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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS-R2-ES-2013-0056; FXES11130900000-156–FF09E42000]**

**RIN 1018-AY46**

**Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf**

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), revise the regulations for the nonessential experimental population of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended. This action is being taken in coordination with our final rule in this **Federal Register** to list the

Mexican wolf as an endangered subspecies. The regulatory revisions in this rule will improve the project to reintroduce a nonessential experimental population, thereby increasing potential for recovery of this species.

**DATES:** This rule becomes effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This final rule, along with the public comments, environmental impact statement (EIS), and record of decision, are available on the Internet at <http://www.regulations.gov>, Docket No. FWS–R2–ES–2013–0056 or from the office listed in **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**

**Why we need to publish a rule.** We are revising the regulations under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act or ESA) that established the experimental population of the Mexican wolf (*Canis lupus baileyi*) to further its conservation by improving the effectiveness of the reintroduction project in managing the experimental population. We intend to do this by: (1) Modifying the geographic boundaries in which Mexican wolves are managed south of Interstate-40 in Arizona and New Mexico under section 10(j) of the Act; (2) modifying the management regulations that govern the initial release, translocation, removal and take of Mexican wolves; and (3) issuing a permit under section 10(a)(1)(A) of the Act for management of Mexican wolves both inside and outside of the Mexican Wolf Experimental Population Area (MWEPA). Revisions to the regulations, which were promulgated in 1998, and the section 10(a)(1)(A) permit are needed because: (1) Under the current regulations we will not be able to achieve the necessary population growth, distribution, and recruitment that would contribute to the persistence of, and improve the genetic variation within, the experimental population; (2) there is a potential for Mexican wolves to disperse into southern Arizona and New Mexico from reintroduction areas in the States of Sonora and Chihuahua in northern Mexico; and (3) certain provisions lack clarity, are inadequate, or limit the efficacy and flexibility of our management of the experimental population of Mexican wolves.

Also, this final rule is necessitated by a related action we are taking to classify the Mexican wolf as an endangered subspecies. The Mexican wolf has been listed under

the Act in the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) as part of the gray wolf (*Canis lupus*) listing since 1978. Therefore, when we designated the Mexican wolf experimental population in 1998 (1998 Final Rule; 63 FR 1752, January 12, 1998), it corresponded to the gray wolf listing in even though it was specific to our Mexican wolf recovery effort. With this publication of the final rule to list the Mexican wolf as an endangered subspecies, we need to revise 50 CFR 17.11(h) such that the experimental population will be associated with the Mexican wolf subspecies listing rather than with the gray wolf species.

**The basis for our action.** The 1982 amendments to the Act included the addition of section 10(j), which allows for reintroduced populations of listed species to be designated as “experimental populations.” Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species’ current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species’ designation elsewhere in its range. Treating the experimental population as threatened allows us the discretion to devise management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. When

designating an experimental population, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and advisable to conserve that species.

**We prepared an EIS.** We prepared a final Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to ensure that we considered the environmental impacts of the designation of the proposed nonessential experimental population of Mexican wolves. From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We again initiated scoping on August 5, 2013 (78 FR 47268). We utilized all information collected since the 2007 scoping process began in the development of the draft EIS published in the **Federal Register** on July 25, 2014 (79 FR 43358). We used information from the analyses in the final EIS published in the **Federal Register** on November 25, 2014 (79 FR 70154), to inform our final decision on the revision to the regulations for the experimental population of the Mexican wolf.

**We conducted 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 13, 2013 (78 FR 35719), and our July 25, 2014 (79 FR 43358), proposed rules. 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 invited six peer reviewers to comment, during the open public comment period, on our use and interpretation of the science used in developing our proposed rule. We considered all comments and information we received during the comment periods on the proposed rules during preparation of this final rulemaking.

### **Previous Federal Actions**

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

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

establish a captive-breeding program and reintroduce captive Mexican wolves to the wild (Service 1982, p. 28).

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

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

On February 29, 2012, we completed a 5-year review of the gray wolf listed entity, recommending that the entity currently described on the List of Endangered and Threatened Wildlife should be revised to reflect the distribution and status of gray wolf populations in the lower 48 States and Mexico by removing all areas currently included in its range, as described in the CFR, except where there is a valid species, subspecies, or DPS that is threatened or endangered (Service 2012).

On June 13, 2013 (78 FR 35664), we concurrently proposed a rule in the **Federal Register** to delist the gray wolf and list the Mexican wolf subspecies as endangered. The proposal to list the Mexican wolf as an endangered subspecies necessitated that we propose a revision to the regulations for the experimental population of the Mexican wolf in Arizona and New Mexico in order to correctly document this population as an experimental population of the Mexican wolf subspecies rather than the gray wolf species found in the current CFR. We also proposed several changes to the section 10(j) rule and management regulations of Mexican wolves to improve the effectiveness of the reintroduction project in managing the experimental population. Therefore, on June 13, 2013 (78 FR 35719), we published a proposed rule to revise the regulations for the 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 EIS in conjunction with the proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That notice of intent to prepare an EIS 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 regulations for the 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 regulations for the experimental population designation of the Mexican wolf to end on December 17, 2013, and announced public hearings.

On July 25, 2014 (79 FR 43358), we proposed a new revision to the regulations for the experimental population of the Mexican wolf, and announced the availability of a draft EIS on the proposal. That proposal had a 60-day comment period ending September 23, 2014.

In a July 29, 2013, stipulated settlement agreement between the Service and the Center for Biological Diversity, the Service agreed to submit to the **Federal Register** for publication, on or before January 12, 2015, a final determination concerning the proposed section 10(j) rule modification. This final rule revising the regulations for the existing experimental population of the Mexican wolf meets that agreement.

## **Background**

### *Species Information*

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

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

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

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

*et al.* 2009, p. 482; Breck *et al.* 2011, entire; Reed *et al.* 2006, p. 1129; AMOC and IFT 2005, p. TC-15)).

### *Recovery Efforts*

By the early 1970s, the Mexican wolf was extirpated in the United States, and by the 1980s, it was also considered extirpated in Mexico. The United States and Mexico signed the Mexican Wolf Recovery Plan in 1982 (Service 1982). The recovery plan did not contain objective and measurable recovery criteria for delisting as required by section 4(f)(1) of the Act because the status of the Mexican wolf was so dire that the recovery team could not foresee full recovery and eventual delisting (Service 1982, p. 23). Instead, the recovery plan contained a “prime objective” to ensure the immediate survival of the Mexican wolf. The prime objective of the 1982 recovery plan was: “To conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mi area (12,950-square-km) within the Mexican wolf’s historic range” (Service 1982, p. 23).

In the June 2013 proposed revision (78 FR 35719), we stated that the purpose of the experimental population is to accomplish the prime objective of the 1982 Mexican Wolf Recovery Plan to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild. That number was derived solely to prevent the Mexican wolf from going extinct, not to recover the species. We acknowledge that a scientifically

based population goal is needed as part of the measurable recovery criteria in order to determine when removing the Mexican wolf from the endangered species list is appropriate. We intend to establish a population goal as part of the recovery criteria for delisting in a future revision to the Mexican Wolf Recovery Plan as soon as feasible. The population objective of 300 to 325 Mexican wolves in the MWEPA established in this final rule would provide for the persistence of this population and enable it to contribute to the next phase of working toward full recovery of the Mexican wolf and its removal from the endangered species list. In other words, the Mexican wolves in the MWEPA population will contribute to the delisting criteria, in addition to other populations, as necessary.

A binational captive-breeding program between the United States and Mexico, referred to as the Mexican Wolf Species Survival Plan (SSP), was initiated in 1977 to 1980 with the capture of the last remaining Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States. Through the breeding of the 7 founding Mexican wolves and generations of their offspring, the captive population has expanded to approximately 248 wolves in 55 facilities, including 37 facilities in the United States and 18 facilities in Mexico (Siminski and Spevak 2014, p. 2).

The primary purpose of the SSP is to maintain a healthy captive population of Mexican wolves for the Service and the Dirección General del Vida Silvestre (in Mexico) for reintroduction into the wild. This program is an essential component of Mexican wolf

recovery. Specifically, the purpose of the SSP is to reestablish the Mexican wolf in the wild through captive breeding, public education, and research. This captive population is the sole source of Mexican wolves available to reestablish the species in the wild and is imperative to the success of reintroduction efforts in the United States and Mexico.

Reintroduction efforts to reestablish the Mexican wolf in the wild have taken place in both the United States and Mexico. Mexico initiated a reintroduction program with the release of five captive-bred Mexican wolves into the San Luis Mountains just south of the United States–Mexico border in October 2011. Through August 2014, Mexico released a total of 14 adult Mexican wolves, of which 11 died or are believed dead, and 1 was removed for veterinary care. The remaining two adult Mexican wolves were documented with five pups in 2014, marking the first successful reproductive event in Mexico since their extirpation in the 1980s. We expect the number of Mexican wolves in Mexico to fluctuate from zero to several wolves or packs of wolves during 2015 and into the future in or around Sonora and Chihuahua or other Mexican States.

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

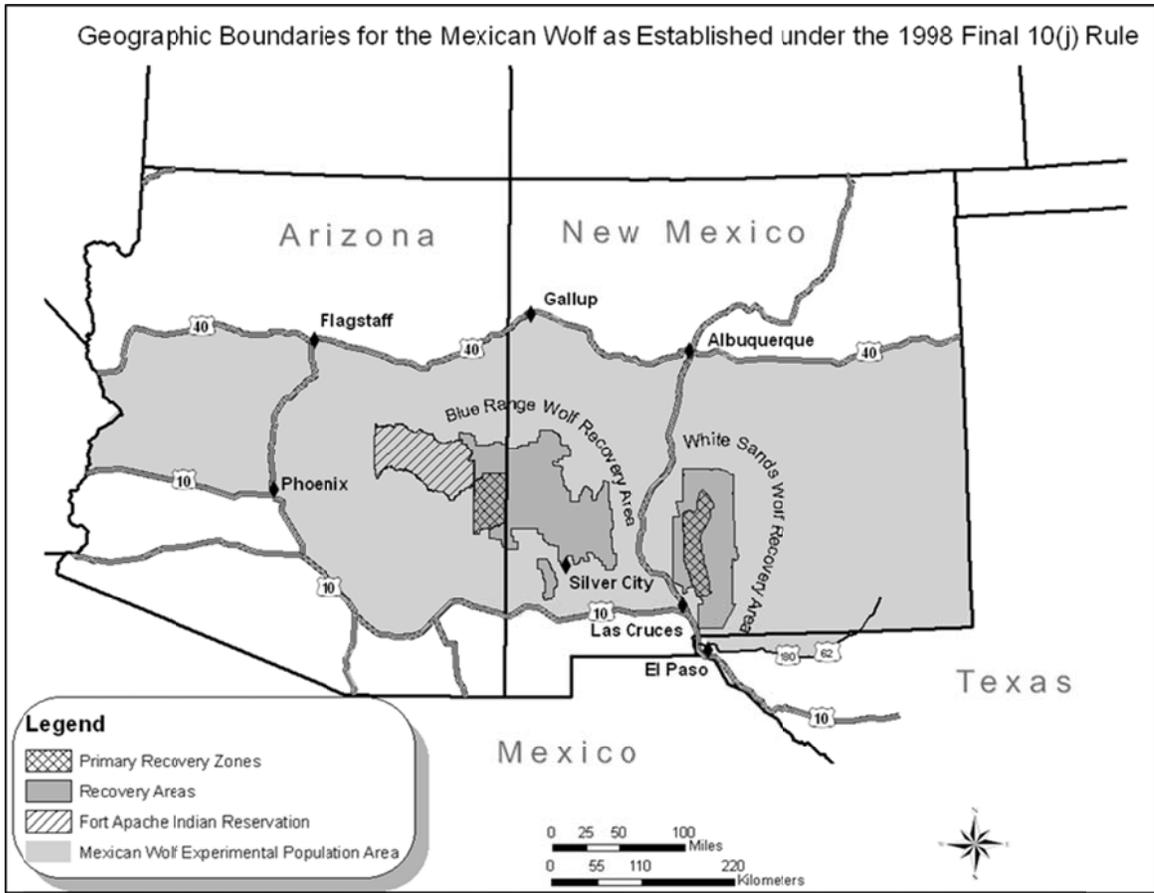


Figure 1—Geographic boundaries for the Mexican Wolf under the 1998 Final Rule under section 10(j) of the Endangered Species Act.

In the years 1998 through 2002, we conducted a high number of initial releases and translocations (n = 110) and a moderate number of removals (n = 58), which contributed to a net gain of 38 wolves in the overall population and the highest average population growth rate (1.003) (e.g., the average population growth was approximately 100 percent per year: Calculated as the population count at year two minus the population count at year one divided by the population at year one) experienced by the population. From 2003 through 2007, we conducted a moderate number of initial releases and

translocations (n = 68) and a high number of removals (n = 84), resulting in a net gain of 10 wolves in the overall population and an average population growth rate that was relatively flat (0.069). Between 2008 and 2013, which was characterized by a low number of releases and translocations (n = 19), but also a low number of removals (n = 17), we observed a net gain of 31 wolves and a higher average population growth rate (0.095) than the previous phase (Service 2014, Appendix D, p. 1).

We expect to pursue additional recovery efforts for the Mexican wolf outside of the MWEPA in the future. In the meantime, we expect that managing this experimental population in accordance with this revised rule will contribute to future recovery. We initiated the revision of the 1982 Mexican Wolf Recovery Plan in 2010. The revised plan will provide information about suitable habitat and population sizes for Mexican wolf recovery in the United States and Mexico. A draft plan will be provided for public and peer review before being finalized.

More information about the life history, decline, and current status of the Mexican wolf in the southwestern United States can be found in the final rule determining endangered status for the Mexican wolf (*Canis lupus baileyi*) (published elsewhere in this **Federal Register**), the 1982 Mexican Wolf Recovery Plan (Service 1982, pp. 5–8, 11–12), the 1996 final EIS (Service 1996, pp. 1–7), the 1998 Final Rule (63 FR 1752, January 12, 1998), the Mexican Gray Wolf Blue Range Reintroduction Project 5-Year Review (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, pp. TC–1 to TC–2), the Mexican Wolf Conservation

Assessment (Service 2010, pp. 7–15, 20–42), the Mexican Wolf Recovery Program Progress reports from 2001 to 2013, and the 2014 final EIS (Service 2014). These documents are available on-line at <http://www.fws.gov/southwest/es/mexicanwolf/>.

#### *Population Objective for Mexican Wolves in the MWEPA*

As noted above, this experimental population represents just one component of Mexican wolf recovery based on our understanding that multiple Mexican wolf populations may be necessary for recovery. However, for purposes of this final rule, we are establishing a population objective for the experimental population throughout the MWEPA in both Arizona and New Mexico based on the best available information until future recovery planning efforts are able to determine a population goal for range-wide recovery. We intend for the experimental population objective for this population to contribute to the future population goal established for the range-wide recovery of the Mexican wolf.

Several studies in the scientific literature helped inform our establishment of a population objective for the MWEPA. For instance, Wayne and Hedrick (2010, p. 3) recommend Mexican wolf recovery criteria to include 3 connecting populations of at least 250 Mexican wolves in each population. Their recommendation was based on the genetic aspects (effective population size) of the Mexican wolf relative to that of the gray wolf in the Northern Rocky Mountains and the recovery goals established for the Northern Rocky Mountains population. They suggest that the recovery goals of the

Northern Rocky Mountains population (300 wolves, 30 breeding pairs, in 3 populations, with some level of connectivity) should serve as a starting point for Mexican wolf recovery goals because of the degree of inbreeding, higher level of human-caused mortality, and lower likelihood of persistence of Mexican wolves compared with wolves in the Northern Rocky Mountains. They conclude that 3 connected populations of 250 wolves in each population would likely be necessary to achieve recovery rangewide, suggesting that if natural gene flow does not occur between these populations then artificial movement may be necessary (Wayne and Hedrick 2010, p. 3).

Carroll *et al.* (2014) performed more sophisticated analyses of potential recovery scenarios for the Mexican wolf using a population viability model, pedigree analyses of Mexican wolves currently in the BRWRA or captivity, and habitat models related to connectivity. Carroll *et al.* (2014, entire) analyzed the variation of mortality and dispersal metrics relative to probabilities for extinction and quasi-extinction (i.e., the probability of being relisted to threatened) in a metapopulation structure consisting of three populations that were connected via dispersal. Because two of these populations were assumed to have been founded using a more genetically diverse group of animals than is currently present in the experimental population in the BRWRA, the average viability of the populations was significantly higher than predicted for the experimental population.

The population extinction threshold was established as a 5 percent population extinction risk, as is commonly used in recovery plans (Carroll *et al.* 2014, p. 81). The

risk of extinction varied by both population size and the number of effective migrants per generation (an effective migrant is an animal that comes from outside a population and successfully reproduces within the population). The risk of extinction for population sizes below 200 was affected by the number of migrants exchanging genetic information with the population. When located within a metapopulation of three equally sized populations, populations of 100 had a greater than 5 percent extinction risk, even with 3 effective migrants per generation per population. Populations of 125 were more resilient with 2.5 to 3.0 effective migrants per generation. Populations of 150 with greater than 0.5 effective migrants per generation showed extinction risk below the 5% threshold (Carroll *et al.* 2014, p. 81). This effect occurred in part because the migrants provided genetic exchange between the populations, which reduced the relatedness within each population and, therefore, increased persistence for each population.

Carroll *et al.* (2014, entire) also examined a quasi-extinction threshold. Quasi-extinction represents the likelihood that a population, once it exceeds a certain population size, will again drop below that size in the future (e.g., due to the effects of accumulation of genetic inbreeding). In this analysis, they demonstrated that certain population sizes with higher levels of effective migration reduced the probability of quasi-extinction (Carroll *et al.* 2014, p. 82). A population comprising between 175 and 200 wolves had a less than 50 percent probability of quasi-extinction depending on whether the population had 0.5 to 1.0 effective migrants per generation. Population sizes of 300 to 325 achieved closer to a 10 percent probability of quasi-extinction regardless of whether the population had 0.5 or 1.0 effective migrants per generation, suggesting that at larger population sizes

(above 300) increasing migration beyond 0.5 effective migrants per generation is a less important factor, when each population is present within a larger metapopulation (Carroll *et al.* 2014, p. 82).

Based on Carroll *et al.* (2014 entire), a population objective of at least 300 Mexican wolves with some number of effective migrants would be appropriate for a single population objective, recognizing that the number of effective migrants per generation greatly affects population persistence at various population sizes. We recommend a population objective of 300 to 325 Mexican wolves within the MWEPA throughout both Arizona and New Mexico with a minimum of 1 to 2 effective migrants per generation entering the population, depending on its size, over the long term. Further information on the minimum number of effective migrants per generation needed per population size is discussed in Section 1.2.2 of the final EIS (Service 2014). In the more immediate future, we may conduct additional releases in excess of 1-2 effective migrants per generation to address the high degree of relatedness of wolves in the current BRWRA. We will continue to refine this information through a revised recovery plan. It will be important to ensure that a specific number of effective migrants are incorporated into the population, in this case from captivity, until such time as other wild populations are established within the context of a metapopulation as defined in a Service-approved recovery plan (Carroll *et al.* 2014, entire). Prior to the establishment of other wild Mexican wolf populations outside of the MWEPA and documentation of effective migrants between wild populations, we will need to use the captive population as a source of migrants for the experimental population.

### *Why We Need To Revise the 1998 Final Rule*

We are revising the regulations to the experimental population to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population. We intend to do this by: (1) Modifying the geographic boundaries in which Mexican wolves are managed south of Interstate-40 in Arizona and New Mexico under section 10(j) of the Act; (2) modifying the management regulations that govern the initial release, translocation, removal, and take of Mexican wolves; and (3) issuing a section 10(a)(1)(A) permit for management of Mexican wolves both inside and outside of the MWEPA. Revisions to the 1998 Final Rule and the section 10(a)(1)(A) permit are needed because: (1) Under the current regulations we will not be able to achieve the necessary population growth, distribution, and recruitment that would contribute to the persistence of, and improve the genetic variation within, the experimental population; (2) there is a potential for Mexican wolves to disperse into southern Arizona and New Mexico from reintroduction areas in the States of Sonora and Chihuahua in northern Mexico; and (3) certain provisions lack clarity, are inadequate, or limit the efficacy and flexibility of our management of the experimental population of Mexican wolves.

Over time and through project reviews, annual reports, monitoring, and communication with our partners and the public, we recognize that elements of the 1998 Final Rule designation need to be revised to help us enhance the growth, stability, and

success of the experimental population. Specifically, the 1998 Final Rule currently restricts initial releases of Mexican wolves to the Primary Recovery Zone, which constitutes only 16 percent of the BRWRA. This provision has constrained the number and location of Mexican wolves that can be released from captivity into the wild, which limits our ability to improve the genetic status of the population. Also, the 1998 Final Rule has a requirement that Mexican wolves stay within the BRWRA, which does not allow for natural dispersal movements from the BRWRA or occupation of the MWEPA. This requirement constrains the growth of the wild population. Under the 1998 Final Rule, we are required to implement management actions that disrupt social structure or lead to removal of wolves from the wild when a Mexican wolf naturally disperses from the BRWRA into the MWEPA. Therefore, we are revising a number of provisions that were established in the 1998 Final Rule to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population.

#### *Statutory and Regulatory Framework*

The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and

protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

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

section 10(j) of the Act (hereafter referred to as a 10(j) rule) contains the prohibitions and exemptions necessary and appropriate to conserve that species.

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

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the

continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

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

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

For the purposes of section 7 of the Act, we treat a nonessential experimental population as a threatened species when it is located within a National Wildlife Refuge or

unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When a nonessential experimental population is located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply.

In these instances, a nonessential experimental population provides additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the nonessential experimental population will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for Mexican wolves established within the experimental population area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect

a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

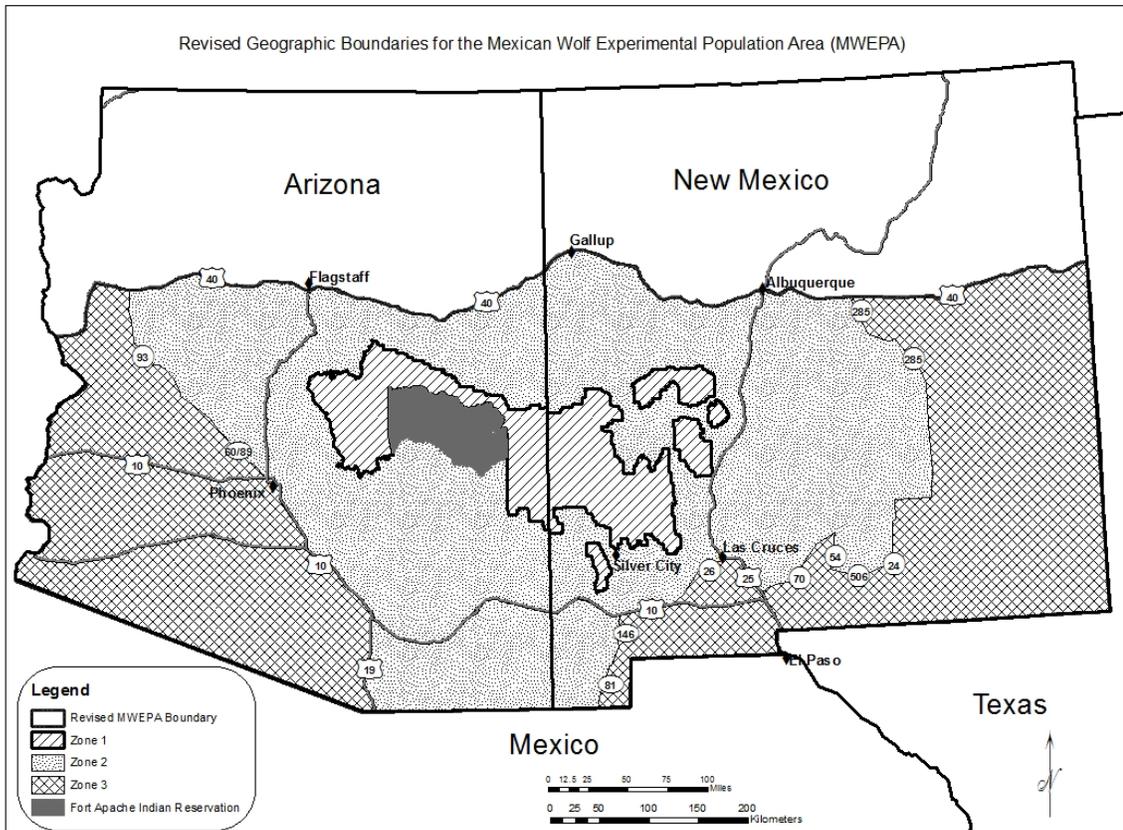
Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish a nonessential experimental population.

#### *Revisions to the Geographic Area of the Mexican Wolf Experimental Population*

We are expanding the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States–Mexico international border across Arizona and New Mexico (Figure 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 making 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 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.

