local agencies has shown them to be adequate for the implementation and enforcement of the listed NSPS and NESHAP categories, the EPA hereby notifies the public that it has delegated the authority for the source categories listed as of the dates specified in the above tables.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This document is issued under the authority of sections 101, 110, 111, 112 and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7411, 7412 and 7601).

Dated: December 3, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 98–552 Filed 1–9–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD07

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has decided to reintroduce the endangered Mexican gray wolf (*Canis lupus baileyi*) into the Blue Range Wolf Recovery Area, a designated area within the subspecies' probable historic range. This reintroduction will be the first step toward recovery of the Mexican wolf in the wild. The Blue Range Wolf Recovery Area consists of the entire Apache and Gila National Forests in east-central Arizona and west-central New Mexico. If the Service later finds it to be both necessary for recovery and feasible, we would reintroduce wolves into the White Sands Wolf Recovery Area, which also lies within the subspecies' probable historic range. This area consists of all land within the boundary of the White Sands Missile Range in south-central New Mexico together with designated land immediately to the west of the missile range. By this rule, the Service classifies wolves to be re-established in these areas as one nonessential experimental population under section 10(j) of the Endangered Species Act (Act) of 1973, as amended. This final rule sets forth management directions and provides for limited allowable legal take of wolves within a defined Mexican Wolf Experimental Population Area.

EFFECTIVE DATE: January 24, 1998.

ADDRESSES: Send correspondence concerning this rule to the Mexican Gray Wolf Recovery Program, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306. The complete file for this final rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Parsons (see **ADDRESSES** section) at telephone (505) 248–6920; facsimile (505) 248–6922; or electronic mail at david__parsons@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Legislative

The Endangered Species Act Amendments of 1982, Pub. L. 97–304, created section 10(j), providing for the designation of specific populations of listed species as ''experimental populations.'' Under previous authorities of the Act, the Service was permitted to re-establish (reintroduce) populations of a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts, stemming from concerns by some about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a conservation and recovery tool.

Under section 10(j), a population of a listed species re-established outside its current range but within its probable historic range may be designated as ''experimental'' at the discretion of the Secretary of the Interior (Secretary). Reintroduction of the experimental population must further the conservation of the listed species. An experimental population must be separate geographically from nonexperimental populations of the same species. Designation of a population as experimental increases the Service's management flexibility.

Additional management flexibility exists if the Secretary finds the experimental population to be ''nonessential'' to the continued existence of the species. For purposes of section 7 [except section 7(a)(1), which requires Federal agencies to use their authorities to conserve listed species], nonessential experimental populations located outside national wildlife refuge or national park lands are treated as if they are proposed for listing. This means that Federal agencies are under an obligation to confer, as opposed to consult (required for a listed species), on any actions authorized, funded, or carried out by them that are likely to jeopardize the continued existence of the species. Nonessential experimental populations located on national wildlife refuge or national park lands are treated as threatened, and formal consultation may be required. Activities undertaken on private or tribal lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

Individual animals used in establishing an experimental population can be removed from a source population if their removal is not likely to jeopardize the continued (12.9 km^2) existence of the species (see Findings Regarding Reintroduction, below), and a permit has been issued in accordance with 50 CFR part 17.22.

The Mexican gray wolf was listed as an endangered subspecies on April 28, 1976 (41 FR 17742). The gray wolf species in North America south of Canada was listed as endangered on March 9, 1978, except in Minnesota where it was listed as threatened (43 FR 9607). This listing of the species as a whole continued to recognize valid biological subspecies for purposes of research and conservation (43 FR 9610).

Biological

This final experimental population rule addresses the Mexican gray wolf (*Canis lupus baileyi*), an endangered subspecies of gray wolf that was extirpated from the southwestern United States by 1970. The gray wolf species (*C. lupus*) is native to most of North America north of Mexico City. An exception is in the southeastern United States, which was occupied by the red wolf species (*C. rufus*). The gray wolf occupied areas that supported populations of hoofed mammals (ungulates), its major food source.

The Mexican gray wolf historically occurred over much of New Mexico, Arizona, Texas, and northern Mexico, mostly in or near forested, mountainous terrain. Numbering in the thousands before European settlement, the ''lobo'' declined rapidly when its reputation as a livestock killer led to concerted eradication efforts. Other factors contributing to its decline were commercial and recreational hunting and trapping, killing of wolves by game managers on the theory that more game animals would be available for hunters,

habitat alteration, and human safety concerns (although no documentation exists of Mexican wolf attacks on humans).

The subspecies is now considered extirpated from its historic range in the south western United States because no wild wolf has been confirmed since 1970. Occasional sightings of ''wolves'' continue to be reported from U.S. locations, but none have been confirmed. Ongoing field research has not confirmed that wolves remain in Mexico.

Mexican wolves were eradicated before their natural history had been systematically studied. Chapter 1 of the Final Environmental Impact Statement (FEIS) discusses the taxonomy and probable historic range of *C. l. baileyi,* as well as the genetics and other important background on the captive population. Appendix A of the FEIS provides life history and ecological descriptions of Mexican wolves to the extent they are known or can be inferred from historical evidence, observations of captive Mexican wolves, and studies of gray wolves in other geographic regions.

Recovery Efforts

The *Mexican Wolf Recovery Plan* was adopted by the Directors of the Service and the Mexican Direccion General de la Fauna Silvestre in 1982. Its objective is to conserve and ensure survival of the subspecies by maintaining a captive breeding program and re-establishing a viable, self-sustaining population of at least 100 Mexican wolves in a 5,000 square mile area within the subspecies' historic range. The plan guides recovery efforts for the subspecies, laying out a series of recommended actions. The recovery plan is currently being revised; the Service expects to release a draft for public review in 1998. The revised plan will more precisely define population levels at which the Mexican wolf can be downlisted to ''threatened'' status and removed from protection under the Act (i.e., delisted).

A captive breeding program was initiated with the capture of five wild Mexican wolves between 1977 and 1980, from Durango and Chihuahua, Mexico. Three of these animals (two males and a female that was pregnant when captured) produced offspring, founding the ''certified'' captive lineage. Two additional captive populations were determined in July 1995 to be pure Mexican wolves—each has two founders. The captive population included 148 animals as of January 1997—119 are held at 25 facilities in the United States and 29 at five facilities in Mexico.

On April 20, 1992, the Service issued a ''Notice of Intent to Prepare an Environmental Impact Statement on the Experimental Reintroduction of Mexican Wolves (*Canis lupus baileyi*) into Suitable Habitat within the Historic Range of the Subspecies'' (57 FR 14427). This notice also announced the time and place of public scoping meetings. The Service released the draft Environmental Impact Statement (DEIS), entitled ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States,'' for public review and comment on June 27, 1995 (60 FR 33224). The location and times of 14 public meetings were also announced in that notice. On September 26, 1995, the Service announced that three public hearings would be held in October 1995 (60 FR 49628). All announced meetings and hearings were held. The public comment period on the DEIS closed on October 31, 1995; and approximately 18,000 people submitted comments. Provisions of the Service's draft proposed Mexican wolf experimental population rule were summarized in Chapter 2 of the DEIS and provided in full in Appendix C of the DEIS.

The proposed Mexican wolf experimental population rule was published in the **Federal Register** on May 1, 1996 (61 FR 19237–19248) and public comments were accepted through July 1, 1996. A May 22, 1996, **Federal Register** notice (61 FR 25618–25619) announced four public meetings/ hearings specific to the proposed rule, which were held in potentially affected areas.

The Service released the FEIS on Mexican wolf reintroduction on December 20, 1996. Chapter 5 of the FEIS contains a detailed review of public comments on the DEIS, including comments on the draft proposed rule, and the Service's responses. Pursuant to 50 CFR 17.81(d), this experimental population rule and the FEIS were developed in consultation with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, affected private landowners, native American tribes, technical experts, and others. The Service has cooperated with local governments through meetings with county officials and their representatives, making background information available, soliciting information, reviewing and responding to comments and studies prepared by county consultants, inviting consultants with expertise in local issues to an EIS team meeting, and other measures. In addition, the EIS process included holding public comment meetings throughout potentially affected areas, including holding a joint meeting with the Commission of Sierra County, the only county that so requested.

The Service is exploring additional avenues of communication and cooperation with local governments and other stakeholders in the implementation of Mexican wolf reintroduction.

On April 3, 1997, the Department of the Interior issued its Record of Decision on the FEIS, and selected the Preferred Alternative (Alternative A in the FEIS) for implementation (62 FR 15915–15916). The Service will reintroduce captive-raised Mexican wolves in eastern Arizona within the designated Blue Range Wolf Recovery Area. Released wolves and their offspring will be designated a nonessential experimental population. This population will be allowed to colonize the entire Blue Range Wolf Recovery Area. If the Service later determines it to be both necessary for recovery and feasible, we would reintroduce wolves into the White Sands Wolf Recovery Area, the designated back-up area.

Mexican Wolf Recovery Areas

The Service has determined that reintroduction in the Blue Range Wolf Recovery Area (Figure 1) is biologically and environmentally preferable and has the greatest potential for successfully achieving the current recovery objective for Mexican wolves. The White Sands Wolf Recovery Area (Figure 2) may serve as a back-up reintroduction area only if its use is later determined to be both necessary and feasible, according to criteria in the Preferred Alternative.

The two wolf recovery areas are within the Mexican wolf's probable historic range. The Mexican wolf is considered extinct in the wild in the United States. Thus, both areas are geographically separate from any known, naturally-occurring, nonexperimental populations of wild wolves.

Section 17.84(k)(9) of this rule establishes a larger Mexican Wolf Experimental Population Area (Figure 3), which also is geographically separate from any known, naturally-occurring nonexperimental populations of wild wolves. The Service is not proposing to re-establish Mexican wolves throughout this larger area. The purpose of designating an experimental population area is to establish that any member of the re-established Mexican wolf population found in this larger area is a member of the nonessential experimental population, and subject to the provisions of this rule including, but

not limited to, its capture and return to the designated recovery area(s).

Reintroduction Procedures

Captive Mexican wolves are selected for release based on genetics, reproductive performance, behavioral compatibility, response to the adaptation process, and other factors. Selected wolves have been moved to the Service's captive wolf management facility on the Sevilleta National Wildlife Refuge in central New Mexico where they have been paired based on genetic and behavioral compatibility and measures are being taken to adapt them to life in the wild. As wolves are moved to release pens, more will be moved to the Sevilleta facility. Additional wolves for reintroduction may be obtained from selected cooperating facilities that provide an appropriate captive environment.

Initially, wolves will be reintroduced by a ''soft release'' approach designed to reduce the likelihood of quick dispersal away from the release areas. This involves holding the animals in pens at the release site for several weeks in order to acclimate them and to increase their affinity for the area. (The soft release approach is described in more detail in Chapter 2 of the FEIS.) The releases will begin in 1998. Procedures for releases could be modified if new information warrants such changes.

In the Blue Range Wolf Recovery Area, approximately 14 family groups will be released over a period of 5 years, with the goal of reaching a population of 100 wild wolves. Approximately five family groups of captive raised Mexican wolves will be released over a period of 3 years into the White Sands Wolf Recovery Area, if this back-up area is used, with the goal of reaching a population of 20 wolves.

