

week to before the hearing date, to allow sufficient time to process requests. Information regarding the proposal is available in alternative formats upon request.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 2007.

**Kevin Adams,**

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AV39

### Endangered and Threatened Wildlife and Plants; Proposed Revision of Special Regulation for the Central Idaho and Yellowstone Area Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose revisions to the 2005 special rule for the central Idaho and Yellowstone area nonessential experimental population of the gray wolf (*Canis lupus*) in the northern Rocky Mountains (NRM). Specifically, this rule proposes to modify the definition of “unacceptable impacts” to wild ungulate populations so that States and Tribes with Service-approved post-delisting wolf management plans can better address the impacts of a biologically recovered wolf population on ungulate populations and herds while wolves remain listed. We also propose to modify the 2005 special rule to allow private citizens in States or on Tribal lands with approved post-delisting wolf management plans to take wolves that are in the act of attacking their stock animals or dogs. All other provisions of the 2005 special rule, including the process to obtain Service approval and the conditions for reporting all wolf take, would remain unchanged. As under the existing terms of the 2005 special rule, these proposed modifications would not apply with respect to States or Tribes without approved post-delisting wolf

management plans and would not impact wolves outside the Yellowstone or central Idaho nonessential experimental population areas. A draft environmental assessment will be prepared on this proposed action.

**DATES:** Comments from all parties on both the proposal and the draft environmental assessment must be received by August 6, 2007. We will hold three public hearings on this proposed rule in July. See **SUPPLEMENTARY INFORMATION** for the dates, times, and locations.

**ADDRESSES:** If you wish to comment, you may submit comments and materials concerning this proposal, identified by “RIN 1018-AV39,” by any of the following methods:

1. You may mail or hand deliver written comments to the U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601;

2. You may send comments by electronic mail (e-mail) directly to the Service at [WolfRuleChange@fws.gov](mailto:WolfRuleChange@fws.gov). Include “RIN number 1018-AV39” in the subject line of the message. See the Public Comments Solicited section below for file format for electronic filing; or

3. You may submit your comments through the Federal e-Rulemaking Portal—<http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in preparation of this proposed action, will be available for inspection following the close of the comment period, by appointment, during normal business hours, at our Helena office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone (406) 449-5225, extension 204.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. We particularly seek comments concerning (1) our proposed modifications to the 2005 experimental population rule to allow private citizens to take wolves in the act of attacking

their stock animals or dogs; and (2) our establishing a reasonable process for States and Tribes with approved post-delisting wolf management plans to allow removal of wolves that are scientifically demonstrated to be impacting ungulate populations to the degree that they are not meeting respective State and Tribal management goals. We specifically ask for comments regarding whether the proposed modifications would reasonably address conflicts between wolves and domestic animals or wild ungulate populations; would provide sufficient safeguards to prevent misuse of the modified rule; would provide an appropriate and transparent public process that ensures decisions are science-based; and would provide adequate guarantees that wolf recovery will not be compromised.

If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods, as listed above in the **ADDRESSES** section. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please note that the e-mail address will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

##### **Peer Review**

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget’s (OMB) Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek independent review of the science in this rule. The purpose of such review is to ensure that our final rule is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment,

during the public comment period, on the specific assumptions and conclusions regarding the proposed rule.

We will take into consideration all comments, including peer review comments, and any additional information received during the comment period on this proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

### Public Hearings

Three open houses will be held on:

- July 17, 2007, Tuesday at Cody Auditorium Facility, 1240 Beck Avenue, Cody, Wyoming; open house 12:30 p.m. to 1:30 p.m. and public hearing 1:30 p.m. to 3:30 p.m.;
- July 18, 2007, Wednesday at Jorgenson's Inn & Suites, 1714 11th Avenue, Helena, Montana; open house 6 p.m. to 7 p.m. and public hearing 7 p.m. to 9 p.m.; and
- July 19, 2007, Thursday at Boise Convention Center on the Grove, 850 Front Street, Boise, Idaho; open house 6 p.m. to 7 p.m. and public hearing 7 p.m. to 9 p.m.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Those that wish to speak must sign up at the open houses and hearing. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearings, please contact Sharon Rose (303) 236-4580. Persons needing reasonable accommodations in order to attend and participate in the public hearing in Idaho should contact Joan Jewett (503) 231-6211, and for hearings in Montana or Wyoming, please contact Sharon Rose at (303) 236-4580, as soon as possible in order to allow sufficient time to process requests. Please call no later than 1 week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

