovery.

TABLE 1.—THE FIVE BALD EAGLE RECOVERY REGIONS AND DATES OF APPROVED RECOVERY PLANS

Recovery region	Date of recovery plan	States
Chesapeake Bay	1982, rev. 1990	Delaware, Maryland, the southern two-thirds of New Jersey, the eastern half of Pennsylvania, Virginia east of the Blue Ridge Mountains, and the "panhandle" of West Virginia.
Pacific	1986	California, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming.
Southeastern	1984, rev. 1989	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Eastern Texas.
Southwestern	1982	Arizona, the area of California bordering the Lower Colorado River, New Mexico, and Oklahoma and Texas west of the 100th meridian.
Northern States	1983	All remaining 24 States or parts thereof.

Recovery Accomplishments

The Service and other Federal, State, tribal, and local cooperators from across the Nation have funded and carried out many of the tasks described within the recovery plans. Annual expenditures for the recovery and protection of the bald eagle by public and private agencies have exceeded $1 million each year for the past decade (Service records). State fish and wildlife agencies have played a vital role in restoring bald eagles to areas from which they were extirpated or in which their numbers were greatly reduced. These activities include conducting annual surveys of breeding and productivity, purchasing lands for the protection of bald eagle habitat, reintroduction and habitat management programs, and public outreach.

A partial survey conducted by the National Audubon Society in 1963 reported on 417 active nests in the lower 48 States, with an average of 0.59 young produced per nest. Surveys we coordinated in 1974 resulted in a population estimate of 791 occupied breeding areas for the lower 48 States.

Since the early 1980s, breeding and productivity surveys were conducted annually on a State-by-State basis. Data collection methods vary somewhat from State to State but generally include surveys by aircraft or visits to the site each year during the breeding season to determine the number of occupied breeding areas, and a second survey just before fledging to count the number of young produced at the site. Some States conduct the survey themselves with agency personnel, others collate data from partners (including cooperating agencies), while some data is collected by personal interviews with reliable sources. Though the data collection methods may vary, most States agree that the data provided to us represent a minimum number of known, occupied breeding areas. The last National bald eagle census was recorded in 2000. Since then, a number of States have collected bald eagle data every other year or every few years.

Since the development and implementation of the five recovery plans, the bald eagle's population growth has exceeded most of the goals established in the various recovery plans. In 1994, our cooperators reported about 4,450 nesting pairs with an estimated average young of 1.16 young per nest. Compared to the survey conducted in 1974, the number of nesting pairs in 1994 in the lower 48 had increased by 462 percent.

Based on the improvements through 1994, including a significant increase in numbers of nesting pairs, increased productivity, and expanded distribution, we reclassified the bald eagle in 1995 from endangered to threatened (60 FR 36000, July 12, 1995). In 1999, we proposed the bald eagle for delisting due to recovery (64 FR 36454, July 6, 1999).

Recovery continues to progress at an impressive rate. Between 1989 and 1999, the bald eagle's nesting population increased at a rate of 8 percent per year. In 2000, the last year a National census was conducted, there were an estimated 6,471 nesting pairs of bald eagles.

Approximately 60 percent of the lower 48 States have reported nesting pair numbers for 2003, totaling 4,044 nesting pairs. We estimate a current bald eagle nesting population in the lower 48 States to be a minimum of 7,066 nesting pairs, using the numbers last reported from the States. Of the 48 States in which the bald eagle is listed, 30 States completed surveys in 2003, 5 States completed the last survey in 2002, and 9 States completed the last survey in 2001. This population estimate may be conservative given that several States that support large bald eagle populations have not continued annual monitoring. Therefore, based on the 2000 census data, the current national bald eagle population is likely larger than the numbers available to the Service.

The bald eagle has successfully recovered throughout its range. In 1984, 13 of the lower 48 States had no nesting pairs of bald eagles, and 73 percent of the nesting pairs were located within only six States: Florida, Wisconsin, Michigan, Minnesota, Washington, and Oregon. By 1996, all but two States supported nesting pairs. By 2000, these six States had a reduced share of 59 percent of all nesting pairs, due to increased nesting in other States. In 2000, there were an estimated 6,471 occupied breeding areas.

In order to maintain a stable population of bald eagles, a minimum productivity of 0.7 young per nesting pair per year is necessary (Sprunt, *et al.* 1973). With a national average productivity of at least one fledgling per nesting pair per year between 1990 and 2000, the bald eagle population has increased and continues to maintain a healthy reproductive rate.

Recovery within the individual recovery regions has also been successful. Recovery plans and objectives were designed to guide and measure recovery efforts. They are intended to provide targets rather than absolute numeric criteria. We discuss bald eagle recovery goals for the five regions and how these goals have been attained below.

Regional Recovery Status

The following is a comparison of the status of the bald eagle in each of the five recovery regions against specific objectives in each of the five recovery plans:

Chesapeake Recovery Region

Delisting Goals: Sustain a nesting population of 300–400 pairs with average productivity of 1.1 young per nest over 5 years, and permanently protect enough habitat to support this nesting population and enough roosting and foraging habitat to support population levels commensurate with increases throughout the Atlantic Coastal area. Habitat protection will be accomplished through landowner cooperation, land easements and acquisition, incentive programs, and a continuing effort to pursue broad-based

shoreline protection through State legislation and policy initiatives.

Achievements: The numeric recovery goals were met in 1992, when the number of nesting pairs exceeded 300 nesting pairs, and the population has continued to increase, with over 800 nesting pairs reported in 2003. The average productivity of 1.1 young per nest over 5 years has been met, with the average between 1998 and 2003 being 1.19 young per nest. The objective of permanently protecting enough habitat to sustain these population numbers is close to being achieved. Habitat has been protected for approximately 200 nesting pairs. These protected lands include, but are not limited to, National Wildlife Refuges, State management areas, National Park Service lands, and conservation easements. Since 1990, occupied breeding areas for the bald eagle have more than doubled in this region, indicating that habitat has not been a limiting factor and that potential nesting habitat is still available for an increasing population of bald eagles, despite land development pressures.

Approximately 75 percent of the nest sites in the Chesapeake Bay area are on private lands. Habitat protection continues to proceed. For instance, the State of Maryland, where 40 percent of the nesting pairs occur, has established the Chesapeake Bay Critical Area Program. This program regulates development and timber harvest operations within 1,000 feet of the Chesapeake Bay and its tidal tributaries in Maryland. Approximately 70 to 80 percent of all eagle nests in Maryland are within the Critical Area. Much of the forested areas within the Critical Area will be conserved (Therres, 4/19/04 in litt), which will likely contribute to the ability to meet the habitat preservation goal established in the recovery plan.

Northern States Recovery Region

Delisting Goals: By the year 2000, establish 1,200 occupied breeding areas distributed over a minimum of 16 States with an average annual productivity of 1.0 young per occupied nest.

