

Dr. Benjamin N. Tuggle  
Director, USFWS Region 2  
500 Gold Avenue, SW  
Albuquerque, New Mexico 87103

April 15, 2014

Subject: Draft EIS Alternatives Pertaining to Revision of Mexican Wolf NEP Rule

Reply to: Terry B. Johnson; ES Advisement, LLC; 6021 West Donald Drive, Glendale,  
Arizona 85310-4205

Dear Dr. Tuggle:

This letter conveys, on behalf of various Cooperating Agencies (see below), an Alternative to proposals drafted by U.S. Fish and Wildlife Service (USFWS) in conjunction with an Environmental Impact Statement (EIS) on revision of the 1998 Nonessential Experimental Population Rule (NEPR) under which Mexican wolf reintroduction is occurring in Arizona and New Mexico. Several of the Cooperating Agencies and Stakeholders signatory to this letter are among the entities that submitted extensive comments in 2013 on Draft EIS Scoping and draft revision of the NEPR. Those submittals occurred in conjunction with (respectively) Federal Dockets FWS-R2-ES-2013-0098 and FWS-HQ-ES-2013-0073 and they and all material cited or otherwise referenced therein are included by reference herein.

This submittal in no way diminishes our previously identified concerns about USFWS compliance with National Environmental Policy Act (NEPA) and Administrative Procedures Act (APA) regulations that govern development of an EIS and promulgation of an NEPR. As noted in our comments on the Federal Dockets referenced above, we believe the current USFWS approach confuses restoration and recovery with reintroduction, substitutes future (potentially suitable) range for scientifically-credible historical range and minimizes the vital importance of wolf recovery in Mexico while forcing wolves into areas of the American Southwest that are inferior in terms of habitat and inappropriate in terms of historical occupancy.

Although litigation remains a viable alternative if those issues are not resolved, we believe that it is essential for us to propose a new Alternative (see Attachment). We believe this Alternative is an important, necessary step toward achieving the Purpose and Need that drives the EIS and NEPR processes. This Alternative is based on two decades of experience with Mexican wolf reintroduction and on the best available biological and social science. It reflects our belief that wolf issues occur in real time and demand real-time decisions and solutions. It also reflects our belief that increased social tolerance is essential to moving Mexican wolf conservation forward significantly over the next decade.

Our purpose in submitting this Alternative is to describe approaches that are based in a sound understanding of the biological, social and wildlife management realities in the areas of Arizona and New Mexico that can best contribute to rangewide Mexican wolf recovery, while sustaining other legitimate uses of public and private lands. Many of these approaches have been

recommended in the past by State wildlife agencies, local governments and by the USFWS's own reviews of Mexican wolf reintroduction (i.e. 2001, 2002 and 2005). Some are new to USFWS Region 2 but for the most part they are based on approaches taken by other USFWS regions for a variety of species. All reflect the legal mandates and responsibilities that State and Tribal wildlife agencies have as stewards of the species that occur within their jurisdictions.

Our intent with this Alternative is to reframe the EIS discussion to talk about possibilities as well as realities. We intend to use open, informed discussion in Cooperator meetings to identify which aspects of this Alternative and others can be blended into a Preferred Alternative that best meets Federal, State, Tribal and stakeholder needs. We want to see those needs defined in terms of furthering Mexican wolf conservation while also minimizing and offsetting negative impacts on the humans who share with wolves the fragmented landscape, limited natural resources and economic and recreation challenges inherent to the American Southwest.

We have spent months developing this Alternative. It is imperfect and not all of us agree with every aspect. However, we all agree that it would lead to a stronger foundation on which to build a Mexican wolf conservation program. Thus, as Cooperating Agencies, we expect the USFWS to give this Alternative full consideration, a rigorous but fair and open-minded staff and public evaluation and ample time for discussion with Cooperating Agencies and the public. In short, we expect to use this Alternative and that collaborative discussion to ensure that the time and effort we invest in the EIS process will be fruitful.