### Previous Federal Actions

In 1974, four subspecies of gray wolf were listed as endangered including the northern Rocky Mountains gray wolf (*Canis lupus irremotus*), the eastern timber wolf (*C. l. lycaon*) in the northern Great Lakes region, the Mexican wolf (*C. l. baileyi*) in Mexico and the southwestern United States, and the Texas gray wolf (*C. l. monstabilis*) of

Texas and Mexico (39 FR 1171, January 4, 1974). In 1978, we published a rule (43 FR 9607, March 9, 1978) relisting the gray wolf as endangered at the species level (*C. lupus*) throughout the conterminous 48 States and Mexico, except for Minnesota, where it was reclassified as threatened. In 2007, we published a rule (72 FR 6052) which delisted the Western Great Lakes population of wolves that included all of Minnesota, Wisconsin, Michigan, and parts of North and South Dakota, Iowa, Illinois, Indiana, and Ohio. The northern Rocky Mountain Wolf Recovery Plan was approved in 1980 (Service 1980, p. i) and revised in 1987 (Service 1987, p. i).

On November 22, 1994, we designated unoccupied portions of Idaho, Montana, and Wyoming as two nonessential experimental population areas for the gray wolf under section 10(j) of the Endangered Species Act of 1973, as amended (Act) (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994). One area was the Yellowstone National Park experimental population area which included all of Wyoming, and parts of southern Montana and eastern Idaho (59 FR 60252, November 22, 1994). The other was the central Idaho experimental population area that included most of Idaho and parts of southwestern Montana (59 FR 60266, November 22, 1994). In 1995 and 1996, we reintroduced wolves from southwestern Canada into these areas (Bangs and Fritts 1996, pp. 407-409; Fritts *et al.* 1997, p. 7; Bangs *et al.* 1998, pp. 785-786). This reintroduction and accompanying management programs greatly expanded the numbers and distribution of wolves in the northern Rocky Mountains. At the end of 2000, the northern Rocky Mountain population first met its numerical and distributional recovery goal of a minimum of 30 breeding pairs and over 300 wolves well-distributed among Montana, Idaho, and Wyoming (68 FR 15804, April 1, 2003; Service *et al.* 2001, Table 4). This minimum recovery goal was again exceeded in 2001, 2002, 2003, 2004, 2005, and 2006 (Service *et al.* 2002-2006, Table 4).

On January 6, 2005, we published a revised nonessential experimental population special rule increasing management flexibility for these recovered populations (70 FR 1286, January 6, 2005). For additional detailed information on previous Federal actions see the 1994 and 2005 special rules (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005), the 2003 reclassification rule (68 FR 15804, April 1, 2003), the Advanced Notice of

Proposed Rulemaking to designate the NRM gray wolf population as a Distinct Population Segment (DPS) and remove the Act's protections for this population (71 FR 6634, February 8, 2006) and the 2007 proposal to designate the NRM gray wolf population as a DPS and remove the Act's protections for this population (i.e., delist) (72 FR 6106, February 8, 2007).

### Background

Given the recovered status of the wolf population and the practical limitations on implementing the current nonessential experimental rules, we propose to slightly modify the 2005 rule (70 FR 1286, January 6, 2005).

Additional background on nonessential experimental rules implemented under section 10(j) of the Act can be found in the 1994 rules (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994) and the 2005 rule (70 FR 1286, January 6, 2005).