Achievements: The delisting goal was achieved in 1991, with 1,349 occupied breeding areas distributed over 20 States. Since 1991, average productivity was estimated to be greater than 1.0. In 2000, the Northern States Recovery Region had an estimated 2,559 occupied breeding areas. When the recovery plan was approved in 1983, nesting bald eagles were considered extirpated in Connecticut, Indiana, Kansas, Massachusetts, New Hampshire, Nebraska, and Utah, and there was no evidence that the species ever had nested in Vermont or Rhode Island. As of 2003, only Vermont remains without a nesting pair of bald eagles, with some of the aforementioned States having more than 25 active eagle nests.

Pacific Recovery Region

Delisting Goals: A minimum of 800 nesting pairs with an average annual productivity of 1.0 fledged young per occupied breeding area, and an average success rate for occupied breeding areas of not less than 65 percent over a 5-year period. Additionally, breeding population goals should be met in at least 80 percent of 30 management zones, and wintering populations should be stable or increasing.

Achievements: The recovery goals have been met, with the numeric delisting objectives having been met since 1995. According to the Pacific Bald Eagle Recovery Plan, the estimated number of nesting pairs for the entire recovery unit in 1985 was 527. However, between 1985 and 2001 the number of nesting pairs of bald eagles for this recovery unit more than tripled, totaling 1,627 nesting pairs. The number of nesting pairs exceeded the recovery goal of 800 in 1990, and has continued to increase. Productivity has averaged approximately 1.0 young per nesting pair since 1990. In 1998, six of the seven Pacific Region States reported an average success rate of 75 percent. Distribution of nesting pairs among management zones was achieved in 1999, with the Olympic Peninsula and Central California Coast meeting their recovery goals. The Pacific Recovery Plan identifies 47 management zones with recovery goals identified for 37 of the zones. As of 1999, 30 of the 37 targeted management zones had met their goals, or 81 percent of the zones. Of the 30 zones where target levels have been met, at least 11 have more than doubled the established objective. At least three zones where no targets were set have one or more nesting pairs of bald eagles.

Data indicate that the objective of stable to increasing trends in wintering populations of bald eagles has been attained on the average for the recovery region. Wintering populations have been tracked in the Pacific and many other States using the mid-winter bald eagle surveys. Wintering populations are difficult to assess because bald eagle concentrations depend upon weather and food supply and consequently will vary from year to year. With these constraints, the information suggests that Washington, Oregon, Idaho, and California have experienced an increasing trend in wintering populations of 1.5 to 4.5 percent, while Nevada and Montana report a decline of about 2.5 percent for 1986–2000. As of 2002, the Pacific Coast Region's counts increased at 1.6 percent per year, and the Great Basin counts increased 1.3 percent per year (K. Steenhof, pers. comm.).

Southeastern Recovery Region

Delisting Goals: The original recovery plan stated that delisting would be considered if the recovery trend continues for 5 years after reclassification goals are met, and the criteria for delisting would be developed when the species is reclassified from endangered to threatened. After reclassifying the species to threatened in 1995, the Southeastern States Bald Eagle Recovery Team reconvened to consider criteria for delisting. The current recommendations of the recovery team are to achieve 1,500 occupied breeding areas over the most recent 3-year period, with average productivity of 0.9 young per occupied breeding area over the same 3-year period, and have 8 of 11 States meet their nesting and productivity goals.

Achievements: The delisting goal of 1,500 occupied breeding areas over the most recent 3-year period has been met, with over 1,700 pairs counted in 2000. Production between 1997 and 2000 averaged 1.24 young per occupied territory, thus exceeding the 0.9 goal for the last surveyed consecutive 3-year period. Individual population goals for all 11 States were first attained in 2000, and the population levels have continued to increase.

Southwestern Recovery Region

Delisting Goals: Although the 1982 recovery plan does not have delisting goals for the Southwestern Recovery Region, it does outline goals for reclassifying the bald eagle from endangered to threatened. The recovery plan states that when the reproductive effort has been effectively doubled to 10–12 young per year over a 5-year period, and the population range has expanded to include one or more river drainages in addition to the Salt and Verde River Systems, the southwestern bald eagle should be reclassified to threatened. The 1982 recovery plan indicated that Arizona was the only State in the recovery region containing nesting bald eagles, with 42 unverified historic nesting territories in the State, 12 occupied territories in the Salt and Verde River Systems, and 1 occupied territory along the Colorado River.

Achievements: The goal established in the recovery plan has been exceeded. In 2003, 46 occupied breeding areas were reported in New Mexico and Arizona alone. In 2004, the State of Arizona had

41 occupied breeding areas, and productivity was estimated at 0.75 young per occupied breeding area (Terry Johnson, pers. comm.). The number of occupied breeding areas has more than doubled in the past 15 years.

The information from the five recovery regions demonstrates that bald eagle numbers have greatly increased and productivity has substantially improved during the past two decades. The increases have continued throughout the species' range since publication of the original July 6, 1999, proposed delisting rule and several States, notably Wisconsin and Minnesota have changed the status to a species of special concern. Currently the Service estimates that more than 7,066 occupied breeding areas occur in the lower 48 States.

Summary of Comments on the July 6, 1999, Proposed Delisting Rule

In the July 6, 1999, proposed delisting rule (64 FR 36454), we requested that all interested parties provide information and comments on the proposal to delist the bald eagle. Announcements of the proposed rule were sent to Federal, State, and local officials, Federal and State agencies, tribes, interested private citizens, and local newspapers and radio stations. We held public hearings in Nashville, Tennessee, on September 13, 1999; in Yorktown, Virginia, on September 21, 1999, and in Phoenix, Arizona, on September 23, 1999.

We considered all comments provided in writing, received through our Web site, and presented orally at the public hearings. The public hearings were attended by a total of 137 people, who provided 47 oral comments. Among those submitting comments were 12 Federal agencies, 22 State resource agencies, 41 conservation organizations, 10 academic institutions, and 213 private citizens. By recovery region, 132 comments were received from the Southwest Region, 79 from the Chesapeake Bay Region, 35 from the Southeastern Region, 28 from the Pacific Region, and 22 from the Northern States Region.

In addition, five bald eagle experts from the Raptor Research Foundation, Inc. volunteered to provide scientific review of the proposal to delist the bald eagle and they submitted comments during the public review period. The Raptor Research Foundation, Inc. is an organization representing approximately 1,200 professional raptor biologists and scientists throughout the world.

We address both the comments of the Raptor Research Foundation's five bald eagle experts along with other comments received during the public comment period under the respective issues below:

Issue 1: Habitat protection for the bald eagle will be reduced once it is removed from the List of Endangered and Threatened Wildlife. The Service should develop a strategy to ensure a core amount of nesting, wintering, and foraging habitat is identified and protected and should give adequate consideration to the species future management needs.