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



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

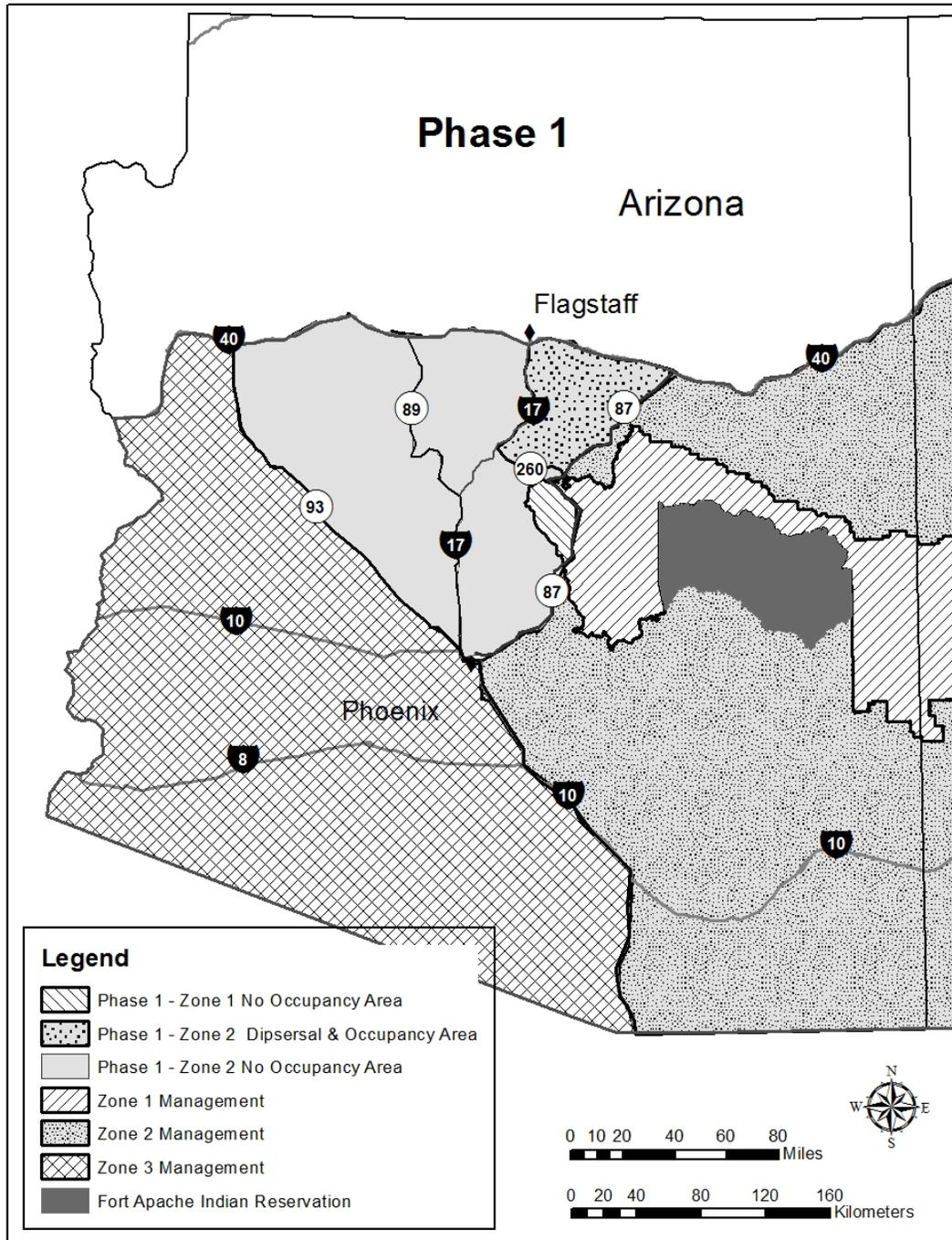
National Forest. Zone 2 is where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, and it 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 where Mexican wolves will be more actively managed under the authorities of this rule to reduce conflict with the potentially affected public.

Further, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87. In consultations with officials of the Arizona Game and Fish Department, they expressed concern that elk populations west of Highway 87 are generally smaller in number and isolated from each other compared to elk populations east of Highway 87. Also, areas west of Highway 87 tend to be drier, and, therefore, elk herds have greater fluctuations in population size than herds in more mesic areas to the east. As such, Arizona's most dense and productive elk populations are found in the eastern part of the State, generally east of Highway 87.

Therefore, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87.

As part of the phased-approach, Phase 1 will be implemented for the first 5 years following the effective date of this rule (see **DATES**). During this phase, initial releases and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona (Figure 3). No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.

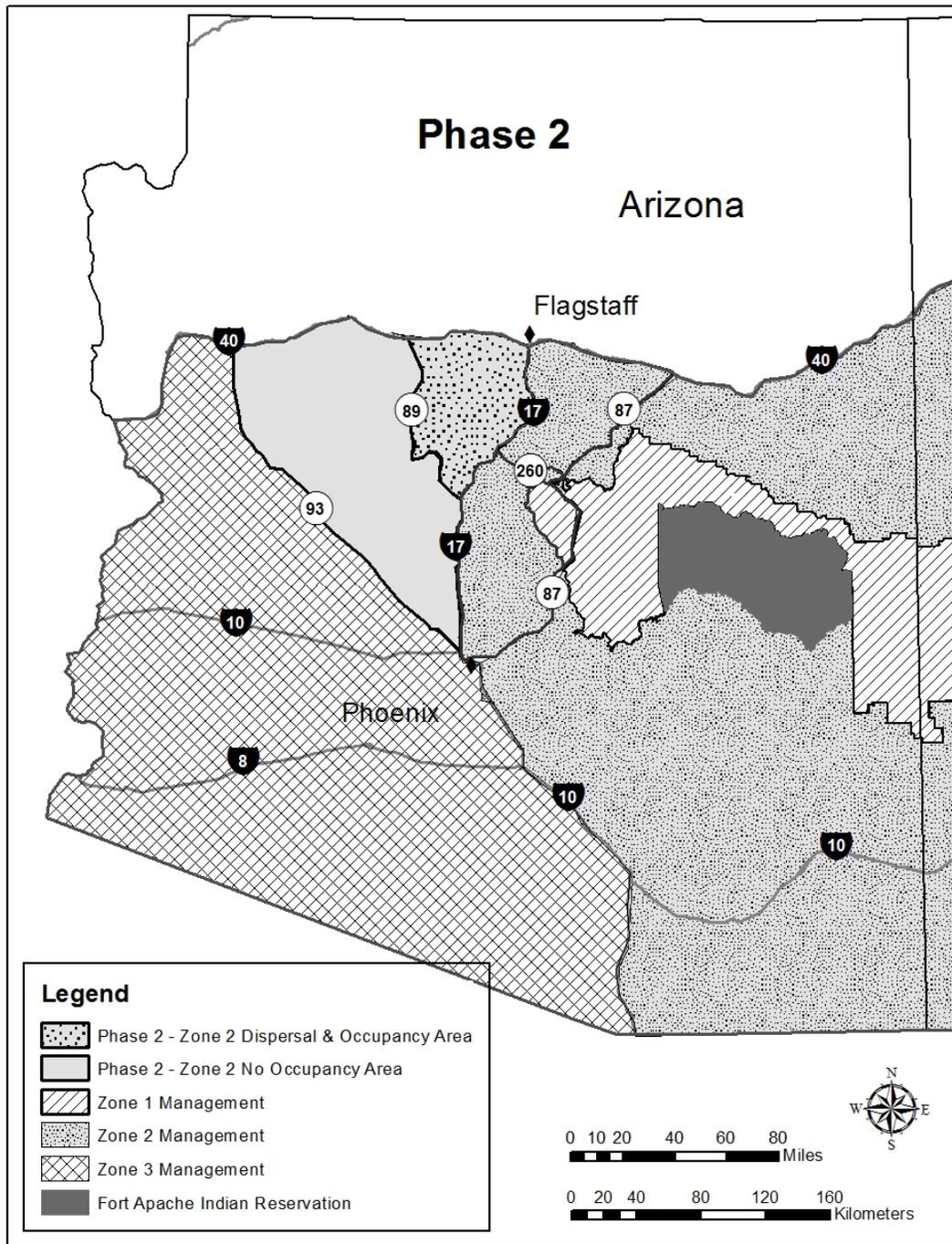
Figure 3—Phase 1 management boundaries for the Mexican wolf experimental



population in Arizona.

If determined to be necessary by the 5-year evaluation, we will initiate Phase 2 (Figure 4). In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3) with the exception of those areas west of State Highway 89 in Arizona.

Figure 4—Phase 2 management boundaries for the Mexican wolf experimental population in Arizona.

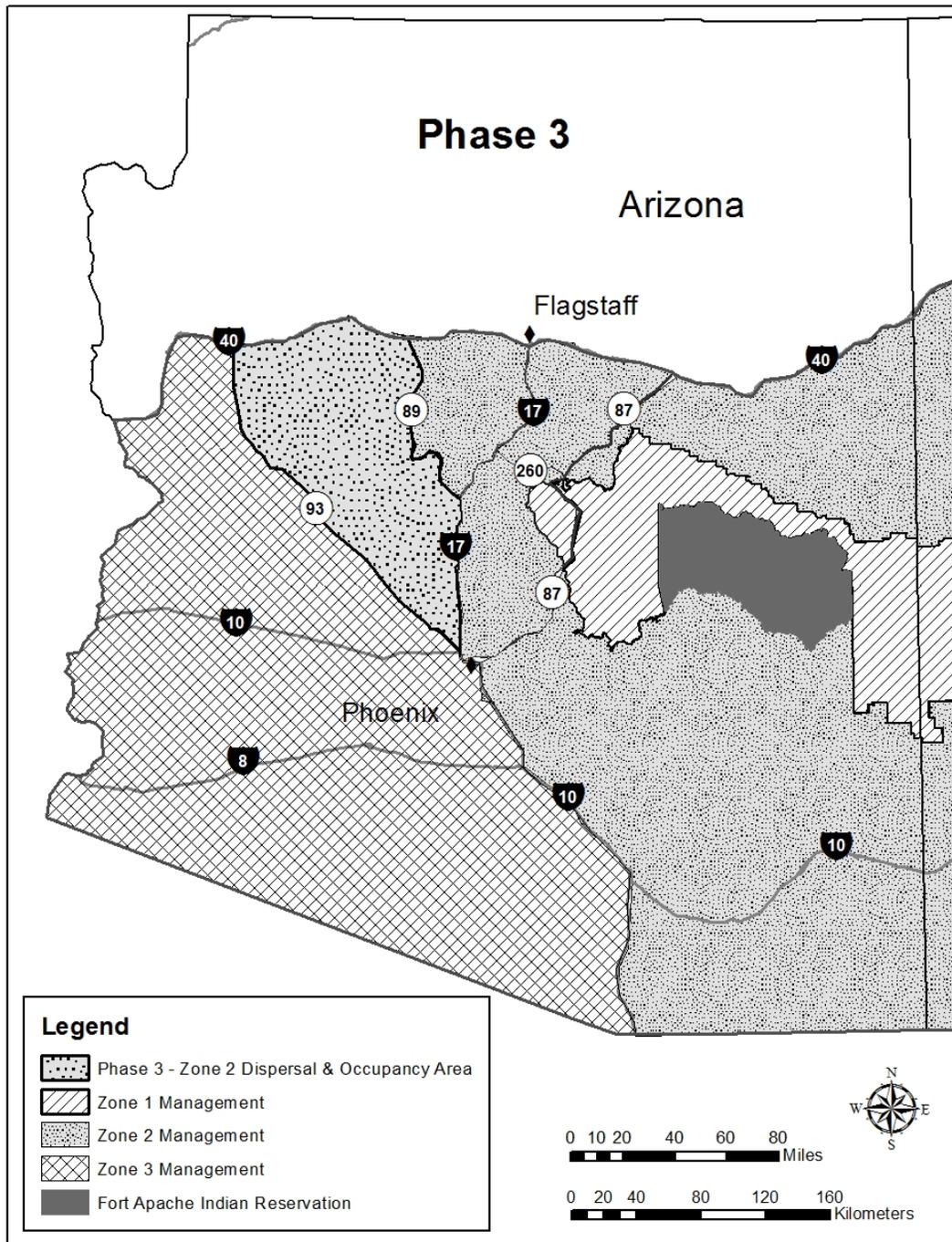


If determined to be necessary by the 8-year evaluation and Phase 2 has already been implemented, Phase 3 will be initiated (Figure 5). In Phase 3, initial release and

translocation of Mexican wolves can occur throughout Zone 1; Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). However, no translocations can be conducted west of State Highway 89 in Arizona.

The phasing may be expedited with the concurrence of participating State game and fish agencies. Regardless of the phase implemented, by the beginning of year 12 from the effective date of this rule (see **DATES**), we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply (Figure 2). Full implementation means that initial release and translocation of Mexican wolves can occur throughout entire Zone 1; Mexican wolves can disperse naturally from Zone 1 into and within the MWEPA (Zones 2 and 3) and occupy the MWEPA (Zones 1, 2 and 3); and translocations can be conducted at selected translocation sites on Federal land within Zones 1 and 2 of the MWEPA.

Figure 5—Phase 3 management boundaries for the Mexican wolf experimental population in Arizona.



Additionally, we are eliminating the BRWRA designation along with the primary and secondary recovery zones provided for in the 1998 Final Rule in accordance with

recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC-4). We are designating Zone 1 as the area where initial releases can occur, which includes the entire Apache and Sitgreaves National Forests and the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona; and the Gila National Forest and the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 2). This revision will provide additional area and locations for initial releases of Mexican wolves to the wild from captivity beyond that currently allowed by the 1998 Final Rule.

With this final rule, we have removed the small portion of the MWEPA in Texas. This area is not likely to contribute substantially to our population objective and is not suitable for the conservation of Mexican wolves because of the lack of a sufficient amount of suitable habitat for the Mexican wolf. We do not expect Mexican wolves to occupy the small portion of Texas that was previously in the MWEPA because ungulate populations are inadequate to support Mexican wolves there.

Lastly, we are removing the White Sands Wolf Recovery Area as a possible reintroduction site for Mexican wolves (Figure 2), although Mexican wolves will still be able to disperse to and occupy this area. Under the 1998 Final Rule, initial releases and reintroduction of Mexican wolves into the White Sands Wolf Recovery Area was authorized if the Service found it necessary and feasible in order to achieve the recovery goal of at least 100 Mexican wolves occupying 5,000 square mi (12,950 square km) (Service 1998). While this recovery area lies within the probable historical range of the

Mexican wolf, and could be an important reestablishment site if prey densities increased substantially, it is now considered a marginally suitable area for Mexican wolf release and reestablishment primarily due to the low density of prey. For this reason the Mexican Wolf Blue Range Reintroduction Project 5-Year Review recommended that an amended or new experimental population rule not include White Sands Missile Range as a Mexican Wolf Recovery Area or as a reintroduction zone (AMOC and IFT 2005, p. ARC-3).

### *Reintroduction Procedures*

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

We have considerable experience conducting initial releases and resulting data upon which to guide our actions. We consider a successful initial release to be any Mexican wolf that ultimately breeds and produces pups in the wild. Between 1998 and 2013, our initial release success rate has been about 21 percent (Service 2014, Appendix

D, p. 4). In other words, for every 100 wolves we release, only 21 of them survive, breed, and produce pups, therefore becoming effective migrants. Based on this success rate, and during the first 20 years of management under this final rule, we expect that each time we initially release wolves we will need to release 10 wolves to achieve 2 effective migrants, one component of our population objective for the MWEPA.

Migrants are important to the conservation of the species to help alleviate genetic threats to the population including reducing kinship (the relatedness of animals to one another) and reducing loss of genetic variation. Based on assessment of the initial release success of various historical release strategies (single wolves, pairs, packs, etc.), we would expect to achieve this target by releasing 2 packs, each with an adult pair and several pups, during years 1 to 4 and 4 to 8, and 1 or 2 packs during the next three successive generations until year 20, or for 5 generations. We may conduct several additional releases in the immediate future in excess of 2 effective migrants per generation to specifically address the high degree of relatedness of wolves in the current BRWRA.

The number of effective migrants needed to alleviate genetic threats to the population could decrease in the third and subsequent generations, assuming the population is above 250, as a population of that size is more robust. We may also conduct infrequent initial releases over time for other management purposes such as replacing wolves that have been removed from the wild. This number of effective migrants (7 to 10 wolves over 5 generations) is negligible from a population size standpoint, but should be significant from a genetic standpoint assuming animals selected for initial release are genetically desirable contributions to the population (Carroll *et al.* 2014, p. 81).

We expect to have adequate availability of initial release sites for the initial releases during future generations. That is, we would need 7 to 10 sites available (unoccupied by established wolf packs) for the release of packs. Zone 1 of the MWEPA provides for at least 7 release sites (see Figure D-2, Service 2014, Appendix D, p. 9). However, the ability to conduct initial releases of packs in these areas will also depend on the natural recolonization of the area. Coordination with State and Federal agencies, counties, Tribes, and the public would be needed prior to identifying specific release sites in Zone 1.

#### *Management of the Experimental Population of Mexican Wolves*

The prime objective of the 1982 recovery plan was to conserve and ensure the survival of the Mexican wolf by maintaining a captive-breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild (Service 1982, p. 23). Based on the 1982 recovery plan, we established a captive-breeding population, starting with 7 founding wolves, of 240 to 300 Mexican wolves in 55 breeding facilities in the United States and Mexico. The 1998 Final Rule enabled us to release Mexican wolves from this captive population into the wild to determine if it was possible to establish a wild population following the extirpation of the species in the early 1970s. Since 1998, we have demonstrated success in establishing a wild population (e.g., a minimum of 83 Mexican wolves in the wild, all of which are wildborn as of December 2013). However, we are now revising the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary

population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population regulation, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective and measurable recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA.

We are implementing this rule to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population. The experimental designation enables the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with endangered status. This includes allowing limited take of individual Mexican wolves under narrowly defined circumstances (50 CFR 17.84(k)(6)). Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting. It is also critical to obtaining needed State, tribal, local, and private landowner cooperation. The Service believes this flexibility has and will continue to improve the likelihood of success of this reestablishment effort. Management of the experimental population may include any of the provisions herein or provided for in Service-approved management plans, protocols, and permits.

Upon the effective date of this rule and as described under paragraph (k)(9)(iv) in the regulations at the end of this document and in accordance with management phasing in Arizona, we are allowing initial release of Mexican wolves throughout the entire Zone 1; allowing Mexican wolves to disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). We are allowing translocation of Mexican wolves at selected translocation sites on Federal land within Zones 1 and 2 of the MWEPA, and we can develop management agreements with private landowners, with the concurrence of State game and fish agencies, and with tribal governments, for management of Mexican wolves in Zone 2. Under this rule, we are allowing Mexican wolves to occupy Federal and non-Federal land in the MWEPA, except in the case of depredation, other nuisance behavior, or an unacceptable impact to a wild ungulate herd that cannot be effectively managed through non-removal techniques. In addition, Mexican wolves will be captured and removed from tribal trust land if requested by the tribal government.

In order to maximize our management flexibility, we have revised the regulations for the take of Mexican wolves on Federal and non-Federal land within the entire MWEPA (Zones 1, 2, and 3) by:

(1) Modifying the conditions that determine when we would issue a permit to allow livestock owners or their agents to take (including intentional harassment or kill), in conjunction with a control action, any Mexican wolf that is in the act of biting, wounding, or killing livestock on Federal land, where specified in the permit; allowing domestic animal owners or their agents to take (including kill or injure) any Mexican

wolf that is in the act of biting, wounding or killing domestic animals on non-Federal land anywhere within the MWEPA;

(2) Providing that the Service or a designated agency may, in conjunction with a removal action authorized by the Service, issue permits to allow domestic animal owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or kill) any Mexican wolf that is present on non-Federal land where specified in the permit; and

(3) Revising the conditions under which take will be authorized in response to an unacceptable impact of Mexican wolf predation on a wild ungulate herd.

Additionally, subject to Service and State approved management agreements, the Service or a designated agency may develop and implement management actions on private land in management Zones 1 and 2 within the MWEPA in voluntary cooperation with private landowners, including but not limited to initial release and translocation of wolves onto such lands if requested by the landowner.

Subject to agreements with tribal governments, the Service may develop and implement management actions on tribal trust land in management Zones 1, 2, and 3 within the MWEPA in voluntary cooperation with tribal governments including but not limited to initial release and translocation. No agreement with a Tribe is necessary for

the capture and removal of Mexican wolves from tribal trust land if requested by the tribal government.

Further, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87. As part of the phased-approach, Phase 1 will be implemented for the first 5 years following the effective date of this rule (see **DATES**). During this phase, we will conduct initial releases of Mexican wolves throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona (Figure 3). No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into and occupy the MWEPA (Zones 1, 2 and 3). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.

If determined to be necessary by the 5-year evaluation, we will initiate Phase 2 (Figure 4). In Phase 2 initial releases of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3) with the exception of those areas west of State Highway 89 in Arizona.

If determined to be necessary by the 8-year evaluation and Phase 2 has already been implemented, Phase 3 will be initiated (Figure 5). In Phase 3, initial release of

Mexican wolves can occur throughout Zone 1. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into and occupy the MWEPA (Zones 1, 2, and 3).

While implementing this phased approach, two evaluations will be conducted: (1) covering the first 5 years and (2) covering the first 8 years after the effective date of this rule in order to determine if we will move forward with the next phase. Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulate herds, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after the effective date of this rule the population of Mexican wolves in the wild is at least 150, and 8 years after the effective date of this rule the population of Mexican wolves in the wild is at least 200. If we have not achieved this population growth, we will move forward to the next phase. Regardless of the outcome of the two evaluations, by the beginning of year 12 from the effective date of this rule, we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply. The phasing may be expedited with the concurrence of participating State game and fish agencies.

Also, we are revising and reissuing the Mexican Wolf Recovery Program's section 10(a)(1)(A) research and recovery permit (TE-091551-8 dated 04/04/2013) so that it applies to management of Mexican wolves both within and outside of the MWEPA. Under this permit we will authorize removal of Mexican wolves that can be

identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. We will make a determination, based in part on their genetic value relative to the Mexican wolf population, to maintain these wolves in captivity, translocate them to areas of suitable habitat within the MWEPA, or transfer them to Mexico.

### *Identification and Monitoring*

Prior to release from captivity into the wild, Mexican wolves will receive permanent identification marks and radio collars, as appropriate. While not all Mexican wolves are radio-collared, we attempt to maintain at least two radio collars per pack in the wild. Radio collars allow the Service to monitor reproduction, dispersal, survival, pack formation, depredations, predation, and a variety of other important biological metrics. We do not foresee a scenario where we would not continue an active monitoring strategy for Mexican wolves while they are listed under the Act. However, we also recognize that a majority of wild Mexican wolves may not have radio collars as the population grows.

The Service will measure the success or failure of releases, translocations, and other management actions by monitoring, researching, and evaluating the status of Mexican wolves and their offspring. Using adaptive management principles, the Service will continue to modify subsequent management actions depending on what is learned.

We will prepare periodic progress reports, annual reports, and publications, as appropriate, to evaluate release strategies and other management actions.

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

## **Summary of Comments and Recommendations**

From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We again initiated scoping on August 5, 2013 (78 FR 47268), when we published a notice of intent to prepare an EIS in conjunction with the proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That notice of intent to prepare an EIS had a 45-day comment period ending September 19, 2013. We requested written comments from the public on the proposed revision to the regulations for the experimental population of the Mexican wolf during two comment periods: June 13, 2013, to December 17, 2013, and July 25, 2014, to September 23, 2014. Additionally four public hearings were held: November 20, 2013, in Albuquerque, New Mexico; December 3, 2013, in Pinetop, Arizona; August 11, 2014, in Pinetop, Arizona; and August 13, 2014, in Truth or Consequences, New Mexico. We also contacted appropriate Federal, tribal, State, county, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule during these comment periods.

Over the course of the two comment periods, we received approximately 48,131 comment submissions. All substantive information provided during these comment periods, including the public hearings, has either been incorporated directly into this final determination or addressed below. Comments from peer reviewers and State game and fish agencies are grouped separately. In addition to the comments, some commenters

submitted for our consideration additional reports and references, which were reviewed and incorporated into this final rule as appropriate.

### *Peer Reviewer Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the six peer reviewers we contacted during the first comment period. During the second comment period, we received responses from one of the six peer reviewers.

We reviewed all comments received from the peer reviewers regarding the proposed revision to the regulations for the experimental population designation of the Mexican wolf. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule, as appropriate.

(1) *Comment:* The wording “based on established ungulate management goals” and “unacceptable impact” in the take provision for unacceptable impacts to wild ungulates is problematic in being so loosely worded and unqualified as to allow a wide variety of interpretations.

*Our response:* Based on information that we received from the Arizona Game and Fish Department and agreed upon by the New Mexico Department of Game and Fish, an unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates. The rule also includes the process that the State game and fish agencies must follow to demonstrate that the decline in the ungulate population was influenced by Mexican wolves.

(2) *Comment:* There needs to be some justification presented why 100 Mexican wolves was once determined to be biologically warranted or why that number rather than 50 or 200 is not the goal for Mexican wolf restoration in its historical range of the purported subspecies in Arizona and New Mexico. There needs to be some link to how 100 Mexican wolves will help achieve recovery for the subspecies as defined under the Act.