*Addressing Unacceptable Impacts on Wild Ungulate Populations*—States and Tribes have the expertise to make determinations of unacceptable impacts to ungulate populations. Both the 1994 Environmental Impact Statement for wolf reintroduction (Service 1994, pp. 6, 8) and the 1994 nonessential experimental special rules addressed the potential impact of wolf restoration on State and Tribal objectives for wild ungulate management. Specifically, the 1994 rules stated, "Potentially affected States and Tribes may capture and translocate wolves to other areas within an experimental population area as described in paragraph (i)(7), *Provided*, the level of wolf predation is negatively impacting localized ungulate populations at an unacceptable level. Such translocations cannot inhibit wolf population recovery. The States and Tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or Tribal wolf management plans. These plans must be approved by the Service before such movement of wolves may be conducted" (59 FR 60264, November 22, 1994; 59 FR 60279, November 22, 1994). The "plans" referenced in the 1994 rules related to the management of the listed nonessential experimental wolves.

Two examples of conflicts that might warrant relocation outlined in the preamble of the 1994 rules were "(1) when wolf predation is dramatically affecting prey availability because of unusual habitat or weather conditions; and (2) when wolves cause prey to move onto private property and mix with livestock, increasing potential conflicts"

(59 FR 60257, November 22, 1994; 59 FR 60272, November 22, 1994).

No such State plans for managing listed wolves were adopted; therefore, no wolves were ever moved for ungulate conflicts under the 1994 regulations. Only Wyoming had requested that wolves be moved by the Service. In that situation, Wyoming reported that wolves were occasionally chasing elk with high rates of brucellosis infection off winter elk feed grounds causing them to temporarily mix more frequently with nearby domestic cattle. The Service suggested that the State identify the sites in Wyoming where they would prefer the wolves to be moved, but no sites were ever identified and no wolves were ever moved.

On January 6, 2005, we finalized a new special rule that allowed greater management flexibility for managing a recovered wolf population in the experimental population area of States and Tribal reservations for States and Tribes which had Service approved, post-delisting wolf management plans (70 FR 1286). It also allowed additional opportunities for the public to take wolves in order to protect their private property.

The 2005 rule's provision for "take in response to wild ungulate impacts" states at 70 FR 1308 that:

"If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question.

(A) In order for this provision to apply, the States or Tribes must prepare a science-based document that:

(1) Describes what data indicate that ungulate herd is below management objectives, what data indicate the impact of wolf predation on the ungulate population, why wolf removal is a warranted solution to help restore the ungulate herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population response to wolf removal will be measured;

(2) Identifies possible remedies or conservation measures in addition to wolf removal; and

(3) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence.

(B) We must determine that such actions are scientifically based and will not reduce the wolf population below recovery levels before we authorize lethal wolf removal."

The 2005 rule authorized lethal take because we recognized that the wolf population had exceeded its recovery goals, that extra management flexibility was required to address conflicts given the recovered status of the population,

that most of the suitable wolf habitat in Montana, Idaho, and Wyoming was occupied by resident wolf packs (Oakleaf *et al.* 2006), and that absent high-quality unoccupied suitable habitat, wolf translocations were likely to fail (70 FR 1294, January 6, 2005; Bradley *et al.* 2005, p. 1506).

The 2005 rule's definition of "Unacceptable impact" is a "State or Tribally-determined decline in a wild ungulate population or herd, primarily caused by wolf predation, so that the population or herd is not meeting established State or Tribal management goals. The State or Tribal determination must be peer-reviewed and reviewed and commented on by the public, prior to a final determination by the Service that an unacceptable impact has occurred, and that wolf removal is not likely to impede wolf recovery" (70 FR 1307, January 6, 2005).