Management of the Reintroduced Population

The nonessential experimental designation enables the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with ''endangered'' status. This includes allowing limited ''take''' (see definition of take in section 17.84(k)(15) of the rule) of individual wolves under narrowly defined circumstances. Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting. It is also critical to obtaining needed State, Tribal, local, and private cooperation. The Service believes this flexibility will improve the likelihood of success.

Reintroduction will occur under management plans that allow dispersal by the new wolf populations beyond the primary recovery zones where they will be released into the secondary recovery zones of the designated wolf recovery area(s) (Figures 1 and 2). The Service and cooperating agencies will not allow the wolves to establish territories on public lands wholly outside these wolf recovery area boundaries. With landowner consent, the Service also would prevent wolf colonization of private or tribal lands outside the designated recovery area(s).

No measures are expected to be needed to isolate the experimental population from naturally occurring populations because no Mexican wolves are known to occur anywhere in the wild. The Service has ensured that no population of naturally-occurring wild wolves exists within the recovery areas. Surveys for wolf sign in these areas have been conducted, and no naturally occurring population has been documented. No naturally occurring population of Mexican wolves has been documented in Mexico following four years of survey efforts there. Therefore, based on the best available information, the Service concludes that future natural migration of wild wolves into the experimental population area is not possible.

Identification and Monitoring

Prior to placement in release pens, the adult-sized wolves will receive permanent identification marks and radio collars. If pups are born in the release pens, they will be marked and may receive surgically implanted transmitters prior to release. Some or all of these pups may be captured and fitted with radio collars when they reach adult size. Captured wild-born wolves will be given a permanent identification mark and radio collar, unless enough animals from their family group (to ensure adequate monitoring of the group) are already radio collared.

The Service and cooperating agencies will measure the success or failure of the releases by monitoring, researching, and evaluating the status of released wolves and their offspring. Using adaptive management principles, the Service and cooperating agencies will modify subsequent releases depending on what is learned from the initial releases. The agencies will prepare periodic progress reports, annual reports, and full evaluations after three and five years that will recommend continuation, modification, or termination of the reintroduction effort. The reports will also evaluate whether, and how, to use the back-up White Sands Wolf Recovery Area.

Findings Regarding Reintroduction

The Service finds that, under the Preferred Alternative, the reintroduced experimental population is likely to become established and survive in the wild within the Mexican gray wolf's probable historic range. The Service projects that this reintroduction will achieve the recovery goal of at least 100 wolves occupying 5,000 square miles. The Blue Range Wolf Recovery Area comprises 6,854 square miles of which about 95% is National Forest.

Some members of the experimental population are expected to die during the reintroduction efforts after removal from the captive population. The Service finds that even if the entire experimental population died, this would not appreciably reduce the prospects for future survival of the subspecies in the wild. That is, the captive population could produce more surplus wolves and future reintroductions still would be feasible if the reasons for the initial failure are understood. The individual Mexican wolves selected for release will be as genetically redundant with other members of the captive population as possible, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Service has detailed lineage information on each captive Mexican wolf. The captive population is managed for the Service under the American Zoo and Aquarium Association's Species Survival Plan program. The Association maintains a studbook and provides an expert advisor for small population management.

Management of the demographic and genetic makeup of the population is guided by the SPARKS computer program. Mean kinship values, which range from zero to one, are a measure of the relatedness of an individual to the rest of the population. Wolves with higher kinship values are genetically well-represented in the population. Individuals whose mean kinship values are above the mean for the captive population as a whole will be used for release. In addition, the GENES computer program is used to examine the influence of removing an individual animal on the survival of the founders' genes. This management approach will adequately protect the genetic integrity of the captive population and thus the continued existence of the subspecies. The United States captive population of Mexican wolves has approximately doubled in the last 3 years, demonstrating the captive population's

reproductive potential to replace reintroduced wolves that die. In view of all these safeguards the Service finds that the reintroduced population would not be ''essential'' under 50 CFR 17.81(c)(2).

The Service finds that release of the experimental population will further the conservation of the subspecies and of the gray wolf species as a whole. Currently, no populations or individuals of the Mexican gray wolf subspecies are known to exist anywhere in the wild. No wild populations of the gray wolf species are known to exist in the United States south of Washington, Idaho, Wyoming, North Dakota, Minnesota, Wisconsin, and Michigan. Therefore, based on the best available information, the Service finds that the re-established population would be completely geographically separate from any extant wild populations or individual gray wolves and that future migration of wild Mexican wolves into the experimental population area is not possible. The Mexican wolf is the most southerly and the most genetically distinct of the North American gray wolf subspecies. It is the rarest gray wolf subspecies and has been given the highest recovery priority for gray wolves worldwide by the Wolf Specialist Group of the World Conservation Union (IUCN).

Releasing captive-raised Mexican wolves furthers the objective of the *Mexican Wolf Recovery Plan*. This reintroduction will establish a wild population of at least 100 Mexican wolves and reduce the potential negative effects of keeping them in captivity in perpetuity. If captive Mexican wolves are not reintroduced to the wild within a reasonable period of time, genetic, physical, or behavioral changes resulting from prolonged captivity could diminish their prospects for recovery.

Designation of the released wolves as nonessential experimental is considered necessary to obtain needed State, Tribal, local, and private cooperation. This designation also allows for management flexibility to mitigate negative impacts, such as livestock depredation. Without such flexibility, intentional illegal killing of wolves likely would harm the prospects for success.

Potential for Conflict With Federal and Other Activities.

As indicated, considerable management flexibility has been incorporated into the final experimental population rule to reduce potential conflicts between wolves and the activities of governmental agencies, livestock operators, hunters, and others. No major conflicts with current management of Federal, State, private, or Tribal lands are anticipated. Mexican wolves are not expected to be adversely affected by most of the current land uses in the designated wolf recovery areas. However, temporary restrictions on human activities may be imposed around release sites, active dens, and rendezvous sites.

Also, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (WS) division will discontinue use of M–44's and choking-type snares in ''occupied Mexican wolf range'' (see definition in section 17.84(k)(15)). Other predator control activities may be restricted or modified pursuant to a cooperative management agreement or a conference between the WS and the Service.

The Service and other authorized agencies may harass, take, remove, or translocate Mexican wolves under certain circumstances described in detail in this rule. Private citizens also are given broad authority to harass Mexican wolves for purposes of scaring them away from people, buildings, facilities, pets, and livestock. They may kill or injure them in defense of human life or when wolves are in the act of attacking their live stock (if certain conditions are met). In addition, ranchers can seek compensation from a private fund if depredation on their livestock occurs.

No formal consultation under section 7 of the Act would be required regarding potential impacts of land uses on nonessential experimental Mexican wolves. Any harm to wolves resulting solely from habitat modification caused by authorized uses of public lands that are not in violation of the temporary restriction provisions or other provisions regarding take or harassment would be a legal take under this rule. Any habitat modification occurring on private or tribal lands would not constitute illegal take. Based on evidence from other areas, the Service does not believe that wolf recovery requires major changes to currently authorized land uses. The main management goals are to protect wolves from disturbance during vulnerable periods, minimize illegal take, and remove individuals from the wild population that depredate livestock or otherwise cause significant problems.

The Service does not intend to change the ''nonessential experimental'' designation to ''essential experimental,'' ''threatened,'' or ''endangered'' and the Service does not intend to designate critical habitat for the Mexican wolf. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii). The Service foresees no likely situation which would result in such changes in the future.

Conflicts With State and Local Policies.

In 1994, Arizona adopted an anti-trapping initiative (amending ARS section 17–301), which makes the use of several wildlife capture devices illegal, including leg-hold traps. However, the law does not prohibit ''the use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona Game and Fish Commission and or the Government of the United States.'' The Service believes leg-hold traps are an essential tool for wolf management. Their use will be primarily for research and relocation purposes. Although the Service believes that its primary purpose for leg-hold trapping (wolf research and relocation) is included in the exception to the Arizona law under ''traps not designed to kill,'' provisions and purposes for the use of wolf capture devices specified in this final experimental population rule [see section 17.84 (k)(3)(ix)] would preempt State law to the extent it may conflict with Federal law.

Catron and Sierra counties in New Mexico have land use planning ordinances that call for equal authority with Federal agencies over decisions affecting Federal lands within these counties. Similar assertions are made by both Apache and Greenlee counties in Arizona in their Land and Resource Policies. The Service has not submitted this Federal proposal to county approval processes under their various planning ordinances, due to legal, budget, staff, and time considerations. Wolf reintroduction under the Preferred Alternative does not directly conflict with Catron and Sierra counties' ordinances that prohibit the release of wolves into those counties, because no wolves will be released in those counties. Nevertheless, releasing wolves in nearby counties with foreseeable dispersal into Catron and Sierra counties, as proposed here, does appear to conflict with the goals of these ordinances; and wolves may be translocated into these counties in the future. The Act, Mexican wolf experimental population rule, and other Federal authority would preempt any conflicting local ordinances.

Key Changes in Final Rule as a Result of Public Comment

The following key changes or clarifications were incorporated into the final rule based on comments received

on or related to the proposed rule, internal Service reviews, changes in Service policy, and the Service's experience with section (10)(j) rules for other nonessential experimental populations. These individual or cumulative changes do not more than marginally alter the projected overall impact of Mexican wolf reintroduction under the Preferred Alternative as set forth in the FEIS. Other minor additions and wording changes also have been made.

(1) The Blue Range Wolf Recovery Area is identified as the biologically and environmentally preferable area, to be used first, with the White Sands Wolf Recovery Area to be used only as the back-up area, if later determined to be both necessary and feasible.

(2) All conditional road closure and land use restriction language, except limited temporary closures around release pens, dens, and rendezvous sites has been removed.

(3) Detailed definitions of ''disturbance-causing land use activities,'' ''livestock,'' ''public land,'' and ''rendezvous site'' have been added. The definition for disturbance-causing land use activities specifically exempts certain activities from the temporary closure provision.

(4) The definition of ''secondary recovery zone'' was modified to clarify that, following the initial release of wolves in the primary recovery zone, wolves may be translocated and released in the secondary recovery zone for authorized management purposes.

(5) The harassment provision has been expanded to allow anyone to harass Mexican wolves to scare them away from people, buildings, facilities, livestock, other domestic animals, and pets anywhere in the Experimental Population Area. Also, the proposed rule provision that restricted public land grazing allottees from waiting for wolves in order to harass them has been deleted.

(6) Rule provisions have been reordered so that provisions authorizing or prohibiting take of Mexican wolves appear as subsections under section 17.84(k)(3).

(7) Hunting was deleted from the list of examples of human activities during which non-negligent and incidental killing or injuring of a Mexican wolf might be considered unavoidable and unintentional take. Military training and testing was added to that list.

(8) The provision that wolves may be captured and/or translocated when conflicting with a major land use was deleted. A provision that they may be captured and/or translocated when they endanger themselves by their presence in a military impact area was added.

