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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

[Docket No. FWS-R2-ES-2013-0056; FXES1113090000C2-134-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; revisions and notice of availability of a draft environmental impact statement; reopening of public comment period and announcement of public hearings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose new revisions to 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, and announce the reopening of the public comment period and scheduling of

public hearings on the proposed rule. In addition, we announce the availability of a draft environmental impact statement on the proposed revisions to the existing nonessential experimental population designation of the Mexican wolf, and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft environmental impact statement, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received on or before [INSERT DATE 60 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. In order to meet a court-ordered settlement agreement deadline, we will not be able to extend the date for public review and comment on these documents.

*Public Informational Sessions and Public Hearings:* We will hold two public informational sessions and two public hearings on this proposed rule and draft environmental impact statement. We will hold a public informational session from 2:00 p.m. to 4:00 p.m., followed by a public hearing from 6:00 p.m. to 9:00 p.m., in Pinetop, Arizona, on Monday, August 11, 2014 (see **ADDRESSES**). We will hold a public informational session from 2:00 p.m. to 4:00 p.m., followed by a public hearing from 6:00 p.m. to 9:00 p.m., in Truth or Consequences, New Mexico, on Wednesday, August

13, 2014 (see **ADDRESSES**). Registration to present oral comments on the proposed rule and draft environmental impact statement at the public hearings will begin at the start of each informational session. With the exception of Federal elected officials, all oral comment registration cards will be pooled and drawn at random.

**ADDRESSES:** *Document availability:* The draft environmental impact statement for this proposed rule is available electronically on <http://www.regulations.gov> in Docket No. FWS–R2–ES–2013–0056 or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

*Document submission:* You may submit written comments on this proposed rule and the draft environmental impact statement 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!”. Please ensure that you have found the correct rulemaking before submitting your comment.

(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 Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments on the proposed rule revision and draft environmental impact statement **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 **Public Comments** section below for more information). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

*Public informational sessions and public hearings:* The August 11, 2014, public informational session and hearing will be held at the Hon-Dah Conference Center, 777 Highway 260, Pinetop, Arizona 85935. The August 13, 2014, public informational session and hearing will be held at the Civic Center, 400 West Fourth Street, Truth or Consequences, New Mexico 87901. People needing reasonable accommodations in order to attend and participate in the public hearings should contact the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

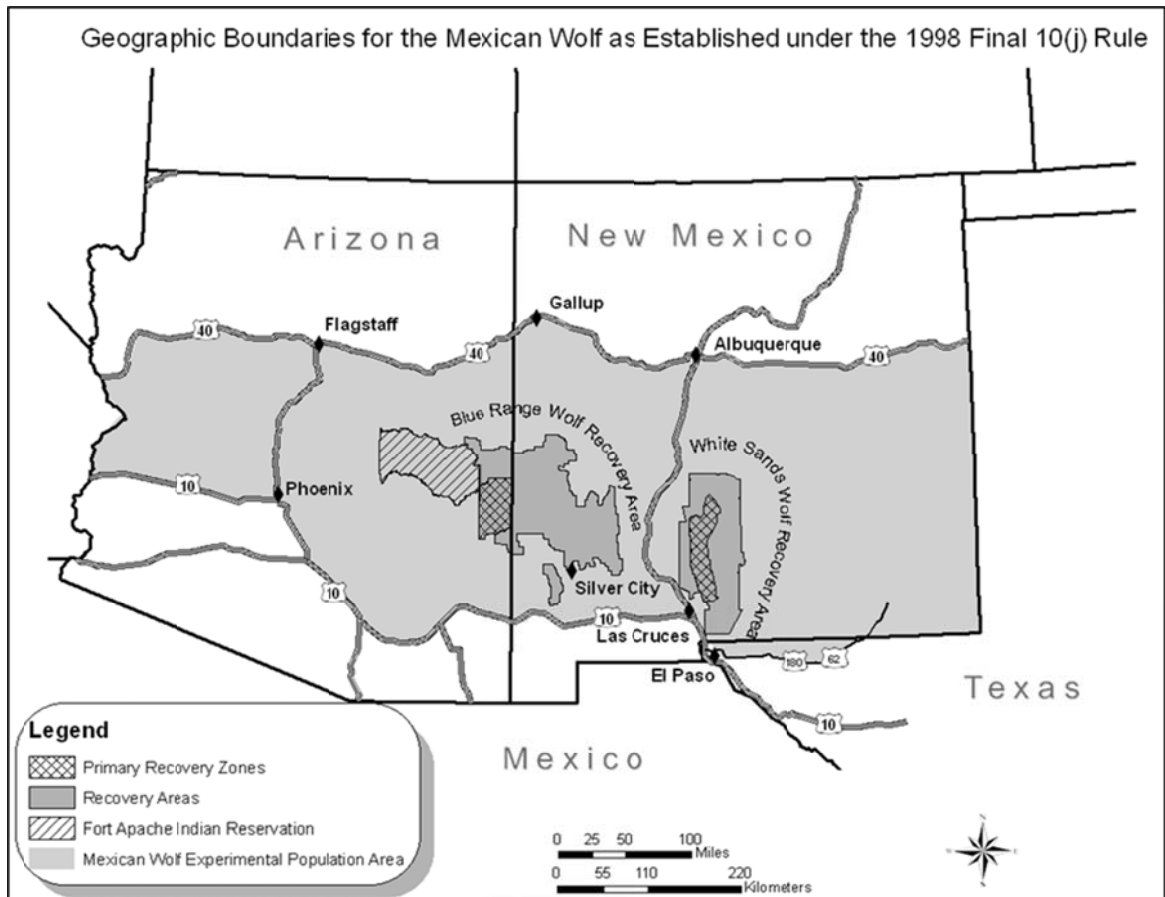
**FOR FURTHER INFORMATION CONTACT:** Sherry Barrett, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE, Albuquerque, NM 87113; by telephone 505-761-4704; or by facsimile 505-346-2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339. Further contact information can be found on the Mexican Wolf Recovery Program's website at <http://www.fws.gov/southwest/es/mexicanwolf/>.

## **SUPPLEMENTARY INFORMATION:**

### **Executive Summary**

In 1998, we, the U.S. Fish and Wildlife Service (Service), published in the **Federal Register** a final rule that established a nonessential experimental population of Mexican wolves in Arizona and New Mexico (63 FR 1752, January 12, 1998; Figure 1). We took this action in accordance with section 10(j) of the Endangered Species Act (16 U.S.C. 1531 et seq.) (Act), which allows us to 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. Experimental populations are treated as threatened species for purposes of section 9 of the Act. The general regulations that extend most section 9 prohibitions to threatened species do not apply to these populations, and we may use our discretion to devise management programs and special regulations for them.

