Regional Office, Ft. Snelling, Minnesota; the Northeast Regional Office, Hadley, Massachusetts; the Montana Field Office, Helena, Montana; the Pacific Southwest Regional Office, Sacramento, California; and the Headquarters Office, Arlington, Virginia (see **FOR FURTHER INFORMATION CONTACT**).

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

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

**Proposed Regulation Promulgation**

Accordingly, 50 CFR part 17 is proposed to be amended as follows:

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) in the List of Endangered and Threatened Wildlife under Mammals by:

■ a. Removing both entries for ''Wolf, gray *(Canis lupus)''*; and

■ b. Adding two entries for ''Wolf, Mexican *(Canis lupus baileyi)''* in alphabetic order 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, Mexican ..... | *Canis lupus baileyi* | Southwestern United States and Mexico. | Entire, except where included in an experimental population as set forth in 17.84(k). | E | ..... | NA | NA |
| Wolf, Mexican ..... | *Canis lupus baileyi* | Southwestern United States and Mexico. | U.S.A. (portions of AZ and NM)—see 17.84(k). | XN | ..... | NA | 17.84(k) |
| * | * | * | * | * | * | | * |

* * * * *

Dated: May 29, 2013.

**Daniel M. Ashe,**

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

[FR Doc. 2013–13982 Filed 6–12–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R2–ES–2013–0056; FXES11130900000C2–134–FF09E32000]**

**RIN 1018–AY46**

## Endangered and Threatened Wildlife and Plants; Proposed Revision To the Nonessential Experimental Population of the Mexican Wolf

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to revise the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended. This action is being taken in coordination with our proposed rule in today's **Federal Register** to list the Mexican wolf as an endangered subspecies and delist the gray wolf (*Canis lupus*). The proposal to list the Mexican wolf as an endangered subspecies and delist the gray wolf species necessitates that we revise the nonessential experimental population designation of Mexican wolves in order to correctly associate this designation with the properly listed entity. In addition, we are proposing several revisions to the section 10(j) rule. We are seeking comment from the public on the proposed revisions and on additional possible modifications that we may analyze and incorporate into our final determination.

**DATES:** We will accept comments received on or before September 11, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 29, 2013. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before any such hearing.

**ADDRESSES:** You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R2–ES–2013–0056, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0056; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

**FOR FURTHER INFORMATION CONTACT:** Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

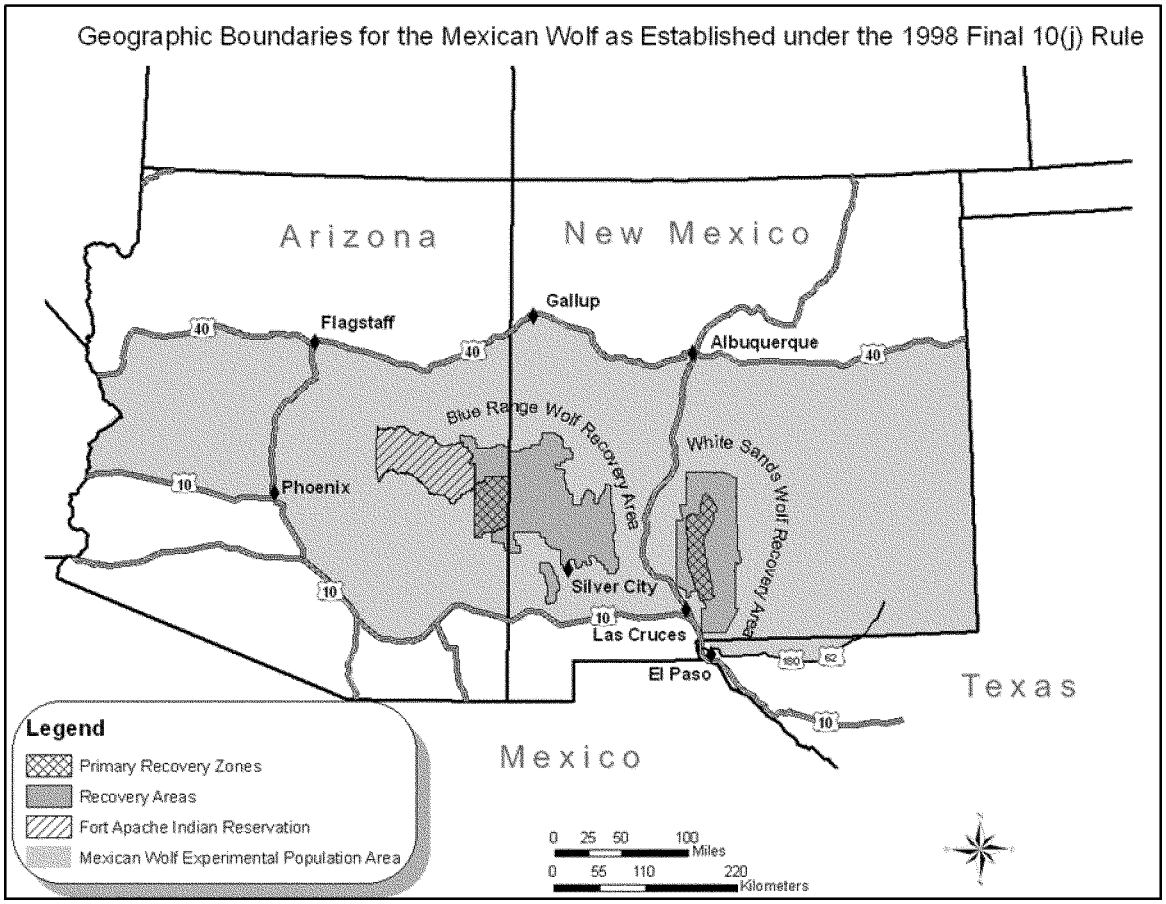
**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

Why we need to publish a rule. This rule is being proposed for two reasons: (1) To ensure this nonessential experimental population of Mexican wolves will be associated with the Mexican wolf subspecies listing, if finalized, rather than with the listing of the gray wolf at the species level; and (2) to allow for public comment on our proposed revisions and modifications to the 1998 final rule that established a Mexican wolf nonessential experimental population (63 FR 1752, January 12, 1998) (1998 Final Rule) (Figure 1).

In our 1998 Final Rule, we established two recovery areas (the Blue Range Wolf Recovery Area [BRWRA] and the White Sands Wolf Recovery Area) within the Mexican Wolf Experimental Population Area [MWEPA]. We established primary recovery zones within each of these recovery areas where initial releases of Mexican wolves would occur, while dispersal and translocations were allowed throughout the recovery areas. We also established provisions to remove Mexican wolves that occupied territories that were wholly outside of the recovery areas, or wolves that depredated on livestock outside of the recovery areas. Since 1998, we have only released Mexican wolves into the BRWRA; we have not utilized the White Sands Wolf Recovery Area. On tribal lands within the Mexican Wolf Experimental Population Area, we established provisions where the Service in cooperation with tribal government would develop management actions, including the capture and removal of Mexican wolves, if requested by the tribe. In 2000, the White Mountain Apache Tribe agreed to allow free-ranging Mexican wolves to inhabit the Fort Apache Indian Reservation, in accordance with this provision of the Final Rule. We recognize that continued occupancy of Mexican wolves on the Fort Apache Indian Reservation is dependent upon tribal agreement.

Figure 1—Geographic Boundaries for the Mexican Wolf under the 1998 Final Section 10(j) Rule.




This proposal is necessitated by a related action we are taking to propose the reclassification of the Mexican wolf (*Canis lupus baileyi*) as an endangered subspecies and delist the gray wolf species (*Canis lupus*). The Mexican wolf has been listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) under a species-wide gray wolf listing since 1978; therefore, when we designated the Mexican wolf nonessential experimental population in 1998 (63 FR 1752, January 12, 1998), it corresponded to the gray wolf listing in the Code of Federal Regulations (CFR) even though it was specific to our Mexican wolf recovery effort. With the proposed removal of the gray wolf from the List of Threatened and Endangered Wildlife and classification of the Mexican wolf as an endangered subspecies, we recognize the need to revise 50 CFR 17.11(h) such that the nonessential population will be

associated with the Mexican wolf subspecies listing rather than with the gray wolf species.

In order to improve implementation and conservation, we are proposing several changes to the section 10(j) rule and management regulations of the Mexican wolves.

The basis for our action. The 1982 amendments to the Act included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Treating the experimental population as threatened allows us the discretion to devise management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. When designating an experimental population, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

We are preparing an environmental impact statement. We are preparing a draft Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To ensure that we consider the environmental impacts associated with this proposed rule, we are preparing a draft EIS to analyze the proposed nonessential experimental population of Mexican wolves. From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We will utilize all information collected since that scoping process began in the development of a draft EIS. We will use information from this analysis to inform our final decision.

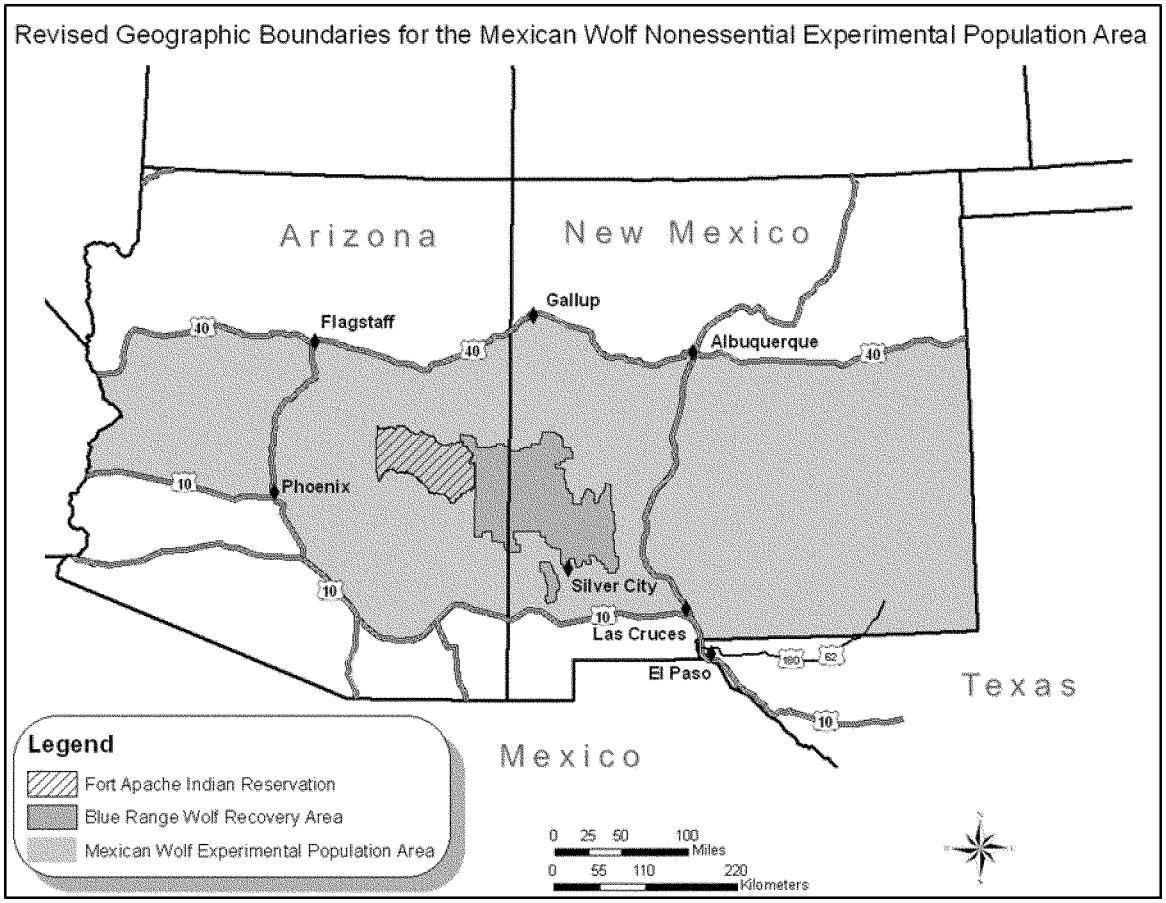
We will seek peer review. We will obtain opinions from knowledgeable individuals with scientific expertise on our technical assumptions, analysis, adherence to regulations, and whether or not we used the best available information. These peer reviewers will analyze our methods and conclusions and provide additional information, clarifications, and suggestions to improve the final determination. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

**Information Requested**

We are seeking public comments on this proposed rule. We are particularly interested in public comments on a number of specific issues we are proposing, and on other options being considered that are not included in today's proposed rule. We may include any of the modifications discussed in this proposed rule in our final determination. We particularly seek comments and information concerning the following revisions being proposed in today's action:

(1) Expanding the area for direct initial release of captive-raised Mexican wolves to include the entire BRWRA, thereby eliminating the primary and secondary recovery zones of the BRWRA (Figure 2).