In our definition of "Unacceptable impact" in the 2005 rule, we set a threshold that has not provided the intended flexibility to allow States and Tribes to resolve conflicts between wolves and ungulate populations. Current information does not indicate that wolf predation alone is likely to be the primary cause of a reduction of any ungulate population in Montana, Idaho, or Wyoming (Bangs *et al.* 2004, pp. 89–100). There are no populations of wild ungulates in Montana, Idaho, or Wyoming where wolves are the sole predator. Wolf predation is unlikely to impact ungulate population trends substantially unless other contributing factors are in operation, such as habitat quality and quantity (National Research Council 1997, pp. 185–186; Mech and Peterson 2003, p. 159), other predators (bear predation on neonates) (Barber *et al.* 2005, p. 42–43; Smith *et al.* 2006, p. vii), high harvest by hunters (Vucetich *et al.* 2005, p. 259; White and Garrott 2005, p. 942; Evans *et al.* 2006, p. 1372; Hamlin 2006, p. 27–32), weather (Mech and Peterson 2003, pp. 138–139), and other factors (Pletscher *et al.* 1991, pp. 545–548; Garrott *et al.* 2005, p. 1245; Smith *et al.* 2006, pp. 246–250). However, in combination with any of these factors, wolf predation can have a substantial impact to some wild ungulate herds (National Research Council 1997, p. 183; Mech and Peterson 2003, pp. 155–157; Evans *et al.* 2006, p. 1377) with the potential of reducing them below State and Tribal herd management objectives.

The unattainable nature of the threshold set in the 2005 rule became apparent soon after its completion. In 2005, the State of Idaho submitted a proposal to the Service that indicated wolf predation was impacting the

survival of adult cow elk in the Clearwater area of central Idaho and that the elk population was below State management objectives (Idaho Fish and Game 2006). In the Clearwater proposal, the State of Idaho and the peer reviewers clearly concluded that wolf predation was not "primarily" the cause of the elk population's decline, but was one of the major factors maintaining the elk herd's status below State management objectives. Declining habitat quality due to forest maturation was the primary factor affecting the herd's status, but black bear predation on young elk calves, mountain lion predation on adults, and the harsh winter in 1996 to 97 also were major factors. Data also clearly indicated that wolf predation was one of the major causes of mortality of adult female elk, which contributed to the elk herd remaining below State management objectives. After discussions with the Service, Idaho put their proposal on hold because the proposal did not meet the regulatory standard for an "Unacceptable impact" set by the 2005 special rule.

We are now proposing to redefine the term "Unacceptable impact" to achieve the originally intended management flexibility. Specifically, we propose to define "Unacceptable impact" as "State or Tribally determined impact to a wild ungulate population or herd, with wolves as one of the major causes of the population or herd not meeting established State or Tribal population or herd management goals. The State or Tribal determination must be peer-reviewed and reviewed and commented on by the public prior to a final determination by the Service that an unacceptable impact has occurred and that wolf removal is not likely to impede wolf recovery." This definition expands the potential impacts for which wolf removal might be warranted beyond direct predation or those causing immediate population declines. It would, in certain circumstances, allow wolf pack removal when wolves are a major cause of the population or herd not meeting established State or Tribal population or herd management goals. Management goals might include cow/calf ratios, movements, use of key feeding areas, survival rates, behavior, nutrition, and other factors.

Under this proposal, as in the 2005 rule, science-based proposals from a State or Tribe with an approved post-delisting wolf management plan would have to undergo both public and peer review. Based on that peer review and public comment, the State or Tribe would finalize the plan and then submit it to the Service for a final

determination. The Service expects the following to be addressed in the State or Tribal proposal: (1) What data indicate that the ungulate herd is below management objectives; (2) what data indicate impact by wolf predation on the ungulate population; (3) why wolf removal is a warranted solution to help restore the ungulate herd to State or Tribal management objectives; (4) the level and duration of wolf removal being proposed; (5) how ungulate population response to wolf removal will be measured; and (6) possible remedies or conservation measures in addition to wolf removal. Before wolf removals can be authorized, the Service must determine if the State or Tribe followed the rule's procedures for developing a proposal to remove wolves in response to unacceptable impacts; if the proposal meets the definition of unacceptable impact; if the science presented supports the recommended action; and if the proposal is science-based.

The recovery goal for the NRM wolf population requires that it be comprised of at least 30 breeding pairs and 300 wolves that are equitably distributed in potentially suitable habitat in Montana, Idaho, and Wyoming. To ensure this goal is achieved, each of the three States (Wyoming, Montana, and Idaho) committed to manage for an equitable distribution of the overall population and assume a management target of 15 breeding pairs in mid-winter within each State. The 15 breeding pair management target was not intended to be the minimum goal for each State. It was an objective so that each State's management would provide a reasonable cushion to ensure each State's share of the wolf population did not fall below the 10 breeding pairs requirement and that the 30 breeding pairs minimum would always be met or exceeded.