(9) A provision was added to authorize the take of Mexican wolves by livestock guarding dogs when used in the traditional manner.

(10) Language was added to clarify the authority of the Service and designated agencies to use leg-hold traps and other effective devices to capture and control wolves according to approved management plans.

(11) A provision was added to allow for the capture, killing, and/or translocation of feral wolf-like animals, feral wolf hybrids, and feral dogs that exhibit evidence of hybridization, domestication, or socialization to humans.

(12) A provision was added that prohibits the disturbance of dead or injured wolves or wolf parts or the area around them unless instructed to do so by an authorized agent of the Service.

(13) We deleted the provision regarding revocation of the experimental status, and removal of the re-established wolves, if legal actions or lawsuits compel a change in the population's legal status to essential experimental, threatened, or endangered, or compel the designation of critical habitat within the Mexican Wolf Experimental Population Area.

(14) The provision for removing the nonessential experimental population from the wild if a naturally-occurring population of wild wolves is discovered within 90 days of the initial release was deleted.

(15) Language was added to clarify that packs whose established territories consist of portions of designated wolf recovery areas and portions of adjacent public lands will not be routinely captured and translocated.

(16) The definition of public lands was revised to exclude State-owned lands lying outside designated wolf recovery areas.

Summary of Public Participation

In June 1996, public open house meetings and formal public hearings were held in El Paso, Texas; Alamogordo and Silver City, New Mexico; and Springerville, Arizona. About 166 people attended these meetings and had an opportunity to speak with agency representatives and submit oral and written comments. Oral testimony was presented by 49 people at the hearings, and 150 people submitted written comments on the proposed rule. We received a petition supporting full endangered status for reintroduced Mexican wolves signed by 32 people; and a petition opposing the reintroduction of Mexican wolves signed by 91 people. In addition, many comments on the DEIS were specific to the draft proposed rule or related management considerations. These comments also were considered in this revision of the proposed rule.

Chapter 5 of the FEIS provides a summary of the many comments received on the DEIS and the Service's responses to those comments. Comments on the DEIS that specifically related to the draft proposed rule are reproduced and responded to below, along with the many additional comments received during the public comment period specific to the proposed rule. Many comments caused a language change from the proposed rule to the final rule.

Issues Raised in Public Comments, and Service Responses

Key issues raised in public comments on the proposed rule, and the Service's responses to them, follow. They are grouped by the following topic areas—(1) Legal status designation; (2) Recovery areas; (3) Mexican Wolf Experimental Population Area; (4) Prevention of wolf dispersal; (5) Allowable take and harassment of wolves; (6) Livestock depredation; (7) Depredation control; (8) Definitions; (9) Land use restrictions; and (10) Other issues.

1. Legal Status Designation

Comment: The Mexican wolf is not a valid subspecies and thus should not be the subject of an experimental population rule. In fact, the Service in the northern Rockies litigation has taken the position that there are no gray wolf subspecies.

Response: Experts on wolf taxonomy recognize the Mexican wolf (*Canis lupus baileyi*) as a distinct gray wolf subspecies. The Service agrees with these experts. Please refer to the discussion on Taxonomy in Chapter 1 of the FEIS.

Comment: Wolves should be released as experimental essential.

Response: The Service determined that the nonessential experimental classification fits the Mexican wolf's status. Only wolves surplus to the captive breeding program will be released. (See section herein on Findings Regarding Reintroduction, and FEIS Appendix D—section 7 Consultation on Proposed Action, section on Effects on Mexican Gray Wolf, regarding definition of ''surplus'' wolves and significance of their removal from the captive population.) Their loss would not jeopardize the continued survival of the subspecies. Further, the nonessential experimental classification

allows for management flexibility deemed vital to successful wolf recovery. Experimental essential status is neither required by section 10(j) of the Act nor the implementing regulations, and it has not been used in past reintroductions of captive-raised animals, such as the red wolf, black-footed ferret, and California condor.

Comment: No theory of population biology would allow the FWS to reach the conclusion that a population of only 136 wolves, including immature pups, has any biologically ''surplus'' adults.

Response: The Service disagrees. The number of wolves in captivity is adequate to support the proposed reintroduction, through the reintroduction of genetically surplus wolves, without significantly affecting the likelihood of survival of the population remaining in captivity. This is not the same as saying that the total captive or wild populations (or both combined) would constitute a minimum viable population under conservation biology principles. The goal of this reintroduction effort is to initiate the recovery of the subspecies. There is strong information from reintroduction efforts for other gray wolf populations, the red wolf, and other species that the nonessential designation is biologically appropriate to successfully initiate the recovery process.

Comment: Designation of the Mexican wolf as nonessential means that it is not endangered, therefore there is no reason to reintroduce it.

Response: The ''experimental nonessential'' terminology in section 10(j) of the Act is confusing. It does not mean that the animal is not near extinction and it does not mean the reintroduction is just an experiment. It is a classification designed to make the reintroduction and management of endangered species more flexible and responsive to public concerns to improve the likelihood of successfully recovering the species.

Comment: The experimental nonessential designation cannot legally be used because the reintroduced population would not be wholly separate geographically from nonexperimental populations of the same species.

Response: The Service disagrees; To date, despite numerous surveys, no evidence has been found that a naturally-occurring wild Mexican wolf population exists or will exist in the future in the United States.

Comment: The wolf should stay on the ''endangered'' list; there is potential confusion if experimental nonessential is used and wild wolves recolonize the same areas; further, the plan to relocate any wild wolves from Mexico that disperse into the experimental population area (outside the recovery areas) defeats the Act's goal of protecting such wild endangered animals.

Response: The best available information supports the Service's conclusion that no populations of or individual Mexican wolves exist anywhere in the wild. This justifies the reintroduction of nonessential experimental animals.

Comment: If wild Mexican wolves did naturally recolonize in areas where the Service proposes to reintroduce captive-raised animals, this should not be grounds for canceling the reintroduction; instead it should be considered a plus that would increase the chances of success of the reintroduction.

Response: See response to previous comment.

Comment: If wild wolves did naturally recolonize in the areas where reintroduced wolves were established, then a ''sunset clause'' should take effect that results in the termination of the status of the reintroduced population as ''nonessential experimental'' and results in all the wolves in the area having full-endangered status.

Response: The Service disagrees. Based on the best available information, we have determined that no wild population of or individual Mexican wolves exist in the recovery areas or anywhere else prior to reintroduction. The Service believes that it would be unwise to allow for an automatic status change of all wolves in the area from experimental to endangered if non-reintroduced wolves suddenly appeared, which the Service considers to be an impossibility.

Comment: The provision to look for a naturally-occurring wild wolf population for up to 90 days after initiation of the reintroduction does not seem to reconcile with the fact that they need to have been there at least for 2 years to qualify under the Service's definition of a ''population''.

Response: We agree and have deleted this provision.

Comment: The nonessential experimental status is not as flexible as the Service claims; the reintroduced wolves would still have to be considered in environmental analyses and planning for other projects in the designated recovery areas, at least as a ''sensitive'' species under ''cumulative impacts.'' Therefore, the presence of the wolves would affect future site specific, forest-wide, and region-wide decision making.

Response: The Service agrees that the presence of the wolves may have minor effects on future projects and plans in the wolf recovery areas; however, those effects would be reduced under nonessential experimental status as compared to under endangered status. The agencies involved would have more flexibility as far as addressing potential impacts on the wolves; and they would not have to conduct formal consultations under section 7 of the Act.

2. Recovery Areas

Comment: The Proposed Action in the DEIS emphasized using the Blue Range Wolf Recovery Area and/or the White Sands Wolf Recovery Area while the Proposed Experimental Population Rule emphasized both areas being used; why the difference?

Response: The draft ''Proposed Mexican Wolf Experimental Population Rule'' was written to cover the Proposed Action (in the DEIS) in its fullest application, that is, as if both areas were ultimately used. It should not be interpreted as a statement that both areas actually will be used. The Preferred Alternative (in the FEIS) chosen in the Record of Decision emphasizes initial use of the Blue Range Wolf Recovery Area, with possible later use of the White Sands Wolf Recovery Area only if determined to be both necessary and feasible. The final rule reflects this preference.

Comment: The areas are too large and will tie up too much land.

Response: The largest area, the Blue Range Wolf Recovery Area, is estimated to be an appropriate size to support a sustainable wolf population of 100 animals. The White Sands Wolf Recovery Area is too small to support a sustainable wolf population without active human management of the population. The designation of these areas carries no use restrictions with it that will ''tie up'' the land.

Comment: There is no evidence that these areas were part of the historic range of the *C.l. baileyi* subspecies.

Response: The Service disagrees. Chapter 1 of the FEIS includes a detailed discussion of Mexican wolf taxonomy and probable historic range. The latter takes in the two designated wolf recovery areas. Further, Chapter 3 in the FEIS discussion under ''Animals—History of Wolves'' for the two areas includes historical documentation of wolves.

Comment: The wolf recovery area boundaries are objectionable and the areas are too small; the plan to return dispersing wolves means that they will only be allowed to reinhabit a small fraction of historic wolf habitat in the

Southwest within the experimental population area. Several separated populations are needed to create a stable metapopulation. They should at least be allowed to disperse south to the Coronado National Forest area. Dispersal corridors between the Blue Range Wolf Recovery Area and the White Sands Wolf recovery Area should be provided for in the rule.

Response: The boundaries represent the areas most likely to successfully support wolf recovery, consisting predominately of public land that has rated high for wolf recovery attributes. This will be the first phase of Mexican wolf recovery; additional recovery areas will be needed in the future to achieve the goal of removing the Mexican wolf from the endangered species list. Such additional areas could be within the designated experimental population area or outside this area, including in Mexico if inter-governmental cooperation is achieved. No decisions have been made yet regarding future areas. The establishment of a dispersal corridor between the Blue Range Area and the White Sands Area does not appear feasible. One general criterion for dispersal corridors is that they be comprised of habitat that is suitable for the target species. No contiguous strip of suitable wolf habitat exists between these areas, which are separated by about 50 miles. It is conceivable that wolves could travel between these areas, but they would encounter considerable human activity and private property. In addition, they would have to cross Interstate Highway 25 and the Rio Grande in the vicinity of Elephant Butte and Caballo Reservoirs.

3. Mexican Wolf Experimental Population Area (MWEPA)

Comment: The Mexican Wolf Experimental Population Area (MWEPA) is about twice as large as needed to administer the rule. The western boundary should be moved further to the east and the eastern boundary further to the west.

Response: The Service disagrees. No naturally occurring populations of wolves exist in or anywhere near the MWEPA. The most likely natural recolonization areas have been excluded from the MWEPA (FEIS Alternative D). A smaller MWEPA might have the confusing potential of artificially creating ''endangered'' Mexican wolves (if their experimental status is unclear) by allowing re-established wolves to quickly disperse outside the MWEPA. The Service believes the proposed MWEPA provides necessary management flexibility.

Comment: Wolves found outside the MWEPA should not have full endangered status under the Act; there are no wild wolves left, therefore any wolves found in the Southwest, even if unmarked, most likely will have originated from the reintroduced population.