*Our response:* As of the early 1970s, the Mexican wolf was extirpated in the United States. The prime objective of the 1982 recovery plan was to conserve and ensure the survival of the Mexican wolf by maintaining a captive-breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild (Service 1982, p. 23). This number was not intended to be a recovery goal. It was a

starting point to determine whether or not we could successfully establish a population of Mexican wolves in the wild that would conserve the species and lead to its recovery.

Based on the 1982 recovery plan, we have now established a captive-breeding program and a wild population; however, we recognize the need to revise the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. We acknowledge that a scientifically based population goal, as a component of future objective and measurable recovery criteria, is needed in order to help determine when removing the Mexican wolf from the endangered species list is appropriate.

Following this phase of improving the existing experimental population regulation, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective and measurable recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA.

In the meantime, this experimental population represents just one phase of Mexican wolf recovery. Based on Carroll *et al.* (Carroll *et al.* 2014, pp. 81–82)), a population objective of at least 300 Mexican wolves with some number of effective migrants would be appropriate for a single population objective, recognizing that the number of effective migrants per generation greatly affects population persistence at various population sizes. We have established a population objective of 300–325 wolves for the MWEPA.

(3) *Comment:* The June 2013 proposed rule suggests that any landowner can request translocation and the Service will attempt to do that. I believe this concept would be a huge mistake and will lead to the very problems that have occurred, to the detriment of Mexican wolf recovery, with the agency removal of non-problem Mexican wolves outside the primary recovery area. If Mexican wolves cause a problem, then deal with them. If not, leave them alone and let them assist with achieving population objectives. That type of provision invites conflict, public demands that cannot be satisfied, bad public relations, and waste of agency resources. The rule should be crystal clear for the public to understand.

*Our response:* We clarified many of the provisions in our revised proposed rule that published in the **Federal Register** on July 25, 2014. We will not remove a Mexican wolf if a landowner (other than tribes on tribal trust lands) requests removal and the wolf is not engaging in activities that fit the definition of a “problem wolf.” We have clarified the language to allow the initial release and translocation of Mexican wolves **onto** private lands if there is an agreement with the landowner and concurrence with the State game and fish agency.

(4) *Comment:* Take of a Mexican wolf by a pet owner is not an issue and should be allowed. It is not going to be a significant issue either way, as very few Mexican wolves will ever be taken, but might give pet owners some recourse and peace of mind.

*Our response:* We have included a provision in this final rule to allow for take of Mexican wolves by owners of domestic animals, which include pet dogs and dogs working livestock or being lawfully used to trail or locate wildlife on non-Federal lands. Domestic animal means livestock as defined in the regulations at the end of this final rule and non-feral dogs. On non-Federal lands, 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 the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. In addition, anyone may use 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.

*Comments from other Federal Agencies*

(5) *Comment:* The potential expansion of the BRWRA to include the Lakeside and Black Mesa Districts of the Sitgreaves National Forest and the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest will bring additional issues that must be considered and addressed by the Service. Of particular concern is the heavy interspersed of inholdings of private lands, towns and numerous unincorporated areas, and the adjacency of the Black Mesa, Tonto, Payson, and Pleasant Valley Ranger Districts to the Phoenix metropolitan area. These Districts also have extensive open road and motorized trail networks with extremely high recreational use.

*Our response:* We acknowledge that there are areas within the MWEPA that are 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. Initial releases of Mexican wolves will be well away from towns and dwellings. 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, such as the areas described by the commenter, they will be more actively managed.

(6) *Comment:* One Federal agency suggested that expanding the MWEPA boundary to include areas south of Interstate 10 to the United States–Mexico international border is problematic because there are few deer or elk in this area and this expansion would likely lead to increased livestock predation. Because the area contains more people than remote forested areas of Arizona and New Mexico, there would likely be more interaction and conflict with both people and pets.

*Our response:* The area of Arizona and New Mexico south of Interstate 10 may provide stepping stone habitat and dispersal corridors for wolves dispersing north from Mexico and south from the experimental population. Management of all Mexican wolves in this area under this final rule will improve the effectiveness of the reintroduction project in minimizing and mitigating wolf–human conflict by providing more management flexibility. Without the experimental population designation, wolves that disperse north from Mexico would currently be considered fully endangered, which

allows for only limited management and runs counter to the management allowed by the nonessential experimental population designation.

*(7) Comment:* One Federal agency recommended clarifying whether the revised 10(j) rule constituted a change in the way depredation losses have been counted in the past. It was recommended that the Service gather information on the total number of livestock killed by wolves, not just the number of incidents, because the actual number of livestock involved is still important and needs to be accounted for and reported.

*Our response:* In this final rule, we do not change the way depredation losses have been counted in the past. We do not use the term depredation incident and only use the term depredation in our definition of problem wolves. We define depredation as the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. Also, we define problem wolves as Mexican wolves that are individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals; or habituated to humans, human residences, or other facilities regularly occupied by humans.

*(8) Comment:* The proposed rule provides for unintentional take coverage for Federal, State, or tribal agency employees or their contractors while engaging in the course of their official duties, such as military training and testing. Some military bases support a robust recreation program as part of its mission in accordance with the Sikes

Act. Unintentional take should cover users of Federal lands that are not agency employees or their contractors, such as recreational users and hunters.

*Our response:* The provision for unintentional take allows for the take of a Mexican wolf by any person 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 the regulations. 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.

(9) *Comment:* The Marine Corps conducts military and associated activities adjacent to and within restricted airspace overlying the Cabeza Prieta National Wildlife Refuge. As such activities may affect Mexican wolves that may be present on the refuge, the Federal agency recommended that the rule clarify how exclusions, specifically use of lands within the National Wildlife Refuge System as safety buffer zones for military activities, apply to military activities adjacent to and over the refuge.

*Our response:* The Cabeza Prieta National Wildlife Refuge occurs within Zone 3 of the MWEPA, which is an area of less suitable Mexican wolf habitat. We expect very few Mexican wolves to occupy these areas of less suitable habitat because ungulate populations are inadequate to support them. In any case, 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. Further, the 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 are specifically excluded from the definition of “disturbance-causing land-use activity.”

*Comments from States*

Section 4(i) of the Act states, “the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency’s comments or petition.” Comments received from the States regarding the proposal to revise the regulations to the experimental population of the Mexican wolf are addressed below.

(10) *Comment:* The June 2013 proposed revision classifies State Game Commission-owned lands as public without any discussions with the States. Because the proposed classification would limit Mexican wolf management flexibility on Commission-owned properties, the Service should exclude State Game Commission-owned lands.

*Our response:* In this final rule, we have separate provisions for take of Mexican wolves based on whether they occur on Federal or non-Federal lands. Non-Federal land

means any private, State-owned, or tribal trust land. In this final rule, State Game Commission-owned lands are considered non-Federal lands.

(11) *Comment:* One State agency requested that the Service explain how increased impacts to ranchers, rural families, property owners, recreational users, and local communities will be mitigated under the proposed rule change to allow direct release throughout the BRWRA.

*Our response:* We have included several provisions in the final rule that will mitigate the potential impacts of Mexican wolves on landowners, recreational users, and local communities. Under the final rule, on non-Federal lands, 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 the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present; on Federal land, livestock owners may be permitted to take a wolf that is in the act of biting, killing, or wounding livestock. We have also included a provision for issuance of take permits on non-Federal land for domestic animal owners to assist the Service or its designated agency in completing wolf control actions. In addition, 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.

(12) *Comment:* Clarify how depredation compensation, incentive, and mitigation programs will be funded and administered.

*Our response:* This rule does not fund or administer depredation compensation and mitigation programs. However, the Service, in cooperation with the National Fish and Wildlife Foundation, established the Mexican Wolf/Livestock Interdiction Trust Fund (Trust Fund), in 2009. The objective of the Trust Fund is to generate long-term funding for prolonged financial support to livestock operators within the framework of cooperative conservation and recovery of Mexican wolf populations in the Southwest. The Trust Fund is overseen by the Mexican Wolf/Livestock Coexistence Council, an 11-member group of ranchers, Tribes, county coalitions, and environmental groups that may identify, recommend, and approve conservation activities, identify recipients, and approve the amount of the direct disbursement of Trust Funds to qualified recipients. The Coexistence Council completed the Mexican Wolf/Livestock Coexistence Plan in March 2014. It is the current policy of the Coexistence Council to pay 100 percent of the market value of confirmed depredated cattle and 50 percent market value for probable kills. In addition, the Coexistence Council distributed \$85,500 for a pay-for-presence program to ranchers in the BRWRA in 2014. The Payment for Presence program mitigated other uncompensated costs (i.e., unconfirmed wolf kills that are never found) that ranchers experience with the presence of wolves. The Payment for Presence program uses a formula, based on wolf utilization of allotments, the number of pups that are alive at the end of the year from a wolf pack utilizing an allotment, the ranchers' implementation of conflict avoidance methods, and the number of livestock exposed to

wolves, to equitably distribute available funds among ranchers applying to the program. Continued funding under the Coexistence Plan will depend on obtaining funding from private and public sources.

(13) *Comment:* The Mexican Wolf/Livestock Coexistence Council is underfunded and significantly challenged to fund losses and conflict-avoidance measures by currently participating livestock producers within the BRWRA and MWEPA. Under its current financial limitations, it has no ability to provide significant (if any) financial support for broad-scale conservation actions rather than compensation for local losses. Neither the proposed rule nor the draft EIS shed adequate light on anticipated costs of interdiction, incentives, etc.

*Our response:* Start-up funding for the Coexistence Council has been provided by the Fish and Wildlife Service and Non-Governmental Organizations. It is our understanding that the Coexistence Council will continue to seek private and public funding into the future.

(14) *Comment:* The Service must identify and analyze methods and means of avoiding, reducing, or mitigating Mexican wolf depredation on livestock and pets, including identification of realistic methods by which to fund and implement such programs over the long term, preferably over a 20-year planning horizon.

*Our response:* As the total number of Mexican wolves in the experimental population increases, the Service will increasingly manage problem wolves by means authorized in this final rule in a way that furthers the conservation of the Mexican wolf while being responsive to the needs of the local community in cases of depredation or nuisance behavior by wolves. This final rule includes several provisions by which depredation on livestock and pets can be avoided and reduced. For instance, 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. Also, 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.

(15) *Comment:* The proposed amendments to the experimental population rules are unnecessary to achieve the population objective for the Mexican wolf. The purpose and need for the original 1998 Mexican wolf section 10(j) rule was to establish a population of at least 100 Mexican wolves in the BRWRA. Currently, 75 wolves occupy this area, and the 100 individual population objective will be met in the near future. Based on population growth over the past several years, the proposed amendments are not necessary for the population objective to be achieved.

*Our response:* Section 2 of the Act requires the Service to conserve endangered and threatened species and utilize its authorities in furtherance of the purposes of the Act.

According to Section 3 of the Act, conserve means to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. The 1982 Mexican Wolf Recovery Plan contained a “prime objective” to ensure the immediate survival of the Mexican wolf—that “prime objective” to ensure immediate survival was 100 wolves. That number, 100 wolves, was not enough, and still is not enough, to delist the Mexican wolf. The purpose of our action is to improve the effectiveness of the reintroduction project in managing the experimental population in order to ensure conservation of the Mexican wolf. Conservation of this species certainly requires more than 100 wolves in the wild. It is our expectation that the new population objective for the MWEPA will help to ensure a stable population of Mexican wolves in the MWEPA in the future. This stable population will then contribute to the range-wide recovery of the species, the goal of which will be determined in a future revision to the Mexican wolf recovery plan.

(16) *Comment:* One State agency requested that the Service add language to the rule that explicitly requires State review and approval prior to any release on private lands or non-trust tribally owned lands under the jurisdiction of the State. Further, they requested that we establish a minimum set of factors that must be considered in this review. These factors include:

- the presence of sufficient native prey within a 10- to 15-mile (16- to 24-kilometer) radius of proposed release site (as determined by the State);

- the State's evaluation of probable impacts to State trust species both on the private property where the release is being proposed as well as adjoining lands;
- zones of potential dispersal;
- both spatial and temporal density and distribution of livestock in the adjoining area;
- livestock depredation removal thresholds; and
- pre-release confirmation from the Service of the timely availability of sufficiently trained and competent Service personnel and the associated fiscal resources and equipment needed to effectively monitor, manage, and remove released Mexican wolves should the removal threshold be met.

*Our response:* In this final rule, we have included provisions for management on private land within Zones 1 and 2 of the MWEPA, so that the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, and with the concurrence of the State game and fish agency. These actions include: occupancy by natural dispersal; initial release; and translocation of Mexican wolves onto private lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency. We have also included provisions for management on tribal trust land within Zones 1 and 2 in the MWEPA, where 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 onto tribal trust land; and capture and removal of Mexican wolves from tribal trust land if requested by the tribal government.

(17) *Comment:* The specifications for releases of Mexican wolves on private land should be included in the proposed rule. Releases on private lands require Federal action and will have direct impacts on other surrounding private landowners, wildlife, livestock, and Federal and State public land. Also, surrounding landowners should be consulted prior to any such release being made. Livestock producers adjacent to private land release sites must be made aware of these releases in order to implement measures to avoid depredation. The Service should develop a set of specific criteria for private land releases prior to any revision to the final 10(j) rule or EIS.

*Our response:* 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 onto such lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency. Specifications for releases may be different for different landowners, so these specifications will be developed as part of the management actions rather than in the final rule, and with the concurrence of State game and fish agencies.

(18) *Comment:* As they relate to allowable take, the differences between what is allowed on public land and what is allowed on private land have been a continuing source of confusion under the 1998 Final Rule and will continue to be a source of confusion under the proposed rule. The problem is best remedied by making take provisions for individuals the same on public land as on private land. It was suggested that the language in the proposed rule be modified to allow for owners of livestock on public lands allotted for livestock grazing the same ability that livestock owners or their agents have on private or tribal lands to take any Mexican wolf in the act of killing, wounding, or biting livestock, regardless of the number of breeding pairs or the most recent population count.

*Our response:* This final rule has been modified to clarify take provisions on Federal and non-Federal land. It is our intent that the regulatory burden of Mexican wolf recovery rest on Federal land; therefore, we have provided additional take provisions on non-Federal land to allow for more flexibility in the management of problem wolves. The differences in allowable take on Federal and non-Federal land will help us effectively manage Mexican wolves within the MWEPA in a manner that furthers its conservation while being responsive to the needs of the local community in cases of depredation or nuisance behavior by wolves on non-Federal lands. We expect that modifying the provisions governing the take of Mexican wolves to provide clarity and consistency will contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local stakeholders.

(19) *Comment:* It was suggested that the Service develop and publish for review a set of criteria for removal of Mexican wolves based on certain situational elements such as the number of livestock killed or injured, the frequency of wolf depredation, and the individual economic impacts to the livestock producer.

*Our response:* We did not include a set of specific criteria for removal of problem wolves in this final rule in order to maximize our flexibility in effectively managing Mexican wolves in a manner that furthers the conservation of the Mexican wolf while being responsive to the needs of local communities. These criteria will be developed in a management plan, which will provide for adaptive management as we gain more information on Mexican wolf management and techniques to minimize conflicts between Mexican wolves and livestock.

(20) *Comment:* Several State agencies suggested that allowable take by authorized personnel would be subject to Service approval, presumably on a case-by-case basis, which has often been highly problematic when cooperating agencies have tried to take aggressive, timely action to address problem wolf incidents. In addition, the Service has not been willing, since 2007, to use lethal take as a tool in managing problem wolves. The Service must enable agencies and stakeholders to directly and effectively address problem-wolf issues while they are occurring. Maintaining effective Mexican wolf management tools is critical to building agency and stakeholder confidence in the process of reintroducing Mexican wolves to historical range. Limitations that prevent timely

deployment of available tools undermine State agency and stakeholder confidence in the reintroduction project.

*Our response:* The final rule authorizes the Service or designated agency to carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. The Service or a designated agency may take any Mexican wolf in the 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 described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32.

(21) *Comment:* The revised 10(j) rule and associated EIS should analyze an alternative that allows issuing permits on a case-by-case basis, to enable consideration of geographic variation in depredation activity or breeding status of Mexican wolves. Situation-specific approaches to managing chronic depredation behavior by specific Mexican wolves that generate adverse economic and social impacts should not be superseded by general thresholds working independently of the undesirable Mexican wolf behaviors that cause such conflict.

*Our response:* The final rule authorizes the issuance of permits to domestic animal owners or their agents on non-Federal lands to assist the Service or designated

agency in completing a control action. The final rule also authorizes the issuance of permits to livestock owners or their agents to take any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit, to assist the Service or designated agency in completing control actions. Issuance of these permits will be at the Service's discretion and thus analyzed on a case-by-case basis. Also, we realize that geographic variation throughout the MWEPA requires different management approaches. That is why we have identified Zones 1, 2, and 3 as different management areas within the MWEPA. We identified these Zones in order to improve the effectiveness of our reintroduction project while minimizing and mitigating Mexican wolf-human conflict.

*(22) Comment:* One State agency suggested modifying the language to set the minimum population size to at least 100 Mexican wolves within the MWEPA as documented by the most recent end-of-year count, and strike any reference to other established populations. The new provision would require that the minimum population level of 100 wolves within the BRWRA must be met before the Service would issue take permits to producers on public lands to address wolves that are in the act of killing their livestock.

*Our response:* The suggested modification will not allow us to improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. In recognition

that the MWEPA will include a variety of land ownership types, our provision to issue a permit for take of a Mexican wolf in the act of wounding, biting, or killing livestock on Federal land will allow us to better consider the site specific circumstances associated with the event compared to establishing a minimum population level of 100 wolves prior to being able to issue such permits; this flexibility will also contribute to our ability to conserve the Mexican wolf by allowing us to integrate information about the current population, including genetic issues, into our permit decisions.

*(23) Comment:* Several State agencies suggested that the language in the rule be modified to allow pet owners, regardless of where they are, to take Mexican wolves that are in the act of attacking or killing pets. Pets, like livestock, are considered by most owners to be private property, and restricting a person's ability to protect their private property, regardless of where, may be contrary to their constitutional rights.

*Our response:* We have included a provision in this final rule to allow for take of Mexican wolves by domestic animal owners, which includes pet dog owners, on non-Federal lands. Specifically, on non-Federal lands, 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 the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. Domestic animal means livestock as defined in the regulations and non-feral dogs. In addition, 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. Pet owners on Federal lands can protect their pets via opportunistic harassment.

*(24) Comment:* One State agency suggested clarifying whether working dogs and tracking hounds, etc., are considered pets or protected in some similar manner. The rule revision should appropriately address protecting working and tracking dogs on public as well as private land.

*Our response:* Take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on Federal and non-Federal lands, is allowed. Dogs that are working livestock or being lawfully used to trail or locate wildlife are excluded from the definition of feral dogs, and are thus included as domestic animals. See comment above where we discuss allowable forms of take for domestic animal owners on non-Federal lands.

*(25) Comment:* One State agency requested that they not be required to develop a Service-approved Mexican Wolf Management Plan or become party to any wolf-related memorandum of agreement or understanding to lawfully take Mexican wolves by any means the State agency deems necessary when it has been determined by the State that Mexican wolf impacts on State trust species are unsustainable and jeopardizing an ungulate population, or when a Mexican wolf has dispersed outside of the MWEPA and the Service is unable to capture the disperser in a timely manner.

*Our response:* Participation in the conservation of Mexican wolves by States is voluntary. Pursuant to this final rule, no State will be required to develop a Service-approved Mexican Wolf Management Plan or become party to any wolf-related memorandum of agreement or understanding. In this final rule, we have provided a definition of unacceptable impact to a wild ungulate herd and process for State game and fish agencies to follow to demonstrate that any decline in an ungulate herd was influenced by Mexican wolf predation. The final rule provides that the Service or a designated agency may take any Mexican wolf in the 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, as described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32. If a Mexican wolf or wolves disperse 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. As part of this rulemaking process, we have issued a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur outside the MWEPA. Under this permit we will authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. Also, in compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the permit as part of our EIS.

(26) *Comment:* One State agency requested that we clarify, by an affirmative statement, that State regulators and other officials cannot be held liable for causing a take of a Mexican wolf simply by their regulation of trapping, or lack thereof.

*Our response:* Whether or not any person or entity will be held liable for the take of Mexican wolves in the future will be made on a case-by-case basis. Therefore, the Service cannot give the commenter the clarification requested. However, the final rule provides for unintentional take within the MWEPA. 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. Take of a Mexican wolf by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity. In addition, taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a wolf. With regard to trapping activities, due care is further defined in the final rule.

(27) *Comment:* The Service should allow State game and fish agencies to issue “Incidental Take Permits” (section 10(a)(1)(B) of the Act) to individuals involved in lawful activities where Mexican wolves might be adversely affected by those activities.

*Our response:* The Act prohibits the "take" of listed species through direct harm or habitat destruction. In the 1982 amendments to the Act, Congress authorized the Service, not State wildlife agencies, to issue permits for the "incidental take" of

endangered and threatened wildlife species in section 10(a)(1)(B) of the Act. Thus, permit holders can proceed with an activity that is legal in all other respects, but results in the "incidental" taking of a listed species. These incidental take permits could be issued to address the incidental take of Mexican wolves associated with otherwise legal activities. However, the Service has not been granted legal authority to allow State game and fish agencies to issue Federal permits in accordance with the Act. States have the ability to apply for section 10(a)(1)(B) incidental take permits and issue certificates of inclusion to individuals who comply with the provisions of the State's conservation plan and permit.

(28) *Comment:* One State agency requested that the rule be modified to indicate that Mexican wolves will be allowed to disperse outside Zone 1, but will only be allowed to remain and occupy those areas within Zone 2 that provide sufficient and sustainable prey populations as determined by the State. The same rationale used by the Service in justifying the proposal to remove a small portion of Texas from the MWEPA can also be applied to areas in New Mexico within the MWEPA that also support marginal habitat for Mexican wolves and native prey.

*Our response:* Criteria for initial releases of Mexican wolves will include adequate prey abundance (e.g., elk, deer, and other native ungulates), based on the best available information from the State or tribal game and fish agency. Dispersal of Mexican wolves is likely to include areas within the MWEPA that have less suitable habitat, such as in Zone 3. However, Mexican wolves will be more actively managed

under the authorities of this rule to reduce human conflicts in these areas. Furthermore, in this final rule, we have defined unacceptable impact to a wild ungulate herd and provide the States with the ability to manage Mexican wolves if they demonstrate predation by Mexican wolves is influencing a decline in the wild ungulate herd.

*(29) Comment:* The proposed revision to allow Mexican wolves to disperse outside the BRWRA and occupy new areas within the MWEPA is improper at this time because a primary consideration regarding suitable wolf habitat is presence of adequate prey densities. The proposed change would allow Mexican wolves to travel to and use areas within the extended MWEPA that might not support adequate levels of native ungulate populations. Primary examples would include State trust lands north of the Apache Sitgreaves National Forests and other portions of National Forests supporting low-productivity elk and deer populations. If Mexican wolves were allowed to occupy these areas, native ungulate populations would be at risk of significant reduction, causing wolves to prey more predominantly on livestock and creating other adverse economic impacts.

*Our response:* The Service has analyzed the habitat within the MWEPA, and although there are patches of poor-quality habitat, we expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and livestock will be low. The final rule provides States the authority to take Mexican wolves in response to unacceptable impacts to wild ungulate

herds, as we recognize that localized reduction in ungulate herds due to wolf predation could occur.

(30) *Comment:* Many areas within the MWEPA are not appropriate for Mexican wolf colonization or occupancy, due to high levels of human occupancy, high road densities, high levels of public activity (including recreation), high potential for interaction with domestic dogs (i.e., depredation and hybridization), and increased potential for human-caused mortality. The EIS and rule revision should use these types of predictable conflicts to identify areas within the MWEPA and recognized subunits in which Mexican wolf dispersal and reestablishment are not appropriate or necessary for sustaining a Mexican wolf population and outline practical mechanisms for managing wolves that disperse to these conflict zones.

*Our response:* We recognize that there are areas within the MWEPA where there is limited suitable habitat for Mexican wolves and increased potential for human-related conflict. Thus, we identified Zones 1, 2, and 3 as different management areas within the MWEPA in order to improve the effectiveness of our reintroduction project while minimizing and mitigating Mexican wolf–human conflict. We have included a phased approach to Mexican wolf management in western Arizona, where elk populations west of Highway 87 are generally smaller in number and isolated from each other compared to elk populations east of Highway 87. Also, we have increased take provisions on non-Federal lands to allow domestic animal owners or their agents to take any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in the rule.

(31) *Comment:* The proposed revision to remove Texas from the MWEPA is biologically appropriate based on Service review of existing habitat, prey base, historical range and metapopulation connectivity within Arizona and New Mexico. However, the same rationale used by the Service to justify that proposal could also be applied in Arizona, west of the Mohave and La Paz Counties from Interstate 40 south to Interstate 10; and in New Mexico, east of Interstate 25 and Interstate 10 from Interstate 40 south to the United States–Mexico international border. Our point in noting this disparity is not to advocate such changes at this time but to emphasize that the Service proposals are not logically consistent.