Figure 2 —Revised Geographic Boundaries for the Mexican Wolf Nonessential Experimental Population Area.




(2) Allowing Mexican wolves to disperse naturally from the BRWRA into the Mexican Wolf Experimental Population Area (MWEPA) and occupy the MWEPA without the requirement to bring them back into the BRWRA (Figure 2).

(3) Removing the portion of west Texas lying north of US Highway 62/180 to the Texas–New Mexico boundary from the MWEPA (Figure 2).

(4) Removing reference to possible reintroduction of Mexican wolves to the White Sands Wolf Recovery Area (Figure 2).

(5) Developing and implementing management actions on private land within the MWEPA by the Service or an authorized agency to benefit Mexican wolf recovery in voluntary cooperation with private landowners, including but not limited to initial release, proactive measures to prevent conflicts, and translocation of wolves if requested by the landowner.

(6) Developing and implementing management actions on tribal land within the MWEPA by the Service or an authorized agency in voluntary cooperation with tribal governments including but not limited to initial release, translocation, proactive measures to prevent conflicts, capture, and removal of Mexican wolves if requested by the tribal government.

(7) Identifying section 6 of the Act as authorizing language for take pursuant to 50 CFR 17.31 for State wildlife agencies with authority to manage Mexican wolves under the nonessential experimental population rule.

(8) Clarifying that an individual can be authorized to take Mexican wolves under specific circumstances.

(9) Clarifying allowable take for Federal agencies and authorized personnel.

(10) Revising the conditions that determine when we would issue a permit to livestock owners or their agents to allow take of Mexican wolves that are engaged in the act of killing, wounding or biting livestock on public lands allotted for grazing from ''6 breeding pairs'' to ''100 Mexican wolves'' to be consistent with our population objective of establishing a population of at least 100 wolves.

(11) Modifying the prohibitions for take such that taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited and will not be considered unavoidable or unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf. Due care includes: (1) Following the regulations, proclamations, and/or laws within the State where the trapping takes place; (2) if securely fastening traps, use double stake traps, cable stakes (at least 18 inches (in) (46 centimeters (cm)) deep) or otherwise securely fasten traps to immovable objects with aircraft cable or chain so that if captured, a Mexican wolf is unable to pull the trap free; (3) if using drags, use one of sufficient size and weight or grapples made from steel at least 0.5 in (1.3 cm) in diameter of cross section attached to chains or cables; (4) reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; and (5) not taking a Mexican wolf via neck snares.

Trappers can call the Interagency Field Team (IFT) (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the Mexican wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or IFT. Taking a Mexican wolf by shooting will not be considered unavoidable or unintentional take.

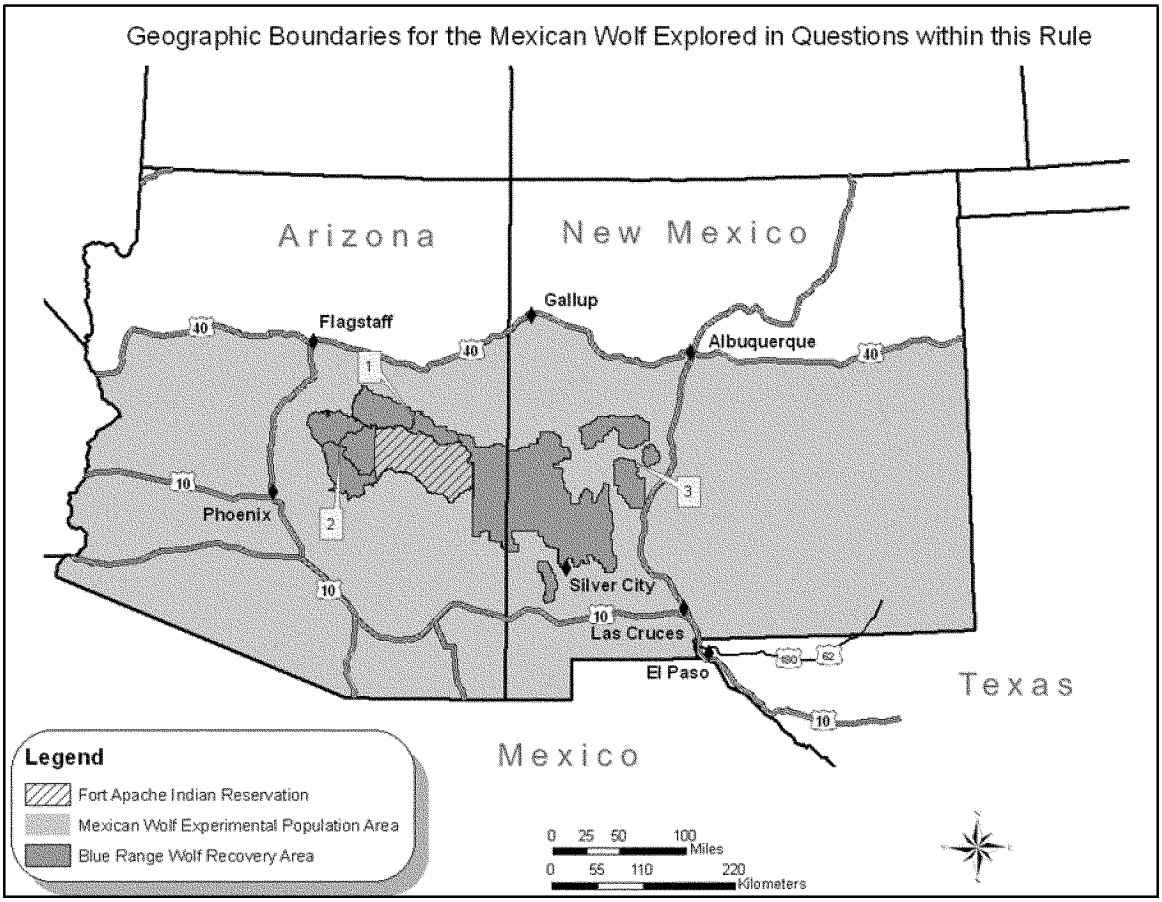
(12) Establishing a new provision to conduct a one-time overall evaluation of the nonessential experimental population 5 years after our final determination on this rule. We will still conduct a status review of the listed species once every 5 years as required by section 4(c)(2) of the Act.

(13) Clarifying that the Service will consider State-owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies.

We are also taking comments on the following options being considered for possible inclusion in the final rule, but not proposed in today's action:

(14) Moving the southern boundary of the MWEPA in Arizona and New Mexico from Interstate Highway 10 to the United States–Mexico international border (Figure 3).

Figure 3—Geographic Boundaries for the Mexican Wolf Explored in Questions within this Proposed Rule. (The geographic boundaries being considered for possible inclusion in the final rule include expansion of the BRWRA to include any or all of the ranger districts of the Sitgreaves National Forest (labeled as 1 in the map), three of the ranger districts within the Tonto National Forest (labeled as 2 in the map), one ranger district within the Cibola National Forest (labeled as 3 in the map), and expansion of the MWEPA boundary from I–10 south across Arizona and New Mexico to the United States–Mexico international border.)




(15) Expanding the BRWRA to include the entire Sitgreaves National Forest in Arizona;

(16) Expanding the BRWRA to include the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona (Figure 3).

(17) Expanding the BRWRA to include the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 3).

(18) Replacing the term ''depredation'' with the term ''depredation incident'' and defining it as, ''the aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or single pack of Mexican wolves at a single location within one 24-hour period, beginning with the first confirmed kill or injury.''

(19) Including provisions for take by pet owners of any Mexican wolf engaged in the act of killing, wounding, or biting pets on private or tribal land anywhere within the MWEPA, provided that evidence of a freshly wounded or killed pet by wolves is present. The take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(20) Including provisions for the issuance of permits on private or tribal land anywhere within the MWEPA to allow livestock owners or their agents to take (including kill or injure) any Mexican wolf that is present on private or tribal land and what conditions must be met before such a permit is issued, such as a minimum population size or population trend of Mexican wolves present in the MWEPA or other established populations based on the most recently reported population count; other relevant measures of population status such as genetic diversity; documentation by the Service or our authorized agent of previous loss or injury of livestock on the private or tribal land, caused by wolves; implementation of agency efforts to resolve the problem and determination that conflict is likely to continue; and enactment of this provision by a formal statement from the Service.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* at Docket No. FWS–R2–ES–2013–0056, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We request that you make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide.

**Previous Federal Actions**

The Mexican wolf was listed under the Act as an endangered subspecies in 1976 (41 FR 17736, April 28, 1976). In 1978, the Service listed the entire gray wolf species in North America south of Canada as endangered, except in Minnesota where it was listed as threatened (43 FR 9607, March 9, 1978). This 1978 listing at the species level subsumed the previous Mexican wolf subspecies listing. However, the 1978 listing rule (43 FR 9607, March 9, 1978) stated that we would continue to recognize the Mexican wolf as a valid biological subspecies for purposes of research and conservation.

After the 1978 listing, the Service initiated recovery programs for the gray wolf in three broad geographical regions of the country: the Northern Rocky Mountains, the Western Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies (Service 1982). The 1982 Mexican Wolf Recovery Plan did not provide recovery criteria, but recommended an initial two-pronged approach to recovery to establish a captive-breeding program and reintroduce captive Mexican wolves to the wild (Service 1982, p. 28).

In 1996, we completed a final EIS, ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States,'' after assessing potential locations for reintroduction of the Mexican wolf (Service 1996). On April 3, 1997, the Department of the Interior issued its Record of Decision on the final EIS (62 FR 15915), and on January 12, 1998, we published a final rule in the **Federal Register** to establish the MWEPA in central Arizona and New Mexico, ''Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico'' (63 FR 1752).