While this change will likely result in more wolf control than is currently occurring, we propose to establish controls to ensure that wolf control for ungulate management purposes would not undermine recovery goals. Specifically, before any lethal control of wolf populations can be authorized, we must determine that such actions will not reduce the wolf population in the State below 20 breeding pairs and 200 wolves. This assures that the wolf population is large enough to easily rebound from such removal, that a large safety margin is provided against unseen mortality events that might occur after such removal, and that a substantial margin of safety is provided to ensure that recovery objectives would never be compromised. This limit is a

necessary and advisable precaution while wolves remain listed to ensure the conservation of the species given the additional take that might be authorized pursuant to this proposed rule. Once delisted, Montana, Idaho, and Wyoming will manage for no less than 15 breeding pairs.

By the end of 2006, the northern Rocky Mountain wolf population was estimated to contain 1,300 wolves in 86 breeding pairs (nearly three times the minimum numeric recovery goal for breeding pairs and more than four times the minimum population goal), and for the 7th consecutive year it exceeded minimum recovery levels. Montana had an estimated 316 wolves in 21 breeding pairs, Idaho had 673 wolves in 40 breeding pairs, and Wyoming had 311 wolves in 25 breeding pairs. Wolf biology allows for rapid recovery from severe disruptions. After severe declines, wolf populations can more than double in just 2 years if mortality is reduced; and increases of nearly 100 percent per year have been documented in low-density suitable habitat (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2007, Table 4). The literature suggests that wolf populations can maintain themselves despite a sustained human-caused mortality rate of 30 percent or more per year (Keith 1983, p. 66; Fuller *et al.* 2003, pp. 182–184).

Our data indicate that the human-caused mortality rate in the adult-sized segment of the northern Rocky Mountain wolf population was nearly 26 percent per year from 1994 to 2004 (Smith 2005), and that the wolf population still continued to expand at about 26 percent annually (Service *et al.* 2007, Table 4). This data indicates that the current annual mortality rate of about 26 percent in the adult portion of the wolf population could be nearly doubled and the wolf population could still maintain itself at current levels. Collectively, these factors mean that wolf populations are quite resilient to human-caused mortality if it is regulated.

The wolf population now occupies most of the suitable wolf habitat in the northern Rocky Mountains (72 FR 6106–6139, February 8, 2007; Oakleaf *et al.* 2006, p. 559). The population is unlikely to significantly expand its overall distribution beyond the outer boundaries of the current population because little unoccupied suitable habitat is available. Given current population density and these habitat limitations, we believe the overall numbers of wolf breeding pairs and numbers of wolves cannot continue to sustain a growth rate of 26 percent per year. Thus, we do not believe any

increased take as a result of this rule, if finalized, would have an impact on the recovered status of the northern Rocky Mountain wolf population in Montana, Idaho, or Wyoming, as long as it remains managed under a science-based plan.

*Addressing Take To Protect Stock Animals and Dogs*—The 1994 experimental population rules stated that “any livestock producers on their private land may take (including to kill or injure) a wolf in the act of killing, wounding, or biting livestock” (defined as cattle, sheep, horses, and mules) (59 FR 60264, November 22, 1994; 59 FR 60279, November 22, 1994). Similar provisions applied to producers on public land if they obtained a permit from the Service (59 FR 60264, November 22, 1994; 59 FR 60279, November 22, 1994).

The 2005 special rule expanded this provision in States with approved post-delisting wolf management plans to allow private citizens to also lethally take wolves that were “in the act of attacking” their livestock and dogs on private land and any livestock or herding and guarding dogs on active public grazing allotments or special use areas. “In the act of attacking” is defined in 50 CFR 17.84(n)(3) as “the actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.” Such incidents had to be reported to the Service or our designated agent(s) within 24 hours and physical evidence of such an attack had to be present.