*Our response:* Texas was removed from the MWEPA because this area is not likely to contribute substantially to our purpose and need, and it is very unlikely that Mexican wolves will disperse into Texas because of the lack of suitable habitat. However, we have identified portions of western Arizona and eastern New Mexico that do not have substantial amounts of suitable habitat as Zone 3 of the MWEPA so that we can actively manage Mexican wolves that disperse there to reduce human conflict under the authorities of this rule. In any case, we do not expect Mexican wolves to occupy these areas of less-suitable habitat because ungulate populations are inadequate to support them.

(32) *Comment:* The Service must include a provision that Mexican wolves that disperse outside the MWEPA will be captured. The proposed rule affirms that commitment in prefatory text, but does not include it in the proposed regulations.

*Our response:* We can only include language in the regulations for management of Mexican wolves within the MWEPA. However, we intend to capture Mexican wolves that establish territories outside the MWEPA under a section 10(a)(1)(A) permit. We are issuing a section 10(a)(1)(A) permit to allow for certain Mexican wolf management activities that occur outside the MWEPA. Under this permit we have the ability to authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. Also, in compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the permit as part of our EIS.

(33) *Comment:* The Service needs to consider delegating management authority of Mexican wolves within the MWEPA through this revised rule or a State and/or Tribal Cooperative Agreement with the Service and/or Memorandum of Agreement (MOA) with the Secretary of the Interior. The revised rule needs to enable willing State game and fish agencies and Tribes to assume lead roles in wolf management within their respective areas of lawful jurisdiction.

*Our response:* Neither the Act nor its implementing regulations allow the Service to delegate its management authority over Mexican wolves to a State. However, in

accordance with this final rule, a State game and fish agency can become a designated agency, which is 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 described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32.

(34) *Comment:* The Service needs to consider delegating management authority to Wildlife Services (a division of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA-APHIS)) for such things as investigating reported depredations on livestock or other domestic animals and reports of nuisance or problem wolves; determining whether and which wolf or wolves depredated on livestock or other domestic animals; and capturing, translocating, and removing Mexican wolves.

*Our response:* Neither the Act nor its implementing regulations allow the Service to delegate its management authority over Mexican wolves to a State or another Federal agency, in this case, USDA-APHIS. In this final rule, Wildlife Services is one of the lead agencies that will confirm cases of wolf depredation on lawfully present domestic animals. Also, Wildlife Services can become a designated agency to assist in implementing this rule (see response to comment above).

(35) *Comment:* The Service needs to clarify who verifies legal presence of grazing livestock and how they verify it (relative to confirming depredation). Also, the Service needs to clarify which agency or agencies would conduct investigations to confirm or refute claims of livestock depredation.

*Our response:* It is the responsibility of the land management agency to verify the legal presence of grazing livestock on their land. In regard to investigating livestock depredation, the Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present livestock or domestic animals.

(36) *Comment:* Define thresholds and methods for temporary and permanent removal of depredating and nuisance Mexican wolves; clearly describe how Mexican wolf mortalities and livestock or domestic animal depredation will be investigated and documented while ensuring that State, Federal, and tribal law enforcement interests are not compromised by non-commissioned employees of the Service and its designated agents; and clearly delineate the laws and regulations pertaining to ownership and removal or destruction of livestock carcasses on public, State, tribal, and private lands.

*Our response:* Immediately following publication of this final rule, the Service will begin working with partner agencies on an interagency management plan that will include standard operating procedures for management of Mexican wolves, discuss flexible thresholds for removal of problem Mexican wolves, and describe how Mexican wolf mortalities and livestock depredations will be investigated. This process of

following a Mexican wolf 10(j) rule with an interagency management plan that includes standard operating procedures was done with the 1998 rule and the 1998 Interagency Management Plan. The laws and regulations pertaining to ownership and removal or destruction of livestock carcasses on public, State, tribal, and private lands are outside the purview of the Mexican wolf management plan.

*(37) Comment:* The Service must propose a modification to give the States and Tribes authority to control Mexican wolves when the population reaches a predetermined objective, before Mexican wolves have an unacceptable impact on wild ungulate populations.

*Our response:* Neither the Act nor its implementing regulations allow the Service to delegate its management authority over Mexican wolves to a State or Tribe. In this final rule, we have included a population objective of 300 to 325 Mexican wolves. We have also included provisions for take in response to unacceptable impacts to wild ungulates. The final rule allows Tribes to request the removal of Mexican wolves from their tribal trust lands.

*(38) Comment:* One State agency requested that the definition of occupied Mexican wolf range be changed to tie occupied range to the presence of breeding populations of Mexican wolves only.

*Our response:* We have changed the definition of occupied Mexican wolf range to mean 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 the prohibitions in paragraph (k)(5)(iii) of this rule, Zone 3 and tribal trust lands are not considered occupied range.

(39) *Comment:* Mexican wolves are highly mobile (especially young males) and will move great distances crossing unsuitable habitat in order to expand their range. The presence of a single Mexican wolf over the period of 1 month does not denote occupied range. Implicit in the term "occupied" is to possess or hold a place or to take up residence. A single Mexican wolf by nature is transient. Mexican wolves are pack animals. In order to occupy or take up residence in a home range, a family group must be established through breeding and successful production of offspring. The definition of occupied Mexican gray wolf range should be changed to tie occupied range to the presence of breeding populations of Mexican wolves only.

*Our response:* See response to comment above.

(40) *Comment:* One State agency recommended that Mexican wolves involved in depredations on private land be classified as problem wolves. Failure of the Service to include private lands in this definition demonstrates the lack of consideration given to private landowners and livestock producers.

*Our response:* In this final rule, problem wolves are defined as Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals; or habituated to humans, human residences, or other facilities regularly occupied by humans. This definition of problem wolf applies to both Federal and non-Federal land within the MWEPA.

(41) *Comment:* The entire purpose for the revision has changed "to the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population." Utah was not consulted about this change in emphasis and purpose, nor was it consulted about any of the newest provisions contained within the experimental population rule revision and associated draft EIS.

*Our response:* In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. The Service is limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico. Also, we intend to capture and return any Mexican wolves that disperse outside the MWEPA. Because Utah is not a State affected by this rule, we did not consult separately with that State. We are willing to meet with Utah or any other State at any time.

(42) *Comment:* One State agency suggested the Service include prescriptions for when and how a Mexican wolf that exhibits unacceptable behaviors, such as persistent depredation or signs of habituation would be removed from the wild.

*Our response:* Mexican wolves described by the requestor may meet the definition of “problem wolves.” The rule explains how problem wolves will be managed in general. Immediately following publication of this final rule, the Service will begin working with partner agencies on an interagency management plan that will include standard operating procedures, discuss flexible thresholds for removal of problem Mexican wolves, and describe how Mexican wolf mortalities and livestock depredations will be investigated. The interagency management plan and its standard operating procedures will fully comply with this rule.

(43) *Comment:* The Service should include a mechanism for active inclusion of and support for reintroductions in Mexico.

*Our response:* We can only include language in the regulations for management of Mexican wolves within the MWEPA. Furthermore, the Service only has regulatory authority within the United States. However, we continue to support Mexico’s reintroduction program.

(44) *Comment:* The Service should include a dispute resolution in the event of a non-economic impasse that cannot be resolved at any level between the State wildlife management agency and the Service.

*Our response:* Immediately following publication of this final rule, the Service will begin working with partner agencies on a revised interagency management plan that will include an addendum for a dispute resolution process. The revised interagency management plan and its standard operating procedures will fully comply with this rule.

(45) *Comment:* The revised rule should identify how and when wolf releases will be made and that there must be concurrence between the State wildlife agencies and the Service.

*Our response:* Information on how and when Mexican wolf releases will be made will be included in an interagency management plan, which the Service will begin working with partner agencies on immediately following publication of this final rule. The interagency management plan and its standard operating procedures will fully comply with this rule.

(46) *Comment:* The Service proposal asserts that under no circumstances would shooting a Mexican wolf be considered incidental take. This approach predetermines the outcomes of investigations that in many cases to date, in Arizona, New Mexico, and elsewhere in gray wolf range, have resulted in findings that private citizens and wildlife

agency officials have on occasion incidentally (inadvertently) taken a wolf by shooting. The Service fails to analyze adequately the impacts of this strategy on agency wolf management efforts and on private citizens who might kill a wolf when protecting their livestock against coyote depredation.

*Our response:* The Service does not make this assertion. Under certain circumstances incidental take of a Mexican wolf by shooting might be allowable (i.e., take in defense of human life). Each incident of take will be investigated and determinations regarding those investigations will be made on a case-by-case basis. Nothing in this rule predetermines the outcome of an investigation into the take of a Mexican wolf.

(47) *Comment:* The proposed rule fails to include any portion of the cooperating agencies' alternative (proposal) in violation of 50 CFR 17.81(d), which requires that any regulation promulgated pursuant to section 10(j) of the ESA shall, to the maximum extent practicable, represent an agreement between the Service, an affected State, Federal agencies, and affected landowners. The omission of any significant element of the Cooperating Agencies' proposal in the proposed rule is clear evidence the Service has failed to provide meaningful cooperation or make a good faith effort to reach an agreement with the cooperating agencies.

*Our response:* In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the Service, the affected State, and

Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. We invited 84 Federal and State agencies, local governments, and tribes to participate as cooperating agencies in the development of the EIS, 27 of which signed memoranda of agreements. We have maintained a list of individual stakeholders, as well as a website, since the initiation of the EIS development to ensure that interested and potentially affected parties received information on the EIS and notices of opportunities for public involvement. We met with the Arizona Game and Fish Department and the New Mexico Department of Game and Fish to collect data and develop the analyses of effects to native species, particularly ungulates and economic impacts associated with hunting in Arizona and New Mexico. We also met with the two State game and fish agencies to discuss issues and recommendations they may have with the proposed rules. To the maximum extent practicable, the Service has provided meaningful cooperation and made a good faith effort to reach an agreement with cooperating agencies. Parts of this final rule that the States requested, and that the Service has agreed to, include: a population objective of 300–325 wolves in the MWEPA, a phased management approach in western Arizona, clarifications to various definitions, and the definition and take provision related to unacceptable impacts to native ungulates. The final EIS (Service 2014) addressed other portions of the Arizona Cooperating Agency’s alternative in Chapter 2 that did not meet our purpose and need.

(48) *Comment:* The proposed rule unlawfully shifts the burden to the States to monitor Mexican wolf predation and the impacts to prey populations. The Tenth Amendment to the Constitution prohibits a Federal agency from compelling a State to

administer a Federal regulatory program. Requiring the States to document impacts to the ungulate population forces the States to undertake expensive scientific studies to determine what impact wolf predation has on prey populations. Monitoring impacts to ungulate populations will help understand the relationship between wolf predation and ungulate management goals, and it will also provide valuable information on the relationship between prey populations and wolf conservation.

*Our response:* This rule does not require the States to do anything that they have not asked to do. Nothing in this rule compels a State to administer this program because the Act does not allow the Service to delegate its authority in such a manner. We met with the Arizona Game and Fish Department and the New Mexico Department of Game and Fish, and, pursuant to their request, we defined unacceptable impact to a wild ungulate herd. According to the definition that the States created, an unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates. Because the State game and fish agencies conduct annual monitoring of their wild ungulate herds regardless of this final rule, we do not believe this final rule unlawfully shifts the burden to the States to monitor Mexican wolf predation and the impacts to prey populations.

(49) *Comment:* The Service must provide a definition for the term “domestic animals” to clarify the reference and distinguish it from “livestock.” The definition for “Problem wolves” includes a reference to impacts on “domestic animals,” but it is not clear what animals are included under this reference for purposes of affecting associated management responses to problem wolves.

*Our response:* Paragraph (k)(3) of the *Definitions* section of the regulations includes definitions for both domestic animals and livestock. *Domestic animal* means livestock as defined in paragraph (k)(3) and non-feral dogs. *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.

(50) *Comment:* The Service must clarify that the reintroduction project is a collaborative project among multiple jurisdictions that is guided by an overarching MOU, and that accompanying management has been implemented through an Interagency Field Team staffed and supported by resource management agencies that are signatories to the MOU.

*Our response:* The clarification requested in this comment is not required by the Act or its implementing regulations. Immediately following publication of this final rule, the Service will begin working with partner agencies on an interagency management plan that will include standard operating procedures.

(51) *Comment:* One State agency suggested removing proposed paragraphs (k)(5)(iii)(B) through (E) because the State laws and guidelines encompass standards for minimizing any harm or fatalities that might occur once a Mexican wolf becomes incidentally trapped.

*Our response:* With regard to due care and trapping activities, we have left paragraphs (k)(5)(iii)(B) through (E) in the final rule because these due care provisions allow for trapping to occur in a way that reduces harm to Mexican wolves.

(52) *Comment:* As a result of our perspective that the Service has demonstrated a lack of commitment to various aspects of the Mexican wolf program, we suggest that the new final rule include a provision that rescinds the new experimental population rule and immediately reinstates the 1998 Final Rule. This change would include using all means necessary to return the population to the 1998 objective of at least 100 wolves but no more than the number of wolves that are present within the current BRWRA if the Service initiates any Federal process to change the experimental population status of Mexican wolves or designate critical habitat for the experimental population.

*Our response:* The provision requested in the comment is not legally required by the Act or its implementing regulations. Therefore, we will not insert such a provision into this rule. Any change to the status of the Mexican wolf will require further public review and comment.

(53) *Comment:* The definition of depredation should exclude the words "confirmed" and "lawfully present." Depredation occurs anytime a Mexican wolf attacks domestic animals. Inclusion of these qualifiers would result in reported depredations lower than what actually occurs.

*Our response:* In this final rule, we have defined as *Depredation* the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. The Service, USDA–APHIS (Wildlife Services), or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals. The “confirmed” killing or wounding of lawfully present domestic animals by a Mexican wolf is needed to ensure that the depredation was caused by a Mexican wolf and not some other predator. The words “lawfully present” are part of the depredation definition because we do not want to influence Mexican wolf management for a depredation where the domestic animal was trespassing. For example, cattle trespassing on Federal lands are not considered lawfully present domestic animals.

(54) *Comment:* The proposed definition for livestock represents an inconsistency with the New Mexico Livestock Code at 77–2–1.1 NMSA 1978. Any kind or class of livestock represents a significant investment by owners and should be included in the rule’s definition.

*Our response:* We recognize that there are various definitions for “livestock” in the multiple jurisdictions across the States of Arizona and New Mexico. We have defined livestock for purposes of this final rule, which may not be consistent with the purposes of the various jurisdictions.

(55) *Comment:* Paragraph (k)(7)(viii)(C) of the proposed rule provides that, "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." These exemptions and exclusions from the take provisions need to be extended to local government agents and licensed livestock producers that use M-44 devices for predator damage management.

*Our response:* We have included a provision in this final rule prohibiting Wildlife Services from using M-44's and choking-type snares in occupied Mexican wolf range and that 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. The provision for unintentional take allows for the take of a Mexican wolf by any person if the take is unintentional and occurs while the person is engaging in an otherwise lawful activity. Such take must be reported as

specified in accordance with paragraph (k)(6) of the regulations. 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.

*(56) Comment:* Another problem with take by poisoning not being included as unintentional take exists with the use of livestock protection collars (LPCs) that use Compound 1080 or some other poisoning agent. LPCs are licensed and approved for use in New Mexico as a predator damage management tool. Livestock producers and government employees can be licensed to use these devices. The poisoning agent in LPCs is released when a predator physically bites the collar. Thus, for these devices to take a Mexican wolf, the wolf would have to be engaged in the act of biting the animal wearing the LPC. The Service should include provisions for the use of LPCs in the experimental population rule.

*Our response:* Take by poisoning will not be considered unintentional take. Poisoning is nondiscriminatory, and if allowed, LPCs on livestock that died for reasons other than Mexican wolf predation could result in Mexican wolf mortalities for those that were scavenging on dead carcasses.

*Comments from Tribes*

(57) *Comment:* Any changes to the rule must include assurances that funding from the Service will continue, which will allow Tribes to effectively manage Mexican wolves that enter tribal trust lands. If changes result in a significant increase in Mexican wolves on tribal trust lands, funding from the Service should increase correspondingly. The Service needs to provide assurances to the tribes that any Mexican wolves moving onto tribal trust lands will be managed according to tribal authorities and increased funding for the Tribe to manage these additional wolves.

*Our response:* The Service's funding is allocated annually by Congress; therefore, we are not able to provide assurances in a final rule regarding funding to Tribes for management of Mexican wolves. However, it is our intent to continue to provide funding to Tribes as it is available for the management of Mexican wolves on their tribal lands.

(58) *Comment:* Further information was requested on the total number of reintroduced Mexican wolves that will be needed to achieve a viable and self-sustaining population goal. Further, the projected timeframe was requested for when the Service has considered achieving an adequate population in which the Mexican wolf will no longer be considered endangered and require special designation.

*Our response:* The Service has not yet completed a revised recovery plan that would describe the total number of Mexican wolves, and the timeframe, needed to achieve a viable and self-sustaining population such that the protections of the Act would

no longer be needed. However, we have provided for a population objective of 300–325 Mexican wolves within the MWEPA in this final rule.

*(59) Comment:* Clarify which Mexican wolves on which lands will contribute toward reintroduction and recovery objectives. The 1998 Final Rule speaks to a population objective of at least 100 wolves within the MWEPA. The MWEPA defined by the current proposed rule revision does not include tribal lands, thus the significant contribution of the White Mountain Apache Tribe to Mexican wolf conservation is masked on the front end, even as the total number of wild Mexican wolves counted each year includes those on tribal lands and thus masks how short the Service is falling in achieving its objective of establishing a population of at least 100 wolves on non-tribal lands.

*Our response:* The 1998 Final Rule included tribal lands within the MWEPA, although they were not included in the BRWRA. At the request of the White Mountain Apache Tribe, we do not identify the number of Mexican wolves or packs on the Fort Apache Indian Reservation; however, those numbers are included in the overall Arizona population count, as they are important contributions to the experimental population. We will develop recovery criteria in a revised Mexican Wolf Recovery Plan, which will include a determination of how many Mexican wolves are needed for recovery as well as other measures of threat alleviation; we intend for the experimental population in the MWEPA (including wolves on participating tribal lands) to function as a population contributing to the delisting criteria. However, as provided in this final rule, the Service

or a designated agency may develop and implement management actions in cooperation with willing tribal governments on tribal trust land within Zones 1 and 2 of the MWEPA, including: occupancy by natural dispersal; initial release; translocation of Mexican wolves onto such lands; and capture and removal of Mexican wolves from tribal trust land if requested by the tribal government. Thus, we recognize that even a participating tribe may request the removal of Mexican wolves from their tribal trust lands at any time.

(60) *Comment:* The Service has not provided a revised draft copy of the 1982 Mexican Wolf Recovery Plan, which will impact the proposed revision to the regulations for the experimental population of the Mexican wolf. The proposed revisions would have more validity and it would be easier to understand the impacts if there was a clear recovery goal.

*Our response:* We have not yet completed a revised recovery plan that would articulate objective and measurable recovery criteria for the species. We intend to revise the recovery plan as soon as feasible.

(61) *Comment:* Make it explicit that tribal-acquired lands that have not been reserved by Congress cannot be included in the “tribal lands” for which the Service intends to allow tribal development of management plans and/or execution of other wolf management activities. Clearly, tribal trust lands (which include, but may not be limited to, designated Reservation lands) are different than fee-simple lands acquired by Tribes. State wildlife management authorities do not extend to Reservations, but they do extend

to private lands that Tribes acquire through purchase or lease, and which are not held in trust by the Federal Government.

*Our response:* In this final rule, we have defined tribal trust land to mean any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) 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 lands purchased by Tribes to be private land for purposes of development and implementing management actions to benefit Mexican wolf recovery, under paragraph (k)(9)(ii) of the regulations.

(62) *Comment:* The Service needs to evaluate impacts to the Tribe's trophy elk program and subsequent loss of revenue if Mexican wolves from the Tonto National Forest move onto Reservation lands. The proposed revisions' failure to separately identify big game depredation is a major flaw. The San Carlos Apache Tribe's elk hunts are recognized worldwide as exceptional big game hunting experiences. The Tribe and its member outfitters benefit economically from elk and deer hunts on the Reservation. The proposed revision, by concentrating on livestock depredation, fails to recognize the importance of big game hunting to the Tribe and the importance of harvest of game by hunters on the Reservation.

*Our response:* The Service has done this evaluation. As part of the economic analysis associated with the EIS, we utilized available information in our impact analysis for biological resources and the hunting economic sector in the project area. We found that trends in hunter visitation and success rates since 1998 in the areas occupied by Mexican wolves are stable or increasing based on the number of licensed hunters and hunter success rates. Further, Tribes that do not want Mexican wolves on their tribal trust land can request removal of wolves, and our final rule allows for the take of Mexican wolves due to unacceptable impacts to wild ungulate herds as defined by State management objectives, which will serve as mitigation for any herds that may suffer heavier predation impacts. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with hunting activities.

(63) *Comment:* Provisions for take of Mexican wolves on the Reservation should exist and should not be equated with private land take. Tribes are sovereign and should not be viewed as the equivalent to private or public land.

*Our response:* The Service recognizes the unique government-to-government relationship between Indian Tribes and the United States. Furthermore, the Service recognizes that Indian lands are not Federal public lands or part of the public domain, and are not subject to Federal public land laws. They were retained by Tribes or were set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders, or agreements. These lands are managed by Indian Tribes in accordance with tribal goals and objectives, within the framework of applicable laws. Mexican wolves on all land,

including tribal reservations, within the MWEPA will be managed under the proposed 10(j) rule. Under their sovereign authority Tribes have the option of allowing Mexican wolves to occupy tribal trust land or to request their removal. Tribes will also have the option to enter into voluntary agreements with the Service for the management of Mexican wolves on tribal trust land. No agreement is necessary for the capture and removal of Mexican wolves from tribal trust land if requested by the tribal government. In this final rule, tribal members can harass a wolf (considered nonlethal take) exhibiting nuisance behavior or habituation; take (including kill or injure) any Mexican wolf in the act of killing, wounding, or biting domestic animals (specifically livestock and pet dogs) on tribal land, and take (which includes killing as well as nonlethal actions such as harassing, harming, and wounding) a Mexican wolf in self-defense or defense of the lives of others. Also, in conjunction with a removal action authorized by the Service, the Service or a designated agency may, under certain circumstances, issue permits to allow domestic animal owners or their agents to take (including kill or injure) any Mexican wolf that is present on non-Federal land anywhere within the MWEPA.

(64) *Comment:* The proposed revision fails to address the Tribe's concerns and objections pertaining to livestock and game depredation by the Mexican wolf on Tribal trust land. Any attempts to compare the effects of depredations on the Reservation with the effects of depredations that have occurred in the MWEPA are unavailing to the Tribe's view, because of the disproportionate economic impact upon the Tribe and its members. The Service's lack of Federal funding to compensate State and Tribal livestock operators for depredation issues is a concern for Tribal livestock operators.

*Our response:* The Service evaluated the impacts of livestock and game depredation by Mexican wolves within the economic analyses associated with the EIS pursuant to the NEPA process, including an environmental justice analysis to consider impacts to Native American tribes. In addition, a document was developed by a Tribal subgroup of the Mexican Wolf Recovery Team, titled, “Tribal Perspectives on Mexican Wolf Recovery.” This document presents the various perspectives that Tribes may have regarding the Mexican Wolf Recovery Program. Perspectives include cultural, traditional, economic, legal, and social considerations that are important for the Service and other agencies to understand when implementing Mexican wolf recovery on or near Tribal lands. As sovereign nations, Tribes have authority over their lands and, thus, have a unique relationship with federal agencies. Regarding compensation for livestock depredations, both the San Carlos Apache Tribe and the White Mountain Apache Tribe have participated on the Mexican Wolf/Livestock Coexistence Council to develop compensation guidelines and a long-term coexistence plan. The Coexistence Council is now in the process of seeking funding from private and public sources.

(65) *Comment:* No additional reintroductions of Mexican wolves should take place in Arizona or New Mexico until reintroduction in prime areas in Mexico is ongoing and Mexico is fully committed to the program; the Arizona Game and Fish Department has primary control of the program in Arizona; the Service provides Tribes with adequate funds; and section 10(j) of the Act has been utilized to allow take of Mexican wolves

killing, wounding, biting, chasing, threatening, or harassing humans, pets, or livestock on private land, subject to reasonable notice and reporting requirements.

*Our response:* Currently, Mexico is reintroducing Mexican wolves from the captive population into their historical range in Mexico, in accordance with their laws and their recovery plan for the Mexican wolf. The Service only has regulatory authority within the United States, and it is our mission to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. In this final rule, we allow for: (1) Designated agencies, including the Arizona Game and Fish Department and tribes, to assist in implementing this rule, (2) *Take in defense of human life* (Under section 11(a)(3) of the Act and 50 CFR 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.); and (3) 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.

(66) *Comment:* Describe how Mexican wolf management on Tribal and non-Tribal lands in both Arizona and New Mexico will be coordinated to ensure that neither positive nor negative impacts of Mexican wolf reintroduction will fall disproportionately on Tribes or on non-Tribal interests.