Response: Wolves found outside the MWEPA that can be identified as a member of the experimental population will retain their nonessential, experimental status for management purposes.

4. Prevention of Dispersal

Comment: It is not feasible to recapture and return wolves. Wolves will disperse to where they are categorized as endangered under the Act.

Response: The Service disagrees. In Minnesota and other areas, the Service and other agencies have many years of experience in capturing and translocating wolves. Wolves that leave the large Mexican wolf experimental population area could still be managed under this rule.

Comment: For wolves that establish territories on public lands outside the designated recovery areas, the management approach should not be automatic removal; instead, consultation should be entered into with the land managers, similar to that provided for private and tribal lands outside the designated recovery areas. If removal is necessary, the preference should be returning them to the recovery areas rather than to captivity. The plan should also allow for changes to the recovery areas boundaries.

Response: A limited and defined area is considered necessary to allow the wolf the highest degree of acceptance and recovery and to allow the Service and cooperating agencies to plan for wolf management. Allowing the recovery areas to expand out continually would defeat this purpose. However, if the Service determined it was necessary to survival and recovery of the reintroduced population, it is possible that after thorough evaluation the Service could recommend changes to the recovery area boundaries. These would have to be proposed as a revision to the final Mexican Wolf Experimental Population Rule and be subject to formal agency and public review under rulemaking procedures and the National Environmental Policy Act. Language has been added to the rule to clarify that members of wolf packs whose territories consist of public lands lying both within and outside designated recovery areas would not routinely be captured and translocated. On the issue of a preference to return captured wolves to the recovery areas, rather than captivity, the Service prefers this option for non-problem wolves. The Service does not think it is appropriate to write such a preference into the rule because many factors might enter into future case-by-case decision making on this issue.

5. Allowable Take and Harassment of Wolves

Comment: The level of legal protection is too low.

Response: The legal protections afforded Mexican wolves under this rule are considered adequate. Except for narrowly defined exceptions, killing of the wolves would be a violation of the Act, and of this rule, and would subject the offenders to severe penalties.

Comment: Wolves that eat livestock should not be killed, but removed from the area.

Response: Nonlethal control methods will be preferred and encouraged. Depredating wolves taken alive would generally be translocated to an area where they are less likely to depredate or put back into the captive population. Euthanasia is a last resort.

Comment: The Service is too willing to kill or move wolves that threaten livestock or leave the recovery areas.

Response: The Service disagrees. The management strategy of removing livestock-depredating wolves has proved successful for wolf recovery elsewhere, and the Service believes it is appropriate.

Comment: The provisions to kill and harass wolves for protection of humans and livestock will be abused; the numbers of breeding pairs required before this could be allowed is too low.

Response: The Service anticipates some level of abuse of provisions for taking wolves, but believes that extensive public education and information efforts, as well as strong law enforcement, will keep abuse levels low. The provisions on allowable take and harassment of wolves are narrowly drawn so that they are only to be used in ways that enhance wolf recovery, i.e., by removing depredating wolves and by conditioning wolves to generally avoid humans and livestock. On the question of the numbers of breeding pairs needed before allowing harassment or killing, there is no minimum number before nonlethal harassment is allowed. Nonlethal harassment can benefit wolf recovery by negatively conditioning wolves to humans and livestock. As far as the numbers before allowing private killing of livestock on public lands, under narrow conditions, the Service believes that six breeding pairs on the BRWRA represent substantial progress

toward recovery objectives. Information on progress toward these goals will be made available to the public. The number of wolves killed under this provision is expected to be very few, if any, and of minor consequence to the progress of wolf recovery once the prescribed number of pairs has been reached.

Comment: Harassing or killing wolves on public lands should not be allowed.

Response: Public lands are multiple use lands and the limited harassment and killing of wolves allowed is considered appropriate to protect other land uses and promote successful wolf recovery.

Comment: The allowance of unavoidable or unintentional take is too vague and unenforceable.

Response: The Service disagrees. Notice of general wolf locations will be publicized. Hunters (and others) who might shoot a wolf are responsible to identify their targets before shooting. Information and education efforts should minimize illegal take by shooting. Information on how to avoid unintentional trapping will be made available. The few trappers in these areas will be on notice that if they do trap a wolf it likely would not be considered ''unavoidable or unintentional.'' The other area of expected unintended killing of wolves is by collisions with vehicles and the Service sees little point in making the unintended hitting of a wolf by a vehicle illegal.

Comment: Prosecution for illegal killings of Mexican wolves should be mandatory, instead of the ''may'' be prosecuted language used in the proposed rule.

Response: Prosecutorial discretion is important for successful prosecutions. The Service is committed to vigorous enforcement in appropriate cases where evidence exists that illegal killing occurred.

Comment: The provision allowing take of wolves to defend human life is offensive because there has never been a documented case of wolves killing humans.

Response: The Service agrees there are no documented cases of wolves attacking and killing or severely injuring people in North America, but there have been a few instances of wolves attacking people, although not seriously injuring them. The point of the provision, which is consistent with the Act, is to make it quite clear that wolves may be killed if they attack humans, even though this is extremely unlikely to occur.

6. Livestock Depredation

Comment: Regarding the provisions allowing take of wolves that attack livestock: they are too broad, the time limit for the private permit should be drastically reduced from up to 45 days, and take should not be allowed unless depredation exceeds a certain percentage of the herd present, e.g., 1 or 2 percent. Also, the allowance for taking nuisance wolves and for using lethal methods are too vague.

Response: The Service believes the provisions are reasonable, can be administered with appropriate discretion, and will not impede wolf recovery. It would be very difficult to accurately monitor livestock depredation rates attributable exclusively to wolves. Protocols for various management measures, such as grounds and procedures for permit issuance for the taking of wolves and the use of lethal methods, will be spelled out in greater detail in the Service-approved management plan referenced in this rule.

Comment: Public lands ranchers will be put out of business by the unacceptably high level of livestock depredation, unless they are given more freedom to kill wolves. They should not be required to get a permit to control depredating wolves.

Response: The Service believes that some ranchers could be adversely affected in a given year but evidence from other areas where wolves and ranching co-exist does not support the idea that ranchers on these multiple-use public lands will be driven out of business without greater ability to kill wolves. The permit requirement will serve to reduce unauthorized killing of wolves and to reduce potential conflicts with other public land users, such as hikers and campers.

Comment: The private depredation compensation fund should be incorporated into the rule, with a backup provision that if private funding fails, then the Service will commit to continuing the fund.

Response: Absent additional legislation, the Service does not believe it would be appropriate to commit governmental funds to back up the private Defenders of Wildlife fund. The reintroduction is not contingent on the existence of the private fund, but experience with the fund in the Northern Rockies indicates it is reliable.

Comment: The proposed rule indicates it would be illegal for a livestock producer to ''wait for'' wolves for the purpose of scaring them away. This is counterproductive to the purpose of allowing harassment. If a livestock producer has reason to believe his stock have been attacked or harassed by wolves, it is only reasonable that he or she be vigilant for recurrence.

Response: The Service agrees, and the restriction on waiting for wolves in the case of harassment has been deleted.

Comment: The provision in the proposed rule allowing livestock owners and their agents to harass wolves in the immediate vicinity of ''people, buildings, facilities, [and] pets'' should also apply on public lands because several ranchers on public lands have line shacks and other facilities on public lands, where they may stay with their children, pets, and so on.

Response: The Service agrees and has expanded the harassment provision to apply everywhere within the Experimental Population Area.

Comment: Hunting dogs are as valuable as livestock and should be included as such in the rule for purposes of deciding whether wolves have depredated and whether compensation is due.

Response: The use of hunting dogs carries with it an accepted risk of attack by wild animals. We believe this is consistent with the philosophy of ''fair chase'' in the sport of hunting. We disagree that the killing or injuring of a hunting dog by a wolf in the wild should be cause for controlling wolves. The Defenders of Wildlife has sole discretion to determine which acts of depredation are compensable.

7. Depredation Control

Comment: The Arizona anti-trapping law means that traps could not be used to control wolves.

Response: The Service believes leg-hold traps are an essential tool for wolf management. We have included specific provisions for their use in this rule which we believe comply with the exception language in the Arizona law which allows non-lethal trapping for scientific and research purposes. To the extent wolf trapping provisions in this rule conflict with the State law (if they conflict at all), this rule would preempt the State trapping ban.

Comment: M–44's and choking snares should be restricted over a much larger area than called for in the rule; the proposed section (j)(3)(vii), basically limits the restriction to a 5 miles radius buffer around known locations of the wolves, which is inadequate to protect them in view of their ability to travel rapidly.

Response: The Service is preparing a Biological Opinion (under provisions of section 7 of the Act) on the potential effects of the WS program on Mexican wolves. We believe this biological

opinion combined with special provisions in this rule will adequately protect the Mexican wolf. If unacceptable levels of take occur, the Biological Opinion or the rule, or both, would be revised.

Comment: Coyote control will be adversely impacted in areas where the restriction on M–44's and choking-type neck snares is imposed. At the most, this should be limited to the primary recovery zone.

Response: Selective lethal control of coyotes by traps, calling and shooting, and aerial shooting, as well as a variety of nonlethal techniques are allowed under this rule. Field research and observations suggest that coyote populations may be reduced by inter-specific aggression in areas occupied by wolves.

Comment: The inability to use helicopters in designated federal wilderness areas means that a key tool for depredation control will not be available.

Response: Existing restrictions on the use of helicopters in wilderness areas are not affected or changed by this rule. The Service believes that adequate depredation control can be accomplished in wilderness areas. However, we recognize that depredation control in wilderness areas may be less efficient and effective than in non-wilderness areas.

Comment: It will be very difficult in the huge southwestern ranges to find depredated livestock and to determine whether a decomposed carcass represents a wolf depredation; therefore, the depredation control efforts and compensation fund won't work.

Response: The Service acknowledges that some livestock killed by wolves may not be discovered in time to determine the cause of death; and that ranchers may not be compensated for these losses.

8. Definitions

Comment: The lack of a definition of ''problem wolves'' gives too much management flexibility. ''Harass'' must be more clearly defined. ''Rendezvous sites'' needs definition.

Response: With the addition of a definition of ''rendezvous site'', all these terms are defined in the final rule. The Service believes management flexibility is positive. Additional refinement of the definition of ''problem wolves'' could occur under the Service-approved interagency management plan that would be developed under the final rule.

Comment: Better definitions are needed of how wolves impact game populations and how wolves would conflict with a major land use. The former definition amounts to a subtle attempt by the Service to take over the State management of game populations.

Response: The definition in the rule of ''impact on game populations in ways which may further inhibit wolf recovery'' is considered adequate and was developed in cooperation with State game management agencies. It is not a mechanism to dictate State game management, rather, it defines when wolves may be moved to lessen wolf impacts on State-managed game herds. There was no definition of when a wolf is ''conflicting with a major land use'' and the Service has decided to drop that provision from the Preferred Alternative and this rule. It is vague and adequate management flexibility exists under other rule provisions.

Comment: The definition of ''disturbance-causing land use activity'' should specifically exclude the use of lands within the national park or national wildlife refuge systems as safety buffer zones for weapons or missile tests or training.