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



We established the Mexican wolf nonessential experimental population in consideration of the 1982 Mexican Wolf Recovery Plan, which has the primary objective of establishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild. In March of 1998, we released 11 Mexican wolves from the captive-breeding program to the wild. Many additional individuals and family groups have been released or translocated since that time.

Through project reviews, annual reports, monitoring, and communication with our partners and the public, we now recognize that elements of the 1998 final rule need to be revised to help us enhance the growth, stability, and success of the nonessential experimental population. Accordingly, to improve implementation and conservation of the Mexican wolf nonessential experimental population, on June 13, 2013, we published a proposed rule in the **Federal Register** to make several changes to the 1998 section 10(j) rule and management regulations for Mexican wolves (78 FR 35719).

We are now revising the provisions in the June 2013 proposed rule based on information received during the public comment period and our scoping process for the draft environmental impact statement. We solicit public comment as described below.

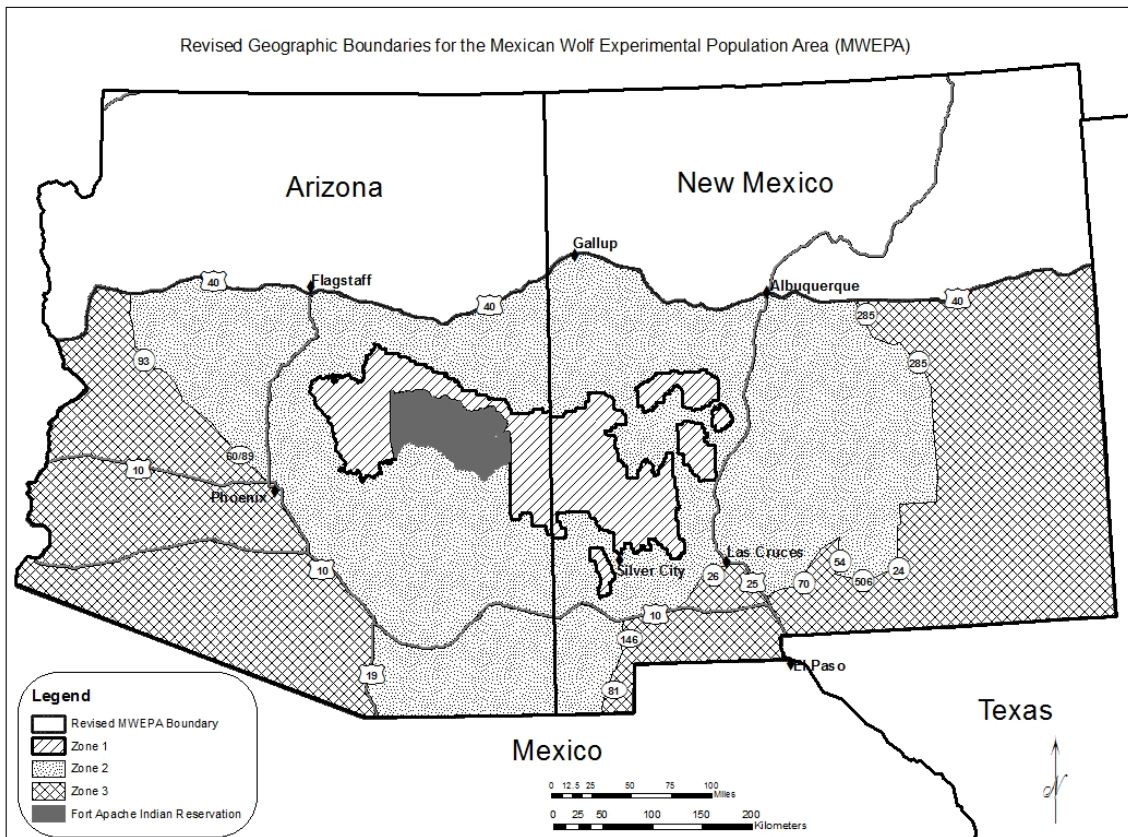
### **Public Comments**

We will accept written comments and information during this reopened comment period on our proposed revisions to the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*), our draft environmental impact statement, and the amended required determinations provided in this document. 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, Native American tribes, the scientific community, industry, general public, and other interested parties concerning the revised proposed revision. We are particularly interested in

comments concerning the following revisions to our proposed rule:

(1) Moving the southern boundary of the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico from Interstate Highway 10 to the United States–Mexico international border (Figure 2).

Figure 2—Proposed revised geographic boundaries for the Mexican wolf experimental population area (MWEPA).



(2) Identifying Zones 1, 2, and 3 as different management areas within the



MWEPA and discontinuing the use of the term Blue Range Wolf Recovery Area (BRWRA) part of (Figure 2).

Zone 1 is an area within the MWEPA in Arizona and New Mexico where Mexican wolves may be initially released or translocated, and includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest.

Zone 2 is an area within the MWEPA where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. The northern boundary of Zone 2 is Interstate Highway 40; the western boundary goes south from Interstate Highway 40 and follows Arizona State Highway 93, Arizona State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States–Mexico international border; the southern boundary is the United States–Mexico international border heading east, then follows New Mexico State Highway 81/146 north to Interstate Highway 10, then along New Mexico State Highway 26 to

Interstate Highway 25; the boundary continues along New Mexico State Highway 70/54/506/24; the eastern boundary follows the eastern edge of Otero County, New Mexico, to the north and then along the eastern edge of Lincoln County, New Mexico, until it intersects with New Mexico State Hwy 285 and follows New Mexico State Highway 285 north to the northern boundary of Interstate Highway 40. Zone 2 excludes the area in Zone 1.

Zone 3 is an area within the MWEPA where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock would be low. If Mexican wolves move outside areas of suitable habitat, they will be more actively managed. Zone 3 is two separate geographic areas on the east and west sides of the MWEPA. One area of Zone 3 is in western Arizona and the other in eastern New Mexico. In Arizona, the northern boundary of Zone 3 is Interstate Highway 40; the eastern boundary goes south from Interstate Highway 40 and follows State Highway 93, State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States–Mexico international border; the southern boundary is the United States–Mexico international border; the western boundary is the Arizona–California State border. In New Mexico, the northern boundary is Interstate Highway 40; the eastern boundary is the New Mexico–Texas State border; the southern boundary is the United States–Mexico

international border heading west, then follows State Highway 81/146 north to Interstate Highway 10, then along State Highway 26 to Interstate Highway 25, the southern boundary continues along State Highway 70/54/506/24; the western boundary follows the eastern edge of Otero County to the north and then along the eastern edge of Lincoln County until it follows State Highway 285 north to the northern boundary of Interstate Highway 40.