*Our response:* Because the regulatory burden of Mexican wolf recovery rests on Federal land, this final rule has been modified to allow for separate take provisions on Federal and non-Federal land (which includes tribal land) to allow for more flexibility in management of problem wolves on non-Federal land. The Service will continue to communicate with local communities and Tribes regarding the management of wolves on tribal and non-tribal lands in both Arizona and New Mexico through our website, conference calls, webinars, and face-to-face meetings. The Service is committed to ensuring that negative impacts of Mexican wolf reintroduction will not fall disproportionately on tribes. To this end, we have included a provision for the development of management agreements with any tribe that wishes to participate in the reintroduction and host Mexican wolves on their land. Tribes that do not want Mexican wolves on their tribal trust land can request removal of wolves. We have excluded tribal land in our definition of occupied Mexican wolf range related to due care for trapping activities.

(67) *Comment:* Some tribes acknowledged that the Mexican wolf plays an integral predatory role in the ecosystem and was once a traditional species. It was the Tribe's opinion that the current experimental population of the Mexican wolf should remain at the current designation.

*Our response:* With this final rule, we revise the 1998 Final Rule to improve the effectiveness of our reintroduction project. Over time and through input from our partners, we recognized the need to revise the 1998 Final Rule to help us enhance the

growth, stability, and success of the experimental population. The revisions include allowing Mexican wolves to be released in a larger area as well as allowing them to disperse throughout and occupy the MWEPA.

(68) *Comment:* One Tribe stated that the proposed revision to the regulations for the experimental population of the Mexican wolf expansion and reintroduction efforts of the Service on tribal trust lands is against traditional beliefs and further consultation on Traditional Ecological Knowledge regarding wolves with the Tribes is warranted.

*Our response:* The Service would appreciate invitations from Tribes for consultation on Traditional Ecological Knowledge regarding wolves. The reintroduction program would benefit from incorporating Traditional Ecological Knowledge of Mexican wolves that historically occurred in Arizona and New Mexico into our knowledge base. For example, a study on the cultural aspects of Mexican wolves was recently completed in 2009 with White Mountain and San Carlos Apache Tribes. As noted in responses to comments above, tribes have the ability under this final rule to request the removal of Mexican wolves from their tribal trust lands.

(69) *Comment:* The Service has not disclosed the number of Mexican wolves proposed to be released and the location of release sites within the State of Arizona.

*Our response:* Chapter 1 and Appendix D of the EIS describe the number of initial releases we expect to conduct in order to improve the genetic composition of the

experimental population (one to two packs of Mexican wolves every 4 years). We will work with Tribes and partner agencies to identify appropriate release sites based on criteria that address adequate prey and avoidance of human conflicts; Appendix D of the EIS provides more information on current initial release sites and our process for selecting sites in the future in the discussion of Alternative One.

*(70) Comment:* One Tribe expressed concerns regarding the Service's justification of further introduction of the Mexican wolf in Arizona. They stated that according to the Service's current data, the State of Arizona accounts for only 15 to 18 percent of suitable habitat for the Mexican wolf in its entire historical range. The Tribe recommended that reintroduction efforts be concentrated and focused on historical home range in Mexico. It is the Tribe's opinion that the Mexican wolf should be reintroduced in Mexico and allowed to naturally disperse from its historical habitat and range.

*Our response:* Maps of the Mexican wolf's historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). Depiction of the northern extent of the Mexican wolf's historical range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies that occurred in the Southwest and their related treatment of intergradation zones. There is evidence indicating that the Mexican wolf may have ranged north into southern Utah and southern Colorado within zones of intergradation where interbreeding with other gray wolf subspecies may have occurred (Leonard *et al.*

2005, pp. 11 and 15). In any case, the Service is currently working with the Mexican Government on Mexican wolf conservation and reintroduction in northern Mexico.

However, the southwestern United States is also an important area for the recovery of the Mexican wolves, and, thus, we will continue with the reintroduction and management of Mexican wolves in the MWEPA.

*(71) Comment:* The Service has indicated there is no Federal funding for future Mexican wolf recovery efforts and Tribes can develop their own Mexican Wolf Management Plans, with Federal approval, including take measures with certain restrictions. Based on tribal sovereignty and the tribes' rights to manage their natural resources, it was the opinion of one tribe that they have the right to develop their own wolf management plan, including take measures that are in the best interest of the Tribe. If Federal funding is available to tribes, the tribe will comply with Federal requirements and comply with Federal approval of tribe's proposed wolf management plans.

*Our response:* The Service will explore Statements of Relationship with individual Tribes as well as assist with the development of Tribal Wolf Management Plans. Such plans, once approved by the Service, would provide the Tribe with authorization for implementation of take measures, as provided for in this final rule.

*(72) Comment:* Expand the MWEPA from the United States–Mexico border to the border of Utah and Colorado, throughout the entire States of Arizona and New

Mexico. This would eliminate the need for a special management plan in areas outside the MWEPA in Arizona and New Mexico.

*Our response:* The 1998 Final Rule enabled us to release Mexican wolves from the captive population into the wild to determine if it was possible to establish a wild population following the extirpation of the species in the early 1970s. Since 1998, we have demonstrated success in establishing a wild population (e.g., a minimum of 83 Mexican wolves in the wild, all of which are wild born as of December 2013). However, we are now expanding the MWEPA and revising the regulations to the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria. Implementation of the revised recovery plan may necessitate revision to this regulation for the experimental population in the MWEPA or the development of regulations associated with the establishment of one or more populations in other areas in the future, which will include any necessary analysis pursuant to NEPA. If these actions took place north of I-40, coordination with the States of Colorado and Utah, in addition to Arizona and New Mexico, would be required. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (i.e., delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico.

(73) *Comment:* Identify the region north of Interstate 40 as a "no go" or "relocate" zone, and relocate Mexican wolves that enter this area back to the MWEPA, retaining the 10(j) flexibility to harass, and otherwise manage wolves moving north. This would help all entities manage Mexican wolves moving north; would help maintain the separation between the northern gray wolf populations and the reintroduced Mexican wolf; expand the flexibility of the Service in working with Pueblos, Tribes, private landowners and States; and avoid the abrupt shift in management between areas.

*Our response:* We discuss our rationale for not including the region north of Interstate 40 as part of the MWEPA in our discussion of Alternatives Eliminated from Further Consideration in Chapter 2 of the EIS (Service 2014, Chapter 2, p. 5-7). While we recognize the importance of natural dispersal and colonization/recolonization of unoccupied habitat, which expands the species' range, our purpose in proposing changes to the 1998 Final Rule is to improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA. Future revisions may include an expansion of the MWEPA north of I-40, and such a revision would require coordination with the States of Colorado and

Utah. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (i.e., delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico.

(74) *Comment:* Establish clear relocation guidelines.

*Our response:* We currently have criteria for initial releases and translocations of Mexican wolves for the BRWRA, which include distance from towns and dwellings that are occupied year-round and adequate prey abundance. We will continue to use these criteria pending completion of a new management plan, which will include similar provisions.

(75) *Comment:* On maps of potential habitat or of expanded areas, include tribal lands and possibly indicate those with resolutions that permit Mexican wolves or demand removal as separate categories. For example, Fort Apache Indian Reservation is often indicated, and permits Mexican wolves, whereas San Carlos Indian Reservation demands removal, but is not indicated separately from other 10(j) populations.

*Our response:* The Fort Apache Indian Reservation is included in the map of our revised 10(j) rule because they have been an important partner in Mexican wolf reintroductions and we wanted to show the public where this Reservation is located in relation to the rest of our initial release areas (Zone 1). We include a map (Figure 3-5 in

the final EIS) of tribal land and suitable habitat in the project area (Service 2014, Chapter 3 p. 33).

### *Comments from the Public*

#### Comments on Legal Compliance with Laws, Regulations, and Policies

(76) *Comment:* Several commenters stated that Mexican wolves should be considered essential rather than nonessential under the revised 10(j) designation. When the current rule declared Mexican wolves in the wild "nonessential," there were only 11 wolves, recently released from a captive-breeding program, and they made up only 7 percent of all Mexican wolves in the world. Now the 75 wolves in the wild have up to four generations of experience in establishing packs and raising pups and make up more than 22 percent of all of the Mexican wolves in the world. After four generations of captive breeding with few releases, scientists warn that there may be serious genetic problems making captive wolves less able to thrive in the wild. The fourth generation of wild lobos is not expendable and is essential to recovering this unique subspecies of wolf. Mexican wolves should have full protection under the Endangered Species Act.

*Our response:* This experimental population was originally designated in 1998, including the determination that it was nonessential. Nothing in this rule changes the scope of that designation. The Mexican wolf population that is in the wild in Arizona and New Mexico today is the experimental population that was designated in the 1998 Final

Rule. This rule revises only the management regulations that apply to the population. Therefore, reconsideration of whether the population is essential or nonessential is outside the scope of this rulemaking. See also, *Designation of Experimental Population as Essential or Nonessential*, below.

(77) *Comment:* Some commenters suggested that designation of the Mexican wolf as nonessential means that it is not endangered, and, therefore, there is no reason to reintroduce it.

*Our Response:* The Mexican wolf remains an endangered species under the Act. The nonessential experimental population designation is a classification for a geographic area designed to make the reintroduction and management of endangered species more flexible and responsive to public concerns to improve the likelihood of successfully recovering the Mexican wolf.

(78) *Comment:* Many commenters were concerned that the Service did not use the best available science.

*Our Response:* As required by section 4(b) of the Act, we used the best scientific and commercial data available in making this final determination. We solicited peer review on the proposed revision to the regulations for the experimental population of the Mexican wolf from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and

conservation biology principles to ensure that our final 10(j) rule is based on scientifically sound data, assumptions, and analysis. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule. We used multiple sources of information including: results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, geospatial analysis, monitoring data from the BRWRA, and expert opinion from biologists with extensive experience studying wolves and their habitat.

In addition, we have complied with our policy on information standards under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, which provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. Information sources may include the recovery plan for the species, peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge. Although some of these documents were not published in peer-reviewed journals, they still contain credible scientific information and represent the best scientific and commercial data available.

(79) *Comment:* The proposed rule does not address the social and economic impacts with the proposal to introduce, reintroduce, or translocate wolves.

*Our response:* We have addressed the various benefits and costs associated with this rulemaking as required by the Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and NEPA in the Required Determinations section. Our EIS assesses economic impacts associated with this rule on livestock production, hunting, and tourism.

(80) *Comment:* Eliminate the requirement for a 5-year review and replace it with a provision requiring annual monitoring and evaluation presented in annual reports released within 3 months of the annual population count conducted in January of each year. This is the current practice of the Interagency Field Team.

*Our response:* We put the reporting requirement in the regulations of this revised 10(j) designation because it is a requirement under 50 CFR 17.81(c)(4), which says that any regulation promulgated under paragraph (a) of the section shall provide a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species. We are not replacing the 5-year review provision with one requiring annual monitoring and evaluation presented in annual reports because the annual reports do not evaluate the success or failure of the 10(j) designation in relation to the conservation and recovery of the Mexican wolf as required by 50 CFR 17.81(c)(4).

Comments on Geographic Boundaries of the Revised Mexican Wolf Experimental Population Area

(81) *Comment:* The Interstate 40 boundary of the MWEPA is arbitrary and inconsistent with best science. Mexican wolves should be able to disperse freely outside of the MWEPA, consistent with other 10(j) populations (including wolves in the Northern Rocky Mountains experimental population). Where Mexican wolf conservation is in desperate need of additional areas to establish territories, there is no rationale for such removals here.

*Our response:* While we recognize that Mexican wolf conservation is in need of additional areas to establish territories, we have expanded the MWEPA to allow natural dispersal and colonization/recolonization of unoccupied habitat, which expands the species' range. Our purpose in proposing changes to the 1998 Final Rule is to improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to

reach full recovery (i.e., delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico. Whether areas north of Interstate 40 are important for the conservation and recovery of the Mexican wolf will be addressed in a future revised recovery plan. This issue is further discussed in Chapter 2, Alternatives Eliminated from Further Consideration, of the final EIS (Service 2014, Chapter 2, p. 5-7).

(82) *Comment:* The proposed MWEPA is not enough for recovery and much of the range that is proposed will not ever actually be suitable for reintroduction. Therefore, more range needs to be included as there is more suitable habitat that is available within public lands that was part of the Mexican wolf historical range. This includes public lands north of Interstate 40, within the area of the Grand Canyon in Arizona, and the mountains in northern New Mexico, such as the Jemez and Sangre de Cristo Mountains and southern Colorado. Provisions in the proposed rule effectively prevent Mexican wolves from returning to the Grand Canyon region, including northern Arizona and southern Utah, or to northern New Mexico and southern Colorado. The Service should eliminate these arbitrary boundaries to the wolves' movement in order to facilitate their recovery. These areas are essential for Mexican wolf recovery.

*Our response:* This MWEPA represents just one phase of Mexican wolf recovery. We acknowledge that additional recovery areas are likely to be needed in the future to recover the Mexican wolf and remove it from the List of Endangered and Threatened Species. These areas will be identified in future recovery planning efforts.

(83) *Comment:* Do not remove the portion of west Texas from the MWEPA.

*Our response:* Texas was removed from the MWEPA because this area is not likely to contribute substantially to our purpose and need, and it is very unlikely that Mexican wolves will disperse into Texas because of the lack of suitable habitat. We do not expect Mexican wolves to occupy the small portion of Texas that was previously in the MWEPA because ungulate populations are inadequate to support Mexican wolves there.

(84) *Comment:* Mexican wolves should not be allowed to occupy the entire MWEPA. The BRWRA and the Fort Apache Indian Reservation contain over 9,000 square miles (23,310 square kilometers), which is adequate to support at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mile (12,950-square-kilometer) area within the Mexican wolf's historic range.

*Our response:* We have expanded the MWEPA with this final rule in order to further the conservation of the Mexican wolf. We do not expect Mexican wolves to occupy the entire MWEPA, but we do expect them to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock would be low. A larger population of Mexican wolves distributed over a larger area has a higher probability of persistence than a small population in a small area (Service 2014, Chapter 1, pp. 31–32).

(85) *Comment:* It is inappropriate for the 10(j) rule to prescribe the management of Mexican wolves outside the 10(j) designated area (i.e., to bring back wolves that disperse beyond the MWEPA). Prior to approving a take permit for wolves outside the MWEPA, the Service will have to evaluate the potential for any such take to be a major Federal action significantly impacting the environment pursuant to NEPA. At a minimum, the Service must complete an environmental assessment (relevant law suit citation provided).

*Our response:* Although we mentioned in the preamble our intent to manage Mexican wolves that disperse outside the MWEPA, we do not have any language in the regulations that prescribes management of Mexican wolves outside the 10(j) designated area. However, we are going to issue a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur outside the MWEPA. Under this permit we will authorize removal of Mexican wolves that can be identified as coming from the experimental population that disperse and establish territories in areas outside of the MWEPA. Also, in compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included an analysis of the environmental effects of the permit as part of our EIS.

(86) *Comment:* The rule proposes to capture Mexican wolves dispersing beyond the boundaries of the current MWEPA. The Service's own Mexican Wolf Recovery Team scientists (Science and Planning Committee) have written that establishment of additional populations will be required to achieve recovery, and that the most suitable habitat to support these populations lies to the north of Interstate 40. This position is also

articulated in a recent peer-reviewed journal article (Carroll *et al.* 2014). A commitment to capture Mexican wolves leaving the MWEPA is inconsistent with best available scientific information. At the very least, the MWEPA should be expanded to extend northward to Interstate 70.

*Our response:* This final rule to revise the regulations for the experimental population of the Mexican wolf that was established in the 1998 Final Rule represents one phase in our approach to recovery and delisting. The 1998 Final Rule enabled us to release Mexican wolves from the captive population into the wild to determine if it was possible to establish a wild population following the extirpation of the species in the early 1970s. Since 1998, we have demonstrated success in establishing a wild population (e.g., a minimum of 83 Mexican wolves in the wild, all of which are wild born as of December 2013). However, we are now expanding the MWEPA and revising the regulations to the 1998 Final Rule so that we can improve the effectiveness of the reintroduction project to achieve the necessary population growth, distribution, and recruitment, as well as genetic variation within the Mexican wolf experimental population so that it can contribute to recovery in the future. Following this phase of improving the existing experimental population, we intend to revise the Mexican wolf recovery plan so that it provides a recovery goal and objective recovery criteria, which may require further revision to this regulation for the experimental population in the future including any necessary analysis pursuant to NEPA. Because we do not have a revised recovery plan at this time to guide us on where Mexican wolves are needed to reach full recovery (i.e., delisting), we are limiting the revised MWEPA to areas south of Interstate 40 in Arizona and New Mexico.

(87) *Comment:* According to the 1998 Final Rule, the White Sands Wolf Recovery Area was specifically intended to serve as a reintroduction area in the event that the initial goal of 100 wolves was not reached within the BRWRA, which is exactly what has occurred. In removing that obligation, fluctuating prey numbers in this recovery area should not serve as a rationale to continue to neglect it as an important tool in ameliorating inbreeding and in conserving the Mexican wolf.

*Our response:* While the White Sands Wolf Recovery Area, as designated in the 1998 Final Rule, lies within the probable historical range of the Mexican wolf, and could be an important reestablishment site if prey densities increased substantially, it is now considered a marginally suitable area for Mexican wolf release and reestablishment primarily due to the low density of prey. For these reasons the Mexican Wolf Blue Range Reintroduction Project 5-Year Review recommended that any amended or new Mexican wolf experimental population rule not include the White Sands Missile Range as a Mexican Wolf Recovery Area or as a reintroduction zone (AMOC and IFT 2005, p. ARC-3); our current habitat analysis supports that recommendation (Service 2014, Section 1.2.14.1 and Figure 1-21).

#### Comments on Definitions

(88) *Comment:* The definition of “occupied range” is problematic and inappropriate, because radio-collared locations are not instantly known to Wildlife

Services personnel but are reported in a delayed manner on Service's website. This only informs Wildlife Services where the wolves were the last time the radio-collared locations were determined. They are not real time, but are at least a month old. Also, Mexican wolves move around much more than 5 miles a day.

*Our response:* We have changed the definition of “occupied Mexican wolf range” to mean 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/>. The Service will continue to coordinate with Wildlife Services on an informal basis. Wildlife Services personnel are on the Interagency Field Team and have access to weekly flight locations, thus Wildlife Services is informed when Mexican wolves are located in unexpected areas.

(89) *Comment:* We believe "problem wolves" should be amended as follows: (1) are members of a group or pack (including adults and yearlings) that were directly involved in livestock depredation on lawfully present livestock two times in an area within 1 year, or (2) have depredated domestic animals other than livestock on private or tribal lands, two times in an area within 1 year; or (3) are habituated to humans, human residence, or other facilities regularly occupied by humans.

*Our response:* We have defined “problem wolves” as 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;

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

(iii) Aggressive when unprovoked toward humans.

The 1982 Amendments to the Act, which created section 10(j), were designed to provide the Service with administrative flexibility to manage experimental populations of listed species. This definition provides the Service with flexibility regarding how to manage problem wolves, whereas the suggestion in the comment does not.

(90) *Comment:* In the definitions of “Predation” and “Problem wolves”, “lawfully present livestock” should be revised to include “. . . or on legal allotments (not trespassing and observing all requirements of the allotment operating instructions) on Federal lands.” The definition of “lawfully present livestock” needs to be clarified to include the permittee’s obligation to follow U.S. Forest Service (USFS) operating instructions as a condition of the privilege of grazing on public lands.

*Our response:* A permittee’s obligation to follow USFS operating instructions is beyond the purview of these revised regulations to the experimental population. It is the responsibility of the USFS, Bureau of Land Management, State Land Commissions, and private landowners who lease grazing allotments to make sure that their permittees are

complying with the terms and agreements of the leased allotments. Lawfully present livestock does not include livestock that is considered to be trespassing on Federal or other lands.

#### General Comments

(91) *Comment:* The proposed rule must not include expanded provisions for take of these critically endangered wolves. Science-based program reviews have shown that the killing and permanent removal of Mexican wolves by agency managers to resolve conflicts has been a major cause of failing to meet the reintroduction objective. The proposed rule changes offer additional excuses for removing wolves. The Service needs to tighten restrictions for take of Mexican wolves, not loosen them.

*Our response:* Nothing in this rule requires an increase in the killing or permanent removal of Mexican wolves. The purpose of this final 10(j) revision is to further the conservation of the Mexican wolf by improving the effectiveness of the reintroduction project in managing the experimental population. We have included modifications to the management regulations that govern take of Mexican wolves in this final rule to mitigate impacts caused by Mexican wolves and to increase our management flexibility in recognition that our action area includes a wider matrix of land ownership type and habitat quality than the previous BRWRA. The experimental population has grown each year since 2009, when the minimum Mexican wolf population count was 42. The Mexican wolf minimum population count was 83 in 2013. We expect that

modifying the provisions governing the take of Mexican wolves will contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local stakeholders.

(92) *Comment:* Traps, including both leg-hold traps and snares, should not be allowed where Mexican wolves are at risk. There is no way to exclude a Mexican wolf from a coyote trap. The injuries that Mexican wolves can sustain in traps can be severe and life-threatening. It is an avoidable source of harm.

*Our response:* Incidents of Mexican wolf injuries and mortalities from trapping targeted at other animals have been low. Since reintroductions began in 1998 and have continued through December 31, 2013, we are aware of 25 incidents in which Mexican wolves were captured in nongovernmental (private) traps; at least 7 have been severely injured, and at least 3 have died as a result of injuries or activities associated with being captured in a leg-hold trap. More information about trapping and threats can be found in the final rule determining endangered status for the Mexican wolf, which published elsewhere in this **Federal Register**. The Service and designated agencies will continue to use leg-hold traps as an effective method to manage Mexican wolves in the wild. For non-project trappers, we have specified due care criteria, which include: 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.

(93) *Comment:* In regard to trapping, add a provision that trappers have to check their traps frequently enough to minimize death or amputation of a Mexican wolf.

Trapping within the MWEPA should require that traps be checked no less than every 24 hours when the lowest ambient temperature is above freezing and no less than every 12 hours when the temperature is below freezing. Until the Mexican wolf is past the insufficient population of 100, the Service should not abdicate its recovery responsibility to States' varying trapping regulations, which are not crafted to promote recovery. The Service should incorporate the best practices from the experience of its Inter-agency Field Team (IFT). In particular there must be adequate warning to people approaching traps and the trappers must check the trap as soon as it is sprung, as well as at least every 24 hours in case the activation signal is defective.

*Our response:* See our response immediately above.

(94) *Comment:* The revised 10(j) rule should state affirmatively that trapping is allowed within the MWEPA.

*Our response:* The Service is not authorized to regulate trapping in the MWEPA. Although we do not state affirmatively in the regulations that trapping is allowed within the MWEPA, we provide for unintentional 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 with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(7)(viii)(A) of the regulations) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf as specified in the final rule.

(95) *Comment:* We need more habitat and more Mexican wolves in the wild to keep them from inbreeding. Time is of the essence as inbreeding is already occurring in the captive wolf population.

*Our response:* This final rule will promote population growth, genetic diversity, and management flexibility by providing additional area and locations for initial release of captive Mexican wolves to the wild. Increased initial releases can improve the genetic composition of the experimental population because the captive population contains Mexican wolves with genetic material that is currently unrepresented (or underrepresented) in the experimental population; therefore, initial release of the appropriate animals can improve the genetic composition of the experimental population

and minimize the likelihood of inbreeding. Genetic variation is managed in the captive wolf population because the Mexican Wolf Species Survival Plan has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2014, p. 2).

*(96) Comment:* Many public comments objected to the killing or lethal take of Mexican wolves. Commenters noted that there are many nonlethal methods to keep depredation levels low and that the Service should require ranchers in the Mexican wolf reintroduction areas to proactively pursue nonlethal deterrents.

*Our response:* We and our partners in the reintroduction project continue to investigate reported depredations and implement a variety of nonlethal methods to minimize Mexican wolf–livestock conflicts. A number of provisions in this final rule allow for nonlethal take of Mexican wolves. However, while preventative and nonlethal control methods can be useful in some situations, they are not consistently reliable, so lethal control remains a tool for managing Mexican wolves. Lethal take of Mexican wolves is most often the management tool of last resort.

*(97) Comment:* Wild Mexican wolves should not be captured and relocated. This activity is a danger to the wild wolves.

*Our response:* Translocation of Mexican wolves continues to be an important management tool. In some cases, translocating a wild Mexican wolf to a new location

will disrupt depredation or nuisance behavior and thus contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local communities. As of December 31, 2013, we have captured 348 individual Mexican wolves, and of these, only 3 have resulted in capture-related mortalities (see Mexican Wolf Recovery Program Progress reports from 2001 to 2013 on our website at <http://www.fws.gov/southwest/es/mexicanwolf/>). This level of mortality is comparable to anesthesia-caused deaths during veterinary procedures and demonstrates a track record of safely handling Mexican wolves by the Program.

(98) *Comment:* Any additional Mexican wolf population introductions will cause serious harm to deer and elk populations. Please do not introduce any more Mexican wolves in Arizona or New Mexico.

*Our response:* In this final rule, we have included provisions allowing for take of Mexican wolves in response to impacts to wild ungulates in accordance with certain stipulations. If the States of Arizona or New Mexico determine that Mexican wolf predation is having an unacceptable impact to 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 following a peer and public review of the data and information supporting the State's request, 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 from their tribal trust lands at any time, take in response to wild ungulate impacts is not applicable on tribal trust lands. Based on a review of available survey data between 1998 and 2012, the Arizona Game and Fish Department determined that while Mexican wolves do target elk as their primary prey source, including elk calves during the spring and summer season, there was no discernible impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer (Service 2104, Chapter 4 p. 12-17).