Response: The Service agrees and the definition of this term has been revised to reflect this.

Comment: The definition of ''engaged in the act of killing, wounding, or biting livestock'' should be changed so that observing a wolf feeding on a livestock carcass would justify the assumption that the wolf had actually attacked and killed the animal, unless the carcass was obviously decomposed, so that the livestock owner could shoot the wolf.

Response: The Service disagrees. Many livestock animals, especially calves, die from other causes. Observing a wolf feeding on a carcass is not an adequate reason to kill the wolf, but it would be a basis to harass the wolf. If subsequent investigation of the carcass showed that the wolf did in fact kill the carcass, then a depredation control effort would be initiated and the rancher likely would be entitled to compensation.

9. Land Use Restrictions

Comment: The land use restrictions are inadequate to protect the wolves.

Response: Land use restrictions have proven almost entirely unnecessary in other areas where wolf recovery is occurring. Such restrictions are counterproductive unless they are clearly needed.

Comment: To avoid conflicts, back roads should be closed in the areas regardless of illegal wolf killing.

Response: This would create unnecessary bad will toward the wolf without adding a conservation benefit. The Service has deleted the back-country road closure provision.

Comment: A radius of more than 1 mile should be used for public access restrictions around release pens, dens, and rendezvous sites—2 to 4 miles; the radius should be on a case-by-case basis and not specified in the rule.

Response: No basis for a larger restricted area is evident now. If such a change proved necessary, the Service could propose to amend the experimental population rule to increase the radius.

Comment: The so-called limited closures are in fact not minor and will virtually shut down the denning and vaguely defined rendezvous areas to human use, such as logging for many months, at least for April through October. This, together with possible back country road closures, could devastate the already threatened Southwest timber industry. Also, the closures around dens, etc., could result in road closures.

Response: The Service believes that proposed closures or use restrictions would be minor. They would be implemented only if deemed to be necessary to protect Mexican wolves from harm; no closure would exceed an area of about 3 square miles (4.8 km^2) or a circle with a 1 mile (1.6 km^2) radius which is about 2,000 acres (810 ha); no closure would be in effect for more than 4 months, except possibly those around release pens; and release pen closures would only be necessary in the primary recovery zones when releases are actually being made. Only one active den site or one active rendezvous site would exist at any given time (except for a possible overlap of 1–2 weeks) in each active pack territory. Pack territories are expected to include about 250 square miles (96.5 km^2). Therefore, on average, no more than 3–6 square miles (7.8–15.5 km^2) of every 250 square miles (96.6 km^2) or 1.2–2.4 percent of the total public land area could be closed or restricted at any time. Furthermore, no closures or use restrictions would be imposed on private or tribal lands without the consent of the owner or tribal government. Nevertheless, the level of concern expressed regarding this provision has caused the Service to define ''disturbance-causing land use activities'' in the final rule. The new definition specifically exempts certain land use activities from the closure provision. In addition, the Service has eliminated the ''back-country road'' closure provision because it is not clear that it would be effective in addressing the problem of illegal killing. Instead,

more emphasis will be placed on public education and law enforcement.

Comment: The access restrictions around pens, dens, and rendezvous sites should be implemented in a way that does not attract undue, potentially destructive, and counterproductive attention to them.

Response: We agree and will consider this view when determining the need for restrictions.

Comment: The road, den, and rendezvous site access closures would prevent Phelps Dodge Company from accessing wells and equipment on the Upper Eagle Creek and prevent other legitimate access to, and uses of, private property in the Blue Range Wolf Recovery Area.

Response: The road closure provision has been deleted. Closures around den and rendezvous sites would be flexible and on an as-needed basis. These would not occur in such a way as to prevent access to private property or to authorized use locations on public property. See response to the two previous comments.

Comment: The provision in the rule that no land use restrictions would be imposed to protect the wolves is negated by the citizen suit provision of the Act, which will be used by pro-wolf groups to impose such restrictions.

Response: The Service disagrees that the citizen suit provision of the Act could successfully impose land use restrictions, as long as the nonessential experimental designation is not declared invalid. This has not occurred in litigation against other section 10(j) rules.

10. Other Issues

Comment: Drivers on public highways should be excused from accidental hitting of wolves, but off-road drivers in wolf habitat should not be excused.

Response: It is hard to conceive that an off-road vehicle could be moving fast enough to hit a wolf by accident or on purpose before the wolf could move out of the way. If this proves to be a problem, which the Service does not expect, the rule could be revised.

Comment: Military training and testing should be added to paragraph (j)(3)(i) as examples of legal activities. Also, in paragraph (3)(ii), military testing and training should be added as examples of authorized agency actions.

Response: The suggested additions have been made.

Comment: The statement in section (j)(9) of the proposed rule that the Service would terminate the reintroductions if a court ordered the Service to change the designation from nonessential experimental to a higher degree of protection is illegal and has another major flaw. If the court required the Service to proceed with the changed status then the Service would have to proceed regardless of that statement.

Response: This provision has been deleted.

Comment: Management of the reintroduced wolves would be better left to local authorities, who would provide more realistic and workable solutions. The rule should provide for implementation of the reintroductions by local governments and much more autonomy at the local level for deciding how to do the reintroductions, the criteria for continuing with them, and law enforcement. The Service should cooperate on implementation of the rule with State fish and wildlife agencies, which should have substantial responsibility for the effort.

Response: The Service is legally responsible under the Act for recovering endangered species. We encourage non-Federal agencies with established wildlife management authority (such as State or Tribal wildlife management departments) to develop and implement Mexican wolf management plans in cooperation with the Service. These plans must promote wolf recovery and must be approved by the Service. We will develop a process for interacting with local governments and other stakeholders before wolves are released.

Comment: No agreements should be made with any State or local agencies which would bind the FWS regarding the terms of the reintroduction.

Response: Because of our legal responsibilities under the Act, the Service must insure that agreements with other agencies will promote recovery of the Mexican wolf.

Comment: A more open process is needed to involve the public in how the actual reintroduction effort will proceed. The rule should have more clear provisions for public involvement and information availability.

Response: The Service is exploring additional avenues of communication and interaction with the public in the implementation of Mexican wolf reintroduction. A process for public interaction will be in place before wolves are released. We believe that this rule is not the appropriate place to provide details of a public interaction process.

Comment: The provisions requiring 24-hour notice to the Service if a wolf is taken need to be clearer about when the period begins and who and how to contact to meet the requirement. Also, the Service must commit to being available to be contacted.

Response: We will provide information in a variety of ways to residents and users of wolf recovery areas on how to comply with reporting requirements in the rule. A way to notify a Service representative will be provided.

Comment: The Service has failed to consult with affected landowners and agencies and to seek agreement on the Mexican Wolf Experimental Population Rule.

Response: The Service has consulted with affected agencies and with interested landowners and members of the public (see previous discussion regarding participation in the proposed rule public comment process). The DEIS review process provided substantial opportunity for review of and consultation on the draft proposed rule. More focussed meetings, hearings, and consultations occurred upon official publication of the proposed rule (61 FR 19237). Several changes have been made to the final rule based on our agreement with comments received on the proposed rule. Given the hundreds of private landowners and other entities involved, no overall agreement on all the terms of the rule among all affected interests was feasible.

Comment: The proposed rule process has been flawed because it was issued before the Final EIS was issued and before the Record of Decision was issued. Without these steps, the public has had inadequate information upon which to make meaningful comments.

Response: We believe that the sequencing of the DEIS, proposed rule, FEIS, ROD, and final rule is legal and proper. Further, we believe that the public's opportunity to review and comment on the proposed rule has exceeded the legal requirement. The draft proposed rule was an important component of the Proposed Action in the DEIS. A draft of the proposed rule appeared in Appendix C of the DEIS. Fourteen public meetings and three hearings were held on the DEIS. The public had 126 days to comment on the DEIS. The proposed rule was then published separately in the **Federal Register** (61 FR 19237) with a 61-day comment period, and four public hearings were held. All comments addressing provisions of the draft proposed rule in the DEIS or the proposed rule in the **Federal Register** (61 FR 19237) were reviewed and considered in this final rule. It would be improper to issue the final rule before the FEIS because the final rule must be consistent with the Record of Decision (ROD), and the ROD must, by law, follow the FEIS by at least 30 days.

Effective Date Justification

The 30 day delay between publication of this final rule and its effective date as provided by the Administrative Procedure Act (5 U.SC. 533 (d) (3)) has been reduced. This is to allow for the timely transfer of suitable release candidates to soft release pens for acclimation purposes. The following biological considerations necessitate this approach. The approved reintroduction of captive wolves initially requires transfer from captive facilities to soft-release pens in the recovery area and an acclimation period of several weeks at the release site prior to actual release to the wild. Wolf experts have recommended that the reintroduction process begin in January due to the reproductive cycle of the Mexican wolf, thereby allowing sufficient time for wolves to become accustomed to their surroundings prior to release and thus easing their transition to the wild environment. Wolves typically breed from late January through early March. In order not to disrupt breeding, wolves need to be moved to the soft release pens as soon as possible. Wolf experts involved in previous wolf releases agree that the wolves should spend about 2 months in the release pens prior to actual release. Wolves typically give birth from early April to early May. The plan is to release the Mexican wolves about 30 days before they have pups to allow sufficient time for the adult wolves to find a suitable den location and excavate a den. Therefore, Mexican wolves must be moved to the soft release pens in late January and begin their 2-month acclimation period so that they can be released around mid to late March. This soft release protocol was developed in previous wolf releases and has been successful.

A draft proposed rule was made available for public review and comment as part of the draft EIS for the Mexican wolf reintroduction proposal. A proposed rule was later issued for additional public review and comment. Opportunity for public discussion and debate of rule provisions was provided at 18 public meetings and hearings throughout potentially affected areas. The rule making process has been responsive to extensive input received from public agencies and further review is unlikely to reveal new substantive issues. Because of the biological conditions described above and the extensive public review of the proposed rule, EIS, and Record of Decision for this action, Mexican wolf reintroduction should begin as soon as possible after the publication of this rule. Therefore, due to biological considerations and the extensive public review process already conducted, good cause exists for this rule to be effective 14 days after publication.

National Environmental Policy Act

A FEIS on reintroduction of the Mexican wolf in the southwestern United States has been prepared and is available to the public (see **ADDRESSES** section). The FEIS should be referred to for analysis of the Preferred Alternative chosen in the Record of Decision. Also, the FEIS contains a complete list of references for the background information provided here.

Required Determinations

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866. The rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This final rule classifies Mexican wolves to be re-established as a nonessential experimental population under section 10(j) of the Act. This rule sets forth management directions and provides for limited allowable legal take of wolves within a defined Mexican Wolf Experimental Population Area. The rule will not significantly change costs to industry or governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. No direct costs, information collection, or record keeping requirements are imposed on small entities by this action. This final rule is not a major rule as defined by 5 U.S.C. 804(2).