Our Response: As further discussed under Factor A below, we recognize that the level of habitat protection for the bald eagle will be reduced once it is delisted. However, as discussed under Factor D, the Federal and State laws will continue to provide adequate protection to bald eagles and their core nesting, wintering, and foraging habitat. Environmental laws that regulate polluted discharges and fill into waterways, wetlands, and associated habitats, will contribute to the protection of bald eagle habitat.

Issue 2: The Service did not adequately enlist the help and advice of the bald eagle recovery teams, nor did it update or revise the five recovery plans.

Our Response: Though formal recovery team meetings did not reconvene, we worked with, and sought the advice of, many of the individual recovery team members throughout the rulemaking process. During the rulemaking process, we solicited information from numerous other sources including the States; bald eagle working groups; Federal, tribal, and university affiliated biologists; and the public.

Issue 3: Habitat protection objectives in the Chesapeake Bay, Northern States and Pacific region recovery plans were not addressed. The draft revised population objectives for the Southeastern Recovery Region have not been met.

Our Response: All recovery plans state "that approved recovery plans are subject to modification as dictated by new findings, changes in species status, and the completion of recovery tasks." The objectives identified during the recovery planning process provide a guide for measuring the success of recovery, but are not intended to be absolute prerequisites, and should not preclude a reclassification or delisting action if such action is otherwise warranted.

The Northern States and Pacific Recovery Plans did not include specific habitat protection goals. The Northern States Recovery Plan instead focused on site-specific and general habitat management. This management approach has contributed to a population level that is more than double the number of breeding pairs identified in the delisting goals. The Pacific Recovery Plan states that if the breeding population goal is reached, we can assume that adequate breeding habitat has been secured. The breeding population goal in the Pacific Recovery Plan has been achieved. The habitat protection goal of the Chesapeake Bay Recovery Plan has not yet been met. However, as discussed earlier, between one-half and one-third of the original habitat protection goal has been met. The bald eagle population is more than double the population goal and continues to increase and has not yet reached carrying capacity—indicating that habitat is not a threat to the maintenance of the population goal for the foreseeable future. The population objectives for the Southeastern Recovery Region were met in 2000, and numbers in that recovery region continue to increase.

Issue 4: Once the bald eagle is removed from the List of Endangered and Threatened Species, legal protections for the bald eagle and its habitat will be reduced or nonexistent. The BGEPA should be strengthened. Federal and State law enforcement officials should be informed about the BGEPA.

Our Response: The ESA has been used to provide the primary regulatory protection for the bald eagle since the listing of the species. However, after delisting occurs, the protections of the BGEPA will remain in effect. The BGEPA restrictions and other existing regulatory mechanisms are discussed under Factor D. We believe these mechanisms are adequate to protect the species if it is delisted, for the reasons discussed under Factor D. BGEPA provides indirect habitat protection, by protecting the bald eagle itself from disturbance. Through the public comment period on this proposed delisting rule, the proposed National Bald Eagle Management Guidelines, and the proposed definition of "disturb," the States will have the opportunity to review and submit any concerns their law enforcement officials may have regarding the protections afforded the bald eagle if it is delisted.

Issue 5: The Service should conduct rigorous long-term monitoring after the species is delisted. The condition and security of habitat should be assessed every 5 years. The contaminant monitoring outlined in the discussion of the monitoring plan in the original proposed rule is also inadequate.

Our Response: We are in the process of updating the post-delisting

monitoring plan that was included in the 1999 proposed delisting rule by addressing comments we received, and we will publish a revised draft monitoring plan for public comments in the near future. We will also seek peer review of the revised monitoring plan by independent scientists. The primary objective of the monitoring plan is to monitor effectively, in cooperation with the States, for not less than 5 years the status of all species delisted due to recovery. (See "Monitoring" section).

Issue 6: The Service should consider establishing minimum criteria that might signal the need for relisting.

Our Response: The Service has not at this time established any criteria that might specifically trigger the need to consider relisting. As required by section 4(g)(1) of the ESA, the Service will monitor the status of the bald eagle for at least five years after delisting. If at any time following delisting, information indicates that the bald eagle may become threatened or endangered, we will evaluate the need to relist the species in accordance with section 4 of the ESA.

Issue 7: The Service should support the U.S. Geological Survey's efforts to develop a streamlined protocol for monitoring wintering bald eagles in the future as part of the post-delisting monitoring plan under the ESA.

Our Response: We support the U.S. Geological Survey's efforts to develop a standardized wintering bald eagle monitoring protocol. However, our goal for bald eagle monitoring after delisting is to detect significant declines in numbers of breeding pairs in the lower 48 States, and we will be working in cooperation with the U.S. Geological Survey in developing the post-delisting monitoring plan. Winter survey results are highly variable; the influx of bald eagles from Canada and Alaska can make assessment of the breeding population in the lower 48 States extremely difficult. We believe that our most reliable and cost-effective approach for detecting population trends in the lower 48 States is to focus on nest site occupancy. These nest surveys have been conducted since the bald eagle was listed under the ESA and form the basis for our determination of recovery. Thus, we believe that post-delisting monitoring should focus on nest site occupancy. Until the U.S. Geological Survey's wintering bald eagle monitoring protocols are completed, the Service will continue working with the States to monitor breeding pairs and productivity.

Issue 8: The annual census of breeding areas and productivity fails to provide the demographic information that is necessary to detect population trends.

Our Response: We disagree. Annual bald eagle breeding area and productivity surveys to date have been conducted in the majority of the lower 48 States for more than 15 years and have provided an extensive database on geographic and National population trends. These surveys not only monitor performance of known territories, but also document recruitment of new territories. The results provide a comprehensive database that clearly demonstrates an increasing population trend.

Issue 9: The Service should initiate shoreline surveys (Chesapeake Bay).

Our Response: We will monitor bald eagles of the Chesapeake Bay using the protocols set up in the National post-delisting monitoring plan under the ESA. The draft monitoring plan will be announced for public comment in the **Federal Register** at a later date. States may choose to conduct more comprehensive monitoring for management purposes on a State level.

Issue 10: Several commenters recommended retaining threatened or endangered status for bald eagles in the Southwest and Chesapeake Bay Recovery Regions, possibly by designation as distinct population segments.

Our Response: Listing under the ESA in taxonomic terms is limited to species, but the term "species" is defined by the ESA to include any subspecies and any distinct vertebrate population segment. To facilitate meeting the intent of the law, we and the National Marine Fisheries Service jointly developed a "Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act" (DPS Policy) (61 FR 4722; February 7, 1996). Three elements are considered regarding the potential recognition of a DPS as endangered or threatened. These elements include: discreteness, defined as being markedly separated from other populations or separated by international boundaries; significance, defined in terms of the population segment's importance to its species; and status, defined as the population's classification as endangered or threatened.