*(99) Comment:* The Service should develop a comprehensive and scientifically valid recovery plan that allows for at least three core populations. The current population in the greater Gila National Forest would then be one of the three core populations. The current recovery plan, more than 25 years old, is functionally irrelevant and virtually useless. The 2012 draft recovery plan, irrationally scuttled by the Service, should move forward.

*Our response:* We acknowledge that a scientifically based population goal is needed in order to determine when we have achieved recovery. That population goal will need to be determined in a future revision to the Mexican Wolf Recovery Plan. We will revise the recovery plan as soon as feasible. This MWEPA represents just one phase of Mexican wolf recovery.

(100) *Comment:* Trapping and the use of M-44's should be banned in the entire MWEPA. Trapping has already caused significant harm to individual Mexican wolves. Given the small size of the Mexican wolf population and the genetic risks associated with the loss of even a single wolf, the biologically sound, compassionate and precautionary approach dictates that every protection should be afforded to the species.

*Our response:* We have included a provision in this final rule prohibiting Wildlife Services from using M-44's and choking-type snares in occupied Mexican wolf range. 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)(7)(vii)(A)) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf.

(101) *Comment:* The revised 10(j) rule does not allow the killing of a Mexican wolf to protect dogs that defend our livelihood.

*Our response:* This final rule includes several provisions by which non-feral dogs may be protected. For instance, 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. Also, 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. In addition, we have provisions on Federal and non-Federal lands to allow for take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock. Further, on non-Federal lands anywhere within the MWEPA, domestic animal (includes non-feral dogs) 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 the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. Lastly, based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, 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.

(102) *Comment:* Livestock owners should never be allowed to kill Mexican wolves on public land to protect livestock, nor should they be allowed to kill them on private land for no reason.

*Our response:* In order to reduce human-related conflict, we have included provisions that 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. These permits will be based on the Service's or a designated agency's discretion in conjunction with a removal action

authorized by the Service. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Also, there are no provisions in this final rule that allow for the killing of Mexican wolves on private land for no reason.

(103) *Comment:* Some commenters believed we are violating the Service's mission to conserve Mexican wolves by allowing for lethal and nonlethal take.

*Our response:* Prior to the 1982 Amendments to the Act, the Service was authorized to translocate listed species into unoccupied portions of their historical range in order to aid in the recovery of the species. Significant local opposition to translocation efforts often occurred, however, due to concerns over the rigid protection and prohibitions surrounding listed species under the Act. Section 10(j) of the 1982 Amendments was designed to resolve this dilemma by providing new administrative flexibility for selectively applying the prohibitions of the Act to experimental populations of listed species. The Service's mission is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Nothing in this rule reduces the ability of the Service to achieve its mission or its responsibility under the Act to conserve Mexican wolves. Rather, this rule builds on the establishment of the experimental population and the partnerships already established with non-Federal entities, States, and Tribes to manage the Mexican wolf, while recognizing the need to balance recovery of the Mexican wolf with other human uses in the MWEPA.

(104) *Comment:* The Service should revise its documents to include complete genetic analysis from the initial capture of the ancestors of today's Mexican wolves, including the genetic makeup of the original animals from which the current population of Mexican wolves is descended; the numbers of animals analyzed and their identities; the results of analysis; the cause of dog characteristics in wolf skulls; and records of any animals in the wild that DNA testing showed were hybrids and proof they were subsequently eliminated from the population.

*Our response:* Including this level of genetic detail is beyond the purview of this revised 10(j) rule. We have noted in the preamble that the Mexican wolves selected for release into the wild are wolves that have genes that are well-represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2014, p. 2). The genetic purity of the Mexican wolves used in the captive program has been confirmed in published scientific studies.

(105) *Comment:* Clarify whether livestock operators are required to implement depredation-avoidance measures before incentives or compensation funding can be provided, or whether such actions are voluntary and independent of incentive and compensation programs.

*Our response:* Although proactive measures are not required to receive compensation funding, the Coexistence Council may provide payments based on a formula that includes the presence of Mexican wolves, number of livestock exposed to wolves, and the rancher's participation in proactive conflict avoidance measures.

(106) *Comment:* The proposed rule includes no plan for how the Service will mitigate damages or reduce the impact of Mexican wolves on individuals or communities that are harmed by their presence. Instead, it proposes to further reduce and limit the conditions under which Mexican wolves will be removed or when landowners will be allowed to take action against a problem wolf. Specific information on how livestock producers will be compensated for their losses due to Mexican wolves needs to be in the revised rule.

*Our response:* Regarding compensation for livestock depredations, the Mexican Wolf/Livestock Coexistence Council has developed compensation guidelines and a long-term Coexistence Plan. The Coexistence Council is now in the process of seeking funding from private and public sources. Further, we have included several provisions in the final rule that will mitigate the potential impacts of Mexican wolves on landowners, recreational users, and local communities. Under the final rule, on non-Federal lands, 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 the regulations, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present; on Federal land, livestock owners may be permitted to take a

wolf that is in the act of biting, killing, or wounding livestock. We have also included a provision for conditional take permits on non-Federal land for domestic animal owners to assist the Service or its designated agency in completing wolf control actions. In addition, 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.

(107) *Comment:* Some commenters suggested that the Mexican wolf is not a valid subspecies and, thus, should not be subject of an experimental population rule.

*Our response:* Based on the best available scientific information, we continue to recognize the Mexican wolf (*Canis lupus baileyi*) as a subspecies of the gray wolf. More information about the taxonomy of the Mexican wolf can be found in the final rule determining endangered status for the Mexican wolf, which published elsewhere in this **Federal Register**.

(108) *Comment:* The final revised 10(j) rule should acknowledge the full name of the subspecies as Mexican gray wolf (*Canis lupus baileyi*) rather than Mexican wolf. While this abbreviated nomenclature is acceptable after the first written usage and in colloquial writing and speech, taxonomic and genetic studies have documented that the Mexican gray wolf is a subspecies of gray wolf and regulatory documents should reflect this.

*Our response:* As previously noted, we recognize the Mexican gray wolf or Mexican wolf (*Canis lupus baileyi*) as a distinct gray wolf subspecies. For this final rule and to be consistent with other Service documents, we have chosen to use the common name Mexican wolf rather than Mexican gray wolf.

(109) *Comment:* The Service has the legal responsibility to recover the Mexican wolf and should maintain and consolidate that authority rather than delegate it again. The Service should issue a final revision to the 1998 Final Rule that makes clear that it has the sole authority over Mexican wolves.

*Our response:* Nothing in this rule delegates the Service's authority to manage Mexican wolves. Although the Service has the primary responsibility for the conservation of federally listed species under the Act, we are committed to working with our partners from other agencies, Tribes, State and local governments, and private entities to implement actions to further the conservation and recovery of the Mexican wolf. Work done by partners from other agencies will be approved by the Service.

(110) *Comment:* It is not acceptable to allow permits for the taking of Mexican wolves, especially without requiring that property owners and ranchers make significant effort to use nonlethal methods to control and protect their property.

*Our response:* We and our partners in Mexican wolf recovery continue to investigate and implement a variety of nonlethal methods of wolf management. While preventative and nonlethal control methods can be useful in some situations, they are not consistently reliable, so lethal control remains a tool for managing Mexican wolves.

(111) *Comment:* Provisions should be included to allow and require the Service to immediately reduce authorized take for all subsequent years following years when this conservation goal has not been met.

*Our response:* Even though we do not have a provision in this final rule that requires the Service to immediately reduce authorized take for all subsequent years following years when the conservation goal is not met, we have the flexibility and discretion to consider the status of the population when issuing take permits to manage Mexican wolves in the MWEPA. Some form of Mexican wolf management is usually necessary when wolves prey on livestock or engage in nuisance behavior. Accordingly, we recognize the importance of obtaining an appropriate balance between enabling Mexican wolf population growth and minimizing nuisance and depredation impacts on local communities, and we understand that removal of wolves to address conflicts with livestock (depredation) or humans (nuisance) is an essential component of reintroduction efforts.

(112) *Comment:* The revised 10(j) rule should include specifications for issuance of take permits to livestock producers (on private or public land). Any specifications

should be based on the particular set of circumstances surrounding an ongoing depredation situation. The issuance of the permit should not depend upon the number of Mexican wolves in the MWEPA. The Service should develop and publish for review a set of take permit criteria based on certain situational elements, such as the number of livestock killed or injured, the frequency of wolf depredation, and the individual economic impacts to the livestock producer, landowner, and pet owner.

*Our response:* In this final rule, the issuance of a take permit to a livestock producer is based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service. We are not including permit criteria in this rule in order to remain flexible while responding to specific depredation situations. Because of the different dynamic issues associated with managing the Mexican wolf experimental population, we are trying to remain flexible so that permits fit the permittee's individual situations.

(113) *Comment:* Rather than addressing illegal shootings, a primary and immediate threat to the Mexican wolf survival and recovery, the Service is proposing to expand the circumstances in which Federal agencies and authorized personnel may take wolves. This would legalize mistaken Mexican wolf shootings, requiring anti-wolf advocates to simply claim that they thought the animal was a coyote. Indeed, the final revisions must include a directive that personnel working on Mexican wolf recovery shall not engage in other predator control activities while assigned to the wolf project.

*Our response:* We have revised the take provisions set forth in the 1998 Final Rule in order to effectively manage Mexican wolves within the expanded MWEPA in a manner that furthers the conservation of the Mexican wolf while being responsive to the needs of the local community in cases of depredation or nuisance behavior by wolves. However, we are not able to include a directive in this final rule that personnel working on Mexican wolf recovery shall not engage in other predator control activities because the Service is not authorized to direct the employees of other Federal and non-Federal agencies. But we have included a provision that Wildlife Services will discontinue use of M-44's and choking-type snares in occupied Mexican wolf range and that 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.

(114) *Comment:* Provisions must be added that allow a rancher lethal take options if he or she experiences multiple depredations regardless of location of those depredations. Private property protection is a civil and constitutional right and the Service must support that right. Permit requirements should not be necessary, but if a permit is required, it should be structured as a cooperative measure rather than an agency requirement and the issuance of such a permit should be made retroactive, as ranchers may have to act before making a request.

*Our response:* We have modified the provisions governing take of a Mexican wolf to contribute to our efforts to find the appropriate balance between enabling wolf

population growth and minimizing nuisance and depredation impacts on local stakeholders. There are several provisions in this final rule by which a domestic animal or livestock owner can take (including kill or injure) a Mexican wolf in response to depredations. However, we are not authorized to structure a cooperative measure that allows the issuance of permits to be made retroactive.

(115) *Comment:* The revised 10(j) rule should not allow for pet owners to kill Mexican wolves attacking pets anywhere in the MWEPA. It is a blank check for wolf opponents to pick up strays and pound puppies, stake them out, and bait Mexican wolves. Authorizing people to kill Mexican wolves in defense of pets may open up new opportunities for fraudulent take.

*Our response:* We have included various provisions in this final rule to allow for take of Mexican wolves by domestic animal owners, which includes pet dog owners. However, for domestic animal owners, more take provisions are allowed on non-Federal land than on Federal land. Unless otherwise specified in this final rule or in a permit, any take of a Mexican wolf must be reported to the Service or a designated agency within 24 hours. The Service or designated agent will then investigate the incident, and if there are cases of fraudulent take, the person or persons may face Federal prosecution.

(116) *Comment:* We received many comments with an overall general opposition to allowing any take by pet owners. Several commenters stated that take of Mexican wolves by pet owners should not be allowed, especially when previous levels of take

were too high to protect Mexican wolves at a level that furthered the conservation of the species.

*Our response:* In this final rule, we have included a provision that allows for the take of Mexican wolves by domestic animal owners or their agents if wolves are in the act of biting, killing, or wounding a domestic animal on non-Federal lands. In addition, there is a provision that would provide for the conditional issuance of permits to allow domestic animal owners or their agents to take (including intentional harassment, injure, or kill) any Mexican wolf that is present on non-Federal land owned by the domestic animal owner. We estimate that actual take of a Mexican wolf would occur only in about 25 percent of the instances in which take would be authorized, or the take of one to two wolves every other year (Service 2014, Appendix D, p. 6). This level of take should not significantly impact the conservation of the species, but see Appendix D of the final EIS for a full analysis of the predicted impact of additional take provisions on Mexican wolf conservation, based on incidences to date in the Mexican Wolf Recovery Program.

(117) *Comment:* The revised 10(j) rule should give State game and fish agencies broad authority to manage experimental populations. The experimental population provisions of the Act (16 U.S.C 1539(j)) give the Service the authority to manage experimental populations in ways different than allowed for other endangered or even threatened species. These experimental population provisions do not prohibit the Service from transferring management authority to the State game and fish agencies, for the purposes of determining if and when take of Mexican wolves may be allowed. These

State game and fish agencies must deal with the presence of Mexican wolves on a day-to-day basis, as well as the impact of these wolves on wild ungulates, livestock, and on revenues generated by the State through hunting licenses, concessions and other related sources. For that reason, these State game and fish agencies should have the authority to determine if and when the lethal removal of Mexican wolves may be carried out. Instead of withholding that authority from the agencies, or doling it out on a very limited basis, the Service should recognize and authorize the State game and fish agencies as the primary authorities for Mexican wolf management.

*Our response:* Federal law does not allow the Service to delegate its authority under the Act to a State. Although the Service has the primary responsibility for the conservation of federally listed species under the Act, we are committed to working with our partners at other Federal and State agencies, tribal and local governments, and private entities to implement actions that help prevent the extinction of species. With this final rule, we have modified the provisions of the 1998 Final Rule to allow designated agencies, such as a Federal, State, or tribal agency, 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 described in 50 CFR 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through 50 CFR 17.32. However, if a Federal, State, or tribal agency becomes a designated agency, the Service will help coordinate their activities while retaining authority for program direction, oversight, guidance, and authorization of Mexican wolf removals.

(118) *Comment:* In both Arizona and New Mexico, describe how Mexican wolf management on tribal and non-tribal lands will be coordinated to ensure that neither positive nor negative impacts of Mexican wolf reintroduction will fall disproportionately on Tribes or on non-tribal interests.

*Our response:* In this final rule, we have established additional take provisions for non-Federal land, which is any private, State-owned, or tribal trust land, because we expect the burden of Mexican wolf recovery to be on Federal land. In addition, Tribes have the ability to request the removal of Mexican wolves from their tribal trust lands. During the preparation of this rule, the Service met with affected Tribes on numerous occasions. We believe this rule reflects the input and requirements of the Tribes.

(119) *Comment:* The rule should contain an escape clause, so that if excessive take results or limits on dispersal constrain population growth, the provisions can be quickly cancelled.

*Our response:* The Service has the flexibility and discretion to consider the status of the population when issuing take permits to manage Mexican wolves in the MWEPA. Some form of Mexican wolf management is usually necessary when wolves prey on livestock or engage in nuisance behavior. Accordingly, we recognize the importance of obtaining an appropriate balance between enabling Mexican wolf population growth and minimizing nuisance and depredation impacts on local communities, and we understand

that removal of wolves to address conflicts with livestock (depredation) or humans (nuisance) is an essential component of reintroduction efforts.

(120) *Comment:* One commenter stated that the Service should demonstrate its commitment to recovering the Mexican wolf by including a provision that the annual Mexican wolf population growth is at least 10 percent before any lethal take or removal of Mexican wolves from the wild is authorized. And this provision should remain in effect until the Mexican wolf population reaches at least 350, or until an approved Mexican Wolf Recovery Plan establishes some other numerical population objective for the expanded experimental population.

*Our response:* The Service has the flexibility and discretion to consider the status of the population when issuing take permits to manage Mexican wolves in the MWEPA. Some form of Mexican wolf management is usually necessary when wolves prey on livestock or engage in nuisance behavior. Accordingly, we recognize the importance of obtaining an appropriate balance between enabling Mexican wolf population growth and minimizing nuisance and depredation impacts on local communities, and we understand that removal of wolves to address conflicts with livestock (depredation) or humans (nuisance) is an essential component of reintroduction efforts.

(121) *Comment:* A streamlined process needs to be identified to address responses to predation by Mexican wolves on Sonoran pronghorn. Such streamlining may include establishing metrics in advance that identify unacceptable impact to Sonoran

pronghorn and the outlining of rapid response protocols and procedures.

*Our response:* Sonoran pronghorn occur within Zone 3 of the MWEPA, which is an area of less suitable Mexican wolf habitat. We do not expect Mexican wolves to occupy these areas of less suitable habitat because ungulate populations are inadequate to support them. Even so, we have included provisions allowing for take of Mexican wolves in response to impacts to wild ungulates in accordance with certain stipulations. If the States of Arizona or New Mexico determine that Mexican wolf predation is having an unacceptable impact to 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 following a peer and public review of the data and information supporting the State's request, 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 from their tribal trust land at any time, take in response to wild ungulate impacts is not applicable on tribal trust lands.

(122) *Comment:* The provision should be removed that exonerates Wildlife Services agents who may take a Mexican gray wolf during control measures for other predators. The apparent misidentification and shooting of a Mexican wolf by a Wildlife Services agent has already occurred. A blanket dismissal of culpability in all future such cases is not a reasonable response.

*Our response:* 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. Take of Mexican wolves by Wildlife Services employees will be investigated by the Service and USDA-APHIS.

(123) *Comment:* The Service continues to assume a direct relationship between authorized taking of Mexican wolves and increased public tolerance of wolves. There is no science-based evidence that new, more permissive take provisions will achieve the conservation mandate of section 10(j) of the Act. Scientific proof of such a relationship does not exist and the papers cited in support of this claim present only unfounded opinions.

*Our response:* Our intention in revising the regulations to the experimental population is to effectively manage Mexican wolves in a manner that furthers the conservation of the Mexican wolf while being responsive to the needs of the local communities and minimizing wolf-human conflict. By providing more management flexibility, we believe that management of Mexican wolves under this final rule will

improve the effectiveness of the reintroduction project in minimizing and mitigating wolf–human conflict while increasing public tolerance (Service 2014, Appendix E p.2).

(124) *Comment:* If the Service insists on maintaining take provisions in the final rule to allow domestic animal owners or their agents to take any Mexican wolf that is present on non-federal land, at a minimum the Service should include a verification process, ensure transparency in permitting decisions, and put a cap on the number of discretionary permits of this type that may be granted on the landscape. The Service sets forth no criteria to delimit when such permits may be granted, or to specify how many wolves may be killed or harmed in each permit.

*Our response:* This final rule authorizes the issuance of permits to domestic animal owners or their agents on non-Federal lands to assist the Service or designated agency in completing a control action. The issuance of permits will be at the Service’s or designated agency’s discretion, and thus, analyzed on a case-by-case basis. Also, we have established additional take provisions for non-Federal land, which is any private, State-owned, or tribal trust land, because we expect the burden of Mexican wolf recovery to be on Federal land.

#### *Comments on National Environmental Policy Act*

We received several comments that we did not adequately address the social, economic, or environmental impacts in accordance with NEPA. However, we have

carefully reviewed the requirements of NEPA and its regulations (Council on Environmental Quality 40 CFR 1502.9), and this final rule, as well as the process by which it was developed and finalized, complies with all provisions of the Act, NEPA, and application regulations. Please see the final EIS for a detailed description of public comments related to NEPA and our responses.

#### *Comments Not Germane to This Rulemaking*

Some of the comments went beyond the scope of this rulemaking, or beyond the authority of the Service or the Act. Because these issues do not relate to the action we proposed, they are not addressed here. These comments include support of or opposition to this rulemaking. For example, some comments indicated that Mexican wolf reintroduction usurped States' rights or that the current propagated population of Mexican wolves are not genetically pure wolves. We also received comments expressing support for, and opposition to, Mexican wolf recovery without further explanation.

#### **Summary of Changes from the June 13, 2013, Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf**

On June 13, 2013 (78 FR 35719), we published a proposed rule to revise the regulations for the experimental population designation of the Mexican wolf. That proposal had a 90-day comment period ending September 11, 2013. Based on information received during that first 90-day public comment period ending on

September 11, 2013, we proposed new revisions to the regulations for the experimental population of the Mexican wolf, and announced the availability of a draft EIS on the proposed revisions on July 25, 2014 (79 FR 43358). The changes from the June 13, 2013 (78 FR 35719), proposed rule that were part of the July 25, 2014 (79 FR 43358), revised proposed rule are described below.

*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 regulations for the 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 final rule, we remove 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 the Mexican wolf 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 allowable take by livestock owners or their agents under paragraph (k)(6)(iii) from “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 overall population’s status. However, based on information that was submitted during public comment, we are no longer using 6 breeding pairs or at least 100 Mexican wolves as conditions for issuing a permit to livestock owners or their agents on Federal lands. The information presented suggested that using 6 breeding pairs or at least 100 Mexican wolves were arbitrary conditions for issuing permits. Therefore, in this final rule, we 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 based on the Service’s or a designated agency’s discretion and in conjunction with a removal action that has been authorized by the Service.

Also in the June 13, 2013 (78 FR 35719), preamble to our proposed rule 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 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 are no longer considering changing the term “depredation” to “depredation incident” and in this final rule will use the term “depredation” only as defined in the rule portion of this document.

Below, we discuss the additional modifications to our proposed revision to the regulations for the experimental population of the Mexican wolf.

*Additional or Revised Definitions from the Proposal to Revise the Regulations for the Experimental Population of the Mexican Wolf*

We add or revise several definitions to provide additional clarification; definitions for these terms are laid out in the rule portion of this document:

*Active den*

*Cross-foster*

*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*

*Wild ungulate herd*

*Wounded*

*Zone 1*

*Zone 2*

*Zone 3*

*Revisions to the Geographic Area of the Mexican Wolf Experimental Population*

We 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 make 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 allows 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 revisions to the 1998 Final Rule allows 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 identify Zones 1, 2, and 3 as different management areas within the MWEPA and discontinue the use of the term BRWRA. These different zones are based on areas of habitat suitability and dispersal corridors. Areas of less suitable Mexican wolf habitat will be where Mexican wolves are more actively managed under the authorities of this rule to reduce conflict with the potentially affected public.

Zone 1 is where Mexican wolves may be initially released or translocated, and where they can occupy and disperse, 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 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 where Mexican wolves will be more actively managed under the authorities of this rule to reduce conflict.

Elimination of the BRWRA and the primary and secondary recovery zones within it, and our expansion of 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 is consistent with recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC-4). These revisions 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, which will enable us to improve the genetic variation of the experimental population.

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

*Experimental Population*

In the rule portion of this document, we clarify take provisions provided in the 1998 Final Rule for intentional harassment, opportunistic harassment, take for research purposes, take by Service personnel or designated agency, and unintentional take. We also revise the due care criteria in regard to trapping activities. And we provide language to clarify that personnel of the USDA–APHIS 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. These changes do not directly authorize an increase in the amount of take. However, an increase in the Mexican wolf population in the MWEPA could result in an increase in the amount of take authorized over time because more situations could result in take.

Furthermore, we revise 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 game and fish agencies determine that Mexican wolf predation is having an unacceptable impact to 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.

*Additional Take Provisions to the Mexican Wolf Experimental Population*

One of the additional provisions we are now allowing is 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 define a domestic animal as livestock as defined in paragraph (k)(3) of this final rule and non-feral dogs. We are making this change to mitigate the potential impacts of Mexican wolves on landowners, recreational users, and local communities. These management actions must occur in accordance with 50 CFR 17.84(k)(7)(iv)(A).

We are also finalizing provisions for the issuance of permits, based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, 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 where specified in the permit. 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 are adding 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.

### **Summary of Changes from the July 25, 2014, Proposed Revisions to the Regulations for the Nonessential Experimental Population of the Mexican Wolf**

In this final rule, based on information received during the July 25, 2014, to September 23, 2014, public comment period, we make several modifications from our July 25, 2014, proposal to revise the regulations for the experimental population of the Mexican wolf. These modifications represent an agreement with Arizona and New Mexico's State game and fish agencies in accordance with 50 CFR 17.81(d). As explained further below, we find that these recommended modifications are commensurate with the conservation of the Mexican wolf. First, we added a definition for *Unacceptable impact to a wild ungulate herd*. Second, we established a population objective of 300 to 325 Mexican wolves throughout the MWEPA, in both Arizona and New Mexico. Last, we have provided for a phased approach to Mexican wolf management within the MWEPA in western Arizona.

In our revised proposed rule, our language under paragraph (k)(7)(vi) stated that “If Arizona or New Mexico determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact to 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.” Based on information that we received from the State game and fish agencies, an unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on a preponderance of evidence of bull:cow ratios, cow:calf ratios, hunter days, and/or elk population estimates. The process outlined in paragraph (k)(7)(vi) for Service approval remains the same.

We received comments from numerous agencies, organizations, and individuals requesting that we include a population objective for the MWEPA. In accordance with best available information, we included a population objective of 300 to 325 Mexican wolves throughout the MWEPA in both Arizona and New Mexico (see *Population Objective for Wolves in the MWEPA*). This range will be based on end-of-year counts. So as not to exceed this population objective, we will exercise all management options with preference for translocation to other Mexican wolf populations to further the conservation of the subspecies. The Service may change this population objective as necessary to accommodate a new recovery plan.