(3) Adding definitions for the terms cross-fostering; designated agency; disturbance-causing land-use activity; domestic animal; Federal land; feral dog; in the act of biting, killing, or wounding; initial release; intentional harassment; non-Federal land; Service-approved management plan; translocate; tribal trust land; ungulate herd; wounded; and Zones 1, 2, and 3.

(4) Revising the due care criteria with regard to trapping activities. With regard to trapping activities, due care includes: Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or tribe where the trapping takes place; modifying or utilizing appropriate size traps, chains, drags, and stakes to reasonably expect to prevent a wolf from either breaking the chain, or escaping with the trap on the wolf, or utilizing sufficiently small traps (less than Victor 2) to reasonably expect the wolf to either immediately pull free from the trap, or span the jaw spread when stepping on the trap; reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; not taking a Mexican wolf via neck snares; and if a Mexican wolf is captured, trappers can call the Interagency Field Team (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 Interagency Field Team.

(5) On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal provided that evidence of a freshly wounded or killed domestic animal by a Mexican wolf is present. This take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours. The take of any Mexican wolf without evidence of biting, killing, or wounding a domestic animal may be referred to the appropriate authorities for investigation.

(6) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to allow domestic animal owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal

owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

(7) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to allow livestock owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by livestock owners or their agents under this provision will assist the Service or designated agency in completing the authorized control action. Livestock owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

(8) Allowing for take of Mexican wolves response to impacts to wild ungulates and in accordance with certain stipulations. If Arizona or New Mexico determines, based on established ungulate management goals, that Mexican wolf predation is having an unacceptable impact on a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the

Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. Because tribes are able to request the capture and removal of Mexican wolves at any time, take in response to wild ungulate impacts is not applicable on tribal trust lands.

We will consider all comments and information received during the public comment period in preparation of the final rule to revise the existing nonessential experimental population designation of the Mexican wolf and the final environmental impact statement. Accordingly, the final rule and final environmental impact statement may differ from this proposal and the draft environmental impact statement.

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

If you submitted comments or information on the June 13, 2013 (78 FR 35719), proposed revision to the existing nonessential experimental population designation of the Mexican wolf or the August 5, 2013 (78 FR 47268), publication of a notice of intent to prepare an environmental impact statement in conjunction with the proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final rule.

You may submit your comments and materials concerning this proposed revision to the nonessential experimental population designation of the Mexican wolf, the draft environmental impact statement, and the amended required determinations provided in this document by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment 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.

Comments and materials we receive, as well as some of the supporting documentation we used, 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**).

### **Previous Federal Actions**

This document discusses only those topics directly relevant to the modifications we are making to our proposal to revise existing nonessential experimental population

designation of the Mexican wolf and the associated draft environmental impact statement. For more information on previous Federal actions concerning the Mexican wolf, refer to the proposed revision to the existing nonessential experimental population designation of the Mexican wolf, which published in the **Federal Register** on June 13, 2013 (78 FR 35719), and is available online at <http://www.regulations.gov> (at Docket Number FWS-R2-ES-2013-0056) or from the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## **Background**

On June 13, 2013 (78 FR 35719), we published a proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf. That proposal had a 90-day comment period ending September 11, 2013. On August 5, 2013 (78 FR 47268), we published a notice of intent to prepare an environmental impact statement in conjunction with the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf. That notice of intent to prepare an environmental impact statement had a 45-day comment period ending September 19, 2013. On September 5, 2013 (78 FR 54613), we extended the public comment period on the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf to end on October 28, 2013, and announced public hearings. On October 28, 2013 (78 FR 64192), we once again extended the public comment period on the proposed rule to revise the existing nonessential experimental



population designation of the Mexican wolf to end on December 17, 2013, and announced public hearings on the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf. We will submit for publication in the **Federal Register** a final rule revising the existing nonessential experimental population of the Mexican wolf on or before January 12, 2015.

### **Changes From the June 13, 2013, Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf**

Based on information received during the public comment period and our scoping process for the draft environmental impact statement, we are proposing several modifications to our June 13, 2013, proposal to revise the existing nonessential experimental population designation of the Mexican wolf. 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. 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. In order to improve implementation and conservation, we are proposing several changes to our proposed rule to revise the section 10(j) rule and management regulations for the Mexican wolves.

*Revisions and Considerations from the June 13, 2013, Proposal That Will Not be Carried Forward into the Final Rule*

In the June 13, 2013 (78 FR 35719), proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf, we proposed that Mexican wolves on State-owned lands within the boundaries of the MWEPA be regulated in the same manner as on lands owned and managed by other public land management agencies. In this modification to our proposal, we have removed any reference 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. In the 1998 final rule that established a Mexican wolf nonessential experimental population (63 FR 1752, January 12, 1998) (1998 Final Rule), management of Mexican wolves on 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. Henceforth, the Service will consider the management of Mexican wolves on State-owned lands within the boundaries of the MWEPA in the same manner and subject to the same provisions of this rule as on non-Federal lands, which is consistent with the 1998 Final Rule.

Additionally in the June 13, 2013 (78 FR 35719), proposed rule, we proposed to modify the provision “six breeding pairs” to a requirement that at least 100 Mexican wolves must be present in the MWEPA before a permit to take Mexican wolves can be issued to livestock owners or agents on public land grazing allotments. 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). In the June 13, 2013 (78 FR 35719), proposed rule we considered overall population size to be a better metric for evaluating the appropriateness of providing such permits because it provided a more consistent measure of the population's status. However, based on scientific information that was submitted during public comment, we are no longer using six breeding pairs or at least 100 Mexican wolves as conditions for issuing a permit to livestock owners or their agents on Federal lands. Now, we are proposing to allow livestock owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land be based on the Service's or a designated agency's discretion and during or after a removal action has been authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful).

Also in the June 13, 2013 (78 FR 35719), preamble to our proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf, we considered several additional revisions. One of the considerations was to change the term "depredation" to "depredation incident" and revise 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." We considered this change in order to provide consistency with terms used in our management documents (standard operating protocol,

management plans, etc.), in which we consider all of the depredations that occur within one 24-hour period as one incident in our determination of what management actions to apply to a given situation. However, we received public comment, particularly from the ranching community, that this term does not appropriately communicate individual depredations (e.g., a wolf may have depredated three times in one 24-hour period). In addition, we are using the term “depredation” only in our definition of problem wolves. Therefore, we will no longer consider changing the term “depredation” to “depredation incident” and will use the term “depredation” only as defined in the rule portion of this document.