We are not aware of threats specific to any part of the eagle's range, including the Southwest and Chesapeake Bay Recovery Regions, that suggest that the bald eagle is likely to become endangered in any particular geographic area. As discussed above, the bald eagle's recovery is widespread. Even in the Southwest region, where there has historically and is currently limited available habitat, the bald eagle has significantly exceeded the reclassification goals outlined tine the recovery plan. Therefore, we need not at this time analyze whether any particular geographic area would constitute a DPS pursuant to our DPS policy.

Issue 11: Another commenter stated that the Service did not cite the papers by Dr. Jim Fraser and his colleagues (Fraser *et al.*, 1996) documenting the impact of human population growth on bald eagles and indicating a likelihood of extirpation in the Chesapeake Bay area given present trends in habitat loss. Therefore, the Service should evaluate the rate of habitat loss in Chesapeake Bay before delisting.

Our Response: The analysis under Factor A has considered the subject papers. We are aware of development pressure in the Chesapeake Bay area. However, we disagree with Dr. Fraser about the long-term prospects for eagle survival in this area. The bald eagle population numbers continue to increase at a healthy rate in each of the States covered under this recovery region. During the past decade, we have added several new National Wildlife Refuges encompassing thousands of acres of eagle habitat to the refuge system. Newer refuges at James River and Rappahannock in Virginia, and recent expansions at Blackwater Refuge in Maryland, are notable examples. In addition, the State of Maryland will continue to implement the Chesapeake Bay Critical Area Program (discussed under the "Regional Recovery Status" section above). While any species would benefit by having its entire habitat permanently protected, such a level of protection is not required to ensure the long-term persistence of the bald eagle in the Chesapeake Bay watershed. Bald eagles have not yet reached carrying capacity in the Chesapeake Bay recovery unit. Because habitat is not currently limiting the species' population growth, it is likely that the species will continue to expand into available habitat after delisting.

We recognize that the bald eagle's continued population expansion will likely cause its population to reach the carrying capacity of the Chesapeake Bay area. At that point, additional habitat loss may in fact cause the population to decline from its future peak level to some degree. Moreover, it is conceivable that at some point in the future, continued habitat loss could, under certain scenarios, result in the eagle being in danger of extirpation in the Chesapeake Bay area. However, having reviewed all of the available information regarding habitat threats as well as the existing regulatory mechanisms that

directly or indirectly protect eagle habitat, it is our judgment that this outcome is not likely in the foreseeable future.

Issue 12: Demographic data show that the Arizona bald eagle population faces a high likelihood of decline. Mortality of breeding adults is excessive. Subadults constitute a higher percentage of breeding eagles than is the case for other populations. Fledgling mortality is excessive and reproductive rates are below those characteristic of other eagle populations. Direct human intervention through the Arizona Bald Eagle Nestwatch Program has saved 16 percent of all southwestern bald eagle fledglings since 1983; but continuance of this program is not assured. Some human intervention will be required to maintain this population.

Our Response: We fully recognize the role that active management of the bald eagle has played in the Southwest in achieving recovery. With that said, this population has increased since listing in 1978, and may have reached its carrying capacity given the extent and nature of available nesting habitat, and the difficult conditions under which it nests. We will continue to work with other involved agencies to assure continuation of existing management and protection regimens, which we believe will adequately protect the current nesting population.

Issue 13: Threats to the continued existence of the bald eagle in the southwest are increasing. These threats include habitat loss, river dewatering, human encroachment through recreation and development, toxic substances, low-flying aircraft, fishing line entanglement, grazing, and global warming. The Service has issued a number of biological opinions that document the perilous status of southwestern bald eagles.

Our Response: We agree that a number of biological opinions have been issued relevant to the Southwest population of bald eagles. Section 7 of the ESA requires Federal agencies to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of listed species. Biological opinions analyze and document project-level effects to the bald eagle in the context of the effects on the recovery region and ultimately to the National population. In other words, the potential effects to the southwestern or any of the other four populations are considered in terms of whether they appreciably reduce the likelihood of both survival and recovery of the bald eagle throughout the lower 48 States, not solely for the geographic area in which the impacts may occur. In making these population level determinations, the biological opinions assess the status of the recovery unit populations. The current status of the Southwest Recovery Region indicates that population numbers are nearly equal to the estimated historical occupancy and are expanding into new watersheds.

Issue 14: No laws other than the ESA provide the necessary protection for the continued survival of Southwestern bald eagles. Many of the existing laws the Service plans to rely on were in place when the bald eagle was listed, thus demonstrating their inadequacy.

Our Response: The primary reason the bald eagle was listed was due to the catastrophic reproductive failure resulting from the widespread use of DDT. That major threat has been eliminated since DDT was banned in 1972. Though it did take some time after the ban for DDT and DDE (its metabolic breakdown product) to dissipate from the food chain, the banning of DDT effectively stopped the declining trend. Although the protective mechanisms of the ESA will no longer apply if the species is delisted, a number of other laws provide protection to the bald eagle throughout its range and these protections will continue after delisting. Many of the current laws and regulations protecting our environment (such as the Clean Water Act of 1972) were enacted about the same time as the ESA. We believe that existing laws and regulations, including the BGEPA and the Migratory Bird Treaty Act, will provide adequate protection from potential threats to maintain a recovered population of the bald eagle. (See discussion under Factor D of the "Summary of Factors Affecting the Species" section of this proposed rule.)

Issue 15: Statements made in the proposed rule that eagles are thriving on private land, thus implying that they may be adapting to human presence, remain unsubstantiated.

Our Response: Based on the best available data, we have determined that bald eagle response to human presence is highly variable. For example, Florida hosts the largest number of nesting pairs of bald eagles of any of the lower 48 States, exceeding 1,100 nesting pairs. Available data indicate that approximately 66 percent of these nest sites occur on private lands. The remaining 34 percent of these nest sites occur on publicly owned lands or some form of conservation lands. In addition, these Florida eagles have shown remarkable adaptation to human presence and activities and continue to thrive in environments that, until recently, would have been considered unsuitable habitat.

Issue 16: The Service should initiate a coordinated research effort and seek funding to investigate the ecology of Avian Brain Lesion Syndrome in the Southeastern Recovery Region.

Our Response: This disease, now known as Avian Vacuolar Myelinopathy, is being studied and tracked by the National Wildlife Health Center in Madison, Wisconsin. This is further discussed under "Factor C" of the Summary of Factors Affecting the Species.

Issue 17: The 90-day comment period was not adequate to conduct a thorough scientific review. The Service should have published a notice of intent to delist. The Service held too few public hearings, engaged in too little advertisement about them, and did not allow for extension of time.

Our Response: We believe the 90-day comment period for the proposed delisting rule, which exceeded the required 60-day comment period, was adequate. Prior to the publication of the proposed rule, we solicited input from numerous entities, including the States, tribes, and many recovery team members. The number of public hearings was based on the number of requests we received. We had seven requests for public hearings, and offered three hearings at locations close to the requesters' home towns. The advertisements regarding the hearings followed our standard procedures and included direct coordination with the requesters. The Service received a few requests for extensions of the comment period; however, the requests did not provide adequate justification for an extension. In any case, due to new information we have now reopened the public comment period on the proposed delisting.