Between 2003 and 2009, the Service published several rules revising the 1978 conterminous listing for the gray wolf in an attempt to recognize recovery progress achieved in the Northern Rocky Mountains and Western Great Lakes populations but leave the Mexican wolf in the southwestern United States and Mexico listed as endangered (except for the nonessential experimental population in Arizona and New Mexico) (68 FR 15804, April 1, 2003; 72 FR 6052, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15070 and 74 FR 15123, April 2, 2009). However, these revisions were challenged in court, which left the 1978 listing unchanged through 2010 (Service 2012, pp. 3–4).

Effective January 27, 2012, the Service designated a Western Great Lakes Distinct Population Segment (DPS) in Minnesota, Wisconsin, Michigan, and portions of adjacent States, and removed this segment from the List of Endangered and Threatened Wildlife (76 FR 81666, December 28, 2011). The Service removed the Northern Rocky Mountain DPS (Montana, Idaho, and portions of adjacent states, not including Wyoming) from the List of Endangered and Threatened Wildlife pursuant to Section 1713 of Public Law 112–10 on May 5, 2011 (76 FR 25590), and subsequently removed gray wolves in Wyoming from the List of Endangered and Threatened Wildlife on September 10, 2012 (77 FR 55530).

On August 4, 2010, we published a 90-day finding on two petitions to list the Mexican wolf as an endangered subspecies with critical habitat (75 FR 46894). In the 90-day finding, we determined that the petitions presented substantial scientific information that the Mexican wolf may warrant reclassification as a subspecies or DPS. As a result of this finding, we initiated a status review. On October 9, 2012, we published our 12-month finding in the **Federal Register** (77 FR 61375) stating that the listing of the Mexican wolf as a subspecies or DPS was not warranted at that time because Mexican wolves already receive the protections of the Act under the species-level gray wolf listing of 1978.

During 2011 and 2012, we conducted a 5-year review of the gray wolf finding that the entity currently described on the List of Endangered and Threatened Wildlife should be revised to reflect the distribution and status of gray wolf populations in the lower 48 States and Mexico by removing all areas currently included in its range, as described in the CFR, except where there is a valid species, subspecies, or DPS that is threatened or endangered (Service 2012).

From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a final scoping report in

April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We will utilize the information collected during that scoping process in the development of a draft EIS.

Today, we concurrently proposed a rule in the **Federal Register** to delist the gray wolf as a species and list the Mexican wolf subspecies as endangered. The proposal to list the Mexican wolf as an endangered subspecies necessitates that we propose a revision to the nonessential experimental population of Mexican wolves in Arizona and New Mexico in order to correctly document this population as an experimental population of the Mexican wolf subspecies rather than the gray wolf species found in the current CFR. We are also proposing and seeking comment on a number of substantive modifications and technical corrections to the regulation governing the Mexican wolf nonessential experimental population designation.

## Background

Our approach in this proposed rule is to refer to the 1998 Final Rule as necessary to describe the current situation and the changes we are proposing, and to propose new language where appropriate at this time.

### *Species Information*

The Mexican wolf is the smallest extant gray wolf subspecies in North America. Adults weigh 50 to 90 pounds (lb) (23 to 41 kilograms (kg)) with a length of 5 to 6 ft (1.5 to 1.8 m) and height at shoulder of 25 to 32 in (63 to 81 cm) (Brown 1988, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1988, p. 118). Solid black or white coloration, as seen in other North American gray wolves, does not exist in Mexican wolves. The basic life history for the Mexican wolf is similar to that of other gray wolves (Mech 1970, entire; Service 1982, p. 11; Service 2010, pp. 32–41).

Historically, Mexican wolves were distributed across portions of the southwestern United States and northern and central Mexico. In the United States, this range included eastern, central, and southern Arizona; southern New Mexico; and western Texas (Brown 1983, pp. 10–11; Parsons 1996, pp. 102–104). Maps of Mexican wolf historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). The southernmost extent of the Mexican wolf's range in Mexico is consistently portrayed as ending near Oaxaca (Hall 1981, p. 932; Nowak 1995, p. 395). Depiction of the northern extent of the Mexican wolf's pre-settlement range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies and their interpretation of where reproductive interaction between neighboring wolf populations occurred (see today's **Federal Register** publication of the Proposed Rule Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered).

Mexican wolves were associated with montane woodlands characterized by sparsely to densely forested mountainous terrain consisting of evergreen oaks (*Quercus* spp.) or pinyon (*Pinus edulus*) and juniper (*Juniperus* spp.) to higher elevation pine (*Pinus* spp.), mixed-conifer forests, and adjacent grasslands at elevations of 4,000 to 5,000 ft (1,219 to 1,524 m) where ungulate prey were abundant. Mexican wolves were believed to have preyed upon white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), collared peccaries (javelina) (*Tayassu tajacu*), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), jackrabbits (*Lepus spp.*), cottontails (*Sylvilagus spp.*), and small rodents (Parsons and Nicholopoulos 1995, pp. 141–142); white-tailed deer and mule deer were believed to be the primary sources of prey (Brown 1988, p. 132; Bednarz 1988, p. 29).

Today, Mexican wolves in Arizona and New Mexico inhabit evergreen pine-oak woodlands (i.e., Madrean woodlands), pinyon-juniper woodlands (i.e., Great Basin conifer forests), and mixed-conifer montane forests (i.e., Rocky Mountain, or petran, forests) that are inhabited by elk, mule deer, and white-tailed deer (Service 1996, pp. 3–5; AMOC and IFT 2005, p. TC–3). Mexican wolves in the BRWRA show a strong preference for elk compared to other ungulates (Adaptive Management Oversight Committee (AMOC) and Interagency Field Team (IFT) 2005, p. TC–14, Reed *et al.* 2006, pp. 56, 61; Merkle *et al.* 2009, p. 482). Other documented sources of prey include deer and occasionally small mammals and birds (Reed *et al.* 2006, p. 55). Mexican wolves are also known to prey and scavenge on livestock (Merkle *et al.* 2009, p. 482; Breck *et al.* 2011, entire; Reed *et al.* 2006, p. 1129; AMOC and IFT 2005, p. TC–15)).

### *Recovery Efforts*

The United States and Mexico signed the Mexican Wolf Recovery Plan in 1982 (Service 1982). The recovery plan did not contain objective and measurable recovery criteria for delisting as required by section 4(f)(1) of the Act because the status of the Mexican wolf was so dire that the recovery team could not foresee full recovery and eventual delisting (Service 1982, p. 23). Instead, the recovery plan contained a ''prime objective'' to ensure the immediate survival of the Mexican wolf. The prime objective of the 1982 recovery plan was: ''To conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mi area (12,950-square-km) within the Mexican wolf's historic range'' (Service 1982, p. 23). This objective has since guided the recovery effort for the Mexican wolf in the United States.

A binational captive-breeding program between the United States and Mexico, referred to as the Mexican Wolf Species Survival Plan (SSP), was initiated in 1977 to 1980 with the capture of the last remaining Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States. Through the breeding of the 7 founding Mexican wolves and generations of their offspring, the captive population has expanded to its current size of close to 258 wolves in 52 facilities, including 34 facilities in the United States and 18 facilities in Mexico (as of October 12, 2012) (Siminski and Spevak 2012, p. 2).

The primary purpose of the SSP is to raise Mexican wolves for the Service and the General del Vida Silvestre (in Mexico) for reintroduction into the wild. This program is an essential component of Mexican wolf recovery. Specifically, the purpose of the SSP is to reestablish the Mexican wolf in the wild through captive breeding, public education, and research. This captive population is the sole source of Mexican wolves available to reestablish the species in the wild and is imperative to the success of reintroduction efforts in the United States and Mexico.

Reintroduction efforts to reestablish the Mexican wolf in the wild have taken place in both the United States and Mexico. Mexico initiated a reintroduction program with the release of five captive-bred Mexican wolves

into the San Luis Mountains just south of the United States–Mexico border in October 2011. As of February 2012, four of the five released animals were confirmed dead due to ingestion of illegal poison. The status of the fifth Mexican wolf is unknown. A sixth Mexican wolf was released in March 2012; its fate is unknown as only its collar was found in April 2012 (Service, our files). A pair of Mexican wolves was released in October 2012 and was alive as of March 3, 2013. Mexico plans to release additional Mexican wolves in this area, and possibly several other identified locations (including Nuevo Leon and Coahuila) in Mexico in 2013 and beyond; however, a schedule of releases is not publicly available at this time. We expect the number of Mexican wolves in Mexico to fluctuate from zero to several wolves or packs of wolves during 2013 and into the future in or around Sonora and Chihuahua or other Mexican States.

In the United States, we have focused our recovery efforts on the reestablishment of Mexican wolves as a nonessential experimental population under section 10(j) of the Act in Arizona and New Mexico. We established the nonessential experimental population of Mexican wolves in 1998 to pursue the prime objective of the 1982 Mexican Wolf Recovery Plan (Figure 1). The reintroduction project is a collaborative effort conducted by the Service, Forest Service, Arizona Game and Fish Department, White Mountain Apache Tribe, and U.S. Department of Agriculture's Animal and Plant Health Inspection Service.

In March of 1998 we released 11 Mexican wolves from the captive-breeding program to the wild. Additional individuals and family groups have been initial-released or translocated into the BRWRA each year through 2012. Initial-released refers to Mexican wolves released to the wild that have only been in captivity, and translocated wolves are ones with previous wild experience that were removed from the wild for management reasons and subsequently rereleased into the wild at a later time.

We expect to pursue additional recovery efforts for the Mexican wolf outside of the MWEPA in the future and to determine the capacity of the nonessential experimental population to contribute to recovery. We initiated the revision of the 1982 Mexican Wolf Recovery Plan in 2010. The revised plan will provide information about suitable habitat and population sizes for Mexican wolf recovery in the United States and Mexico. A draft plan will be provided for public and peer review before being finalized.

More information about the life history, decline, and current status of the Mexican wolf in the southwestern United States can be found in the ''Proposed Rule Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered'' (published elsewhere in today's **Federal Register**), the 1982 Mexican Wolf Recovery Plan (Service 1982, pp. 5–8, 11–12), the 1996 FEIS (Service 1996, pp. 1–7), the 1998 Final Rule (63 FR 1752, January 12, 1998), the Mexican Gray Wolf Blue Range Reintroduction Project 5-Year Review (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, pp. TC–1 to TC–2), the Mexican Wolf Conservation Assessment (Service 2010, pp. 7–15, 20–42), and Mexican Wolf Recovery Program Progress reports from 2001 to 2011. These documents are available on-line at *http://www.fws.gov/southwest/es/mexicanwolf.*

*Why We Need to Revise the 1998 Final Rule*

We are proposing to modify the MWEPA designation to improve our ability to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild, which is the population objective provided in the 1982 Mexican Wolf Recovery Plan. Over time and through project reviews, annual reports, monitoring, and communication with our partners and the public, we recognize that elements of the 1998 Final Rule designation need to be revised to help us enhance the growth, stability, and success of the nonessential experimental population. Specifically, the 1998 Final Rule currently restricts initial releases of captive Mexican wolves to the wild to the Primary Recovery Zone, which constitutes only 16 percent of the BRWRA. This has constrained the number and location of Mexican wolves that can be released into the wild. Also, the 1998 Final Rule has a requirement that Mexican wolves stay within the BRWRA, which does not allow for natural dispersal movements from the BRWRA or occupation of the MWEPA. Currently, we are required to implement management actions that disrupt social structure or lead to removal of wolves from the wild when a Mexican wolf naturally disperses from the BRWRA into the MWEPA. In addition, we are proposing a number of modifications that will improve our communication and coordination implementing the nonessential experimental population designation. We intend our actions to demonstrate an adaptive management approach in which we utilize the lessons learned since we began reestablishing Mexican wolves in 1998.