Below, we discuss the additional modifications to our proposal to revise the existing nonessential experimental population designation of the Mexican wolf.

#### *Additional or Revised Definitions for the Proposal to Revise the Mexican Wolf*

##### *Nonessential Experimental Population*

We are adding or revising several definitions to our June 13, 2013 (78 FR 35719), proposed rule to provide additional clarification; definitions for these terms are laid out in the rule portion of this document:

##### *Cross-fostering*

##### *Designated agency*

*Disturbance-causing land-use activity*

*Domestic animal*

*Federal land*

*Feral dog*

*In the act of biting, killing, or wounding*

*Initial release*

*Intentional harassment*

*Non-Federal land*

*Service-approved management plan*

*Translocate*

*Tribal trust land*

*Ungulate herd*

*Wounded*

*Zone 1*

*Zone 2*

*Zone 3*

*Proposed Revisions to the Geographic Area of the Mexican Wolf Nonessential*

*Experimental Population*

We are proposing to expand the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States–Mexico international border across Arizona and New Mexico (Figure 2). 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 proposing this modification because the reintroduction effort for Mexican wolves now being undertaken by the Mexican Government has established a need to manage Mexican wolves that may disperse into southern Arizona and New Mexico from reestablished Mexican wolf populations in Mexico. An expansion of the MWEPA south to the international border with Mexico would allow us to manage all Mexican wolves in this area, regardless of origin, under the experimental population 10(j)

rule. The regulatory flexibility provided by our proposed revisions to the 1998 Final Rule would allow us to take management actions within the MWEPA that further the conservation of the Mexican wolf while being responsive to needs of the local community in cases of problem wolf behavior.

Also, we are identifying Zones 1, 2, and 3 as different management areas within the MWEPA and discontinuing the use of the term BRWRA. Zone 1 is where Mexican wolves may be initially released or translocated, and includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest. Zone 2 is an area within the MWEPA where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. Translocations in Zone 2 will be focused on suitable Mexican wolf habitat that is contiguous to occupied Mexican wolf range. Zone 3 is where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities

of this rule to reduce human conflict.

We are also proposing the expansion of initial release sites to include the entire Sitgreaves National Forest in Arizona; 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 2). This expansion would include the proposed modification that would allow for initial releases and translocations throughout Zone 1. Our proposed modification to eliminate the primary and secondary recovery zones within Zone 1 and our consideration of expanding Zone 1 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 will 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.

*Clarification of Take Provisions from the 1998 Final Rule for the Mexican Wolf*

*Nonessential Experimental Population*

In the rule portion of this document, we have clarified take provisions for intentional harassment, opportunistic harassment, take for research purposes, take by Service personnel or designated agency, and unintentional take. In restructuring these allowable forms of take, we have not added more forms of take. Rather, we restructured



to clarify take provisions provided in the 1998 Final Rule. We have also revised the due care criteria in regard to trapping activities. And we have provided language to clarify that personnel of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties associated with predator damage management activities for species other than Mexican wolves.

Furthermore, we have modified provisions in the 1998 Final Rule to allow for removal of Mexican wolves in response to impacts to wild ungulates. Under this provision, if Arizona or New Mexico determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact on a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with § 17.84(k)(7)(iv)(A).

*Additional Proposed Provisions to the Mexican Wolf Nonessential Experimental Population*

One of the additional provisions we are now proposing is to allow take of a Mexican wolf on non-Federal lands anywhere within the MWEPA by domestic animal

owners or their agents when any Mexican wolf is in the act of biting, killing, or wounding a domestic animal provided that evidence of a freshly wounded or killed domestic animal by Mexican wolves is present.

We are also proposing provisions for the issuance of permits on non-Federal land anywhere within the MWEPA, and under particular circumstances, to allow domestic animal owners or their agents to take (including intentional harassment or kill) any Mexican wolf that is present on non-Federal land. Permits issued under this provision specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

Lastly, we have added reporting requirements which clarify that, unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or our designated agency within 24 hours.

### **Peer Review**

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we conducted peer review on our June 2013 rule. Due to the revisions, we will again seek expert opinions from previous reviewers and independent

specialists regarding this revised proposed rule. The purpose of such review is to ensure that our final rule for this species is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this document immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the reopening of the public comment period, on our use and interpretation of the science used in developing our proposed rule.

We will consider all comments and information we receive during the comment period on the June 13, 2013 (78 FR 35719), proposed rule and this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

### **Required Determinations—Amended**

In our June 13, 2013, proposed rule (78 FR 35719), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft environmental impact statement. We have now made use of the draft environmental impact statement data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C.

1501 *et seq.*), the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), and E.O. 12630 (Takings). However, based on the draft economic analysis data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*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 experimental 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 proposed revision to the nonessential experimental population of the Mexican wolf 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 the United States–Mexico international border. This rule proposes activities that have, in part, already been taking place within the BRWRA. However, it expands many of those activities to larger portions of the MWEPA.

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 unlikely 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 occupy anywhere within the MWEPA, which has the potential to affect small entities in the area outside the initial release areas. Specifically, small businesses involved in hunting and animal production, such as outfitters, guides, and beef cattle and sheep ranching, may be affected by Mexican wolves preying on wild native ungulates or depredating on domestic animals. We have further assessed these types of impacts to small entities in the area outside the initial release areas in the draft environmental impact statement.

Small businesses involved in ranching and livestock production may be affected by Mexican wolves depredating on domestic animals. Direct effects to small businesses could include foregone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd, and weight loss of livestock when wolves are present. Ranchers have also expressed concern that a persistent presence of wolves may negatively impact their property and business values. We do not foresee a significant economic impact to a

substantial number of small entities in the ranching and livestock production sector based on the following information.

The Department of Agriculture reported a national estimate of 89.3 million cattle and calves in 2013, which implies that together, Arizona and New Mexico contribute approximately 2.5 percent to the overall national supply (NASS: <http://quickstats.nass.usda.gov>). Over 90 percent of the ranches in Arizona (approximately 6646 out of 7384 ranches) and 80 percent of the ranches in New Mexico (approximately 5336 out of 6670 ranches) could be classified as small with a total number of less than 100 cattle. We estimate there are fewer than 12,000 small ranches in Arizona and New Mexico below Interstate 40 (the project area), based on 2007 Census of Agriculture data by county. This is a significant overestimate of the number of small ranches in the project area because it includes data for counties that are split by Interstate 40 (i.e., only a portion of the counties' ranches occur in the study area), as well as ranches that may occur in Zone 3 where we do not expect wolf occupancy over the project time period. While small ranches represent the majority of the number of ranches in the two States, they produce less than 10 percent of the states' total cattle and calf inventory, or a quarter of one percent of the national inventory. The largest operations, those with an inventory greater than 2,500 cattle, account for over 50 percent of the total states' livestock.