Summary of Factors Affecting the Species

Section 4 of the ESA and the regulations (50 CFR part 424) promulgated to implement its listing provisions set forth the procedures for listing, reclassifying, and delisting species. We may list a species if one or more of the five factors listed in Section 4(a)(1) of the ESA threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened for one of the following reasons: (1) Extinction; (2) recovery; or (3) original data for classification of the species were in error.

The bald eagle was proposed for delisting on July 6, 1999. This notice further indicates our intent to delist and supply more information to the public than was provided previously. Discussion of the five listing factors and their application to the recovery of the bald eagle are discussed below.

A. The Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range. Nesting, wintering, and foraging habitat are essential to the continued survival of the bald eagle. The current increasing population trend clearly indicates that habitat is not presently limiting the growth of the bald eagle population in the lower 48 States, that the population has not yet reached carrying capacity in many parts of its range, and that the population will continue increasing following delisting. We recognize that the bald eagle occupies habitats that are often subject to development or other encroachment in some parts of the range. In addition, we acknowledge that habitat availability may limit future growth of certain local populations. The population will likely increase at a much slower rate than what has been documented during the recovery period. In addition, population numbers will naturally fluctuate in areas where the habitat has reached its carrying capacity.

Despite these potential limitations, however, numerous factors ensure the bald eagle is not likely to become endangered in the foreseeable future by loss of suitable habitat or range in any of the five recovery regions. First, the bald eagle thrives near a variety of different aquatic environments including reservoirs, lakes, rivers, estuaries, and the marine environment. These environments exist in each of the lower 48 States, and currently, bald eagles occupy these types of habitats in 47 out of the 48 States. This tremendous distribution of bald eagles throughout the entire United States, combined with the eagles' ability to exploit such a wide range of geographic habitat settings provides an important buffer against any potential threats to the population in each recovery region and as a whole.

In addition, information suggests that some individual eagles in many parts of their range are demonstrating a growing tolerance of human activities in proximity to nesting and foraging habitats. Eagles in these situations continue to successfully reproduce in settings previously considered unsuitable. For example, where our Southeastern nesting management guidelines have been followed in Florida, some bald eagles pairs have shown a remarkable adaptation to human presences by nesting in residential subdivisions, commercial and industrial parks, on cell phone towers, and alongside expressways. A common thread throughout these urban landscapes is the availability of ample food sources such as natural lakes, rivers and ponds, artificial stormwater retention ponds, and public landfills. As the eagles begin to reach the carrying capacity in local areas and face development or other encroachments, it is anticipated that some eagles will adapt to these circumstances, while other eagles may not be successful. However, because this species utilizes numerous aquatic environments and many areas have not yet reached carrying capacity, we expect many of these displaced eagles will be able to relocate to more suitable habitats.

Additionally, there will continue to be numerous bald eagles nesting on protected lands, including, but not limited to, National Wildlife Refuges, National Parks, National Forests, as well as State management areas, and lands owned by private conservation organizations. Therefore, a substantial number of bald eagle nesting territories will remain protected and provide strongholds throughout the range of the species.

Absent any range-wide, catastrophic impacts such as epidemic disease or widespread environmental contamination, habitat loss is not likely to become a limiting factor for the recovery regions or the national bald eagle population in the foreseeable future, and is not likely to rise to the level where the bald eagle meets the definition of either threatened or endangered. Given the existence of suitable habitat sufficient to support a bald eagle population at a recovered level into the foreseeable future, the demonstrated increasing levels of tolerance of some local bald eagle populations to increasing levels of human disturbance, and continued protections afforded under various laws described below under Factor D, the bald eagle is not threatened by present or future destruction, modification, or curtailment of its habitat or range.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* The shooting of bald eagles, and the taking of their nests and eggs, was prohibited in 1940 with the Bald Eagle Protection Act. Shooting of bald eagles was prohibited again in 1972, when eagles were added to the list of birds protected by the MBTA. Large-scale mortality from unregulated shooting, like that which occurred early in the last century, has been eliminated. Hunter education courses include bald eagle identification material to educate hunters about bald eagles and the protection that the species is afforded. There is currently a low level of illegal shooting and commerce in eagle feathers and parts, and it is likely that this level will continue in the future. We will continue to enforce the restrictions of BGEPA and MBTA.

There is no legal commercial or recreational use of bald eagles, and such uses of bald eagles will remain illegal under various statutes, as described under Factor D below. We consider current laws and enforcement measures apart from the ESA sufficient to protect the bald eagle from illegal activities, including trade. We exercise very strict control over the use of bald eagles or their parts for scientific, education, and Native American religious activities. To respond to the religious needs of Native Americans, we established the National Eagle Repository in Commerce City, Colorado, which serves as a collection point for dead eagles. As a matter of policy, all Service units transfer salvaged bald eagle parts and carcasses to this repository. Members of federally recognized tribes can obtain a permit from us authorizing them to receive and possess whole eagles, parts, or feathers from the repository for religious purposes. After removal from protection under the ESA, we will still have the ability to issue permits for limited exhibition and education purposes, selected research work, and other special purposes, including Native American religious use, consistent with Federal regulations implementing the BGEPA (50 CFR part 22). We will not issue these permits if they are incompatible with the preservation of the bald eagle.

In summary, there is no current or anticipated future overutilization of the bald eagle for commercial, recreational, scientific, or educational purposes. Such uses will remain regulated under the BGEPA, the Migratory Bird Treaty Act, and Lacey Act.

C. *Disease or Predation.* Predation has been documented but it does not constitute a significant problem for bald eagle populations.

Diseases such as avian cholera, avian pox, aspergillosis, tuberculosis, and botulism may affect individual bald eagles, as do parasites such as the Mexican chicken bug, but are not considered to be a significant threat to overall bald eagle numbers. According to the National Wildlife Health Center (NWHC) in Madison, Wisconsin, only a small percentage of bald eagles submitted to the NWHC between 1985 and 2003 died of infectious disease. The species' widespread distribution

generally helps to protect the bald eagle from catastrophic losses due to disease.

Since 1994, it is estimated that 104 bald eagles died of avian vacuolar myelinopathy (AVM). Confirmed cases of bald eagle deaths due to AVM are recorded in Arkansas, North Carolina, South Carolina, and Georgia. At present, this disease continues to be investigated. While a toxic agent is suspected as the cause of this condition, cooperative efforts are under way to determine the prevalence of this disease and its origin. These mortalities can have a localized impact on bald eagle populations; however, there is currently no evidence that the overall recovery of the species is affected.