In regard to the phased approach to Mexican wolf management in western Arizona, in consultations with the Arizona Game and Fish Department, they expressed concern that elk populations, west of Highway 87 are generally smaller in number and isolated from each other compared to elk populations east of Highway 87. Also, areas west of Highway 87 tend to be drier, and, therefore, elk herds have greater fluctuations in population size than herds in more mesic areas to the east. As such, Arizona's most dense and productive elk populations are found in the eastern part of the State, generally east of Highway 87. Therefore, we have included a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87.

As part of the phased-approach, Phase 1 will be implemented for the first 5 years following the effective date of this rule (see **DATES**), and under this phase, initial release and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona (Figure 3). No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3). However, during Phase 1 dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.

In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican

wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3) with the exception of those areas west of State Highway 89 in Arizona (Figure 4).

If determined to be necessary by the 8-year evaluation and Phase 2 has already been implemented, Phase 3 will be initiated (Figure 5). In Phase 3, initial release and translocation of Mexican wolves can occur throughout Zone 1, including the area west of State Highway 87 in Arizona. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3).

While implementing this phased approach, two evaluations will be conducted: (1) covering the first 5 years and (2) covering the first 8 years after the effective date of this rule in order to determine if we will move forward with the next phase. Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulates, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after the effective date of this rule the population is at least 150 Mexican wolves, and 8 years after the effective date of this rule the population is at least 200 Mexican wolves. The phasing may be expedited with the concurrence of participating State game and fish agencies. Regardless of the outcome of the two evaluations, by the beginning of year 12 from the effective date of this rule, we will move to full implementation of this rule throughout the MWEPA, and the phased

management approach will no longer apply. The phasing may be expedited with the concurrence of participating State game and fish agencies.

## **Findings**

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

### *Is the Experimental Population Wholly Separate Geographically From Nonexperimental Populations of the Same Species?*

Prior to the first release of Mexican wolves in 1998, the Service ensured that no population of naturally occurring wild wolves existed within the recovery areas under consideration (in the United States) or in Mexico. Currently, no populations or individuals of the Mexican wolf subspecies are known to exist in the United States outside of the MWEPA. Due to the active reestablishment effort Mexico initiated in 2011, as of October 2014, seven confirmed Mexican wolves were known to exist in the wild approximately 130 mi (209 km) south of the United States–Mexico international border. The seven wolves consist of two adults and their five pups, and are approximately 100 mi (161 km) straight-line distance south from the United States–Mexico international border. Thus, the two areas are neither adjacent to nor overlapping each other.

The Mexican wolves in Mexico do not meet the definition of a population that we have consistently used in our gray wolf experimental population rules, which is at least two breeding pairs of gray wolves that each successfully raised at least two young annually for two consecutive years (59 FR 60252, November 22, 1994). This definition represents what we have determined to be the minimum standards for a gray wolf population (Service 1994). The courts have supported this definition and thus upheld our interpretation that pairs must breed to have a “population” (*Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224, 1234 (10<sup>th</sup> Cir. 2000); *U.S. v. McKittrick*, 142 F.3d 1170, 1175 (9<sup>th</sup> Cir. 1998), cert. denied, 525 U.S. 1072 (1999)). Based on the results of Mexico’s efforts from 2011 through 2013, we can only speculate that the number of Mexican wolves in Mexico will fluctuate over the next few years from zero to several wolves or packs of wolves depending on mortalities, future releases, and successful breeding (in the wild) of released wolves. Therefore, we consider it unlikely for a population that meets our definition to be established in northern Mexico any time soon and certainly no such population exists currently.

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

could benefit recovery of the Mexican wolf by providing genetic interchange between populations.

*Is the Experimental Population Area in Suitable Natural Habitat Outside the Species' Current Range, But Within Its Probable Historical Range?*

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

*Designation of Experimental Population as Essential or Nonessential*

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

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

In 1998, we designated the Mexican wolf experimental population. At that time, we determined that the experimental population was not essential to the survival of the species in the wild. In this final rule, we are not revisiting the issue of whether or not the experimental population is essential to survival of the species in the wild, and nothing in the rule changes the designation of the population. The 1998 Rule is being changed only to improve the effectiveness of the reintroduction project in managing the experimental population in particular ways that have been previously described. Making these management changes does not require the Service to revisit the 1998 designation’s determination regarding whether the population is essential or not.

Reestablishing a species is by its very nature an experiment for which the outcomes are uncertain. However, it is always our goal to successfully reestablish a species in the wild so that it can be recovered and removed from the endangered species

list. This is consistent with the Act's requirements for section 10(j) experimental populations. Specifically, the Act requires experimental populations to further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. In short, experimental populations must further a species' recovery.

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

In addressing essentiality, the Act instructs us to determine whether a population is essential to the continued existence of an endangered or threatened species in the wild. Our regulations define essential experimental populations as those "whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild (50 CFR 17.80(b))." The Service defines "survival" as the condition in which a species continues to exist in the future while retaining the potential for recovery (Service and

National Marine Fisheries Service 1998). Inherent in our regulatory definition of essential is the impact the potential loss of the experimental population would have on the species as a whole (Service 1984). All experimental populations not meeting this bar are considered nonessential (50 CFR 17.80(b)).

The Service has previously determined that this experimental population of Mexican wolves was nonessential in the 1998 Final Rule. The Mexican wolf population that is in the wild in Arizona and New Mexico today is the experimental population that was designated in the 1998 Final Rule. The 1998 Final Rule stated that “The Service finds that even if the entire experimental population died, this would not appreciably reduce the prospects for future survival of the subspecies in the wild. That is, the captive population could produce more surplus wolves and future reintroductions still would be feasible if the reasons for the initial failure were understood (63 FR 1754).”

*Does the Establishment of the Experimental Population and Release of Mexican Wolves Further the Conservation of the Species?*

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

The Mexican wolves in the captive-breeding program and the seven wolves in the wild in Mexico (which do not constitute a population) are the only extant Mexican wolves other than those in the existing experimental population. The primary purpose of

the captive-breeding program is to supply wolves for reestablishing Mexican wolves into the wild. Mexican wolves selected for release from the captive-breeding program are genetically well-represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2014, p. 2). This rule allows for more captive Mexican wolves to be released to the wild, which can be accommodated by the captive-breeding program. We find that the continuation of the experimental population and specifically the expansion of the area into which initial releases can be conducted will not have adverse effects on the captive-breeding program. Such releases benefit the captive-breeding program by freeing up space for additional breeding of Mexican wolves, which helps slow the loss of genetic diversity. Mexican wolf dispersal throughout the MWEPA will further the conservation of the species by allowing wolves access to additional habitat for reestablishment.

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

In our 1998 Final Rule we stated, “The Service finds that, under the Preferred Alternative, the reintroduced experimental population is likely to become established and survive in the wild within the Mexican wolf’s probable historic range (63 FR 1754, January 12, 1998).” We have been reestablishing Mexican wolves into the BRWRA

since 1998, and the population has consistently demonstrated signs of establishment, such as wolves establishing home ranges and reproducing. The progress in meeting the population objective of at least 100 wild Mexican wolves has been slower than projected, but we anticipate that the revisions in this rule will support progress toward our objective. At the end of 2013, all of the Mexican wolves in the wild in Arizona and New Mexico were born in the wild. This marked the twelfth consecutive year in which wild-born Mexican wolves bred and raised pups in the wild. We have also modified our management procedures related to depredation response and other recommendations from the Mexican Wolf Blue Range Reintroduction Project 5-Year Review to ensure the success of the experimental population (Service 2010, p. 29). To promote survival of the wild population we have used an adaptive management framework to modify our approach to depredation management by removing fewer Mexican wolves, focusing on proactive measures, and tasking the Mexican Wolf/Livestock Coexistence Council to develop a comprehensive program to fund proactive conflict avoidance measures, depredation compensation and payments for presence of Mexican wolves.

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

The recovery and long-term conservation of the Mexican wolf in the southwestern United States and northern Mexico is likely to depend on establishment of a metapopulation or several semi-disjunct populations spanning a significant portion of its historic range in the region (Carroll *et al.* 2014, entire). Continuing the effort to

reestablish the experimental population, and making modifications to improve it, will substantially contribute to the recovery of the species, as it is currently extirpated in the wild except for the existing experimental population in the United States and a fledgling reestablishment effort in Mexico. We recognize that the reestablishment of a single experimental population of Mexican wolves is inadequate for recovery, and we are fully cognizant that a small isolated Mexican wolf population, such as the existing experimental population, can neither be considered viable nor self-sustaining (USFWS 2010 entire, Carroll *et al.* 2014 entire). The continued successful reestablishment of an experimental population of Mexican wolves in the MWEPA is envisaged as the first step toward, and will contribute to, recovery.

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

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

wolves may disperse through or occasionally occupy less-suitable habitat. We also recognize that Mexican wolves may seek to inhabit tribal or private lands with suitable habitat.

Zone 1, the area where Mexican wolves may be initially released from captivity or translocated as established in this final rule, comprises 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 that are administered by the Forest Service. The Forest Service manages these areas to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The National Forests are responsible for developing and operating under a Land and Resource Management Plan, which outlines how each of the multiple uses on the forest will be managed. The Forest Service is a partner in the management and recovery of the Mexican wolf.

The MWEPA covered by this final rule contains a mixture of many land ownerships, including Federal (e.g., Forest Service, Bureau of Land Management, Department of Defense), State, private, and tribal lands. A variety of actions and activities may occur throughout the MWEPA, such as recreation, agriculture and ranching, development, and military operations. Although we expect the majority of the Mexican wolf population to occur on Federal lands within Zones 1 and 2 of the MWEPA due to habitat suitability, we also anticipate that the experimental population may be affected by actions and activities occurring on private or tribal land, such as ranching

operations, because wolves that depredate livestock or display nuisance behavior may be hazed or removed. We will establish management actions in cooperation with private landowners and tribal governments to support the recovery of the Mexican wolf on private and tribal lands and will continue our efforts to support the Mexican Wolf/Livestock Coexistence Council and proactive management activities aimed at reducing wolf–livestock conflicts.

Road and human densities have been identified as potential limiting factors for colonizing wolves in the Midwest and Northern Rocky Mountains due to the mortality associated with these landscape characteristics (Mladenoff *et al.* 1995, entire; Oakleaf *et al.* 2006, pp. 558–561). Vehicular collision, in particular, is not identified as having a significant impact on the Mexican wolf population, although it may contribute to the overall vulnerability of the population due to its small population size and the cumulative effects of multiple factors, including inbreeding and illegal shooting of wolves. We recognize that human and road densities in the MWEPA are within recommended levels for Mexican wolf colonization, and are expected to remain so in the future; therefore, we see the impact to the population from actions related to human development as minimal within the areas we expect Mexican wolves primarily to inhabit. More information about vehicular collisions and other threats can be found in the final rule determining endangered status for the Mexican wolf, which published elsewhere in this **Federal Register**.

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

We will continue to work with other agencies, tribes, and landowners to ensure that their activities will not adversely affect the experimental population of Mexican wolves. Based on our intent to capture and return to the MWEPA Mexican wolves that disperse outside of the MWEPA, we do not expect actions and activities adjacent to the MWEPA to have a significant impact on the experimental population.

### **Consultation with State Game and Fish Agencies, Local Governments, Federal Agencies, and Private Landowners in Developing and Implementing This Rule**

In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this rule represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. We invited 84 Federal and State agencies, local governments, and tribes to participate as cooperating agencies in the development of the EIS, 27 of

which signed a Memorandum of Understanding (MOU). The purpose of this MOU was for the signatory entities to contribute to the preparation of the EIS that analyzes the proposed revisions to the regulations for the Mexican Wolf Experimental Population. We have maintained a list of individual stakeholders, as well as a website, since the initiation of the EIS development to ensure that interested and potentially affected parties received information on the EIS and notices of opportunities for public involvement. As previously mentioned, numerous parts of this rule directly reflect the input and desires of State game and fish agencies, local governmental entities, affected Federal agencies, and affected private landowners.

In June 2013, we notified the tribal governments of all the Native American tribes in Arizona and New Mexico of our intent to prepare an EIS. We held Tribal Working Group meetings to provide opportunity for input, discuss the current status of the EIS development, and address issues raised by the Tribes. We met with affected Federal agencies; several State, county, and tribal governments; as well as Forest Service livestock permittees, several Natural Resource Conservation Districts, and organizations representing interested parties to discuss the proposed rule and draft EIS. We met with the Arizona Game and Fish Department and New Mexico Department of Game and Fish to collect data and develop the analyses of effects to native species, particularly ungulates and economic impacts associated with hunting in Arizona and New Mexico. We also met with the two State game and fish agencies to discuss issues and recommendations they may have with the proposed rules. The New Mexico State Game Commission suspended the involvement of the New Mexico Department of Game and Fish in the

Mexican Wolf Recovery Program on June 9, 2011, but they have participated as a Cooperating Agency for the development of the EIS. Throughout the course of drafting this rule, the Arizona Game and Fish Department has made numerous comments on the rule. Some of those comments have been incorporated into this rule as explained earlier. Numerous other entities and individuals have provided suggestions on the draft rule that have not always reflected the best available scientific and commercial information available or met our purpose and need for revising this rule and therefore do not contribute to the conservation of the species. Therefore, it is not practicable for this final rule to represent an agreement between the Service and all agencies and persons holding any interest in land that may be affected by the establishment of this experimental population. We held four public hearings and three public information sessions in Arizona and New Mexico prior to developing this final rule and EIS. We reviewed and considered approximately 48,131 public comments submitted on the June 13, 2013, and July 25, 2014, proposed rules prior to finalizing this rule and the EIS.

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

For Mexican wolves that occur outside the MWEPA, the Act (16 U.S.C. 1531 *et seq.*) prohibits activities that “take” endangered and threatened species unless a Federal permit allows such “take.” 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 issued by us under section 10(a)(1)(A) of the Act authorizes

activities otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including acts necessary for the establishment and maintenance of experimental populations. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species.

We have developed a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur both inside and outside the MWEPA. Please note that if Mexican wolves travel outside the MWEPA, we intend to capture and return them to the MWEPA or put them in captivity. In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the permit as part of our EIS. In accordance with both the Act and NEPA, we invited local, State, tribal, and Federal agencies and the public to comment on the draft section 10(a)(1)(A) permit during the July 25, 2014, to September 23, 2014, open comment period (79 FR 43358; July 25, 2014).

### **Required Determinations**

#### *Regulatory Planning and Review—Executive Order 12866*

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

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. This final rule promotes predictability and reduces uncertainty because it clearly tells the affected public what is necessary to promote the conservation of Mexican wolves in the MWEPA. It is the most innovative approach because it improves upon the 1998 Final Rule. Section 10(j) of the Act provides a less burdensome tool for reintroducing threatened and endangered species into the wild.

Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. This new rule provides added flexibility regarding how the public may deal with Mexican wolves. This flexibility is found in this rule's new "take" provisions. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. As explained earlier in this rule, the Service has consistently involved the public in this decisionmaking process through public meetings and public comment periods. We believe we have used the best scientific information available in drafting this rule. For these reasons, we have developed this rule in a manner consistent with these requirements.

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

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

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and forestry and logging operations with fewer than 500

employees and annual business less than \$7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Importantly, the impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of a 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 a rule. 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 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).

In this final rule revising the regulations for the experimental population of the Mexican wolf, 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 expands many of those activities that were already taking place within the BRWRA to larger portions of the MWEPA in both States.

Because of the regulatory flexibility for Federal agency actions provided by the 10(j) designation and the exemption for incidental take in the special rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the experimental population. In regard to section 7(a)(2) of the Act, except on National Park Service and National Wildlife Refuge system lands, the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. 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) of the Act 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 experimental population area. As a result, and in accordance with these regulations, some modifications to the Federal actions within the 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.

However, this revision to the regulations for the experimental population will allow Mexican wolves to occupy the MWEPA, which has the potential to affect small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111), sheep farming (business activity code NAICS 112410), and outfitters and guides (business activity code NAICS 114210). Small entities in these sectors may be affected by Mexican wolves depredating on, or causing weight loss of, domestic animals (particularly beef cattle), or preying on wild native ungulates, respectively. We have further assessed these impacts to small entities in the EIS. We also consider impacts to the tourism industry.

Small businesses involved in ranching and livestock production may be affected by Mexican wolves depredating on domestic animals, particularly beef cattle. 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 small size standard for beef cattle ranching entities and sheep farms as defined by the Small Business Administration are those entities with less than \$750,000 in average annual receipts (<http://www.sba.gov/content/summary-size-standards-industry-sector>). We consider close to 100 percent of the cattle ranches and sheep farms in Arizona and New Mexico to be small entities. The 2012 Census of Agriculture reports that there were 6,029 cattle and calf operations and 7,447 sheep farms in Arizona and 12,796 cattle and calf operations and 3,385 sheep farms in New Mexico.

Of the approximately 18,825 cattle ranches in Arizona and New Mexico, 12,275 occur in counties in the MWEPA (2012 Census of Agriculture data by county). This estimate was derived by subtracting the number of milk cow farms and inventory and feeder farms and inventory from the total cattle and calf farms and inventory for the project area counties. The actual number of ranches within the project area is less than this estimate because several counties extend beyond the borders of the project area. The Agricultural Census does not report sub-county farms or inventory, so relying on the county numbers is the best available data for estimating the number of potentially affected small ranching operations.

Cattle ranches vary significantly in herd size, with classifications ranging from a herd of 1–9 animals, to those with more than 2,500 animals (2012 Census of Agriculture). For the purposes of this analysis, we consider all of the ranches to be small entities. More than 80 percent of the ranches in Arizona and New Mexico have fewer than 50 head of cattle (in Arizona, 5,367 out of 6,029 ranches, and in New Mexico, 11,165 out of 12,796). Nearly 50 percent of Arizona operations and 40 percent of New Mexico operations had a herd size of less than 10. While these ranches represent the majority of the number of ranches in the two States, they account for only about 10 percent of the States' total cattle and calf inventory (in Arizona, 76,712 out of 911,334 cattle and in New Mexico, 268,438 out of 1,354,240 cattle) (2012 Census of Agriculture). The largest operations, those with an inventory greater than 500 cattle, account for more than 80 percent of the total cattle inventory in Arizona and 66 percent of the total inventory in New Mexico.

The Department of Agriculture reported a national estimate of 90.0 million cattle and calves in 2013, which implies that together, Arizona and New Mexico contribute approximately 2.5 percent to the overall national supply (National Agriculture Statistics Service's website at <http://quickstats.nass.usda.gov>).

We assessed whether a substantial number of entities would be impacted by this rule by estimating the annual number of depredations we expect to occur within the project area when the Mexican wolf population will be at its largest. Between 1998 and 2013, on average there were 62 total depredations (confirmed and unconfirmed) by

Mexican wolves in any given year, which equates to 1.3 cow/calves killed for every Mexican wolf. Based on this, we estimate the average number of cattle killed (both confirmed and unconfirmed) in any given year will be 130.8 per 100 Mexican wolves). We expect the experimental population to grow from its current minimum population estimate of 83 wolves to a maximum population of not more than 300 to 325 wolves under the proposed action within 13 years; accordingly, we expect the annual number of depredations (both confirmed and unconfirmed) to increase from 119 to approximately 412 cows/calves. Assuming that one cow is depredated per ranch, 412 of 12,275 ranches would experience depredation events annually, or 3.4 percent of the cattle ranches.

To the extent that some cattle ranches will most likely not be impacted by wolf recovery because they are not located in suitable habitat but are included in the total estimate of potentially affected ranches because the Agricultural Census does not provide data at a sub-county level, this estimate could understate the percentage of ranches potentially affected. However, for other reasons, this estimate could very well overstate the percentage of cattle ranches affected as 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. Therefore, it is more likely that fewer than 412 ranches may experience more than one depredation, rather than each of 412 ranches experiencing one depredation.

Compared to the 2012 total inventory of estimated ranch cattle (97,686) for the five-county area of the BRWRA (Graham, Greenlee, and Apache Counties in Arizona; and Catron and Grant Counties in New Mexico), both confirmed and unconfirmed depredations per 100 Mexican wolves account for less than 0.4 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. With a population objective of 300 to 325 Mexican wolves in the MWEPA, the expected value of 412 cattle (130.8 cattle killed per 100 Mexican wolves on average for any year) at auction using 2013 prices (National Agriculture Statistics Service's website at <http://quickstats.nass.usda.gov>; the most current data available at the time of the analysis) would be about \$430,553.

Small businesses involved in ranching and livestock production could also be indirectly affected by weight loss of livestock due to the presence of Mexican wolves. For example, livestock may lose weight because wolves force them off 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 because the cattle would be afraid to spread out to find more lucrative forage areas. Weight loss could also occur if the presence of wolves causes the herd to move around more rapidly as they try to keep away from wolves. Based on Ramler *et al.* 2014, weight loss of cattle is associated with the ranches that have

suffered depredations. Therefore, we would expect the same ranches—that is, 412 ranches or fewer—that were impacted by depredations to potentially be impacted by weight loss of their cattle. Because wolves' tendency to prey on cattle is localized, we would not expect all 412 ranches and their associated herds to be impacted.

Using a mid-point estimate of 6 percent weight loss for calves at the time of auction (Service 2014, Chapter 4, p. 43-44), we calculated the impact on 2012 model ranches assuming that wolf presence pressures were allowed to persist throughout the foraging year. Based on 2013 market prices, a 6 percent weight loss for the herd at the time of sale could result in a profit loss of \$2,393 to \$12,226 depending on the size of the ranch (Service 2014, Chapter 4, p. 44, Table 4-10). This is likely an overestimate of impacts that would occur, as once wolves are detected in an area, a variety of proactive and reactive management tools are available to the landowner or the Service and our designated agencies such that wolf presence would not persist throughout a foraging year.

This final rule is based on Alternative One in our environmental impact statement. This alternative minimizes the potential impact to small ranching entities in several ways relative to the other action alternatives and the no action alternative. First, the rule offers several forms of harassment and take of Mexican wolves on Federal and non-Federal land that are not offered in Alternatives Three or Four. Second, Alternative One maximizes our ability to conduct initial releases in areas of high-quality habitat (relative to Alternatives Two and Four) in order to minimize nuisance events associated with initial releases. In addition to the minimization measures provided by the rule, one or

more sources of compensation may be available to ranchers to further mitigate impacts. If the Mexican Wolf/Livestock Trust Fund continues to be funded, we would expect the Mexican Wolf /Livestock Coexistence Council (Coexistence Council) to compensate 100 percent of the market value of confirmed depredated cattle and 50 percent of market value for probable kills with payments to affected ranchers (Mexican Wolf/Livestock Coexistence Plan 2014). We would also expect the Coexistence Council to continue to provide funding for proactive conservation measures to decrease the likelihood of depredation and Payments for Presence of Mexican wolves to offset indirect costs. Another possible source of mitigation funding is the USDA Livestock Indemnity Program, part of the 2014 Farm Bill, which provides (among other benefits) benefits to livestock producers for livestock lost due to attacks by animals introduced into the wild by the Federal Government or protected by Federal law, including wolves. This program may pay a livestock owner 75 percent of the market value of the applicable livestock ([http://www.fsa.usda.gov/Internet/FSA\\_File/lip\\_long\\_fact\\_sht\\_2014.pdf](http://www.fsa.usda.gov/Internet/FSA_File/lip_long_fact_sht_2014.pdf)).

Based on the preceding information, we find that the impact of direct and indirect effects of Mexican wolf depredations on livestock is not both significant and substantial. That is, if impacts are evenly spread, less than 3.4 percent of small ranches in Arizona and New Mexico will be impacted, which we do not consider to be a substantial number. If impacts are disproportionately felt (several ranchers bear the burden of the depredations), the number of affected ranches will be even less (not substantial), but the impact to those affected may be significant depending on the number of cattle on the ranch and other characteristics.

Small businesses (\$5.5 million or less in operating income) associated with hunting in Arizona and New Mexico could also be affected by implementation of our 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. Based on a review of available survey data between 1998 and 2012, the Arizona Game and Fish Department determined the impact that Mexican wolves have had on deer and elk populations in the BRWRA. The Arizona Game and Fish Department 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 discernible impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer. The Arizona Game and Fish Department also reported that, while the number of elk permits authorized has varied since Mexican wolves were reintroduced into Arizona, the variation is attributable to a variety of management-related objectives unrelated to elk availability for hunters.

At a population of 300 to 325, we expect the Mexican wolf density in the MWEPA to be no higher (and more likely, lower) than it is currently because the area where wolves can occur is larger. We also expect 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 (Service

2014, Chapter 4, p. 12-15). 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 occupied by Mexican wolves 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. Further, our final rule allows for the take of Mexican wolves due to unacceptable impacts to wild ungulate herds, which will serve as mitigation for any herds that may suffer heavier predation impacts. 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 (Service 2014, Chapter 4, p. 52). 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.

We further conclude that no significant direct costs, information collection, or recordkeeping requirements are imposed on small entities by the action and that the rule is not a major rule as defined by 5 U.S.C. 804(2).