Between 1998 and 2013, on average there were about 56 total depredations (confirmed and unconfirmed) by Mexican wolves in any given year, which equates to



about 1.2 cow/calves killed for every Mexican wolf (or 118 depredations for every 100 Mexican wolves). Compared to the 2007 total inventory of cattle (123,124) for the 5 county area of the Mexican wolf initial release area (Graham, Greenlee, and Apache Counties, Arizona, and Catron and Grant Counties, New Mexico) both confirmed and unconfirmed depredations per 100 Mexican wolves account for less than 0.01 percent of the herd size. The economic cost of Mexican wolf depredations in this time period has been a small percentage of the total value of the livestock operations. The average number of cattle killed (both confirmed and unconfirmed) in any given year is estimated to be 118.2 per 100 Mexican wolves. The expected value of these cattle (118.2 cattle killed per 100 Mexican wolves on average for any year) at auction using 2012 prices (most current data available at the time of the analysis) would be about \$98,000 dollars. Prices will be updated for the final EIS.

We recognize that annual depredation events have not been, and may not be uniformly distributed across the ranches operating in occupied wolf range. Rather, wolves seem to concentrate in particular areas and to the extent that livestock are targeted by the pack for depredations, some ranch operations will be disproportionately affected. However, while a depredation could disproportionately impact a small ranch compared to a larger ranch (e.g., in lost market value), it is more likely that a depredated cow will belong to a large ranching operation than a small one based on the proportion of cattle associated with ranch size. The annual number of depredations (both confirmed and unconfirmed) is expected to grow from 97 to 335 cows/calves as the Mexican wolf population also grows from 83 to 285 individuals during the period 2013 through 2026.

The total economic impact to the ranching community during this period is calculated to be \$2.3 million with a net present value of \$1.4 million. We would expect to compensate 100 percent of the market value of confirmed depredated cattle and 50 percent of market value for probably kills with payments to affected ranchers from our Mexican Wolf Interdiction Fund, which provides for proactive conservation measures to decrease the likelihood of depredation and for compensation of verified livestock depredations. This impact, spread over a 12-year period, is not both significant and substantial. That is, if impacts are disproportionately felt, the number of affected ranches will be small but the impact to those affected may be significant. If the impacts are more evenly spread across a greater number of ranches the economic impact to those entities will not be significant.

Small businesses involved in ranching and livestock production may be affected by weight loss of livestock due to the presence of Mexican wolves. For example, livestock may lose weight because wolves force them off of suitable grazing habitat or away from water sources. Livestock may try to protect themselves by staying close together in protected areas where they are more easily able to see approaching wolves and defend themselves and their calves. A consequence of such a behavioral change would likely be weight loss, especially if the wolves are allowed to persist in the area for a significant amount of time. The weight loss would be associated with the cattle's fear of roaming away from the herd to forage. Using a mid-point estimate of 6 percent weight loss for calves at the time of auction (based on available data), we calculated the impact on 2012 model ranches assuming that wolf presence pressures were allowed to persist throughout the foraging year. Based on available studies and reports and under current

market prices, a six percent weight loss for calves at the time of sale could result in a total loss of profit for a small ranch and reduce profits for a medium and large ranch on the equivalent of losing five and ten calves for auction from the baseline (an estimated loss of profit of \$9,269 for a large ranch). We estimate that only a small proportion of ranches in the project area could be affected by weight loss, given that wolves may not occupy areas near some ranches' livestock during any point of the project time frame (12 years), wolves may not be in the vicinity of some ranches' livestock for the entire foraging season (as assumed in our calculations), and landowners and the Service and our designated agencies have a variety of harassment and take mechanisms available to address wolf-livestock conflicts. Furthermore while such an impact could be significant to an individual small ranch, for the purposes of this certification we do not consider the impact significant because small ranches account for less than 10 percent of the states' total cattle and calf inventory, or a quarter of one percent of the national inventory. Therefore, we do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector associated with indirect effects of weight loss of livestock when wolves are present.

Small businesses associated with hunting in Arizona and New Mexico could also be affected by implementation of our proposed action. Direct effects to small businesses in this section could occur from impacts to big game populations due to Mexican wolf predation (primarily on elk); loss of hunter visitation to the region, or a decline in hunter success, leading to lost income or increased costs to guides and outfitters. However, we do not have information suggesting that these impacts will occur. Between 1998 and

2012, Arizona Game and Fish Department conducted a study to determine the impact that Mexican wolves have had on deer and elk populations in the Blue Range Wolf Recovery Area. The study found that while Mexican wolves do target elk as their primary prey source, including elk calves during the spring and summer season, there was no discernable impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer. The study also reported that the number of elk permits authorized by AGFD has varied since Mexican wolves were reintroduced into Arizona. The study reports that the variation is attributable to a variety of management-related objectives. Elk availability for hunters, however, was not the reason for the decline.

During the project time period, we expect the Mexican wolf density in the MWEPA to be no higher (and more likely, lower) than it is currently and wolf to elk ratios (an indicator of predation pressure) to occur at levels resulting in less than significant biological impacts, suggesting that ungulate populations will not be impacted by Mexican wolves. Furthermore, information suggests that wolves tend to prey on unproductive calf elk and older cow elk, whereas hunters are seeking elk with high reproductive potential. Trends in hunter visitation and success rates since 1998 in the areas where Mexican wolves have been introduced are stable or increasing based on the number of licensed hunters and hunter success rates. We do not have information suggesting these trends would change during the project time period. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with hunting activities.

We also considered impacts to the tourism industry from implementation of our proposed action. In this case, impacts to small businesses would be positive, stemming from increased profits associated with wolf-related outdoor recreation opportunities, such as providing eco-tours in Mexican wolf country. However, we do not have information suggesting that wolf presence will create significant (positive) economic impacts to a substantial number of small entities, as very few eco-tours or other ventures have been identified since 1998. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with tourism activities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Arizona Game and Fish Department, cooperating agencies, New Mexico Game and Fish Department, stakeholders, published literature and reports, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revision to the existing nonessential experimental population designation of the Mexican wolf would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

We may not conduct or sponsor and the public is not required to respond to a

collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB has reviewed and approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned OMB Control Number 1018-0095. The OMB has also approved the collection of information associated with endangered and threatened species permit applications and reports and assigned OMB Control Number 1018-0094, which expires January 31, 2017. This proposal contains a requirement to prepare a science based document in order to obtain Service authorization to remove Mexican wolves in response to impacts to wild ungulates. Because this requirement applies only to two States, OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required.