*Statutory and Regulatory Framework*

The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range, but within its probable historical range. With the experimental population designation, the relevant population is treated as threatened, regardless of the species' designation elsewhere in its range. Threatened status allows us discretion in devising management programs and special regulations for such a population through the use of section 4(d) of the Act. Section 4(d) allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule

contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is essential or nonessential to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential.

For the purposes of section 7 of the Act, we treat a nonessential experimental population as a threatened species when it is located within a National Wildlife Refuge or unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When a nonessential experimental population is located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, a nonessential experimental population provides additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the nonessential experimental population will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for Mexican wolves established within the nonessential experimental population area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

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

**Proposed Experimental Population Area**

We are continuing our effort to establish a population of Mexican wolves within the subspecies' historical range in Arizona and New Mexico by proposing to revise the 1998 Final Rule (63 FR 1752, January 12, 1998). The current and proposed revision to the experimental population area is the entirety of the species' current range in the United States. The purpose of the nonessential experimental population was, and remains, to accomplish the prime objective of the 1982 Mexican Wolf Recovery Plan to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild (Service 1982, p. 23).

With this rule, we propose to revise the geographic boundaries of the MWEPA described in the 1998 Final Rule by removing the small portion of the MWEPA in Texas. This area is not likely to contribute substantially to our population objective based on habitat suitability. The proposed MWEPA is the geographic area lying north of Interstate Highway 10 and south of Interstate Highway 40 in Arizona and New Mexico (Figure 2).

Also, we are proposing to maintain the geographic boundaries of the BRWRA as described in our 1998 Final Rule (i.e., the Apache National Forest in Arizona and the Gila National Forest in New Mexico), but to eliminate the primary and secondary recovery zones inside the BRWRA (Figure 2). We are proposing to modify the regulations associated with initial releases within the BRWRA and the regulations associated with natural dispersal of Mexican wolves from the BRWRA into the MWEPA; both of these modifications are described below in Management of the Reintroduced Population.

We are not carrying forward the recommendation from the 1998 Final Rule to consider the White Sands Wolf Recovery Area as a possible

reintroduction site for Mexican wolves (Figure 2). Under the 1998 Final Rule, initial releases and reintroduction of Mexican wolves into the White Sands Wolf Recovery Area is authorized if the Service finds it necessary and feasible in order to achieve the recovery goal of at least 100 Mexican wolves occupying 5,000 square mi (12,950 square km) (Service 1998). While this recovery area lies within the probable historical range of the Mexican wolf, and could be an important reestablishment site if prey densities increased substantially, it is now considered a marginally suitable area for Mexican wolf release and reestablishment primarily due to the low density of prey. For these reasons the Mexican Wolf Blue Range Reintroduction Project 5-Year Review recommended that any amended or new Mexican wolf nonessential experimental population rule not include White Sands Missile Range as a Mexican Wolf Recovery Area or as a reintroduction zone (AMOC and IFT 2005, p. ARC–3).

*Additional Revisions to the Previous Experimental Population Area Under Consideration*

As stated above (see Information Requested section), we are also taking comments on the following options being considered for possible inclusion in the final rule, but not proposed in today's action. Thus, depending upon the information we receive during the public comment period and our own further analysis, our final rule may include these actions.

We are considering expanding the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States-Mexico international border across Arizona and New Mexico (Figure 3). Expanding the MWEPA was a recommendation in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–3). We are considering this modification because a larger MWEPA would provide additional habitat for dispersal while promoting management flexibility and consistency in management over a larger area (as opposed to Mexican wolves in this area having full endangered status).

We are also considering the expansion of the BRWRA to include the entire Sitgreaves National Forest and the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona and the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 3). This expansion would include the proposed modification that would allow for initial releases and translocations throughout the expanded BRWRA. Our proposed modification to eliminate the primary and secondary recovery zones within the BRWRA and our consideration of expanding the BRWRA to include the entire Sitgreaves and three Ranger Districts of the Tonto National Forests in Arizona and one Ranger District of the Cibola National Forest in New Mexico are consistent with recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–4). These revisions would provide additional area and locations for initial release of Mexican wolves to the wild from captivity beyond that currently allowed by the 1998 Final Rule.

*Reintroduction Procedures*

In our 1998 Final Rule, we stated that we would release 14 family groups of Mexican wolves into the BRWRA over a period of 5 years to achieve our goal of establishing a population of at least 100 wild Mexican wolves. Selection criteria for Mexican wolves that are released include genetics, reproductive performance, behavioral compatibility, response to the adaptive process, and other factors (63 FR 1754, January 12, 2998). Since the end of that initial 5-year period in 2003, we have continued to conduct initial releases of Mexican wolves from captivity into the BRWRA and to translocate wolves with previous wild experience back into the BRWRA.

We are proposing to revise selection criteria for Mexican wolves that are released into the wild by including sex and age as selection criteria, including specifying our reasons for conducting initial releases, as follows in the paragraph below:

Captive Mexican wolves are selected for release based on genetic contribution to the wild population, reproductive performance, behavioral compatibility, prior behavior, sex, age, response to the adaptation process, and other factors. Mexican wolves selected for release may be acclimated in Service-approved prerelease facilities or released directly into the BRWRA. Initial release of Mexican wolves into the BRWRA will be conducted on an as-needed basis to assist with population growth or maintenance, genetics management, and other relevant considerations.

*Management of the Experimental Population Area*

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 of individual Mexican wolves under narrowly defined circumstances (50 CFR 17.84(k)(6)). 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 has and will continue to improve the likelihood of success of this reestablishment effort. Management of Mexican wolves in the BRWRA and MWEPA may include any of the provisions herein or provided for in Service-approved management plans, protocols, and permits.

We are proposing to allow for initial releases of captive-raised Mexican wolves throughout the entire BRWRA, which would eliminate the primary and secondary recovery zones defined in the 1998 Final Rule. We previously defined a primary recovery zone to mean an area where the Service: (1) Will release captive-raised Mexican wolves, (2) may return and rerelease previously released Mexican wolves, (3) may release translocated wild-born Mexican wolves, and (4) will actively support recovery of the reintroduced population. We previously defined the secondary recovery zone to be an area adjacent to a primary recovery zone in which the Service allows released Mexican wolves to disperse, where wolves captured in the wild for authorized management purposes may be translocated and released, and where managers actively support recovery (63 FR 1772, January 12, 1998). If this proposed rule is finalized, the distinction between the primary and secondary recovery zones related to initial releases and other management actions will be eliminated, thereby eliminating the need to retain or define these zones. With our current proposal, we would apply a consistent management regime for all Mexican wolves in the BRWRA.

The purpose of this proposed change to allow initial releases throughout the BRWRA is to expand the area and locations for potential initial release sites. This flexibility will support our efforts to achieve the prime objective of the 1982 Mexican Wolf Recovery Plan and the specified reintroduction goal of the 1998 Final Rule to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild. That is, we expect that expanding the area and locations for potential release sites will support population growth for several reasons. First, allowing initial release of captive Mexican wolves into the entire BRWRA will increase our opportunities to conduct initial releases. Because Mexican wolf packs have established home ranges in the primary recovery

zone, which encompasses only 16 percent of the BRWRA, we are constrained in our ability to release additional family groups from captivity into this occupied habitat. Only two captive-raised Mexican wolves have been released into the BRWRA in the last 6 years for this reason.

Second, this modification will allow us to conduct initial releases into optimal release sites in remote locations such as the Gila and Aldo Leopold Wilderness Areas. These large wilderness areas provide roadless habitat, have very low human population density, and limited livestock grazing, which are characteristics that support the establishment of Mexican wolves while reducing the potential for wolf–human conflict.

Third, this modification would also allow us to improve our ability to support the genetic health of the population in that we would have more opportunities to replace genetically important Mexican wolves that die or are removed from the population with captive wolves with similar genetic makeup.

Finally, this modification, assuming it led to a larger, more viable population, would result in a population more tolerant of the loss of individuals. Being able to lose individuals from a larger population would have less effect on the subspecies, as a whole, and support our ability to respond to Mexican wolf–livestock conflicts and increase our overall management flexibility.

We are proposing to allow Mexican wolves in the BRWRA to disperse throughout the BRWRA and into the MWEPA, and to occupy the MWEPA (Figure 2). The 1998 Final Rule did not allow Mexican wolves to disperse from the BRWRA into the MWEPA. Management of Mexican wolves in the BRWRA and MWEPA may include hazing, translocations, lethal take, and other necessary actions, as provided for in this proposed rule and in Service-approved management plans and protocols. We are proposing to allow Mexican wolves to disperse naturally from the BRWRA into the MWEPA and to occupy the MWEPA because this modification will promote numeric and spatial expansion of the population, assisting us in reaching our population objective. We intend to capture and return Mexican wolves originating from the nonessential experimental population that disperse outside of the MWEPA.

There are two situations in which a Mexican wolf could occur in the southwestern United States outside of the MWEPA: (1) A Mexican wolf may disperse outside of the MWEPA without our knowledge; or (2) Mexican wolves may disperse into the United States from Mexico. Any Mexican wolf outside of the MWEPA will have full endangered status under the Act. The public is encouraged to contact the Mexican Wolf Recovery Coordinator or a designated representative of the Service to determine if there is the potential for take in areas where Mexican wolves are listed as endangered. Any trappers concerned that they might incidentally take an endangered Mexican wolf can apply for a section 10(a) permit.

Within the MWEPA, we are proposing the development and implementation of management actions to benefit Mexican wolf recovery in cooperation with private landowners, including but not limited to initial release and translocation of Mexican wolves on private land if requested by the landowner, and on tribal land in cooperation with tribal governments including but not limited to initial release, translocation, capture, and removal of wolves if requested by the tribal government.

On public land grazing allotments we will continue to offer permits under the Act to allow livestock owners or their agents to take a Mexican wolf engaged in the act of killing, wounding, or biting livestock, but we propose to change the condition of requiring 6 breeding pairs in the population prior to issuance of a such a permit to requiring 100 Mexican wolves in the MWEPA based on the most recent population count. We originally established the 6 breeding pair metric to serve as an indication that the overall size and status of the population was appropriate to allow additional regulatory flexibility in our management. However, we have learned that the number of breeding pairs in the population does not necessarily serve as a surrogate for population size. Therefore, we are proposing a more direct method of deciding when to allow additional regulatory flexibility by basing our determination on the number of Mexican wolves in the MWEPA population. We will continue to track breeding pairs as a population metric, but will not use this number as a basis for the level of regulatory flexibility.

*Additional Revisions to the Management of the Experimental Population Area Under Consideration*

As stated above (see Information Requested section), we are also taking comments on the following options being considered for possible inclusion in the final rule, but not proposed in today's action. Thus, depending upon the information we receive during the public comment period and our own further analysis, our final rule may include these actions.

We are considering including provisions for take by pet owners of any Mexican wolf engaged in the act of killing, wounding, or biting pets on private or tribal land anywhere within the MWEPA, provided that evidence of a freshly wounded or killed pet by wolves is present. Such take must be reported to the Service or an authorized agent within 24 hours. We would modify our definition of ''engaged in the act of killing, wounding, or biting livestock'' to also apply to pets. We are considering this modification in order to provide the same provisions for pets as we do for livestock on private and tribal land in an effort to reduce wolf-related conflicts for humans and their animals. We estimate that this may result in the take of at most two wolves per year.