In more recent years, the West Nile Virus (WNV) has affected some individual bald eagles. According to NWHC, between January 2002 and January 2004, 81 bald eagles were tested for WNV at the Center, and 4 tested positive. Individual States have also conducted tests on dead bald eagles with an overall small percentage testing positive. For example, the State of New York annually counts the number of bald eagles residing in the State. The count has averaged over 300 individual bald eagles each year since 2000, with only two confirmed cases of WNV. The recovery of the bald eagle should not be affected by the small percentage of localized cases of WNV.

The NWHC is investigating winter mortality to bald eagles along the lower Wisconsin River. Unusual mortality to birds wintering in two counties along the lower Wisconsin River, Wisconsin, began in 1994–1995 with the deaths of at least 14 bald eagles. However, no sick bald eagles were found at roosts from 10–65 km upriver and 10–150 km downriver from the affected region, and elsewhere in the State. Beginning in 2000–2001, after a hiatus of 4 years, similar bald eagle mortality has reoccurred each winter, with 30 to 40 confirmed cases. The current hypothesis is that the syndrome is caused by a severe thiamine deficiency as a result of feeding largely on gizzard shad, but that hypothesis remains to be adequately tested (G. S. McLaughlin *et al.* 2004, abstract). This syndrome is very localized, and is not having an impact on the Statewide bald eagle population. Wisconsin's eagle population has been rising each year since the mid-1980s, with over 830 nesting pairs counted in 2003 (Beheler, WIDNR 2003).

In summary, like all wildlife populations, the bald eagle is affected by numerous natural and environmentally related diseases, as well as predation. While these diseases and predation may have significant impacts on small, local populations, there are no known natural or environmentally related disease threats that currently have, or are anticipated to have, widespread impacts on any of the five recovery regions or the national bald eagle population in the lower 48 States. Therefore, neither predation nor disease constitutes a significant threat to the bald eagle.

D. *The Inadequacy of Existing Regulatory Mechanisms.* After removal from the list of species protected by the ESA, the bald eagle and its nests and eggs will remain protected in the United States by other Federal wildlife laws. These statutes will continue to protect and sustain a recovered bald eagle population within the lower 48 States. The following discusses the protections that will continue to be afforded the bald eagle.

The Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668d) enacted by Congress in 1940, was the first law intended to prevent extinction of the bald eagle. It prohibits the taking or possession of and commerce in bald and golden eagles, with limited exceptions. The law provides significant protections for bald eagles by prohibiting, without specific authorization, take, possession, selling, purchase, or bartering, offering to sell, purchase, or barter, transport, export or import any bald or golden eagle, alive or dead, or any part, nest, or egg thereof.

Take under the BGEPA is defined as "to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" (16 U.S.C. 668c). Under BGEPA, permits may be issued to take of bald eagles only for scientific or exhibition purposes, for religious purposes of Native American tribes, or for the protection of wildlife, agriculture, or other interests (50 CFR part 22). All other take is prohibited. Thus, unless permitted for any of the aforementioned activities, any and all other activities that take bald eagles constitute a violation of the BGEPA.

Unlike the ESA, which provides exceptions and exemptions to the prohibitions against take (i.e., via section 7 incidental take statements, and section 10 incidental take permits) for take resulting from an "otherwise lawful activity," there is no similar mechanism expressly available under BGEPA to permit the incidental take of bald eagles, including take by "disturbance."

To help land managers, landowners, and others who conduct activities in bald eagle habitat avoid a prohibited disturbance of bald eagles after ESA delisting, the Service has developed draft National Bald Eagle Management Guidelines. A Notice of Availability to solicit public input on the draft Guidelines is being published in the **Federal Register** concurrent with this proposed delisting rule.

The purposes of the National Bald Eagle Management Guidelines are to: (1) Publicize the provisions of the BGEPA and the MBTA that continue to protect bald eagles to reduce the possibility that the law will be violated, (2) advise landowners, land managers, and the general public of the potential for various activities to disturb bald eagles, and (3) encourage land management practices that benefit bald eagles and their habitat.

Concurrent with this proposed delisting rule and draft National Bald Eagle Management Guidelines, we are also publishing a proposed rule in the **Federal Register** to promulgate a regulatory definition of "disturb" to 50 CFR 22.3, part of our regulations that implement the BGEPA. A regulatory definition of the term "disturb" will provide a clarification of the scope of the BGEPA's prohibitions of take, and will provide the basis for the recommendations contained in the draft National Bald Eagle Management Guidelines.

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) implements various treaties and conventions between the U.S. and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Unless permitted by regulations, the MBTA provides that it is unlawful to pursue, hunt, take, capture, or kill; attempt to take, capture or kill; possess, offer to sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not.

In 2001, the President signed Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds" requiring Federal agencies to incorporate migratory bird conservation measures into their agency activities. Under the Executive Order, each Federal agency whose activities may adversely affect migratory birds was required to enter into a Memorandum of Understanding (MOU) with the Service, outlining how the agency will promote conservation of migratory birds. Although the MOUs are still under development, per the Executive Order, Federal agencies are encouraged to immediately begin implementing conservation measures.

Specific Federal agency responsibilities addressed in the Executive Order that could have direct or indirect benefits to bald eagles

include: Integrating bird conservation principles, measures, and practices into agency activities; avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources; preventing detrimental alteration of migratory bird habitat; designing migratory bird habitat and population conservation into agency plans and planning processes; and recognizing and promoting economic and recreational values of birds.

The Lacey Act Amendments of 1981 (16 U.S.C. 3372–3378) make it unlawful to import, export, transport, buy or sell wildlife taken or possessed in violation of Federal, State, or tribal law. Interstate or foreign commerce in wildlife taken or possessed in violation of foreign law also is illegal. The Lacey Act helps foreign countries and our individual States enforce their wildlife conservation laws.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) establishes a system of import/export regulations to prevent the over-exploitation of plants and animals listed in its three appendices. For species listed under Appendix I, there is no commercial trade allowed, only import/export for scientific/propagation purposes, which requires a permit from both the countries of origin and import. Although Appendix II species may be commercially traded, a permit is required from the country of export or re-export, and a permit is only issued if certain conservation conditions are met.

The bald eagle is currently listed as an Appendix II species. However, commercial trade is prohibited due to the BGEPA, which prohibits import and export. Bald eagles are limited to North America—Canada, the United States, Mexico, and the French Island territories of St. Pierre and Miquelon. A bald eagle is considered a vagrant when found in Belize, Bermuda, Ireland, Puerto Rico, and the U.S. Virgin Islands.

Section 101(a) of the Clean Water Act (33 U.S.C. 1251–13287) states that the objective of this law is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters and provide the means to assure the "protection and propagation of fish, shell fish, and wildlife" (section 101(a)(2)). If the bald eagle is delisted, this statute will continue to contribute in a significant way to the protection of the species and its food supply through provisions for water quality standards, protection from the discharge of harmful pollutants, contaminants (section 303(c), section 304(a), and section 402) and discharge of dredge or fill material into all waters, including wetlands (section 404).

The Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) requires that agencies sponsoring, funding, or permitting activities related to water resource development projects request review by the Service and the State natural resources management agency. This Act allows the resource agencies to examine impacts to fish and wildlife resources from all aspects of the proposed project and to make recommendations to offset those impacts. These comments must be given equal consideration with other project purposes.

Another important regulatory mechanism affecting the bald eagle is the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), the EPA requires environmental testing of new pesticides. It specifically requires testing the effects of pesticides on representative wildlife species before a pesticide is registered. It is meant as a safeguard to avoid the type of environmental catastrophe that occurred from organochlorine pesticides, such as DDT, that led to the listing of this species as endangered.

Many States protect the bald eagle under their State wildlife and endangered species laws. After Federal delisting, many States may follow suit by removing their special protections for the bald eagle. Most State laws that protect bald eagles are not as comprehensive as the ESA; they provide little habitat protection and, therefore, have generally played a smaller role in protection of eagles while the eagle has been listed under the ESA. After delisting, those States that also remove the bald eagle from their State protection laws will continue to manage the recovered population as they do their other wildlife resources.

In summary, several existing Federal laws and regulations will continue to provide a limited amount of protection to the recovered bald eagle population in the lower 48 States. Take of bald eagles will remain restricted through the BGEPA, the MBTA, and the Lacey Act. The BGEPA protection of individual bald eagles from disturbance, as defined in the proposed regulation, will continue to protect the species and maintain recovered population levels. The National Bald Eagle Management Guidelines will provide the public with a guide for complying with the requirements of the BGEPA by avoiding activities that disturb the bald eagle.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* Bald eagles have been subjected to direct and indirect mortality from a variety of human-related activities, for example, poisoning (including indirect lead poisoning) electrocution, strikes by wind turbines, collisions with trains and other vehicles, and death and reproductive failure resulting from exposure to pesticides.

The threat of death and reproductive failure was dramatically reduced in 1972 when DDT was banned from use in the United States. An additional step to halt the decline was taken in 1976, when registrations of dieldrin, heptachlor, chlordane, and other toxic persistent pesticides were cancelled for all but the most restricted uses in the United States. Although persistent levels of DDT in the environment of the Channel Islands (located off the coast of California) are continuing to affect the reproduction of bald eagles on the islands, the effects are highly localized and have a negligible impact on the bald eagle population in the lower 48 States.

By 1977, most uses of polychlorinated biphenyls (PCBs) were restricted in the United States. Some industrial and commercial applications where PCBs were used include: Electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics, and rubber products; and in pigments, dyes, and carbonless copy paper. More than 1.5 billion pounds of PCBs were manufactured in the United States prior to 1977 (U.S. EPA 2004). PCBs do not readily break down and may persist in the environment for decades. There continues to be a risk of reproductive failure to individual bald eagles that consume prey that have accumulated levels of PCBs in their system. However, cases where PCBs have impaired bald eagle reproductive success are relatively low and localized. For example, Bowerman (1993) documented lower reproduction among the bald eagles nesting along the coasts of the Great Lakes in Michigan compared to those nesting further inland. Nevertheless, Michigan's bald eagle population has continued to increase.

Mercury is a toxic metal that is emitted into the atmosphere by industrial activities like coal-fired power generation. It can travel long distances and can be deposited on the surface of the earth in remote areas far from the industry emitting the atmospheric mercury. Mercury that accumulates in soil can be transported to waterways in runoff and subsurface water flow. Once in the water, mercury begins to accumulate in the aquatic organisms, with concentrations highest

at the top of the food chain. Consumption of prey with elevated levels of mercury can cause a variety of neurological problems in bald eagles. Flight and other motor skills can be significantly altered (Eisler 1987). Elevated levels of mercury have been reported in bald eagles in the Northeast, Great Lakes region, Northwest, and Florida. However, populations of bald eagles continue to increase in each of these areas, albeit at a slower rate in some; thus mercury exposure seems to have a negligible impact on the bald eagle population in the lower 48 States.

Lead poisoning has caused death and suffering in birds and other wildlife for many years. Bald eagles died from lead poisoning as a result of feeding on hunter killed or crippled waterfowl containing lead shot and from lead shot that was inadvertently ingested by prey waterfowl. In 1991, the Service completed its 5-year program to phase out the use of lead shot for waterfowl hunting (USFWS, Bald Eagle Biologue (no date)). However, the use of lead sinkers remains legal in every State except New Hampshire, and could potentially pose a threat to the bald eagle. According to the National Wildlife Health Center in Madison, Wisconsin, numerous bald eagles that have succumbed to lead poisoning are sent to the center each year.

Other causes of injury and mortality to individual bald eagles continue to exist. Raptor electrocution has been a concern since the early 1970s. Although power companies are starting to become more proactive in preventing bird electrocution (USGS, Field Manual of Wildlife Diseases, 1999), a significant amount of progress is needed before bird electrocutions are completely prevented.

While structures and vehicles continue to kill or injure individual birds, and environmental contaminants can cause death or reduced productivity in local areas, given the geographic range of the bald eagle and its widespread recovery, these negative impacts appear to have a negligible effect on regional or national populations. Therefore, we have determined that these other natural or manmade factors affecting the bald eagle are not sufficient to cause the bald eagle to become threatened in the future.

Conclusion of Recovery Analysis and Status Review

In summary, the bald eagle has made a dramatic resurgence from the brink of extinction. With the protections of the ESA, the banning of DDT, and cooperative conservation efforts of the Service, States, other Federal agencies, non-government organizations, and individuals, our National symbol has recovered and the purposes and policy of the ESA have been achieved.

Bald eagle recovery goals have generally been met or exceeded for the species on a rangewide basis. There is no recovery region in the lower 48 States where we have not seen substantial increases in eagle numbers. Conversely, there are no sizeable areas where bald eagle numbers continue to decline. We believe the surpassing of recovery targets over broad areas and on a regional basis, and the continued increase in eagle numbers since the 1995 reclassification from endangered to threatened, effectively compensates for any local shortfall in meeting targets in a few recovery sub-areas or regions.

We have reviewed the national status of the bald eagle and evaluated past, present, and future threats to the regional and national bald eagle populations in the preceding five-factor analysis. Adequate habitat is available to support existing bald eagles and to ensure future population growth; disease or predation is not a significant threat; there is no current or anticipated future overutilization for commercial, recreational, scientific, or educational purposes; adequate regulatory mechanisms will remain in place after delisting to ensure the continued recovery of the bald eagle; and the level of other natural and manmade factors is not high enough to threaten the survival of the species. We have determined that none of these existing or potential threats, either alone or in combination with others, are likely to cause the bald eagle to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. The bald eagle no longer requires the protection of the ESA, and therefore, we propose its removal from the list of threatened and endangered species.