#### *Draft Environmental Impact Statement*

The purpose of the draft environmental impact statement, prepared under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of revising the existing nonessential experimental population designation of the Mexican wolf. In the draft environmental impact statement, four alternatives are evaluated: Alternative One (BRWRA Expansion; MWEPA Expansion with Management Zone; Modified Provisions for Take of Mexican Wolves); Alternative Two (MWEPA Expansion with Management Zones; Modified Provisions for Take of Mexican Wolves); Alternative Three (BRWRA Expansion; MWEPA Expansion with Management Zones); and

#### Alternative Four (No Action).

The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental impact statement. Our preliminary determination is that revising the existing nonessential experimental population designation of the Mexican wolf will not have significant impacts on the environment. However, we will further evaluate this issue as we complete our final environmental impact statement.

As we stated earlier, we are soliciting data and comments from the public on the draft environmental impact statement, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our revision of the existing nonessential experimental population designation.

#### **Management of Wolves Outside the Mexican Wolf Nonessential Experimental Population Area**

For Mexican wolves that occur outside the MWEPA, the Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these

permits. A permit granted by us under section 10(a)(1)(A) of the Act authorizes activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CF R 17.72 for threatened plant species.

As part of this rulemaking process, we have drafted a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur outside the MWEPA. In compliance with NEPA (42 U.S.C. 4321 et seq.), we have included analysis of the environmental effects of the draft permit as part of our draft EIS. This draft section 10(a)(1)(A) permit is attached as an appendix in the draft EIS. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits. Therefore, we invite local, State, tribal, and Federal agencies, and the public to comment on the draft section 10(a)(1)(A) permit.

### **Authors**

The primary authors of this document 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 further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 78 FR 35719 (June 13, 2013) 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 § 17.84 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 (MWEPA), 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:

*Active den* means a den or a specific site above or below ground that is used by Mexican wolves on a daily basis to raise pups, typically between March 1 and July 31. More than one den site may be used in a single season.

*Cross-fostering* means offspring that are removed from their biological parents and placed with surrogate parents.

*Depredation* means the confirmed killing or wounding of lawfully present domestic animals by one or more wolves. The Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals.

*Designated agency* means a Federal, State, or tribal agency designated by the Service to assist in implementing this rule, all or in part, 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.

*Disturbance-causing land-use activity* means any activity on Federal lands that the Service determines could adversely affect reproductive success, natural behavior, or persistence 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) Lawfully present livestock 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 non-Federal 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 and Department of Homeland Security border security 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.

*Domestic animal* means livestock as defined in paragraph (k)(3) of this section and non-feral dogs.

*Federal land* means land owned and under the administration of Federal agencies 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.

*Feral dog* means any dog (*Canis familiaris*) or wolf–dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely over a rural landscape without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leashed, or otherwise restrained (e.g., by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.

*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.

*In the act of biting, killing, or wounding* means grasping, biting, attacking, wounding, or feeding upon a live domestic animal on non-Federal land or live livestock on Federal land. The term does not include a Mexican wolf feeding on an animal carcass.

*Initial release* means releasing Mexican wolves to the wild within Zone 1, or in accordance with tribal or private land agreements in Zone 2, that have never been in the wild, or releasing pups that have never been in the wild and are less than 5 months old within Zones 1 or 2. The initial release of pups less than 5 months old into Zone 2 allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released in Zone 2 with pups born in captivity.

*Intentional harassment* means deliberate, pre-planned harassment of Mexican wolves, including by less-than-lethal means (such as 12-gauge shotgun rubber-bullets and bean-bag shells) designed to cause physical discomfort and temporary physical injury, but not death. Intentional harassment includes situations where the Mexican wolf or wolves may have been unintentionally attracted, or intentionally tracked, waited for, chased, or searched out; and then harassed. Intentional harassment of Mexican wolves is only allowed under a permit issued by the Service or its designated agency.

*Livestock* means domestic alpacas, bison, burros (donkeys), cattle, goats, horses, llamas, mules, and sheep, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans. Poultry is not considered livestock under this rule.

*Mexican Wolf Experimental Population Area (MWEPA)* means an area in Arizona and New Mexico including Zones 1, 2, and 3, that lies south of Interstate Highway 40 to the international border with Mexico.

*Non-Federal land* means any private, State-owned, or tribal trust land.

*Occupied Mexican wolf range* means an area of confirmed presence of Mexican wolves based on the most recent map of occupied range posted on the Service's Mexican Wolf Recovery Program website at <http://www.fws.gov/southwest/es/mexicanwolf/>. Specific to Prohibitions (5)(iii) of this rule, Zone 3 and tribal trust lands are not considered occupied range.

*Opportunistic harassment* means scaring any Mexican wolf 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. Such harassment might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Opportunistic harassment of Mexican wolves can occur without a permit issued by the Service or its designated agency.

*Problem wolves* mean Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are:

(i) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were directly involved in a depredation on lawfully present domestic animals; or

(ii) Habituated to humans, human residences, or other facilities regularly occupied by humans.

*Rendezvous site* means a gathering and activity area regularly used by Mexican wolf pups after they have emerged from the den. Typically, these sites are used for a period ranging from about 1 week to 1 month in the first summer after birth during the period from June 1 to September 30. Several rendezvous sites may be used in succession within a single season.

*Service-approved management plan* means management plans approved by the Regional Director or Director of the Service through which Federal, State, or tribal agencies may become a designated agency. The management plan must address how Mexican wolves will be managed to achieve conservation goals in compliance with the Act, this 10(j) nonessential experimental population rule, and other Service policies. If a Federal, State, or tribal agency becomes a designated agency through a Service-approved

management plan, the Service will help coordinate their activities while retaining authority for program direction, oversight, and guidance.

*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)).

*Translocate* means to release Mexican wolves into the wild that have previously been in the wild. In the MWEPA, translocations will occur only in Zones 1 and 2.

*Tribal trust land* means any lands title to which is either: held in trust by the United States for the benefit of any Indian tribe or individual; or held by any Indian tribe or individual subject to restrictions by the United States against alienation. For purposes of this rule, tribal trust land does not include land purchased in fee title by a tribe. We consider fee simple land purchased by tribes to be private land.