We are considering including provisions for the issuance of permits on private land anywhere within the MWEPA to allow livestock owners or their agents to take (including kill or injure) any Mexican wolf that is present on private land. We would establish conditions that must be met before such a permit is issued, such as a minimum population size of Mexican wolves present in the MWEPA or other established populations based on the most recently reported population count; other relevant measures of population status such as genetic diversity; documentation by the Service or our authorized agent of previous loss or injury of livestock on the private land, caused by Mexican wolves; completion of agency efforts to resolve the problem; and enactment of this provision by a formal statement from the Service. We are considering this provision to reduce wolf-livestock conflicts and provide livestock owners and their agents with more options for resolving such conflicts.

Both of these considerations demonstrate a balanced approach to our reestablishment efforts such that as we pursue measures to expand the number and distribution of Mexican wolves in the experimental population we also increase our management flexibility, including identification of circumstances in which take may be appropriate. A larger, more widespread population would be less affected by the limited take under consideration than the small, restricted population that currently exists entirely within the BRWRA.

*Identification and Monitoring*

Prior to release from captivity into the wild, adult-sized Mexican wolves will receive permanent identification marks and radio collars, as appropriate. Pups and uncollared adult Mexican wolves within the current BRWRA population are routinely captured and given permanent identification marks and radio collars. While not all Mexican wolves are radio-collared, we attempt to maintain at least two radio collars per pack in the wild. Radio collars allow the Service to monitor reproduction, dispersal, survival, pack formation, depredations, predation, and a variety of other important biological metrics. We do not foresee a scenario where we would not continue an active monitoring strategy for Mexican wolves. However, we also recognize that a majority of wild Mexican wolves may not have radio collars as the population grows, due to the difficulty of capturing them.

The Service will measure the success or failure of the releases by monitoring, researching, and evaluating the status of released Mexican wolves and their offspring. Using adaptive management principles, the Service will continue to modify subsequent releases depending on what is learned. We will prepare periodic progress reports, annual reports, and publications, as appropriate, to evaluate release strategies.

The 1998 Final Rule contained requirements to conduct full evaluations of the status of the nonessential experimental population after 3 and 5 years. As part of the evaluations, a recommendation would be made for continuation, modification, or termination of the reintroduction project. Both evaluations were conducted and recommendations were made to continue the nonessential experimental population with modifications. These reviews were intensive efforts that included Service staff, other Federal, State, and tribal agencies, independent experts, and public involvement. In this proposed rule, we propose a one-time full evaluation of the revised nonessential experimental population rule 5 years after any final determination has been made to revise the existing 10(j) regulation; the evaluation should focus on modifications needed to improve the efficacy of reestablishing Mexican wolves to the wild and the contribution the nonessential experimental population is making to the recovery of the Mexican wolf. We do not consider a 3-year review to be necessary, as we included this provision in the 1998 Final Rule to address the substantial uncertainties we had with reestablishing captive Mexican wolves to the wild. Therefore, a one-time program review conducted 5 years after our final determination will provide an appropriate interval to assess the effectiveness of the project. This one-time program review is separate from the status review of the listed species that we will conduct once every 5 years as required by section 4(c)(2) of the Act.

**Mexican Wolf Experimental Population Findings**

As discussed in the *Statutory and Regulatory Framework* section, several findings are required before establishing an experimental population. Below are our findings.

*Is the experimental population wholly separate geographically from nonexperimental populations of the same species?*

Prior to the first release of Mexican wolves in 1998, the Service ensured that no population of naturally occurring wild wolves existed within the recovery areas under consideration (in the United States) or in Mexico. Currently, no populations or individuals of the Mexican wolf subspecies are known to exist in the United States outside of the BRWRA. Due to the active reestablishment effort Mexico initiated in 2011, two confirmed Mexican wolves are known to exist in the wild approximately 130 mi (209 km) south of the United States-Mexico international border. The two Mexican wolves in Mexico are approximately 180 mi (290 km) straight-line distance from the southern boundary of the current MWEPA. Thus, the two areas are neither adjacent to nor overlapping each other.

The Mexican wolves in Mexico do not meet the definition of a population that we have consistently used in our gray wolf experimental population rules, which is, at least 2 breeding pairs of gray wolves that each successfully raised at least two young annually for 2 consecutive years (59 FR 60252, November 22, 1994). This definition represents what we have determined to be the minimum standards for a gray wolf population (Service 1994). The courts have supported this definition and thus upheld our interpretation that pairs must breed to have a ''population'' (*Wyoming Farm Bureau Federation* v. *Babbitt,* 199 F.3d 1224, 1234 (10th Cir. 2000); *U.S.* v. *McKittrick,* 142 F. 3d 1170, 1175 (9th Cir. 1998), cert. denied, 525 U.S. 1072 (1999)). Based on the results of Mexico's efforts in 2011 and 2012, we can only speculate that the number of Mexican wolves in Mexico will fluctuate over the next few years from zero to several wolves or packs of wolves depending on mortalities, future releases, and successful breeding (in the wild) of released wolves. Therefore, we consider it unlikely for a population that meets our definition to be established in northern Mexico any time soon and certainly no such population exists currently.

Based on the fact that there are currently no populations of Mexican wolves in the United States or Mexico other than the BRWRA population, we find that the nonessential experimental population is wholly geographically separate. If a population is successfully established in the future due to Mexico's efforts, it is possible that an occasional Mexican wolf from Mexico may disperse into the United States. Interconnectivity between Mexican wolves in Mexico and in the MWEPA in the future could benefit recovery of the Mexican wolf by providing genetic interchange between populations.

*Is the experimental population area in suitable natural habitat outside the species' current range, but within its probable historical range?*

The experimental population area is within suitable natural habitat in its probable historical range. Because Mexican wolves were extirpated from the wild prior to protection by the Act, there is no current range in the United States except that which is occupied by this nonessential experimental population. The MWEPA is considered to be probable historical range (Parsons 1996, p. 106; Bogan and Mehlhop 1983, p. 17).

*Is the experimental population essential to the continued existence of the species?*

Our finding of whether a population is nonessential is made with our understanding that Congress enacted the provisions of section 10(j) to mitigate fears that reestablishing populations of threatened or endangered species into the wild would negatively impact landowners and other private parties. Congress also recognized that flexible rules could encourage recovery partners to actively assist in the reestablishment and hosting of such populations on their lands (H.R. rep. No. 97–567, at 8 (1982)). Although Congress allowed experimental populations to be identified as either essential or nonessential, they noted that most experimental populations would be nonessential (H.R. Conference Report No. 835, supra at 34; Service 1984)).

We make all determinations on essentiality prior to taking any action to

reestablish a population of endangered or threatened species. It is instructive that Congress did not put requirements in section 10(j) to reevaluate the determination of essentiality after a species has been reestablished in the wild. While our regulations require a ''periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (50 CFR 17.81(c)(4))'', this has not been interpreted as requiring reevaluation and reconsideration of a population's nonessential experimental status (Service 1991, 1994, 1996b).

Reestablishing a species is by its very nature an experiment for which the outcomes are uncertain. However, it is always our goal to successfully reestablish a species in the wild so that it can be recovered and removed from the endangered species list. This is consistent with the Act's requirements for section 10(j) experimental populations. Specifically, the Act requires experimental populations to further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. In short, experimental populations must further a species' recovery.

The importance of an experimental population to a species' recovery does not mean the population is ''essential'' under section 10(j) of the Act. All efforts to reestablish a species are undertaken to move that species toward recovery. If importance to recovery was equated with essentiality, no reestablished populations of a species would qualify for nonessential status. This interpretation would conflict with Congress' expectation that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34; Service 1984) and our 1984 implementing regulations, which indicated an essential population will be a special case and not the general rule (Service 1984).

In addressing essentiality, the Act instructs us to determine whether a population is essential to the continued existence of an endangered or threatened species. Our regulations define essential experimental populations as those ''whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild (50 CFR 17.80(b)).'' The Service defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (Service and National Marine Fisheries Service 1998). Inherent in our regulatory definition of essential is the impact the potential loss of the experimental population would have on the species as a whole (Service 1984). All experimental populations not meeting this bar are considered nonessential (50 CFR 17.80(b)).

The Service has previously determined that this experimental population of Mexican wolves was nonessential in the 1998 Final Rule. This proposal revalidates that conclusion. That is, even if the entire experimental population died, this situation would not appreciably reduce the prospects for future survival of the subspecies because Mexican wolves are still maintained in the captive-breeding program. Furthermore, the captive Mexican wolf population could produce enough wolves that future reintroductions in the wild would be feasible and we have a now proven capacity to successfully start a wild population from captive stock. All Mexican wolves selected for release are genetically redundant to the captive population, meaning their genes are already well represented. This factor minimizes any adverse effects on the genetic integrity of the remaining captive population in the event Mexican wolves released to the wild do not survive.

*Does the establishment of the experimental population and release into the BRWRA and MWEPA further the conservation of the species?*

(1) Are there any possible adverse effects on extant populations of the Mexican wolf as a result of removal of individuals for introduction elsewhere?

The only extant population of Mexican wolves other than those in the BRWRA is in the captive-breeding program. The primary purpose of Mexican wolves in the captive-breeding program is to supply wolves for reestablishing Mexican wolves into the wild. Individual Mexican wolves are selected from the captive-breeding program for release into the BRWRA. As explained in our 1998 Final Rule, the Mexican wolves selected for release are wolves that have genes that are well-represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2012, p. 2). Our proposal to open the secondary recovery zone to initial releases will allow for more captive Mexican wolves to be released to the wild and can be accommodated by the captive-breeding program. We find that the continuation of the BRWRA population and specifically the expansion of the area into which initial releases can be conducted will not have adverse effects on the captive-breeding program. Mexican wolf dispersal from the BRWRA into the MWEPA will further the conservation of the species by allowing wolves access to additional habitat for reestablishment.

(2) What is the likelihood that any such experimental population will become established and survive in the foreseeable future?

In our 1998 Final Rule we stated, ''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 wolf's probable historic range (63 FR 1754, January 12, 1998).'' We have been reestablishing Mexican wolves into the BRWRA since 1998, and the population has consistently demonstrated signs of establishment, such as wolves establishing home ranges and reproducing. The progress in meeting the population objective of at least 100 wild Mexican wolves has been slower than projected, but we anticipate that making the modifications proposed in this rule will support progress toward our objective. As of 2012, of the Mexican wolves in the wild in Arizona and New Mexico, 97 percent were conceived and born in the wild. Currently, there are fourth generation pups whose great grandparents were also born in the wild. We have also modified our management procedures related to depredation response and other recommendations from the Mexican Wolf Blue Range Reintroduction Project 5-Year Review to ensure the success of the BRWRA population (Service 2010, p. 29). To promote survival of the wild population we have utilized an adaptive management framework to modify our approach to depredation management by removing fewer Mexican wolves, focusing on proactive measures, and tasking an interdiction stakeholder council to develop a comprehensive depredation compensation, incentive, and proactive program.

(3) What are the relative effects that establishment of an experimental population will have on the recovery of the Mexican wolf?

Continuing the effort to reestablish the nonessential experimental population, and making modifications

to improve it, will substantially contribute to the recovery of the species, as it is currently extirpated in the wild except for the nonessential experimental population in the United States and a fledgling reestablishment effort in Mexico. We recognize that more than one population of Mexican wolves will need to be established for recovery (Service 2010, pp. 68–70); therefore, achieving the objective of at least 100 wolves for this population serves as a fundamentally necessary component of Mexican wolf recovery.