This rule proposes to add a new provision for lethal take of wolves in States with approved post-delisting wolf management plans when in defense of “stock animals” (defined as “a horse, mule, donkey, or llama used to transport people or their possessions”) or dogs. Specifically, the proposed modification states that “any legally present private citizen on private or public land may immediately take a wolf that is in the act of attacking the individuals’ legally present stock animal or dog, provided there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The citizen must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this

rule, the carcass of the wolf and the area surrounding should not be disturbed. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.”

Since 1995, only 43 wolves (about 8 percent of the 538 wolves legally removed in agency-authorized control actions) have been legally killed by private citizens in defense of their private property or by shoot-on-sight permits as authorized by either the 1994 or 2005 experimental population special rules. There has been no documentation of wolf depredations on stock animals that were accompanied by their owners in the past 12 years, but a few instances of stock animals being spooked by wolves have been reported. While this proposed revision will provide additional opportunity for private citizens to protect their private property, we expect minor impacts on the wolf population.

Ninety-one dogs have been confirmed to be killed by wolves from 1987 to 2007 (Service *et al.* 2007, Table 5). No pet dogs have been confirmed to be killed by wolves while they were accompanied by their owners, and no wolves have been killed solely to protect dogs. However, 35 hunting hounds have been killed by wolves, primarily on public land. In only a few of those instances, the hounds' owners were close enough that they might have been able to better protect their dogs by shooting at the wolves involved. We expect that take of wolves involved in conflicts with pet dogs or hunting hounds would be rare. This proposed modification would allow for private citizens to protect their dogs from wolf attack while not meaningfully increasing the rate of wolf removal.

#### Required Determinations

*Regulatory Planning and Review*—In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and subject to OMB review. An economic analysis is not required because this rule will result in only minor and positive economic effects on a small percentage of private citizens in Idaho and Montana, and possibly Wyoming if it develops an approved post-delisting wolf management plan.

(a) This regulation does not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A brief assessment to clarify the costs and benefits associated with this rule follows.

*Costs Incurred*—Under the 2005 special rule, which this rule proposes to modify, management of wolves by States or Tribes with Service-approved post-delisting wolf management plans is voluntary. Therefore, associated costs would be discretionary. While we do not quantify these expected expenditures, these costs may consist of staff time and salary as well as transportation and equipment necessary to control wolves unacceptably impacting ungulate populations or herds.

We have funded State and Tribal wolf monitoring, research, and management efforts for gray wolves in Montana, Idaho, and Wyoming, and intend to continue to do so as long as wolves are listed. For the past several years Congress has targeted funding for wolf management to Montana, Idaho, and Wyoming, and the Nez Perce. In addition, Federal grant programs are available that fund wildlife management programs by the States and Tribes.

*Benefits Accrued*—The objectives of the proposed rule change are (1) to allow States and Tribes with Service-approved post-delisting wolf management plans to address the unacceptable impacts of a biologically recovered wolf population to ungulate populations and herds, and (2) to allow private citizens in States or on Tribal lands with approved post-delisting wolf management plans to take wolves that are in the act of attacking their stock animals or dogs. Allowing wolf removal in response to unacceptable impacts will help maintain ungulate populations or herds at or above State or Tribal objectives. Balancing the needs of wolves and elk provides substantial and sustainable economic benefits. Allowing take of wolves in the act of attacking stock animals or dogs would have a beneficial economic impact by allowing citizens to protect such private property. This proposed amendment could prevent the need for these citizens to replace and retrain these animals. An additional potential benefit may be a lower level of illegal take of wolves due to higher local public tolerance of wolves resulting from reduced conflicts between wolves and humans.

(b) This regulation does not create inconsistencies with other agencies' actions. It is exactly the same as the nonessential experimental population rules currently in effect regarding agency responsibilities under section 7 of the Act. This rule reflects continuing success in recovering the gray wolf through long-standing cooperative and complementary programs by a number of Federal, State, and Tribal agencies. Implementation of Service-approved

State or Tribal post-delisting wolf management plans supports these existing partnerships.