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

*Ungulate herd* means an assemblage of wild ungulates living in a given area.

*Wounded* means exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a Mexican wolf bite.

*Zone 1* means an area within the MWEPA in Arizona and New Mexico where Mexican wolves may be initially released from captivity or translocated. Zone 1 includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest.

*Zone 2* is an area within the MWEPA where Mexican wolves will be allowed to

naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. The northern boundary of Zone 2 is Interstate Highway 40; the western boundary goes south from Interstate Highway 40 and follows Arizona State Highway 93, Arizona State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States–Mexico international border; the southern boundary is the United States–Mexico international border heading east, then follows New Mexico State Highway 81/146 north to Interstate Highway 10, then along New Mexico State Highway 26 to Interstate Highway 25; the boundary continues along New Mexico State Highway 70/54/506/24; the eastern boundary follows the eastern edge of Otero County, New Mexico, to the north and then along the eastern edge of Lincoln County, New Mexico, until it intersects with New Mexico State Hwy 285 and follows New Mexico State Highway 285 north to the northern boundary of Interstate Highway 40. Zone 2 excludes the area in Zone 1.

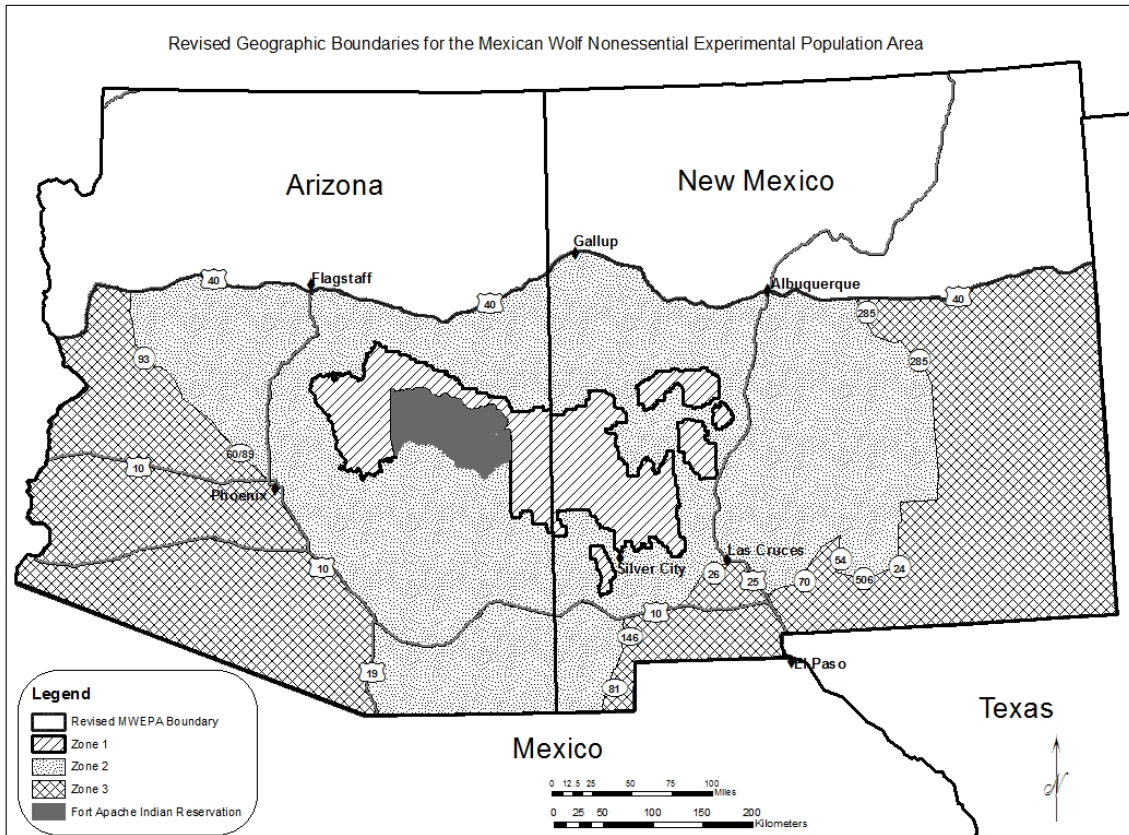
*Zone 3* means an area within the MWEPA where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities of this rule to reduce human



conflict. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock is low. If Mexican wolves move outside areas of suitable habitat, they will be more actively managed. Zone 3 is two separate geographic areas on the east and west sides of the MWEPA. One area of Zone 3 is in western Arizona and the other in eastern New Mexico. In Arizona, the boundaries of Zone 3 are the northern boundary is Interstate Highway 40; the eastern boundary goes south from Interstate Highway 40 and follows State Highway 93, State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States–Mexico international border; the southern boundary is the United States–Mexico international border; the western boundary is the Arizona–California State border. In New Mexico, the northern boundary is Interstate Highway 40; the eastern boundary is the New Mexico–Texas State border; the southern boundary is the United States–Mexico international border heading west, then follows State Highway 81/146 north to Interstate Highway 10, then along State Highway 26 to Interstate Highway 25, the southern boundary continues along State Highway 70/54/506/24; the western boundary follows the eastern edge of Otero County to the north and then along the eastern edge of Lincoln County until it follows State Highway 285 north to the northern boundary of Interstate Highway 40.

(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. The boundaries of the

MWEPA are the portion of Arizona and New Mexico that lies south of Interstate Highway 40 to the international border with Mexico. 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. Specifically, 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 the Service or a designated agency), must minimize disturbance of the area around them, and must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated agency 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 Mexican 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 unintentional take, unless due care was exercised to avoid injury or death to a wolf. With regard to trapping activities, due care includes:

(A) Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or tribal trust lands where the trapping takes place.

(B) Modifying or utilizing appropriately sized traps, chains, drags, and stakes to reasonably expect to prevent a wolf from either breaking the chain, or escaping with the trap on the wolf, or utilizing sufficiently small traps (less than or equal to a Victor #2) to

reasonably expect the wolf to either immediately pull free from the trap, or span the jaw spread when stepping on the trap.

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

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

(E) If a Mexican wolf is captured, trappers can call the Interagency Field Team (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 Interagency Field Team.