(4) What is the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area?

Now, as in the 1998 Final Rule (63 FR 1752, January 12, 1998), we do not foresee that the introduced population would be affected by existing or anticipated Federal or State actions or private activities. Wolves are considered habitat generalists that can occupy areas where prey populations and human tolerance support their existence (Mech 1970, p. 334; Mech 1995, entire; Fritts *et al.* 2003, pp. 300–301; Fuller *et al.* 2003, pp. 170–171; Oakleaf *et al.* 2006, p. 560). We expect Mexican wolves in the MWEPA to primarily occupy forested areas on public lands due to the availability of prey in these areas and supportive management regimes, although we recognize that wolves may disperse through or occasionally occupy less-suitable habitat. We also recognize that Mexican wolves may seek to inhabit tribal or private lands with suitable habitat.

The current BRWRA as established in the 1998 Final Rule is comprised of the Gila and Apache National Forests that are administered by the Forest Service. The Forest Service manages these areas to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The Gila and Apache National Forests within the BRWRA are responsible for developing and operating under a Land and Resource Management Plan, which outlines how each of the multiple uses on the forest will be managed. The Forest Service is a cooperator in the management and recovery of the Mexican wolf.

The proposed revision to the MWEPA contains a mixture of many land types, including Federal (Forest Service, Bureau of Land Management, Department of Defense), State, private, and tribal lands. A variety of actions and activities may occur throughout the MWEPA, such as recreation, agriculture and ranching, development, and military operations. Although we expect the majority of the Mexican wolf population to occur within the BRWRA or other public lands in the MWEPA due to habitat suitability, we also anticipate that the nonessential experimental population may be affected by actions and activities occurring on private or tribal land, such as ranching operations, because we haze or remove wolves that depredate livestock or display nuisance behavior. We are proposing to establish management actions in cooperation with private landowners and tribal governments to support the recovery of the Mexican wolf on private and tribal lands and will continue our efforts to establish and support the Mexican Wolf Livestock Interdiction Fund and proactive management activities aimed at reducing wolf-livestock conflicts.

Road and human densities have been identified as potential limiting factors for colonizing wolves in the Midwest and Northern Rocky Mountains due to the mortality associated with these landscape characteristics (Mladenoff *et al.* 1995, entire; Oakleaf *et al.* 2006, pp. 558–561). Vehicular collision, in particular, is not identified as having a significant impact on the Mexican wolf population, although it may contribute to the overall vulnerability of the population due to its small population size and the cumulative effects of multiple factors, including inbreeding and illegal shooting of wolves. We recognize that human and road densities in the BRWRA are within recommended levels for Mexican wolf colonization, and are expected to remain so in the future (see Proposed Rule Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered), Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence); therefore, we see the impact to the population from actions related to human development as minimal within the areas we expect Mexican wolves primarily to inhabit.

Both Arizona and New Mexico protect the Mexican wolf under State law. In Arizona, Mexican wolves are managed as Wildlife of Special Concern (Arizona Game and Fish Commission Rules, Article 4, R12–4–401) and are identified as a Species of Greatest Conservation Need (Tier 1a, endangered) (Species of Greatest Conservation Need 2006, pending). In New Mexico, Mexican wolves are listed as endangered under the State's Wildlife Conservation Act (NMSA 1978, pp. 17–2–37 through 17–2–46). Based on these protective designations and regulations, we do not foresee that actions on State land will significantly negatively affect the nonessential experimental population.

We will continue to work with other agencies, tribes, and landowners to ensure that their activities will not adversely affect the nonessential experimental population of Mexican wolves. In particular, we propose provisions within this rule to limit take of Mexican wolves (see proposed 50 CFR 17.84(k)(4)). Based on our intent to capture and return to the MWEPA Mexican wolves that disperse outside of the MWEPA, we do not expect actions and activities adjacent to the MWEPA to have a significant impact on the nonessential experimental population.

**Summary of Proposed Changes From the Previous Nonessential Experimental Population Rule**

The nonessential experimental population rule we are currently proposing differs from the 1998 Final Rule in several substantive and technical ways. Each of these modifications is being proposed to improve the efficacy and clarity of our nonessential experimental population designation and improve our progress toward reaching our objective to establish a population of at least 100 wild Mexican wolves. These modifications will also enhance our management flexibility of the population. Below is a list of the proposed changes from the previous nonessential experimental population rule:

(1) We are proposing to allow direct initial release of Mexican wolves from captivity to the wild throughout the entire BRWRA (i.e., both the primary and secondary recovery zones designated in the 1998 Final Rule) rather than only in the primary recovery zone (Figure 2). This modification will eliminate the need to define a primary and secondary recovery zone within the BRWRA, as management of Mexican wolves will be consistent throughout the BRWRA. Therefore, we are discontinuing the definitions of primary and secondary recovery zones in this proposal. This modification will promote population growth, genetic diversity, and management flexibility by providing additional area and locations for initial release of captive Mexican wolves to the wild.

(2) We are proposing to allow Mexican wolves to disperse naturally from the BRWRA into the MWEPA and to occupy the MWEPA (Figure 2). Please note that if Mexican wolves travel outside the MWEPA, we will capture

and return them to the MWEPA or put them in captivity. In the 1998 Final Rule, Mexican wolves were not allowed to disperse outside of the BRWRA; we were required to capture dispersing Mexican wolves and return them to the BRWRA or put them into captivity. Because natural dispersal from the BRWRA was not allowed, population growth in the wild has been limited. Therefore, we are proposing to allow for natural dispersal outside the BRWRA so that the wild population can expand numerically and spatially, assisting us in reaching our population objective. We will manage Mexican wolves in the MWEPA by reducing conflicts with humans and land uses through such means as hazing, trapping, translocations, and removals.

(3) We are proposing to remove the portion of Texas included in the 1998 Final Rule (west Texas lying north of U.S. Highway 62/180 to the Texas–New Mexico boundary) in our new designation of the MWEPA, as we do not consider this area to be likely to contribute substantially to our population objective (Figure 2).

(4) We are proposing to remove reference to possible reintroduction of Mexican wolves to the White Sands Wolf Recovery Area. The 1998 Final Rule included White Sands Wolf Recovery Area as a backup reintroduction location to be utilized if determined necessary, but prey density has since been determined to be too low in this area to support Mexican wolves (Figure 2).

(5) We are proposing to provide for the development and implementation of management actions on private land throughout the MWEPA. The 1998 Final Rule did not contain this provision because Mexican wolves were not allowed to inhabit the MWEPA outside of the BRWRA.

(6) We are proposing to provide for the development and implementation of management actions on tribal land within the MWEPA by the Service or an authorized agency in voluntary cooperation with tribal governments including but not limited to initial release, translocation, capture, and removal of Mexican wolves if requested by the tribal government.

(7) We are proposing to identify section 6 of the Act as authorizing State wildlife agencies to manage Mexican wolves pursuant to 50 CFR 17.31 under the nonessential experimental population rule. Section 6 of the Act authorizes the Service to cooperate to the maximum extent practicable with the States on the conservation of endangered species, including the development of cooperative agreements and management agreements. This proposed modification clarifies that States with which we have cooperative or management agreements for the Mexican wolf reintroduction project can take Mexican wolves that are part of the nonessential experimental population during the course of normal management activities in accordance with 50 CFR 17.31.

(8) We are proposing to clarify the specific circumstances under which individuals are authorized to take Mexican wolves that are part of the nonessential experimental population. In the 1998 Final Rule, we used the term ''personnel'' to describe those authorized to take Mexican wolves in the nonessential experimental population pursuant to a Service-approved management plan, special management measure, or a valid permit issued by the Service under 50 CFR 17.32. We intended this provision to extend to individuals, that is, not only those people who are associated with an agency.

(9) We are proposing to clarify the allowable take for Federal agencies and authorized personnel. We added language to the provisions for allowable take for Federal agencies to clarify that take must be non-negligent and incidental to a legal activity and must be reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service. We added language to the provisions for allowable take for authorized personnel to clarify that Wildlife Services personnel will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties. Such take must be non-negligent, incidental to predator control activities, and consistent with recommendations of a section 7(a)(4) conference opinion with Wildlife Services that addresses their program activities that may affect Mexican wolves. Wildlife Services personnel must report the take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service. We are proposing these modifications to provide clarity and consistency in our take determinations.

(10) We are proposing to revise the conditions that determine when we would issue a permit to allow take of Mexican wolves that are engaged in the act of killing, wounding or biting livestock. The 1998 Final Rule included a definition of breeding pair as one of the conditions for take of Mexican wolves by livestock owners or agents on public land grazing allotments (i.e., that there must be six breeding pairs present in order for a permit to take wolves to be issued by the Service). We consider overall population size to be a better metric for evaluating the appropriateness of providing such permits because it provides a more consistent measure of the population's status. Therefore, we are proposing to modify the provision ''6 breeding pairs'' to a requirement that at least 100 Mexican wolves must be present in the MWEPA before such a permit can be issued. With this proposed modification, the definition of a breeding pair would be made unnecessary.

(11) We are proposing to modify the prohibitions for take such that taking a Mexican wolf with a trap, snare, or other type of capture device within the occupied Mexican wolf range is prohibited and will not be considered unavoidable or unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf. Due care includes: (1) Following the regulations, proclamations, and/or laws within the State where the trapping takes place; (2) If securely fastening traps, using double-stake traps, cable stakes (at least 18 inches (in) (46 centimeters (cm)) deep), or otherwise attaching traps to immovable objects with aircraft cable or chain so that, if captured, a Mexican wolf is unable to pull the trap free; (3) If using drags, using one of sufficient size and weight or grapples made from steel at least 0.5 in (1.3 cm) in diameter of cross section attached to chains or cables; (4) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; and (5) Not taking a Mexican wolf via neck snares. We are proposing this modification to provide clarity and consistency in our take determinations.

(12) We are proposing to establish a new requirement to conduct a one-time evaluation of the status of the nonessential experimental population and its contribution toward recovery of the Mexican wolf 5 years after the final rule designation. The 1998 Final Rule contained provisions for 3- and 5-year reviews, which were conducted in 2001 and 2005, respectively. We do not consider a 3-year review to be necessary, as we included this provision in the 1998 Final Rule to address the substantial uncertainties we had with reestablishing captive Mexican wolves to the wild. Therefore, a one-time evaluation 5 years after the final determination is made will provide the appropriate interval to assess the effectiveness of the project. We will also be conducting status reviews of the listed species every 5 years as required

by section 4(c)(2) of the Act, and will continue to produce annual progress reports.

(13) We are proposing to consider State-owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies. The 1998 Final Rule designated State-owned lands within the boundary of designated wolf recovery area as public land. All State-owned lands within the boundary of the MWEPA, but outside of designated wolf recovery areas were subject to the provisions of private lands in the 1998 Final Rule. We are proposing this change to allow consistent management of Mexican wolves throughout the MWEPA, recognizing that State and other public lands within the MWEPA are under control of the agency that owns those lands, that this regulation gives the Service no additional authority over those lands, and thus the Service's role is to work cooperatively with those land management agencies to address conservation needs of the Mexican wolf.