In summary, we have considered whether this final rule 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, the New Mexico Game and Fish Department, stakeholders, published literature and reports, and information in our files. For the above reasons and based on currently available information, we certify that this final rule to revise the regulations for the Mexican wolf experimental population would not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

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

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

(1) This rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that, if adopted, this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small

Government Agency Plan is not required. As explained above, small governments would not be affected because the experimental population designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of \$100 million or greater in any year (i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act).

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this rule does not have significant takings implications. When reestablished populations of federally listed species are designated as nonessential experimental populations, the Act’s regulatory requirements regarding the reestablished listed species within the experimental population are significantly reduced. In the 1998 Final Rule, we stated that one issue of concern is the depredation of livestock by reintroduced Mexican wolves, but such depredation by a wild animal would not be a taking under the 5th Amendment. One of the reasons for the experimental population is to allow the agency and private entities flexibility in managing Mexican wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

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

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), we have considered whether this final rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in New Mexico and Arizona. Achieving the population objective for the MWEPA will help to ensure a stable population of Mexican wolves in the MWEPA in the future. This stable population will then contribute to the range-wide recovery of the species, which will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State

governments will not change, and fiscal capacity will not be substantially or directly affected. This final rule operates to maintain the existing relationship between the State and the Federal Government. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

*Civil Justice Reform—Executive Order 12988*

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

*Government-to-Government Relationship with Tribes*

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

Service will communicate and consult on a Government-to-Government basis with any affected Native American tribes in order to find a mutually agreeable solution.

#### *Paperwork Reduction Act*

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB. This rule would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018-0095, which expires October 31, 2017. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

We prepared a draft and final EIS pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with the revision to the regulations for the experimental population of the Mexican wolf section 10(j) rule. From October through December 2007, we conducted a public scoping process under NEPA based on

our intent to modify the 1998 Final Rule. We developed a final scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We utilized information collected during that scoping process in the development of a draft EIS for the proposed revision to the regulations for the experimental population of the Mexican wolf. Information about additional scoping opportunities was available on our website, at <http://www.fws.gov/southwest/es/mexicanwolf/NEPA.cfm>. On July 25, 2014 (79 FR 43358), we proposed new revisions to the regulations for the experimental population of the Mexican wolf, and announced the availability of the draft EIS on the proposed revisions. After full consideration of all information and comments received on the proposed rule and the EIS, we made our final determination based on the best available information.

The purpose of the draft and final EISs, prepared under NEPA (42 U.S.C. 4321 *et seq.*), was to identify and disclose the environmental consequences resulting from the proposed action of revising the regulations for the experimental population of the Mexican wolf. The Service has complied with NEPA by completing the final EIS and Record of Decision. The final EIS and Record of Decision are available electronically on the Mexican Wolf Recovery Program's website at <http://www.fws.gov/southwest/es/mexicanwolf/>.

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

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use because the actions contemplated in this rule involve the reintroduction of Mexican wolves. Mexican wolves reintroduced in the MWEPA do not change where, when, or how energy resources are produced or distributed. Because this action is not a significant energy action, no Statement of Energy Effects is required.

### **References Cited**

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

### **Authors**

The primary authors of this document are the staff members of the Mexican Wolf Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

### **Authority**

The authorities for this action are 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.*).

#### **List of Subjects for 50 CFR Part 17**

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

#### **Final Regulation Promulgation**

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

#### **PART 17—[AMENDED]**

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 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 U.S. Fish and Wildlife Service (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 found that the experimental population was 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 bear and raise pups, typically between approximately April 1 and July 31. More than one den site may be used in a single season.

*Cross-foster* means the removal of offspring from their biological parents and placement with surrogate parents.

*Depredation* means the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. The Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals. Cattle trespassing on Federal lands are not considered 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 described in §17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through §17.32.

*Disturbance-causing land-use activity* means any activity on Federal lands within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between April 1 and July 31, and around active Mexican wolf rendezvous sites between June 1 and September 30, which 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 husbandry activities (e.g., livestock drives, roundups, branding, vaccinating, etc.), 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:

- (A) Lawfully present livestock and use of water sources by livestock;
- (B) Livestock drives if no reasonable alternative route or timing exists;

(C) Vehicle access over established roads to non-Federal land where legally permitted activities are ongoing if no reasonable alternative route exists;

(D) 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;

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

(F) 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 this paragraph (k)(3) 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 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, wounding, or feeding upon a live domestic animal on non-Federal land or live livestock on Federal land. The term does not include feeding on an animal carcass.

*Initial release* means the release of Mexican wolves to the wild within Zone 1, as defined in this paragraph (k)(3), or in accordance with tribal or private land agreements in Zone 2, as defined in this paragraph (k)(3), 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, preplanned 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, as defined in this paragraph (k)(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 the prohibitions at paragraphs (k)(5)(iii) and (k)(5)(vii)(D) of this section, Zone 3, as defined in this paragraph (k)(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:

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

(B) Habituated to humans, human residences, or other facilities regularly occupied by humans; or

(C) Aggressive when unprovoked toward 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 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, guidance, and authorization of Mexican wolf removals.

*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 the release of Mexican wolves into the wild that have previously been in the wild. In the MWEPA, translocations will occur only in Zones 1 and 2, as defined in this paragraph (k)(3).

*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.

*Unacceptable impact to a wild ungulate herd* will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates.

*Unintentional take* means the take of a Mexican wolf by any person if the take is unintentional and occurs while engaging in an otherwise lawful activity, 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.

*Wild ungulate herd* means an assemblage of wild ungulates (bighorn sheep, bison, deer, elk, or pronghorn) living in a given area.

*Wildlife Services* means the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

*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 into which Mexican wolves will be allowed to naturally disperse and occupy and 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 into which Mexican wolves will be allowed to naturally disperse and occupy, and where Mexican wolves may be translocated.

(A) 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.

(B) The northern boundary of *Zone 2* is Interstate Highway 40; the western boundary extends 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 southern and then 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*, as defined in this paragraph (k)(3).

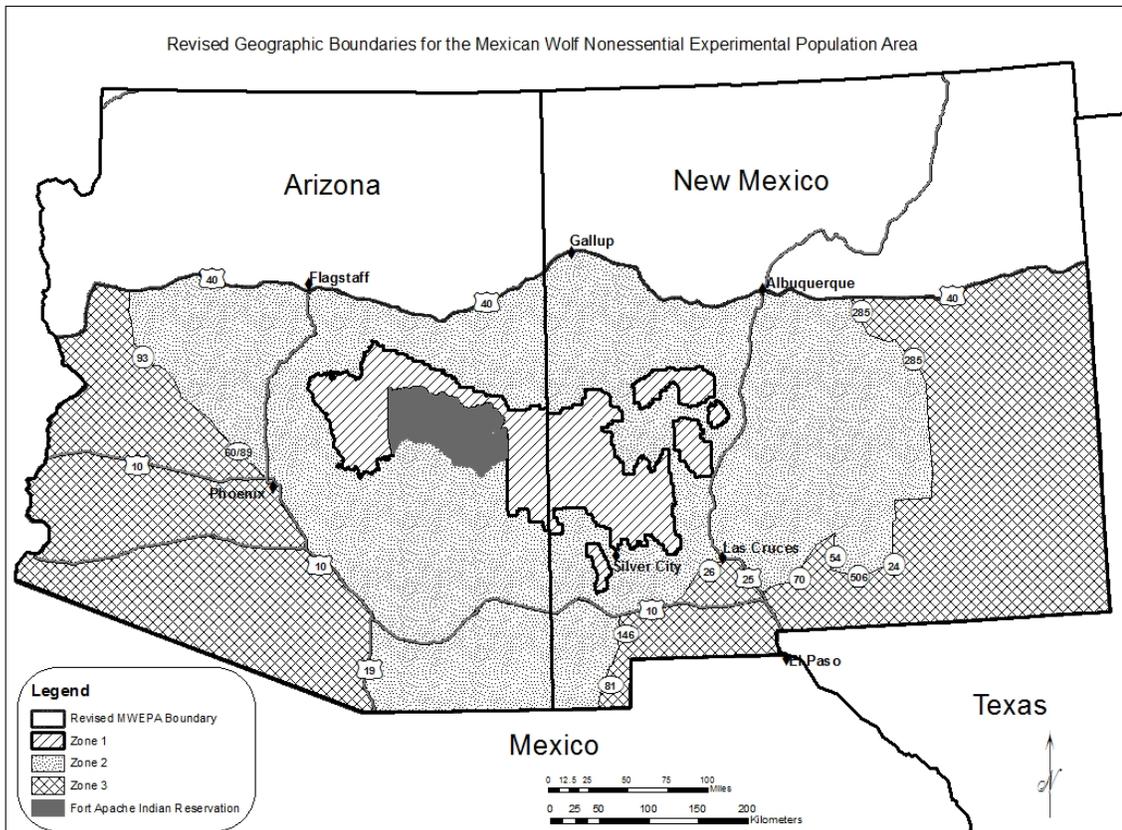
*Zone 3* means an area within the MWEPA into which Mexican wolves will be allowed to disperse and occupy, but neither initial releases nor translocations will occur there.

(A) *Zone 3* is an area of less suitable Mexican wolf habitat 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 of areas of suitable habitat, they will be more actively managed.

(B) *Zone 3* is two separate geographic areas on the eastern and western sides of the MWEPA. One area of *Zone 3* is in western Arizona, and the other is in eastern New Mexico. In Arizona, the northern boundary of *Zone 3* is Interstate Highway 40; the eastern boundary extends 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 of *Zone 3* 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

southern and then 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 within the subspecies' probable historical range and is wholly separate geographically from the current range of any known Mexican wolves. The boundaries of the MWEPA are the portions of Arizona and New Mexico that are 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 experimental population is prohibited, except as provided in paragraph (k)(7) 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 as described in paragraph (k)(6) of this section.

(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)(7)(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 using appropriately sized traps, chains, drags, and stakes that provide a reasonable expectation that the wolf will be prevented from either breaking the chain or escaping with the trap on the wolf, or using sufficiently small traps (less than or

equal to a Victor #2 trap) that allow a reasonable expectation that the wolf will either immediately pull free from the trap or span the jaw spread when stepping on the trap.

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

(D) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service as described in paragraph (k)(6) of this section.

(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 505-761-4704; 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 experimental population is 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. After the take of a Mexican wolf, the Service must be provided evidence that the wolf was in the act of biting, killing, or wounding a domestic animal at the time of take, such as evidence of freshly wounded or killed domestic animals. 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 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 in conjunction with a removal action authorized by the Service, 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 in conjunction with a removal action authorized by the Service, the Service

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.

(1) 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.

(2) After the take of a Mexican wolf, the Service must be provided evidence that the wolf was in the act of biting, killing, or wounding livestock at the time of take, such as evidence of freshly wounded or killed livestock. 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 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 for take on Federal land 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 unacceptable impacts to a wild ungulate herd.* If the Arizona or New Mexico game and fish agency determines that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd, as defined in paragraph (k)(3) of this section, the respective State game and fish agency may request approval from the Service that Mexican wolves be removed from the area of the impacted wild 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) The Arizona or New Mexico game and fish agency must prepare a science-based document that:

(1) Describes what data indicate that the wild ungulate herd is below management objectives, what data indicate that the impact on the wild ungulate herd is influenced by Mexican wolf predation, why Mexican wolf removal is a warranted solution to help restore the wild ungulate herd to State game and fish agency management objectives, the type (level and duration) of Mexican wolf removal management action being proposed, and how wild 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 wild 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 game and fish agency 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 affected wild 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 game and fish agency on 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 from tribal trust lands at any time, take in response to impacts to wild ungulate herds 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 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 described in §17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through §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, special management measure, or valid permit issued by the Service under §17.32, 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;

(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;

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

(4) Evidence that Mexican wolves are habituated to humans, human residences, or other facilities regularly occupied by humans, or evidence that Mexican wolves have exhibited unprovoked and aggressive behavior toward humans.

(D) Wildlife Services will not use 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; therefore, shooting a Mexican 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 should lead to management recommendations for, and thus provide for the conservation 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 approximately April 1 and July 31, and around active Mexican wolf rendezvous sites between approximately June 1 and September 30, as necessary.

(9) *Management.* (i) On private land within Zones 1 and 2, as defined in paragraph (k)(3) of this section, 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 initial release and translocation of Mexican wolves onto such lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency.

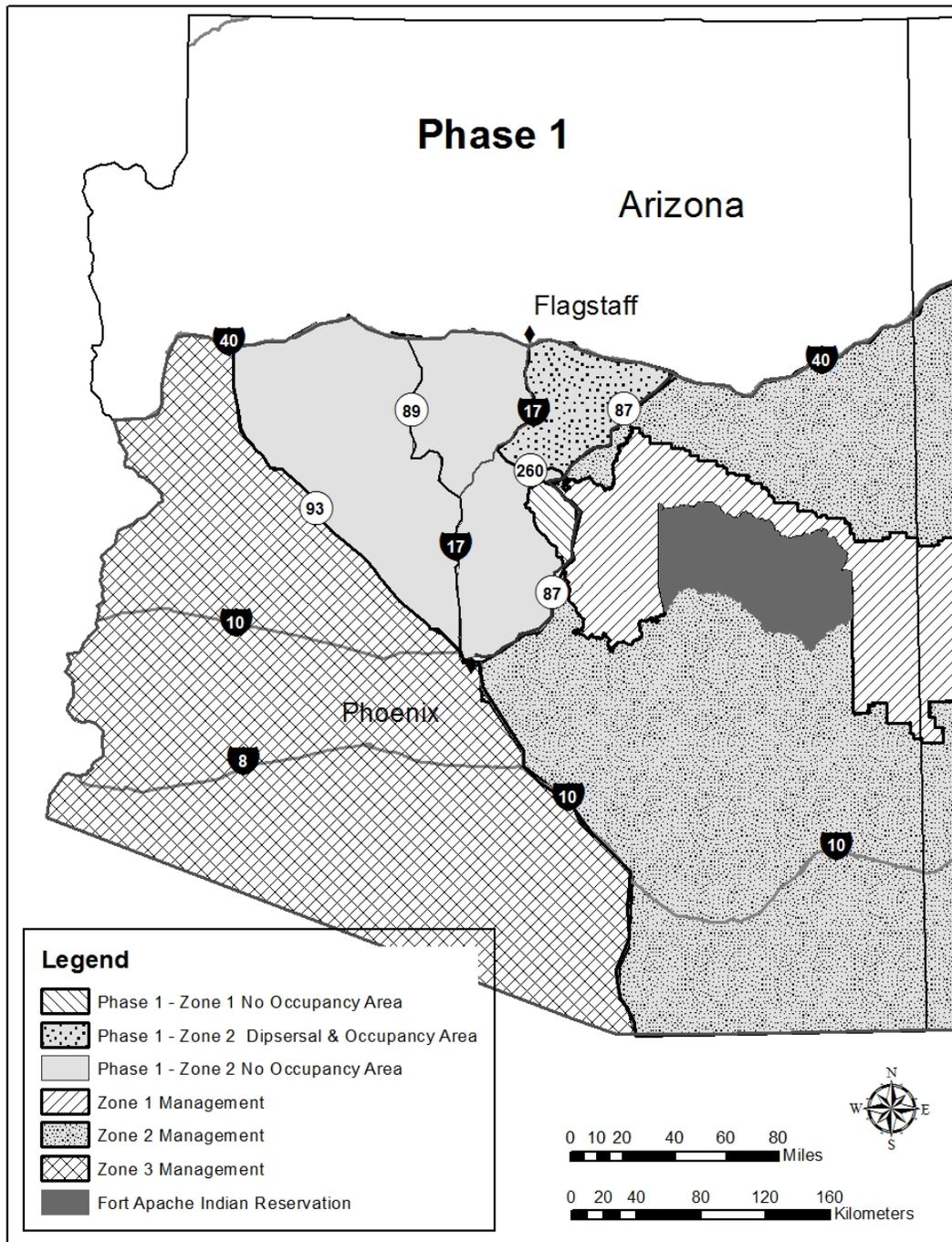
(ii) On tribal trust land within Zones 1 and 2, as defined in paragraph (k)(3) of this section, of the MWEPA, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: occupancy by natural dispersal, initial release, and translocation of Mexican wolves onto such lands. No agreement between the Service and a Tribe is necessary for the capture and removal of Mexican wolves from tribal trust lands if requested by the tribal government.

(iii) Based on end-of-year counts, we will manage for a population objective of 300 to 325 Mexican wolves in the MWEPA in Arizona and New Mexico. So as not to

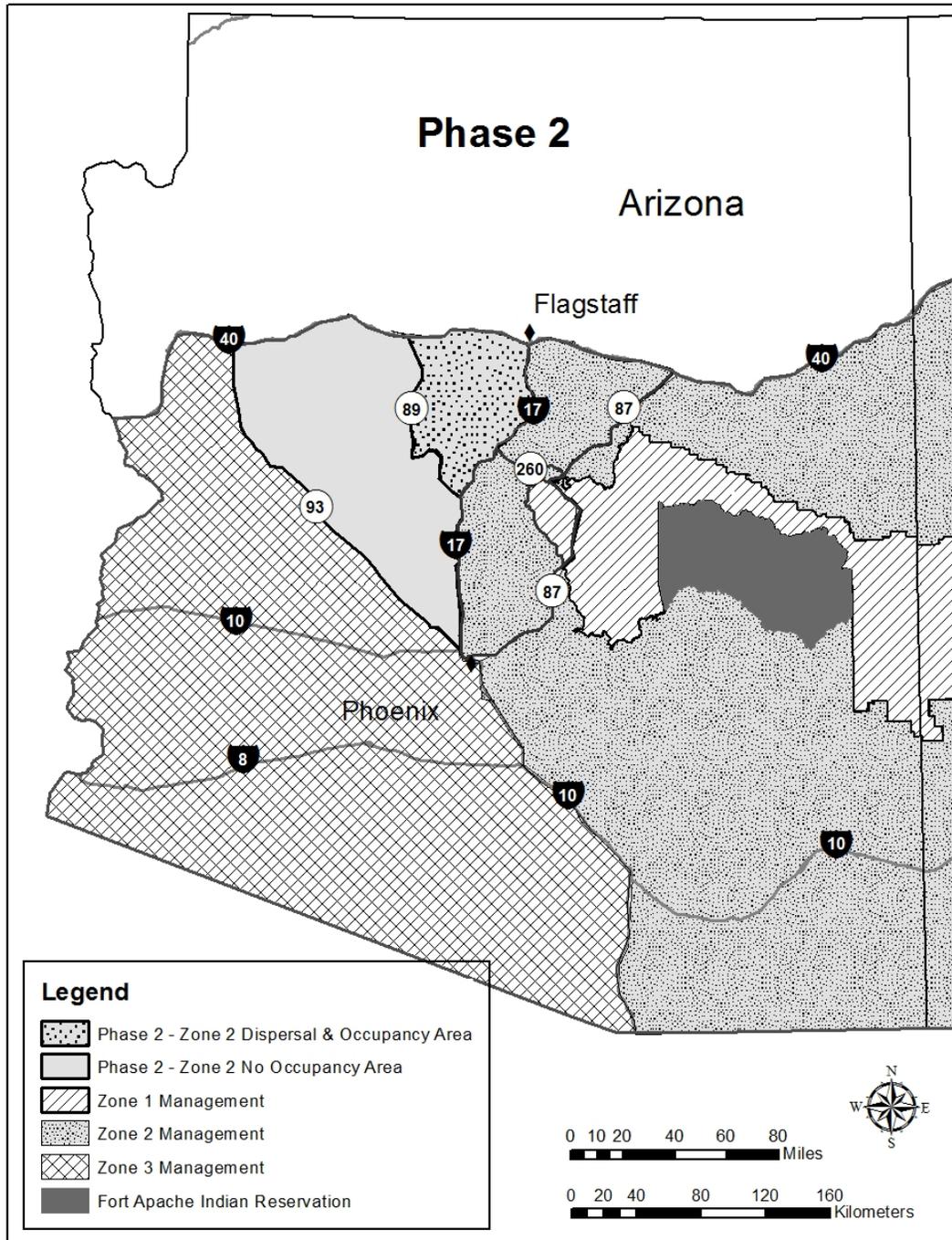
exceed this population objective, we will exercise all management options with preference for translocation to other Mexican wolf populations to further the conservation of the subspecies. The Service may change this provision as necessary to accommodate a new recovery plan.

(iv) We are implementing a phased approach to Mexican wolf management within the MWEPA in western Arizona as follows:

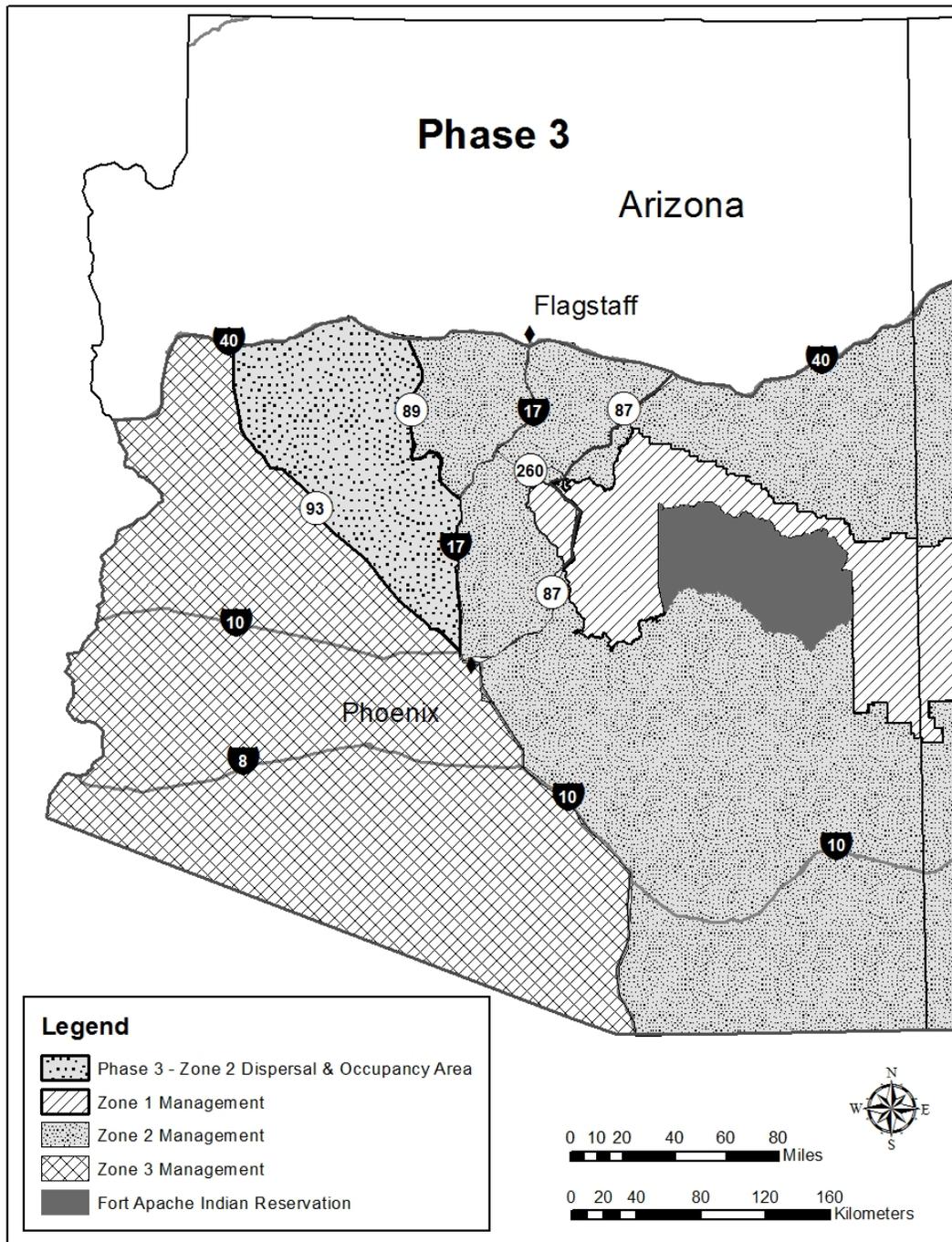
(A) Phase 1 will be implemented for the first 5 years following [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. During this phase, initial releases and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona. No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17. A map of Phase 1 follows:



(B) In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). However, during Phase 2, dispersal and occupancy west of Interstate Highway 17 will be limited to the area west of Highway 89 in Arizona. A map of Phase 2 follows:



(C) In Phase 3, initial release and translocation of Mexican wolves can occur throughout Zone 1. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). A map of Phase 3 follows:



(D) While implementing this phased approach, two evaluations will be conducted: The first evaluation will cover the first 5 years and the second evaluation will cover the first 8 years after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] in order to determine if we will move forward with the next phase.

(1) Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulate herds, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the population of Mexican wolves in the wild is at least 150, and 8 years after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the population of Mexican wolves in the wild is at least 200.

(2) If we have not achieved this population growth, we will move forward to the next phase. Regardless of the outcome of the two evaluations, by the beginning of year 12 from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply.

(E) The phasing may be expedited with the concurrence of participating State game and fish agencies.

(10) *Evaluation.* The Service will evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, approximately 5 years after [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER], the Service will prepare a one-time overall evaluation of the experimental population program that focuses on modifications needed to improve the efficacy of this rule, reestablishment of Mexican wolves to the wild, and the contribution the experimental population is making to the recovery of the Mexican wolf.

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Dated: January 7, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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