(6) *Reporting requirements.* Unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or a designated agency within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of Mexican wolves, including opportunistic harassment, to the 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 505-761-4748; or by facsimile 505-346-2542. Additional contact information can also be found on the Mexican Wolf Recovery Program's website at <http://www.fws.gov/southwest/es/mexicanwolf/>. Unless otherwise specified in a permit, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(7) *Allowable forms of take of Mexican wolves:* Take of Mexican wolves in the MWEPA are allowed as follows:

(i) *Take in defense of human life.* Under section 11(a)(3) of the Act and § 17.21(c)(2), any person may take (which includes killing as well as nonlethal actions such as harassing or harming) a Mexican wolf in self-defense or defense of the lives of others. This take must be reported as specified in accordance with paragraph (k)(6) of this section. If the Service or a designated agency determines that a Mexican wolf presents a threat to human life or safety, the Service or the designated agency may kill the wolf or place it in captivity.

(ii) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Such harassment of Mexican wolves might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Any form of opportunistic harassment must be reported as specified in accordance with paragraph (k)(6) of this section.

(iii) *Intentional harassment.* After the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves. The harassment must occur in the area and under the conditions specifically identified in the permit. Permittees must report this take as specified in accordance with paragraph (k)(6) of this section.

(iv) *Take on non-Federal lands.*

(A) On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in paragraph (k)(3) of this section, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. This take must be reported as specified in accordance with paragraph (k)(6) of this section. The take of any Mexican wolf without evidence of biting, killing, or wounding domestic animals may be referred to the appropriate authorities for investigation.

(B) Take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on non-Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.

(v) *Take on Federal land.*

(A) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to livestock owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Livestock owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.

(B) Take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) This provision does not exempt Federal 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. 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.

(vi) *Take in response to impacts to wild ungulates.* If Arizona or New Mexico determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact on a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with the following provisions:

(A) Arizona or New Mexico must prepare a science-based document that:

(1) Describes what data indicate that the ungulate herd is below management objectives, what data indicate that the impact on the ungulate herd is influenced by Mexican wolf predation, why Mexican wolf removal is a warranted solution to help restore the ungulate herd to State management objectives, the type (level and duration) of Mexican wolf removal management action being proposed, and how ungulate herd response to wolf removal will be measured and control actions adjusted for effectiveness;

(2) Demonstrates that attempts were and are being made to identify other causes of ungulate herd declines and possible remedies or conservation measures in addition to wolf removal;

(3) If appropriate, identifies areas of suitable habitat for Mexican wolf translocation; and



(4) Has been subjected to peer review and public comment prior to its submittal to the Service for written concurrence. In order to comply with this requirement, the State must:

(i) Conduct the peer review process in conformance with the Office of Management and Budget's most recent Final Information and Quality Bulletin for Peer Review and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(ii) Obtain at least three independent peer reviews from individuals with relevant expertise other than staff employed by the State (Arizona or New Mexico) requesting approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd.

(B) Before the Service will allow Mexican wolf removal in response to impacts to wild ungulates, the Service will evaluate the information provided by the requesting State (Arizona or New Mexico) and provide a written determination to the requesting State agency whether such actions are scientifically based and warranted.

(C) If all of the provisions above are met, the Service will, to the maximum extent allowable under the Act, make a determination providing for Mexican wolf removal. If the request is approved, the Service will include in the written determination which management action (capture and translocate in MWEPA, move to captivity, transfer to Mexico, lethally take, or no action) is most appropriate for the conservation of the Mexican wolf subspecies.

(D) Because tribes are able to request the capture and removal of Mexican wolves at any time, take in response to impacts to wild ungulates is not applicable on tribal trust lands.

(vii) *Take by Service personnel or a designated agency.* The Service or a designated agency may take any Mexican wolf in the nonessential experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, 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) The Service or designated agency may use leg-hold traps and any other effective device or method for capturing or killing Mexican wolves to carry out any measure that is a part of a Service-approved management plan regardless of State law. The disposition of all Mexican wolves (live or dead) or their parts taken as part of a Service-approved 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.

(B) The Service or designated agency may capture; kill; subject to genetic testing; place in captivity; or euthanize any feral wolf-like animal or feral wolf hybrid found within the MWEPA that shows physical or behavioral evidence of: hybridization with other canids, such as domestic dogs or coyotes; being a wolf-like 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.

(C) The Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, the Service will consider all of the following:

(1) Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by Mexican wolves, or evidence that Mexican wolves were in the act of biting, killing, or wounding a domestic animal;

(2) The likelihood that additional Mexican wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken; and

(3) Evidence of attractants or intentional feeding (baiting) of Mexican wolves.

(D) The Wildlife Services 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 Service-approved management agreement or a conference opinion between Wildlife Services and the Service.

(viii) *Unintentional take:* (A) Take of a Mexican wolf by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity. Such take must be reported as specified in accordance with paragraph (k)(6) of this section.

Hunters and other shooters have the responsibility to identify their quarry or target before shooting, thus shooting a wolf as a result of mistaking it for another species will not be

considered unintentional take. Take by poisoning will not be considered unintentional take.

(B) Federal, State, or tribal agency employees or their contractors may take a Mexican wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing and Department of Homeland Security border security activities. Take of Mexican wolves by Federal, State, or tribal agencies must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) Take of Mexican wolves by Wildlife Services employees while conducting official duties associated with predator damage management activities for species other than Mexican wolves may be considered unintentional if it is coincidental to a legal activity and the Wildlife Services employees have adhered to all applicable Wildlife Services' policies, Mexican wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in Wildlife Service's biological and conference opinions.

(ix) *Take for research purposes.* The Service may issue permits under § 17.32, and designated agencies may issue permits under State and Federal laws and regulations, for individuals to take Mexican wolves pursuant to scientific study proposals approved by the agency or agencies with jurisdiction for Mexican wolves and for the area in which the study will occur. Such take may include Mexican wolves, their prey, their competitors, or their occupied or potentially occupied habitats that might lead to management recommendations for, and thus enhance the survival of, the Mexican wolf.

(8) *Disturbance-causing land-use activities:* For any activity on Federal lands that the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves, the Service will work with Federal 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.

(9) *Management:* (i) On private land within Zones 1 and 2 of the MWEPA, the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including: occupancy by natural dispersal; initial release; and translocation of Mexican wolves in Zones 1 or 2 if requested by the landowner and with the concurrence of the State wildlife agency.

(ii) On tribal trust land within Zones 1 and 2 the MWEPA, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: occupancy by natural dispersal; initial release; translocation of Mexican wolves; and capture and removal of Mexican wolves if requested by the tribal government.

(10) *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 approximately 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 experimental population is making to the recovery of the Mexican wolf.

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Dated: July 1, 2014.

Michael J. Bean,

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

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