(c) This rule will not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients because we do not foresee any new impacts or restrictions to existing human uses of lands in Idaho or Montana as a result of this rule, nor in Wyoming or any Tribal reservations that remain under the 1994 10(j) rules.

(d) This rule does not raise novel legal or policy issues. Instead it proposes to reduce the restrictions on take of wolves. Similar take provisions are already in place through the 1994 and 2005 special rules (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005). No new novel legal or policy issues are raised by the amendments offered in this proposed rule.

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

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

The majority of wolves in the West are currently protected under the nonessential experimental population designations that cover Wyoming, most of Idaho, and southern Montana that treat wolves as a threatened species. Special regulations exist for these experimental populations that currently allow government employees and

designated agents, as well as livestock producers and private citizens, to take problem wolves. This proposed regulation modification does not change the nonessential experimental designation, but does contain additional special regulations that allow States and Tribes with approved post-delisting wolf management plans more flexibility in managing nonessential experimental wolves.

These changes are applicable only where States or Tribes (on Tribal reservations) that have an approved post-delisting management plan for gray wolves. Within the northern Rocky Mountain gray wolf population's range, only the States of Idaho and Montana have approved plans. Therefore, the regulation is expected to result in a small reduction of economic losses to some private citizens in States with approved post-delisting wolf management plans (i.e., Idaho and Montana) within the boundary of the nonessential experimental populations of the northern Rocky Mountain gray wolf population (Central Idaho nonessential experimental population area and Yellowstone nonessential experimental population area) (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994).

In anticipation of the possible delisting the northern Rocky Mountain gray wolf population, we have worked closely with States to ensure that their plans provide the protection and flexibility necessary to manage wolves at or above recovery levels after delisting. Approved plans are those plans that have passed peer review and Service scrutiny aimed at ensuring that the requirements under the Act are met and that recovery levels are maintained. It is appropriate for States that have met this approval standard to manage wolves prior to delisting for several reasons. States with approved post-delisting wolf management plans (Montana and Idaho) worked with their elected officials and public to develop biologically and socially accepted State regulatory frameworks to conduct wolf management. They have already assumed an important role in the management of this species and have developed extensive field experience and expertise, garnered considerable public trust, and exceeded the goals for recovery. A gradual transfer of responsibilities while the wolves are protected under the Act provides an adjustment period for the State wildlife agencies, Federal agencies, and Tribes to work out any unforeseen issues that may arise.

### Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 801 *et seq.*, the SBREFA.

(a) This regulation will not have an annual effect on the economy of \$100 million or more and is fully expected to have no significant economic impacts. The proposed regulation further reduces the effect that wolves will have on a few private citizens by increasing the opportunity for them to protect their stock animals and dogs. Since there are so few small businesses impacted by this regulation, the combined economic effects are minimal.

(b) This regulation will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation.

(c) This regulation will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Based on the analysis of identified factors, we have determined that no individual industries within the United States will be significantly affected and that no changes in the demography of populations are anticipated. The intent of this special rule is to facilitate and continue existing commercial activities while providing for the conservation of species by better addressing the concerns of affected landowners and the impacts of a biologically recovered wolf population.

### Unfunded Mandates Reform Act

The 2005 special rule, which this proposed rule suggests amending, defines a process for voluntary and cooperative transfer of management responsibilities for a listed species back to the States. Therefore, in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. As stated above, this regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This rule is not expected to have any significant economic impacts nor will it impose any unfunded mandates on

other Federal, State, or local government agencies to carry out specific activities.

### Takings (Executive Order 12630)

In accordance with Executive Order 12630, this rule will not have significant implications concerning taking of private property by the Federal Government. This rule will substantially advance a legitimate government interest (conservation and recovery of listed species) and will not present a bar to all reasonable and expected beneficial use of private property. Because this proposed rule change pertains only to the relaxation of restrictions on lethal removal of wolves, it would not result in any takings of private property.