In accordance with our joint peer review policy that was published in the **Federal Register** on July 1, 1999 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our delisting decision is based on scientifically sound data, assumptions relating to the taxonomy, population models, and supportive biological and ecological information on this proposed rule. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting. We will also solicit peer review on the post-delisting monitoring plan when the proposed plan is completed.

Effects of This Rule

This rule as proposed will remove the protection afforded the bald eagle under the Endangered Species Act, including the special rule at 50 CFR 17.41(a). The provisions of the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act (including prohibitions on the taking of bald eagles) will remain in place. These and other laws affecting bald eagles are discussed in Factor D above. This rule will not affect the bald eagle's status as a threatened or endangered species under State laws or suspend any other legal protections provided by State law. Critical habitat was not designated for the bald eagle, so the delisting will not affect critical habitat provisions of the Act. This rule will not affect the bald eagle's Appendix II status under CITES.

Post-Delisting Monitoring

Section 4(g)(1) of the ESA requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the ESA. If, at any time during the monitoring period, data indicate that protective status under the ESA should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

A monitoring plan was provided in the proposed delisting rule on July 6, 1999 (64 FR 36454). Slightly more than 10 percent of all comments we received on the proposed rule were concerned with post-delisting monitoring and our monitoring proposal. We have been working with biostatisticians to redevelop our monitoring plan to be responsive to the comments we received, including extension of the monitoring period beyond the required 5 years.

The post-delisting monitoring plan will use occupied breeding areas (territories) as representative of the population. It will contain a sample design to estimate numbers of occupied territories, acknowledging that some States will no longer conduct their census-type survey of bald eagle nesting every year. The occupied territory estimates will be compared to those at the time of delisting to determine trends. The sample design, protocol, and estimates for each recovery region

will be developed in cooperation with our State partners.

We, in cooperation with the U.S. Geological Survey, Biological Resources Division and selected States, have recently completed a series of pilot studies for the monitoring plan. The pilot studies incorporate the methods traditionally used by the States to monitor their occupied territories while adding techniques to check accuracy and reduce variability.

The first pilot study was conducted in cooperation with the State of Maine in the spring of 2004. We conducted additional pilot studies in cooperation with the States of Florida, Minnesota, and Washington in the winter/spring of 2005. All of the general habitat types were represented in these pilot studies. Based on the results from 2 years of pilot studies and comments from States, researchers (including peer review), and the public, a final post-delisting monitoring plan will be prepared. We anticipate that our revised draft bald eagle post-delisting monitoring plan will be available for public review in 2006.

Public Comments Solicited

We request comments on three aspects of this proposed rulemaking:

A. Proposed Delisting of the Bald Eagle

We intend any final action resulting from this proposal will be based on the best available scientific information. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We do not anticipate extending or reopening the comment period on this proposed rule after this comment period ends (see **DATES**). We are particularly seeking comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to the bald eagle;

(2) Additional information on the range, distribution, and population size of the bald eagle and its habitat;

(3) The location of any additional populations of the bald eagle;

(4) Data on population trends.

All previous comments and information submitted during the initial comment period on the July 6, 1999, proposed rule need not be resubmitted. We will take into consideration the comments and any additional information received, and such communications may lead to a final determination that differs from the proposal.

If you wish to provide comments and/or information, you may submit your comments and materials concerning this proposed rule by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *baldeagledelisting@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018–AF21" in your e-mail subject header, and your full name and return address in the body of your message. Please note that the Internet address *baldeagledelisting@fws.gov* will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Comments and materials related to this rulemaking will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section). Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We anticipate a large public response to this proposed rule. After the comment period closes, we will organize the comments and materials received and make them available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

B. Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

C. Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (see 5 CFR 11320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical reporting, recordkeeping, or disclosure requirements imposed on ten or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. We will submit the final post-delisting monitoring plan to OMB for approval under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 13211

On May 8, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed rule is not expected to significantly affect energy supplies, distribution, or use, 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 herein is available upon request from the Headquarters Office (see **ADDRESSES** section).

Author

The co-authors of this proposed rule are Jody Gustitus Millar, U.S. Fish &

Wildlife Service, Rock Island Field Office and Diane Lynch, U.S. Fish & Wildlife Service, Northeast Regional Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, as first proposed July 6, 1999, at 64 FR 36454, we propose to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the entry for "Eagle, bald" under "BIRDS" from the List of Endangered and Threatened Wildlife.

§ 17.41 [Amended]

3. Section 17.41 is amended by removing and reserving paragraph (a).

Dated: October 31, 2005.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 06–1442 Filed 2–15–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT38

Endangered and Threatened Wildlife and Plants; Designating the Greater Yellowstone Ecosystem Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce an extension of the comment period for the proposed rule to establish a distinct population segment (DPS) of the grizzly bear (*Ursus arctos horribilis*) for the greater Yellowstone Ecosystem and surrounding area and remove the Yellowstone DPS from the List of Threatened and Endangered Wildlife. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final decision and rule.

DATES: The public comment period is extended until March 20, 2006. Any comments that are received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: If you wish to comment on the proposal, you may submit your comments and materials concerning the proposal by any one of several methods—

1. You may submit written comments to the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall 309, University of Montana, Missoula, Montana 59812.

2. You may hand deliver written comments to our Missoula office at the address given above.

3. You may send comments by electronic mail (e-mail) to *FW6_grizzly_yellowstone@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed action, will be available for inspection after the close of the public comment period, by appointment, during normal business hours, at our Missoula office (*See* address above).

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, at our Missoula office (*see* address above) or telephone (406) 243–4903. Persons who use a Telecommunications Device for the Deaf may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 2005, the Service published a proposal to establish a DPS of the grizzly bear (*Ursus arctos horribilis*) for the greater Yellowstone Ecosystem and surrounding area and to remove the Yellowstone DPS from the List of Threatened and Endangered Wildlife (70 FR 69854). Robust population growth, coupled with State and Federal cooperation to manage mortality and habitat, widespread public support for grizzly bear recovery, and the development of adequate regulatory mechanisms, has brought the Yellowstone grizzly bear population to the point where making a change to its status is appropriate. The proposed delisting of the Yellowstone DPS would not change the threatened status of the remaining grizzly bears in the lower 48 States, which would remain protected by the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The comment period on this proposal opened for 60 days on November 17, 2005. Due to the complexity of this proposed action, we are extending the comment period for an additional 30 days to allow all interested members of the public ample opportunity to comment.

Public Comments Solicited

We intend that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. Generally, we seek information, data, and comments concerning the status of grizzly bears in the Yellowstone ecosystem. Specifically, we seek documented, biological data on the status of the Yellowstone ecosystem grizzly bears and their habitat, and the management of these bears and their habitat.

Submit comments as indicated under **ADDRESSES.** If you wish to submit comments by e-mail, please avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write the proposal, will be available for public inspection, by appointment, during normal business