This final rule contains collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The Service has already requested emergency authorization for this from the Office of Management and Budget (OMB). No information will be collected for this action until OMB authorization is provided.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Takings implications of this final rule have been reviewed under Executive Order 12630, the Attorney General Guidelines, Department Guidelines, and the Attorney General Supplemental Guidelines. One issue of concern is the depredation of livestock by reintroduced wolves; but, such depredation by a wild animal would not be a ''taking'' under the 5th Amendment. One of the reasons for the experimental nonessential designation is to allow the agency and private entities flexibility in managing the wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

The Service has determined that this final rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

This rule has been reviewed under Executive Order 12612 to determine federalism considerations in policy formulation and implementation. Some counties in the vicinity of the wolf reintroduction area have enacted ordinances specifically prohibiting the introduction of the wolf (among other species) within county boundaries. However, the United States Congress has given the Secretary of the Interior explicit statutory authority, in section 10(j) of the Act, to promulgate this rule, and under the Supremacy Clause of the United States Constitution, this has the effect of preempting State regulation of wildlife to the extent in conflict with this rule. Nevertheless, the Service has endeavored to cooperate with State wildlife agencies and County and Tribal governments in the preparation of this rule.

Author

The primary author of this document is Mr. David R. Parsons (see **ADDRESSES** section, above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends 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.

2. Amend section 17.11(h), revise the table entry for ''Wolf, gray'' under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	* * *	*		*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A., conterminous (lower 48) States, except MN and where listed as an experimental population; Mexico.	E	1, 6, 13, 35, 561, 562.	17.95(a)	NA
Do	...do	...do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	...do	...do	U.S.A. (WY and portions of ID and MT—see 17.84(i)).	XN	561, 562	NA	17.84(i)
Do	...do	...do	U.S.A. (portions of AZ, NM, and TX—see 17.84(k)).	XN		NA	17.84(k)

3. The Service amends § 17.84 by adding paragraph (k) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) Mexican gray wolf (*Canis lupus baileyi*).

(1) The Mexican gray wolf (Mexican wolf) populations reestablished in the Blue Range Wolf Recovery Area and in the White Sands Wolf Recovery Area, if used, within the Mexican Wolf Experimental Population Area, identified in paragraph (k)(9) of this section, are one nonessential experimental population. This nonessential experimental population will be managed according to the following provisions.

(2) Based on the best available information, the Service finds that reintroduction of an experimental population of Mexican wolves into the subspecies' probable historic range will further the conservation of the Mexican wolf subspecies and of the gray wolf species; that the experimental population is not ''essential,'' under 50 CFR 17.81(c)(2); that the experimental population is wholly separate geographically from any other wild gray wolf population or individual wild gray wolves; that no wild Mexican wolves are known to exist in the experimental population area or anywhere else; and that future migration of wild Mexican wolves into the experimental population area is not possible.

(3) No person, agency, or organization may ''take'' [see definition in paragraph (k)(15) of this section] any wolf in the wild within the Mexican Wolf Experimental Population Area, except as provided in this rule. The Service may investigate each take of a Mexican wolf and may refer the take of a wolf contrary to this rule to the appropriate authorities for prosecution.

(i) Throughout the Mexican Wolf Experimental Population Area, you will not be in violation of the Act or this rule for ''unavoidable and unintentional take'' [see definition in paragraph (k)(15) of this section] of a wolf. Such take must be non-negligent and incidental to a legal activity, such as military training and testing, trapping, driving, or recreational activities. You must report the take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(ii) Throughout the Mexican Wolf Experimental Population Area, you may ''harass'' [see definition in paragraph (k)(15) of this section] wolves that are within 500 yards of people, buildings, facilities, pets, ''livestock'' [see definition in paragraph (k)(15) of this section], or other domestic animals in an opportunistic, noninjurious manner [see definition of ''opportunistic, noninjurious harassment'' in paragraph (k)(15) of this section] at any time—provided that wolves cannot be purposely attracted, tracked, searched out, or chased and then harassed. You must report harassment of wolves within 7 days to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(iii) Throughout the Mexican Wolf Experimental Population Area, excluding areas within the national park system and national wildlife refuge system, no Federal agency or their contractors will be in violation of the Act or this rule for unavoidable or unintentional take of a wolf resulting from any action authorized by that Federal agency or by the Service, including, but not limited to, military training and testing. This provision does not exempt agencies and their contractors from complying with sections 7(a)(1) and 7(a)(4) of the Act, the latter of which requires a conference with the Service if they propose an action that is likely to jeopardize the continued existence of the Mexican wolf.

(iv) In areas within the national park system and national wildlife refuge system, Federal agencies must treat Mexican wolves as a threatened species for purposes of complying with section 7 of the Act.

(v) On private land anywhere within the Mexican Wolf Experimental Population Area, livestock owners or their agents may take (including kill or injure) any wolf actually ''engaged in the act of killing, wounding, or biting livestock'' [see definition in paragraph (k)(15) of this section]; provided that evidence of livestock freshly wounded or killed by wolves is present; and further provided that the take is reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(vi) On tribal reservation land anywhere within the Mexican Wolf Experimental Population Area, livestock owners or their agents may take (including kill or injure) any wolf actually engaged in the act of killing, wounding, or biting livestock; provided that evidence of livestock freshly wounded or killed by wolves is present; and further provided that the take is reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(vii) On ''public lands'' [see definition in paragraph (k)(15) of this section] allotted for grazing anywhere within the Mexican Wolf Experimental Population Area, including within the designated ''wolf recovery areas'' [see definition in paragraph (k)(15) of this section], livestock owners or their agents may be issued a permit under the Act to take wolves actually engaged in the act of killing, wounding, or biting ''livestock'' [see definition in paragraph (k)(15) of this section]. Before such a permit is issued, the following conditions must be met—livestock must be legally present on the grazing allotment; six or more ''breeding pairs'' [see definition in paragraph (k)(15) of this section] of Mexican wolves must be present in the Blue Range Wolf Recovery Area; previous loss or injury of livestock on the grazing allotment, caused by wolves, must be documented by the Service or our authorized agent; and agency efforts to resolve the problem must be completed. Permits issued under this provision will be valid for 45 days or less and will specify the maximum number of wolves you are allowed to take. If you take a wolf under this provision, evidence of livestock freshly wounded or killed by wolves must be present. You must report the take to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(viii) Throughout the Mexican Wolf Experimental Population Area, take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on public, tribal, and private lands, is permitted. If you become aware that such take by your guard dog has occurred, you must report the take to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(ix) Personnel authorized by the Service may take any Mexican wolf in the nonessential experimental population in a manner consistent with a Service-approved management plan, special management measure, or a valid permit issued by the Service under § 17.32. This may include, but is not limited to, capture and translocation of wolves that—prey on livestock; attack pets or domestic animals other than livestock on private or tribal land; ''impact game populations in ways which may inhibit further wolf recovery'' [see definition in paragraph (k)(15) of this section]; prey on members of the desert bighorn sheep herd found on the White Sands Missile Range and San Andres National Wildlife Refuge so long as the State of New Mexico lists it as a species to be protected; are considered ''problem wolves'' [see definition in paragraph (k)(15) of this section]; are a nuisance; endanger themselves by their presence in a military impact area; need aid or veterinary care; or are necessary for authorized scientific, research, or management purposes. Lethal methods of take may be used when reasonable attempts to capture wolves alive fail and when the Service determines that immediate removal of a particular wolf or wolves from the wild is necessary. Authorized personnel may use leg-hold traps and any other effective device or method for capturing or controlling wolves to carry out any measure that is a part of a Service-approved management plan, notwithstanding any conflicts in State or local law. The disposition of all wolves (live or dead) or their parts taken as part of a Service-authorized management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(x) As determined by the Service to be appropriate, the Service or any agent so authorized by the Service may capture, kill, subject to genetic testing, place in captivity, euthanize, or return to the wild (if found to be a pure Mexican wolf) any feral wolf-like animal, feral wolf hybrid, or feral dog found within the Mexican Wolf Experimental Population Area that shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes; being an animal raised in captivity, other than as part of a Service-approved wolf recovery program; or being socialized or habituated to humans.

(xi) The United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (WS) division will discontinue use of M–44's and choking-type snares in ''occupied Mexican wolf range'' [see definition in paragraph (k)(15) of this section]. The WS division may restrict or modify other predator control activities pursuant to a cooperative management agreement or a conference between the Service and the WS division.

(xii) You may harass or take a Mexican wolf in self defense or defense of the lives of others, provided that you report the harassment or take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service. If the Service or an authorized agency determines that a wolf presents a threat to human life or safety, the Service or the authorized agency may kill it, capture and euthanize it, or place it in captivity.

(xiii) Intentional taking of any wolf in the Mexican Wolf Experimental Population Area, except as described above, is prohibited. The Service encourages those authorized to take wolves to use nonlethal means when practicable and appropriate.

(4) You must not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the experimental population except as authorized in this rule or by a valid permit issued by the Service under § 17.32. If you kill or injure a wolf or find a dead or injured wolf or wolf parts, you must not disturb them (unless instructed to do so by an authorized agent of the Service), you must minimize your disturbance of the area around them, and you must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

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

(6) No land use restrictions will be imposed on private lands for Mexican wolf recovery without the concurrence of the landowner.

(7) No land use restrictions will be imposed on tribal reservation lands for Mexican wolf recovery without the concurrence of the tribal government.

(8) On public lands, the Service and cooperating agencies may temporarily restrict human access and ''disturbance-causing land use activities'' [see definition in paragraph (k)(15) of this section] within a 1-mile radius around release pens when wolves are in them, around active dens between March 1 and June 30, and around active wolf ''rendezvous sites'' [see definition in paragraph 17.84(k)(15) of this section] between June 1 and September 30, as necessary.

(9) The two designated wolf recovery areas and the experimental population area for Mexican wolves classified as a nonessential experimental population by this rule are described in the following subsections. Both designated wolf recovery areas are within the subspecies' probable historic range and are wholly separate geographically from the current range of any known Mexican wolves or other gray wolves..

(i) The Blue Range Wolf Recovery Area includes all of the Apache National Forest and all of the Gila National Forest in east-central Arizona and west-central New Mexico (Figure 1). Initial releases of captive-raised Mexican wolves will take place,

generally as described in our Preferred Alternative in the FEIS on Mexican wolf reintroduction, within the Blue Range Wolf Recovery Area ''primary recovery zone'' [see definition in paragraph (k)(15) of this section]. This is the area within the Apache National Forest bounded on the north by the Apache-Greenlee County line; on the east by the Arizona-New Mexico state line; on the south by the San Francisco River (eastern half) and the southern boundary of the Apache National Forest (western half); and on the west by the Greenlee-Graham County line (San Carlos Apache Reservation boundary). The Service will allow the wolf population to expand into the Blue Range Wolf Recovery Area ''secondary recovery zone'' [see definition in paragraph (k)(15) of this section], which is the remainder of the Blue Range Wolf Recovery Area not in the primary recovery zone.