### Federalism (Executive Order 13132)

This proposed rule maintains the existing relationship between the States and the Federal Government. The State wildlife agencies in Montana, Idaho, and Wyoming requested that we undertake this rulemaking in order to assist the States in reducing conflicts with local landowners and returning wolf management to the States or Tribes. We have cooperated with the States in preparation of this rule. Maintaining the recovery goals for these wolves will contribute to their eventual delisting and their return to State management. Utilizing the 2005 special rule, which this rule proposes to modify, is voluntary. This rule will not have substantial direct effects on the States, on the relationship between the States and the Federal Government, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

### Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the order.

### Paperwork Reduction Act

The OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal

agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. This rule does not contain any new collections of information other than those permit application forms already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB clearance number 1018-0095.

**National Environmental Policy Act**

In compliance with all provisions of the National Environmental Policy Act (NEPA), we are analyzing the impact of this rule modification and will determine if there are any new significant impacts or effects caused by this rule. A draft environmental assessment will be prepared on this proposed action and will be available for public inspection and comments when completed. All appropriate NEPA documents will be finalized before this rule is finalized.

**Government-to-Government Relationship With Tribes (Executive Order 13175)**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have been coordinating with affected Tribes within the experimental population areas of Montana, Idaho, and Wyoming on this rule. We will fully consider all of the comments on the proposed special regulations that are submitted by Tribes and Tribal members during the public comment period and will attempt to address those concerns, new data, and new information where appropriate.

**Energy Supply, Distribution or Use (Executive Order 13211)**

On May 18, 2001, the President issued Executive Order 13211 requiring agencies to prepare Statements of Energy Effects when undertaking certain actions that significantly affect energy supply, distribution, and use. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**Clarity of the Rule**

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite comments on how to make this proposal easier to understand, including answers to

questions such as the following: Are the requirements in the document clearly stated? Does the rule contain technical language or jargon that interferes with the clarity? Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? And is the description of the proposed rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? We requested that any comments about how we could make this rule easier to understand be sent to—Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. People also could e-mail comments to *Exsec@ios.doi.gov*. We will review all public comments and incorporate them in the final rule to make it easier to understand.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from our Helena office (see ADDRESSES section).

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

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

**Proposed Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. Amend § 17.84 by amending paragraph (n) as follows:

- a. In paragraph (n)(3), revise the term "unacceptable impact" and, in alphabetical order, add the terms "stock animal" and "ungulate population or herd", to read as set forth below; and
- b. In paragraph (n)(4), revise the first sentence following the heading and paragraph (n)(4)(v)(B), and add paragraph (n)(4)(xiii), to read as set forth below.

**§ 17.84 Special rules—vertebrates.**

- \* \* \* \* \*
- (n) \* \* \*
- (3) \* \* \*
- \* \* \* \* \*

*Stock animal*—A horse, mule, donkey, or llama used to transport people or their possessions.

*Unacceptable impact*—State or Tribally determined impact to a wild ungulate population or herd, with wolves as one of the major causes of the population or herd not meeting established State or Tribal population or herd management goals. The State or Tribal determination must be peer-reviewed and reviewed and commented on by the public, prior to a final determination by the Service that an unacceptable impact has occurred, and that wolf removal is not likely to impede wolf recovery.

*Ungulate population or herd*—An assemblage of wild ungulates living in a given area.

\* \* \* \* \*

(4) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described under this paragraph (n)(4), are allowed: Opportunistic harassment; intentional harassment; take on private land; take on public land; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; take for research purposes; and take to protect stock animals and dogs. \* \* \*

\* \* \* \* \*

(v) \* \* \*

(B) We must determine that such actions are science-based and will not reduce the wolf population in the State below 20 breeding pairs and 200 wolves before we authorize lethal wolf removal.

\* \* \* \* \*

(xiii) *Take to protect stock animals and dogs.* Any legally present private citizen on private or public land may immediately take a wolf that is in the act of attacking the individual's legally present stock animal or dog, provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The citizen must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this rule, the citizen must not disturb the carcass and the area surrounding it. The take of any wolf without such evidence of a direct and immediate threat may be

referred to the appropriate authorities  
for prosecution.

\* \* \* \* \*

Dated: June 28, 2007.

**Kevin Adams,**

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

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