**Additional Revisions to the Previous Nonessential Experimental Population Rule Under Consideration**

In this proposed rule, we also identify and seek comment on several additional issues, none of which were included in the 1998 Final Rule. We are not proposing these modifications at this time, but are considering including them in our final determination:

(1) Moving the southern boundary of the MWEPA in Arizona and New Mexico from Interstate Highway 10 to the United States-Mexico international border (Figure 3);

(2) Expanding the BRWRA to include the entire Sitgreaves National Forest in Arizona (Figure 3);

(3) Expanding the BRWRA to include the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forests in Arizona (Figure 3);

(4) Expanding the BRWRA to include the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 3);

(5) Including provisions for take by pet owners of any Mexican wolf engaged in the act of killing, wounding, or biting pets on private or tribal land anywhere within the MWEPA, provided that evidence of a freshly wounded or killed pet by wolves is present. Such take must be reported to the Service's Mexican Wolf Recovery Coordinator or an authorized agent within 24 hours; and

(6) Changing the term ''depredation'' to ''depredation incident'' and revising the definition to mean, ''The aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or single pack of Mexican wolves at a single location within one 24-hour period, beginning with the first confirmed kill or injury.''

(7) Including provisions for the issuance of permits on private or tribal lands anywhere within the MWEPA to allow livestock owners or their agents to take (including kill or injure) any Mexican wolf that is present on private or tribal land, including establishing conditions that must be met before such a permit is issued, such as a minimum population size of Mexican wolves present in the MWEPA or other established populations based on the most recently reported population count; other relevant measures of population status such as genetic diversity; documentation by the Service or our authorized agent of previous loss or injury of livestock on the private or tribal land, caused by Mexican wolves; completion of agency efforts to resolve the problem; and enactment of this provision by a formal statement from the Service.

Our intent in considering expansion of the BRWRA would be to release or translocate wolves only into areas of suitable habitat, likely in areas above 4,000 ft above sea level.

**Peer Review**

In accordance with joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. We have provided copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions we utilized. The purpose of such review is to ensure that the final determination is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the public comment period and will consider their comments and information on the proposed modifications during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

Requests for public hearings must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. If we schedule public hearings on this proposal, we will announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before any such hearing.

**Required Determinations**

*Regulatory Planning and Review—Executive Order 12866*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include

small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

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

In the 1998 Final Rule, we found that the nonessential population would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The 1998 Final Rule set forth management directions and provided for limited allowable legal take of Mexican wolves within the MWEPA. We concluded that the rule would not significantly change costs to industry or governments. Furthermore, the rule produced no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. We further concluded that no significant direct costs, information collection, or recordkeeping requirements were imposed on small entities by the action and that the rule was not a major rule as defined by 5 U.S.C. 804(2) (63 FR 1752, January 12, 1998).

If this proposal is adopted, the area affected by this rule includes the portion of the States of Arizona and New Mexico from Interstate Highway 40 south to Interstate Highway 10. This rule proposes an activity that has, in part, already been taking place within the BRWRA. However, we are now proposing to allow initial releases into a portion of the BRWRA in which initial releases were not previously allowed and to allow Mexican wolves to disperse from the BRWRA into the entire MWEPA.

This proposal to allow initial releases in the entire BRWRA will not affect small businesses, organizations, or governments, as this action will occur on the Gila National Forest and the Apache National Forest (Federal land). Although conducting initial releases on the Gila National Forest would be a new action (not currently allowed based on the 1998 Final Rule), if this proposed revision is finalized, Mexican wolves already inhabit the Gila National Forest.

In addition, section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing will likely never be required within the MWEPA. Furthermore, the results of a conference are strictly advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the nonessential experimental population area. As a result, and in accordance with these regulations, some modifications to the proposed Federal actions within the nonessential experimental population area may occur to benefit the Mexican wolf, but we do not expect projects on Federal lands to be halted or substantially modified as a result of these regulations.

On the other hand, this proposed revision would allow Mexican wolves to disperse outside the BRWRA into the MWEPA, which has the potential to affect small entities in the area outside the BRWRA. Specifically, small businesses involved in animal production on private or tribal land, such as beef cattle and sheep ranching, may be affected by Mexican wolves depredating on livestock. Efforts to reduce depredation on livestock are additional expenses to ranching operations, such as employing range riders or modifying fencing or livestock grazing rotation schedules. However, these types of proactive activities may already be conducted for other predators like black bears (*Ursus americanus*), coyotes (*Canis latrans*), or mountain lions (*Puma concolor*). We will further assess these types of impacts to small entities in the area outside the BRWRA in the draft EIS.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the EIS. Upon completion of a draft EIS, we will announce availability of the draft EIS in the **Federal Register** and reopen the public comment period for the proposed revision. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for the determination. We have concluded that deferring the RFA finding until completion of the EIS is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

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

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

(1) Because we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding, we defer our finding on whether this rule will ''significantly or uniquely'' affect small governments until completion of the EIS. At that time, we will determine and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* whether or not this rulemaking will impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, we do not expect that small governments will be affected because the nonessential experimental population designation will not place additional requirements on any city, county, or other local municipalities. However, we will analyze this further in the final rule.

(2) We do not expect that this rule will produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action''

under the Unfunded Mandates Reform Act). Also, we do not expect that this nonessential experimental population designation for Mexican wolves will impose any additional management or protection requirements on the States or other entities. However, we will analyze this further in the final rule.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this rule does not have significant takings implications. When reestablished populations of federally listed species are designated as nonessential experimental populations, the Act's regulatory requirements regarding the reestablished listed species within the nonessential experimental population are significantly reduced. In the 1998 Final Rule, we stated that one issue of concern is the depredation of livestock by reintroduced Mexican 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 Mexican wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

A takings implication assessment is not required because this rule will not effectively compel a property owner to suffer a physical invasion of property and will not deny all economically beneficial or productive use of the land or aquatic resources. This rule substantially advances a legitimate government interest (conservation and recovery of a listed species) and does not present a barrier to all reasonable and expected beneficial use of private property.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in New Mexico and Arizona. Achieving the recovery goals for this species will contribute to its eventual delisting and its return to State management. 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 or directly affected. The special rule operates to maintain the existing relationship between the State and the Federal Government. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

*Civil Justice Reform—Executive Order 12988*

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

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we intend to notify the Native American tribes within and adjacent to the nonessential experimental population area about the proposed rule. They will be advised through written contact, including informational mailings from the Service, and will be provided an opportunity to comment on the draft EIS and proposed rule. If future activities resulting from this rule may affect tribal resources, the Service will communicate and consult on a Government-to-Government basis with any affected Native American tribes in order to find a mutually agreeable solution.

*Paperwork Reduction Act*

Office of Management and Budget (OMB) regulations at 5 CFR part 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. This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule would not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. The OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095, which expires May 31, 2014. 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 Office of Management and Budget control number.

*National Environmental Policy Act*

We are preparing a draft EIS pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with the proposed revision to the nonessential experimental population of the Mexican wolf section 10(j) rule. As part of this process, we will analyze a range of alternatives for implementation of a nonessential experimental population pursuant to NEPA.

From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a final scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We will utilize the information collected during that scoping process in the development of a draft EIS for this proposed revision to the nonessential experimental population of the Mexican wolf. Information about additional scoping opportunities is available on our Web site, *at http://www.fws.gov/southwest/es/mexicanwolf/NEPA.cfm.* When the draft EIS is complete, we will announce its availability for public review, and we will reopen the public comment period on this proposed rule for additional review and comment. After full consideration of all information and comments received on this proposed rule and the draft EIS, our final determination will be made based on the best available information and may include any of the modifications discussed in this proposed rule.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**References Cited**

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0056, or upon request from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

**Authors**

The primary authors of this notice are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

**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; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) in the List of Endangered and Threatened Wildlife under Mammals by:

■ a. Removing both entries for ''Wolf, gray *(Canis lupus)''*; and

■ b. Adding two entries for ''Wolf, Mexican *(Canis lupus baileyi)''* in alphabetic order 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, Mexican ..... | *Canis lupus baileyi* | Southwestern United States and Mexico. | Entire, except where included in an experimental population as set forth in 17.84(k). | E | ..... | NA | NA |
| Wolf, Mexican ..... | *Canis lupus baileyi* | Southwestern United States and Mexico. | U.S.A. (portions of AZ and NM)—see 17.84(k). | XN | ..... | NA | 17.84(k) |
| * | * | * | * | * | * | | * |

■ 3. Amend § 17.84 by revising paragraph (k) to read as follows:

**§ 17.84 Special rules—vertebrates.**

* * * * *

(k) Mexican wolf (*Canis lupus baileyi*). This paragraph (k) sets forth the provisions of a rule to establish an experimental population of Mexican wolves.

(1) *Purpose of the rule:* The Service finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation of the Mexican wolf subspecies. The Service also finds that the experimental population is not essential under § 17.81(c)(2).

(2) *Determinations:* The Mexican wolf population reestablished in the Mexican Wolf Experimental Population Area, including the Blue Range Wolf Recovery Area, identified in paragraph (k)(4) of this section, is one nonessential experimental population. This nonessential experimental population will be managed according to the provisions of this rule. The Service does not intend to change the nonessential experimental designation to essential experimental, threatened, or endangered. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(3) *Definitions*—Key terms used in this rule have the following definitions:

*Affect game populations in ways that may inhibit further Mexican wolf recovery* means affect a particular species of ungulate in a game management unit or distinct herd segment by cumulatively decreasing population or hunter harvest estimates by 35 percent during 2 consecutive years compared to the herd's 5-year average prior to Mexican wolf occupancy (the unit or herd must contain an average of greater than 100 animals). This definition does not apply to Service-approved State and tribal Mexican wolf management plans that define unacceptable impacts from wolf predation on game populations.

*Blue Range Wolf Recovery Area* means the entirety of the Gila National Forest in New Mexico and the Apache National Forest in Arizona in which Mexican wolves may be initially released from captivity, translocated, and managed to reduce conflicts with humans and other land uses to achieve recovery.

*Depredation* means the confirmed killing or wounding of lawfully present domestic livestock by one or more wolves. The Service, Wildlife Services, 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. Such activities may include, but are not limited to—timber or wood harvesting, prescribed 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:

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

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

(iii) 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;

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

(v) Fire-fighting activities associated with wildfires; and

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

*Engaged in the act of killing, wounding, or biting livestock* means in the pursuit of and grasping, biting, attacking, or wounding, or feeding upon, livestock that are alive. The term does not include Mexican wolves feeding on a livestock carcass.

*Harass* means intentional or negligent actions or omissions that create the likelihood of injury to 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.

*Livestock* means cattle, sheep, horses, mules, burros, llamas, and alpacas, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans.

*Mexican Wolf Experimental Population Area (MWEPA)* means an area in Arizona and New Mexico that lies south of Interstate Highway 40 to Interstate Highway 10 into which Mexican wolves are allowed to disperse from the Blue Range Wolf Recovery Area and establish, but are managed by reducing conflicts with humans and land uses through such means as hazing, trapping, translocations, and removals.

*Occupied Mexican wolf range* means an area of confirmed presence, based on the most recent annual report, of resident breeding packs or pairs of Mexican wolves or an area consistently used by at least one resident Mexican wolf over a period of at least 1 month in the MWEPA, described as:

(i) A radius of 5 mi (8 km) around all locations of Mexican wolves and wolf sign confirmed as described above (non-radio-monitored);

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

(iii) A radius of 3 mi (4.8 km) around a scientifically developed home range (fixed kernel or other appropriate method) from more than 20 radio locations of a pack, pair, or single Mexican wolf acquired over a period of at least 6 months (for radio-monitored wolves).