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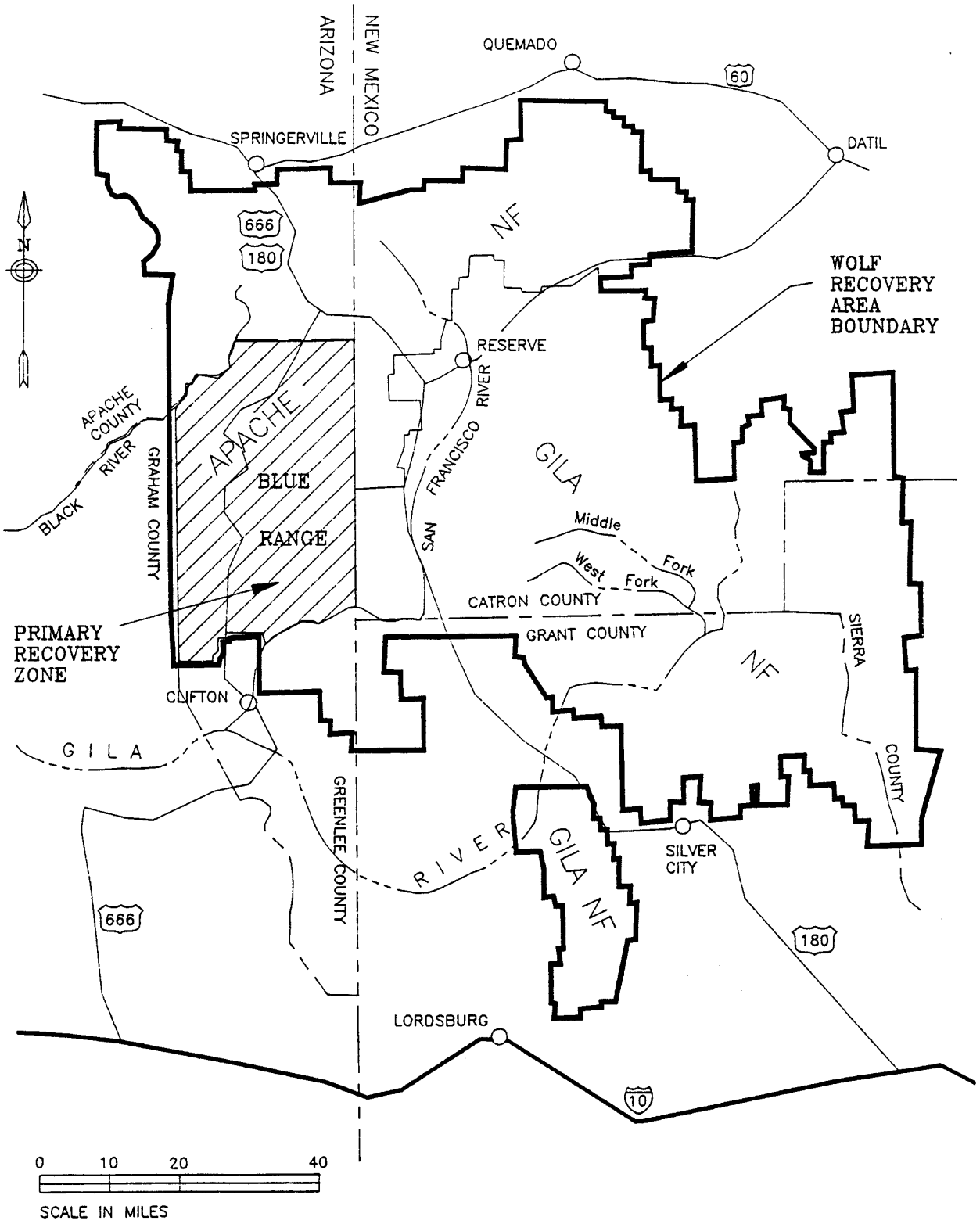
Fig. 1: Blue Range Wolf Recovery Area



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(ii) The White Sands Wolf Recovery Area in south-central New Mexico includes all of the White Sands Missile Range; the White Sands National Monument; the San Andres National Wildlife Refuge; and the area adjacent and to the west of the Missile Range bounded on the south by the southerly boundary of the USDA Jornada Experimental Range and the northern boundary of the New Mexico State University Animal Science Ranch, on the west by the New Mexico Principal Meridian, on the north by the Pedro Armendaris Grant boundary and the Sierra-Socorro County line, and on the east by the western boundary of the Missile Range (Figure 2). This is the back-up reintroduction area, to be used only if later determined to be both necessary and feasible in accordance with the Preferred Alternative as set forth in the FEIS on Mexican wolf reintroduction. If this area is used, initial releases of captive-raised wolves would take place within the White Sands Wolf Recovery Area primary recovery zone. This is the area within the White Sands Missile Range bounded on the north by the road from the former Cain Ranch Head quarters to Range Road 16, Range Road 16 to its intersection with Range Road 13, Range Road 13 to its intersection with Range Road 7; on the east by Range Road 7; on the south by Highway 70; and on the west by the Missile Range boundary. The Service would allow the wolf population to expand into the White Sands Wolf Recovery Area secondary recovery zone, which is the remainder of the White Sands Wolf Recovery Area not in the primary recovery zone.

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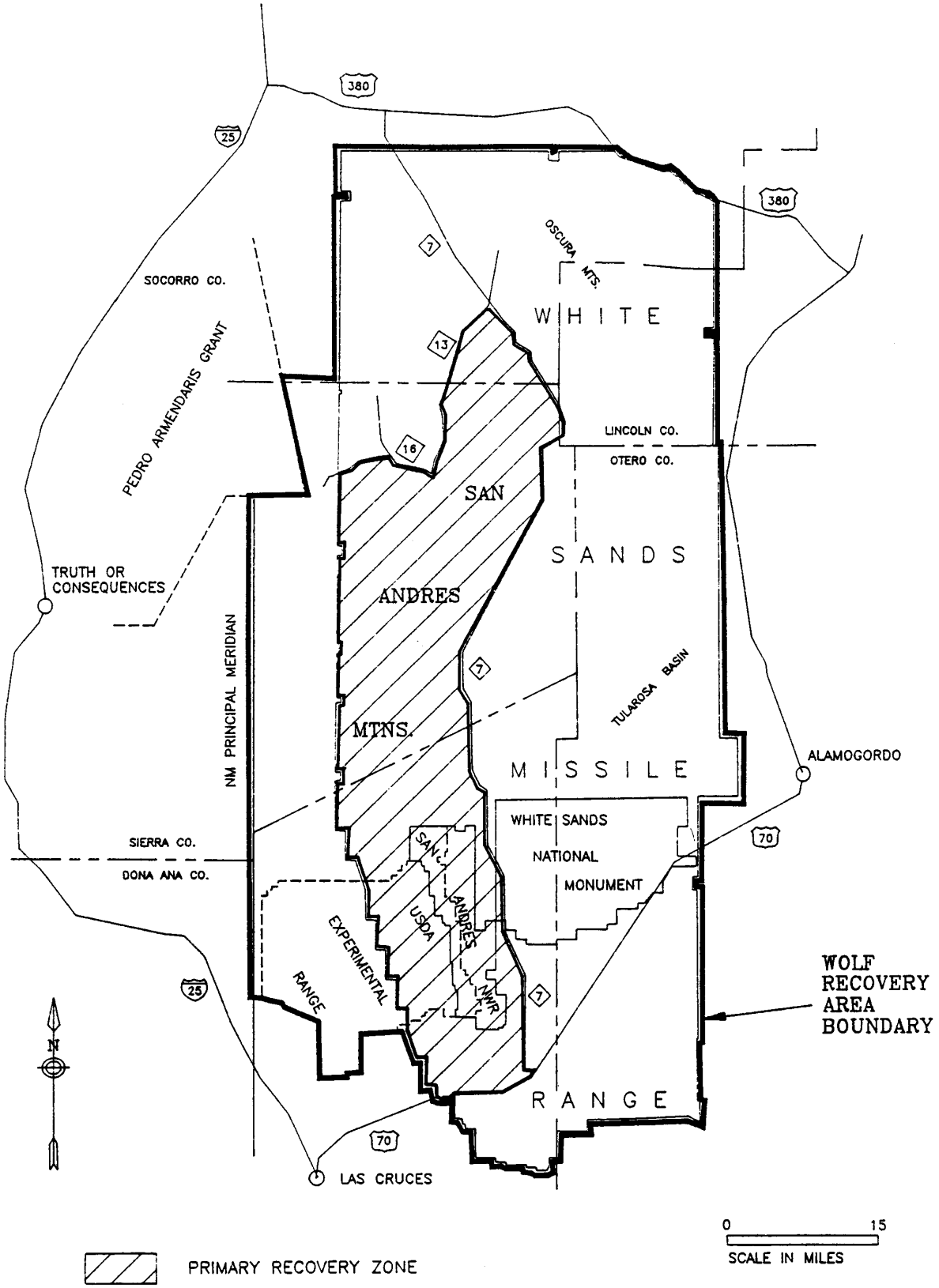
Fig. 2: White Sands Wolf Recovery Area



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(iii) The boundaries of the Mexican Wolf Experimental Population Area are the portion of Arizona lying north of Interstate Highway 10 and south of Interstate Highway 40; the portion of New Mexico lying north of Interstate Highway 10 in the west, north of the New Mexico-Texas boundary in the east, and south of Interstate Highway 40; and the portion of Texas lying north of United States Highway 62/180 and south of the Texas-New Mexico boundary (Figure 3). The Service is not proposing wolf reestablishment throughout this area, but only within the Blue Range Wolf Recovery Area, and possibly later in the White Sands Wolf Recovery Area, respectively described in paragraphs (k)(9) (i) and (ii) of this section. If a member of the nonessential experimental population is captured inside the Mexican Wolf Experimental Population Area, but outside the designated wolf recovery areas, it will be re-released within the recovery area, put into the captive population, or otherwise managed according to provisions of a Service-approved management plan or action. If a wolf is found in the United States outside the boundaries of the Mexican Wolf Experimental Population Area (and not within any other wolf experimental population area) the Service will presume it to be of wild origin with full endangered status (or threatened in Minnesota) under the Act, unless evidence, such as a radio collar, identification mark, or physical or behavioral traits (see paragraph (k)(3)(x) of this section), establishes otherwise. If such evidence exists, the Service or an authorized agency will attempt to promptly capture the wolf and re-release it within the recovery area, put it into the captive population, or carry out any other management measure authorized by this rule or a Service-approved management plan. Such a wolf is otherwise not subject to this rule outside the designated Mexican Wolf Experimental Population Area.

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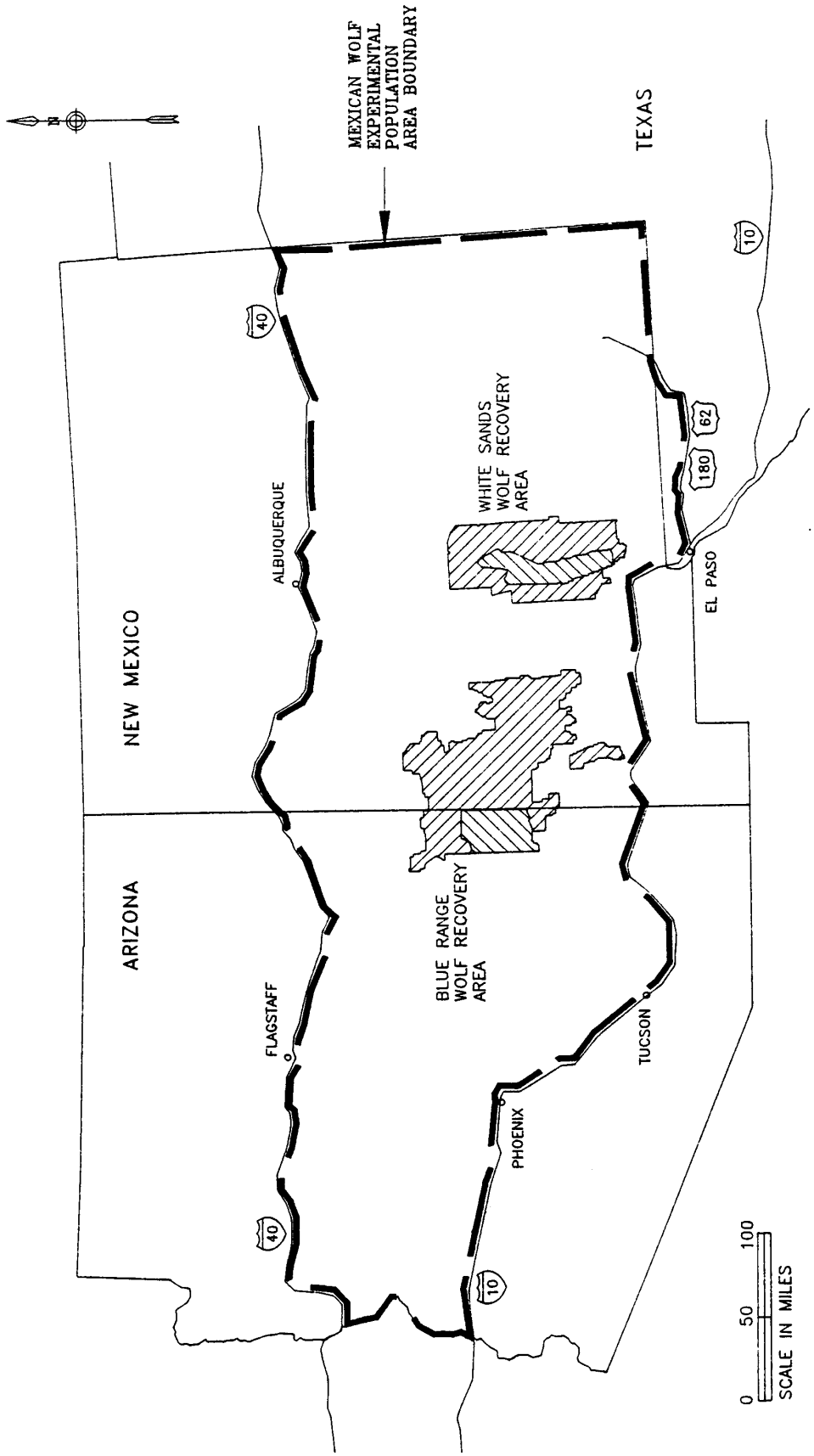

Fig. 3: Mexican Wolf Geographic Boundaries

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(10) If Mexican wolves of the experimental population occur on public lands outside the designated wolf recovery area(s), but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will attempt to capture any radio-collared lone wolf and any lone wolf or member of an established pack causing livestock ''depredations'' [see definition in paragraph (k)(15) of this section]. The agencies will not routinely capture and return pack members that make occasional forays onto public land outside the designated wolf recovery area(s) and uncollared lone wolves on public land. However, the Service will capture and return to a recovery area or to captivity packs from the nonessential experimental population that establish territories on public land wholly outside the designated wolf recovery area(s).

(11) If any wolves move onto private land outside the designated recovery area(s), but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will develop management actions in cooperation with the landowner including capture and removal of the wolf or wolves if requested by the landowner.

(12) If any wolves move onto tribal reservation land outside the designated recovery area(s), but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will develop management actions in cooperation with the tribal government including capture and removal of the wolf or wolves if requested by the tribal government.

(13) The Service will evaluate Mexican wolf reintroduction progress and prepare periodic progress reports, detailed annual reports, and full evaluations after 3 and 5 years that recommend continuation, modification, or termination of the reintroduction effort.

(14) The Service does not intend to change the ''nonessential experimental'' designation to ''essential experimental,'' ''threatened,'' or ''endangered'' and foresees no likely situation which would result in such changes. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(15) Definitions—Key terms used in this rule have the following definitions.

Breeding pair means an adult male and an adult female wolf that have produced at least two pups during the previous breeding season that survived until December 31 of the year of their birth.

Depredation means the confirmed killing or wounding of lawfully present domestic livestock by one or more wolves. The Service, WS, or other Service-authorized agencies will confirm cases of wolf depredation on domestic livestock.

Disturbance-causing land use activity means any land use activity that the Service determines could adversely affect reproductive success, natural behavior, or survival of Mexican wolves. These activities may be temporarily restricted within a 1-mile radius of release pens, active dens, and rendezvous sites. Such activities may include, but are not limited to—timber or wood harvesting, management-ignited fire, mining or mine development, camping outside designated campgrounds, livestock drives, off-road vehicle use, hunting, and any other use or activity with the potential to disturb wolves. The following activities are specifically excluded from this definition—

(1) Legally permitted livestock grazing and use of water sources by livestock;

(2) Livestock drives if no reasonable alternative route or timing exists;

(3) Vehicle access over established roads to private property and to areas on public land where legally permitted activities are ongoing if no reasonable alternative route exists;

(4) Use of lands within the national park or national wildlife refuge systems as safety buffer zones for military activities;

(5) Prescribed natural fire except in the vicinity of release pens; and

(6) Any authorized, specific land use that was active and ongoing at the time wolves chose to locate a den or rendezvous site nearby.

Engaged in the act of killing, wounding, or biting livestock means to be engaged in the pursuit and grasping, biting, attacking, wounding, or feeding upon livestock that are alive. If wolves are observed feeding on a livestock carcass, you cannot assume that wolves killed the livestock because livestock can die from many causes and wolves will feed on carrion.

Harass means ''intentional or negligent act or omission which creates the likelihood of injury to the wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering'' (50 CFR 17.3). This experimental population rule permits only ''opportunistic, noninjurious harassment'' (see definition below).

Impact on game populations in ways which may inhibit further wolf recovery. The Service encourages states and tribes to define unacceptable impacts from wolf predation on game populations in Service-approved management plans. Until such time the term will mean the following—2 consecutive years with a cumulative 35 percent decrease in population or hunter harvest estimates for a particular species of ungulate in a game management unit or distinct herd segment compared to the pre-wolf 5-year average (unit or herd must contain average of greater than 100 animals). If wolf predation is shown to be a primary cause of ungulate population declines (greater than 50 percent of documented adult or young mortality), then wolves may be moved to reduce ungulate mortality rates and assist in herd recovery, but only in conjunction with application of other common, professionally acceptable, wildlife management techniques.

Livestock means cattle, sheep, horses, mules, and burros or other domestic animals defined as livestock in State and Tribal wolf management plans approved by the Service.

Occupied Mexican wolf range means an area of confirmed presence of resident breeding packs or pairs of wolves or area consistently used by at least one resident wolf over a period of at least one month. The Service must confirm or corroborate wolf presence. Exact delineation of the area will be described by:

(1) 5-mile (8 km) radius around all locations of wolves and wolf sign confirmed as described above (nonradio-monitored);

(2) 5-mile (8 km) radius around radio locations of resident wolves when fewer than 20 radio locations are available (for radio-monitored wolves only); or

(3) 3-mile (4.8 km) radius around the convex polygon developed from more than 20 radio locations of a pack, pair, or single wolf acquired over a period of at least 6 months (for radio-monitored wolves).

This definition applies only within the Mexican Wolf Experimental Population Area.

Opportunistic, noninjurious harassment (see ''harass'') means as the wolf presents itself (for example, the wolf travels onto and is observed on private land or near livestock). This is the only type of harassment permitted by this rule. You cannot track, attract, search out, or chase a wolf and then harass it. Any harassment must not cause bodily injury or death to the wolf. The basic intent of harassment permitted by this rule is to scare wolves away from the immediate area. It is limited to approaching wolves and discharging firearms or other projectile launching devices in proximity to but not in the direction of wolves; throwing objects in the general direction of but

not at wolves; or making any loud noise in proximity to wolves.

Primary recovery zone means an area where the Service—

(1) Will release captive-raised Mexican wolves,

(2) May return and re-release previously released Mexican wolves,

(3) May release translocated wild-born Mexican wolves, and

(4) Will actively support recovery of the reintroduced population.

Problem wolves means wolves that—

(1) Have depredated lawfully present domestic livestock,

(2) Are members of a group or pack (including adults, yearlings, and young-of-the-year) that were directly involved in livestock depredations,

(3) Were fed by or are dependent upon adults involved with livestock depredations (because young animals will likely acquire the pack's livestock depredation habits),

(4) Have depredated domestic animals other than livestock on private or tribal lands, two times in an area within one year, or

(5) Are habituated to humans, human residences, or other facilities.

Public land means land under administration of Federal agencies including, but not limited to the National Park Service, Bureau of Land Management, Fish and Wildlife Service, Forest Service, Department of Energy, and Department of Defense; and State-owned lands within the boundary of a designated wolf recovery area. All State-owned lands within the boundary of the experimental population area, but outside designated wolf recovery areas, will be subject to the provisions of this rule that apply to private lands.

Rendezvous site means a gathering and activity area regularly used by a litter of young wolf pups after they have emerged from the den. Typically, the site is used for a period ranging from about one week to one month in the summer. Several sites may be used in succession.

Secondary recovery zone means an area adjacent to a primary recovery zone in which the Service allows released wolves to disperse, where wolves captured in the wild for authorized management purposes may be translocated and released, and where managers will actively support recovery of the reintroduced population.

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

Unavoidable and unintentional take means accidental, unintentional take (see definition of ''Take'') which occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. Examples would be striking a wolf with an automobile and catching a wolf in a trap outside of known occupied wolf range. Taking a wolf with a trap, snare, or other type of capture device within occupied wolf range (except as authorized in paragraph (k)(3)(ix) and (x) of this section) will not be considered unavoidable, accidental, or unintentional take, unless due care was exercised to avoid taking a wolf. Taking a wolf by shooting will not be considered unavoidable, accidental, or unintentional take. Shooters have the responsibility to be sure of their targets.

Wolf recovery area means a designated area where managers will actively support reestablishment of Mexican wolf populations.

Dated: January 7, 1998.

William Leary,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–681 Filed 1–8–98; 9:20 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 010698A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: Effective 12:01 a.m., local time, January 7, 1998, through June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types: vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota is reached, or is projected to be reached, by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast subzone was reached on January 6, 1998. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:01 a.m., local time, January 7, 1998, through June 30, 1998, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06'' W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 6, 1998.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–618 Filed 1–6–98; 4:24 pm]

BILLING CODE 3510–22–F