*Opportunistic, noninjurious harassment* means scaring a Mexican wolf observed on private land or near livestock from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to but not in the direction of the wolf, throwing objects at it, or making loud noise in proximity to it, without causing bodily injury or death to the wolf.

*Problem wolves* means Mexican wolves that—

(i) Are members of a group or pack (including adults and yearlings) that were directly involved in livestock depredation on lawfully present domestic livestock on Federal land;

(ii) Have depredated domestic animals other than livestock on private or tribal lands, two times in an area within 1 year; or

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

*Public land* means land owned, managed, or under the administration of a State or aFederal agency, including, but not limited to, the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Department of Energy, or Department of Defense

*Rendezvous site* means a gathering and activity area regularly used by a litter of young Mexican wolf pups after they have emerged from the den. Typically, the site is used from about 1 week to 1 month during the period from June 1 to September 30. Several sites may be used in succession.

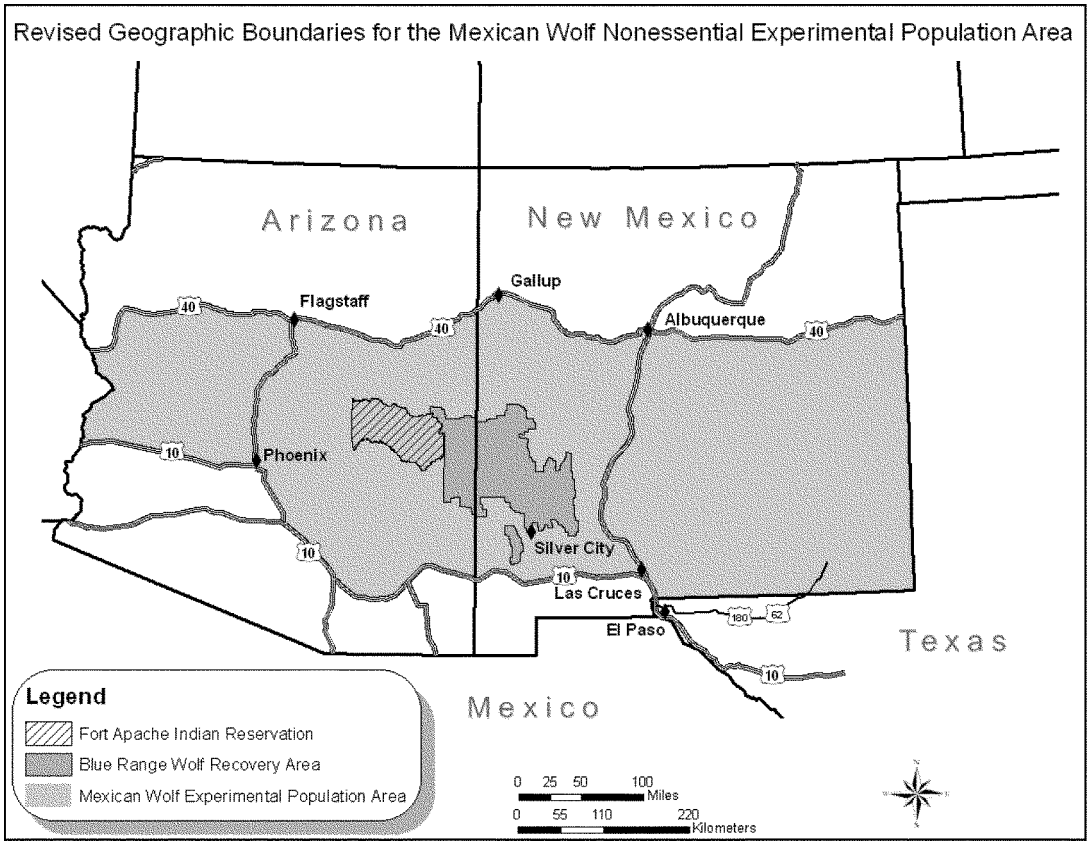
*Take* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

*Unavoidable and unintentional take* means take that occurs despite the use of due care, is incidental to an otherwise lawful activity, and is not done on purpose. Taking a Mexican wolf by shooting will not be considered unavoidable and unintentional take.

(4) *Designated area:* The designated experimental population area for Mexican wolves classified as a nonessential experimental population by this rule is described in this paragraph (k)(4). The designated experimental population area is within the subspecies' probable historical range and is 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. Mexican wolves may be initially released from captivity into the Blue Range Wolf Recovery Area, translocated, and managed to reduce conflicts with humans and other land uses. Mexican wolves will be allowed to disperse from this area into the MWEPA and to occupy the MWEPA.

(ii) A map of the MWEPA follows:




(5) *Prohibitions:* Take of any Mexican wolf in the wild within the MWEPA is prohibited, except as provided in paragraph (k)(6) of this section. In addition, the following actions are prohibited by this rule:

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any Mexican 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 a person kills or injures a Mexican wolf or finds a dead or injured wolf or wolf parts, the person must not disturb them (unless instructed to do so by an authorized agent of the Service), must minimize disturbance of the area around them, and must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(ii) No person may attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule.

(iii) Taking a wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(6)(iv) of this section) and will not be considered unavoidable and unintentional take, unless due care was exercised to avoid injury or death to a wolf. Due care includes:

(A) Following the regulations, proclamations, and/or laws within the State where the trapping takes place;

(B) If securely fastening traps, using double-stake traps, cable stakes (at least 18 inches (in) (46 centimeters (cm)) deep), or otherwise attaching traps to immovable objects with aircraft cable or chain so that, if captured, a Mexican wolf is unable to pull the trap free;

(C) If using drags, using one of sufficient size and weight or grapples made from steel at least 0.5 in (1.3 cm) in diameter of cross section attached to chains or cables;

(D) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; and

(E) Not taking a Mexican wolf via neck snares.

(6) *Allowable take:* Take of Mexican wolves in the MWEPA is allowed as follows:

(i) *Any person or other entity:* (A) Throughout the MWEPA, unavoidable and unintentional take of a Mexican wolf is not a violation of the Act or this rule. Such take must be reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(B) Throughout the MWEPA, any person may use opportunistic, noninjurious harassment at any time for Mexican wolves that are within 500 yards of people, buildings, facilities, pets, livestock, or other domestic animals, and no permit is required—provided that wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Such harassment of Mexican wolves must be reported within 7 days to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(C) A person may take (which includes killing as well as nonlethal actions such as harassing, harming, and wounding) a Mexican wolf in self-defense or defense of the lives of others, provided that the take is reported 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 Mexican wolf presents a threat to human life or safety, the Service or the authorized agency may kill the wolf or place it in captivity.

(ii) *Federal agencies:* (A) Throughout the MWEPA, 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 and unintentional take of a Mexican wolf resulting from any action authorized by that Federal agency or by the Service, including, but not limited to, military training and testing. Such take must be nonnegligent and incidental to a legal activity and must be reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service. 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.

(B) 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.

(iii) *Livestock owners or their agents:* (A) On private land anywhere within the MWEPA, livestock owners or their agents may take (including kill or injure) any Mexican wolf actually engaged in the act of killing, wounding, or biting livestock—provided that evidence of livestock freshly wounded or killed by Mexican wolves is present. The take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(B) On tribal lands anywhere within the MWEPA, livestock owners or their agents may take (including kill or injure) any Mexican 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. The take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(C) On public lands allotted for livestock grazing anywhere within the MWEPA, including the Blue Range Wolf Recovery Area, livestock owners or their agents may be issued a permit under the Act to take Mexican wolves actually engaged in the act of killing, wounding, or biting livestock. Before such a permit is issued, the following conditions must be met: Livestock must be legally present on the grazing allotment; at least 100 Mexican wolves must be present in the MWEPA based on the most recently reported population count; previous loss or injury of livestock on the grazing allotment, caused by Mexican 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 Mexican wolves for which take is allowed. If a livestock owner or his or her agent takes a Mexican wolf under this provision, evidence of livestock freshly wounded or killed by Mexican wolves must be present. Livestock owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(D) Throughout the MWEPA, 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 such take by a guard dog occurs, it must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(iv) *Authorized personnel:* Individuals or 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, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as authorized pursuant to § 17.31 for State wildlife agencies with authority to manage Mexican wolves, or a valid permit issued by the Service under § 17.32.

(A) This take may include, but is not limited to, capture and translocation of Mexican wolves that: Prey on livestock; attack pets or domestic animals other than livestock on private or tribal land; affect game populations in ways that may inhibit further Mexican wolf recovery; are considered problem wolves; endanger themselves by their presence in a military impact area; need aid or veterinary care; or must be taken for authorized scientific, research, or management purposes. If Mexican 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.

(B) The Service encourages those authorized to take wolves to use nonlethal means when practicable and appropriate prior to any lethal take of a Mexican wolf. Lethal methods of take may be used when reasonable attempts to capture wolves alive have failed and when the Service determines that immediate removal of a particular Mexican wolf or wolves from the wild is necessary.

(C) Authorized personnel may use leghold traps and any other effective device or method for capturing or controlling Mexican wolves to carry out any measure that is a part of a Service-approved management plan, notwithstanding any conflicts with State law. Trappers can call the Interagency Field Team (IFT) (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or IFT. The disposition of all Mexican 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.

(D) As determined by the Service to be appropriate, the Service or any agent authorized by the Service may capture, kill, subject to genetic testing, place in captivity, or euthanize any feral wolflike animal, feral wolf hybrid, or feral dog found within the MWEPA 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. If determined to be a pure Mexican wolf, the wolf may be returned to the wild.

(E) The Wildlife Services division will discontinue use of M–44's and choking-type snares in occupied Mexican wolf range. Wildlife Services may restrict or modify other predator control activities pursuant to a cooperative management agreement or a conference opinion between that division and the Service. Wildlife Services personnel will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties. Such take must be nonnegligent, incidental to predator control activities, and consistent with a section 7(a)(4) conference opinion addressing Wildlife Services program activities that may affect Mexican wolves. Wildlife Services personnel must report the take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(7) *Land-use restrictions:* (i) No land-use restrictions will be imposed on private lands pursuant to this rule or for

Mexican wolf recovery without the concurrence of the landowner.

(ii) No land-use restrictions will be imposed on tribal lands pursuant to this rule or for Mexican wolf recovery without the concurrence of the tribal government.

(iii) On public lands, the Service will work with cooperating public land management agencies to use their authorities to temporarily restrict human access and disturbance-causing land-use activities within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between March 1 and June 30, and around active Mexican wolf rendezvous sites between June 1 and September 30, as necessary.

(8) *Management:* (i) On private land within the MWEPA, the Service or an authorized agency will develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including initial release and translocation of wolves on private land if requested by the landowner.

(ii) On tribal land within the MWEPA, the Service or an authorized agency will develop and implement management actions in cooperation with willing tribal governments, including initial release, translocation, capture, and removal of Mexican wolves on tribal land if requested by the tribal government.

(9) *Evaluation:* The Service will evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, the Service will prepare a one-time overall evaluation of the nonessential experimental population program 5 years after [EFFECTIVE DATE OF THE FINAL RULE] that focuses on modifications needed to improve the efficacy of this rule, reestablishment of Mexican wolves to the wild, and the contribution the nonessential population is making to the recovery of the Mexican wolf.

* * * * *

Dated: May 29, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013–13977 Filed 6–12–13; 8:45 am]

**BILLING CODE 4310–55–P**