We anticipate beginning this dialogue at the April 15, 2014 EIS Cooperators meeting and we respectfully ask that you be present for that discussion.

Sincerely,

Cooperating Agencies

Arizona Game and Fish Department  
Eastern Arizona Counties Organization  
Gila County (AZ)  
Graham County (AZ)  
Greenlee County (AZ)  
Navajo County (AZ)

Stakeholders Supporting this Alternative as a Starting Point for Further Discussion

Anglers United  
Arizona Antelope Foundation  
Arizona BASS  
Arizona Big Game Super Raffle  
Arizona Cattle Growers' Association  
Arizona Chapter of the National Wild Turkey Federation  
Arizona Deer Association  
Arizona Desert Bighorn Sheep Society  
Arizona Elk Society  
Arizona Houndsmen

Arizona Sportsmen for Wildlife Conservation  
Arizona Trappers Association  
Arizona Wildlife Federation  
Big Game Forever  
ES Advisement, LLC (AZ)  
Coconino Sportsmen  
Outdoor Experience 4 All  
Phoenix Varmint Callers, Inc.  
Sportsmen's Constituent Group  
The BASS Federation  
The Mule Deer Foundation  
1-2-3-Go

cc: Larry D. Voyles, Director, Arizona Game and Fish Department  
R.J. Kirkpatrick, Acting Director, New Mexico Department of Game and Fish  
Kay Gale, County Manager, Greenlee County, Arizona  
Pascal Berlioux, Executive Director, Eastern Arizona Counties Organization  
Dan M. Ashe, Director, U.S. Fish and Wildlife Service  
Rowan W. Gould, Deputy Director of Operations, U.S. Fish and Wildlife Service  
Jonathan J. Olson, Region 2 NEPA Coordinator, U.S. Fish and Wildlife Service  
Steven L. Spangle, Arizona Field Office Supervisor, U.S. Fish and Wildlife Service

**Mexican Wolf Management in Arizona and New Mexico:**  
**A Cooperating Agencies Alternative**  
**to the**  
**U.S. Fish and Wildlife Service Proposed Preferred Alternative**  
**in a**  
**Draft Environmental Impact Statement on a Proposed Nonessential**  
**Experimental Population Rule for the Mexican Wolf in the Southwest**

Submitted by: Various EIS Cooperating Agencies

Final: April 15, 2014

This Alternative was submitted to the U.S. Fish and Wildlife Service (USFWS; Region 2, Albuquerque) on April 15, 2014 by various Cooperating Agencies for evaluation as an Alternative in the Draft Environmental Impact Statement (DEIS or EIS) on a Proposed Nonessential Experimental Population Rule (NEPR) for the Mexican Wolf in the Southwest. See accompanying cover letter for names of Cooperating Agencies submitting this Alternative.

In addition to the Cooperating Agencies, nongovernmental organizations and other stakeholders supporting this Alternative are identified in the accompanying cover letter.

## **INTRODUCTION**

USFWS is developing a DEIS on a Proposed NEPR for the Mexican Wolf in the Southwest. The proposed rule would supersede the current (1998) Final NEPR. A coalition of Mexican wolf stakeholders (Coalition) previously submitted to USFWS its detailed concerns about (a) the processes USFWS is using to develop the DEIS and NEPR and (b) the substantive content of those proposals. In this document, agencies that have been participating in that coalition (and which are also Cooperating Agencies in the DEIS process) provide their preferred alternative to that which USFWS has drafted.

## **STATE AND TRIBAL ROLES**

First and foremost, the Cooperating Agencies affirm their support for State and Tribal authorities for wildlife management on lands within their respective jurisdictions. The Cooperating Agencies have striven to respect those authorities in drafting this Alternative, which is intended to move Mexican wolf management in Arizona and New Mexico (AZ-NM) from the USFWS to State and Tribal implementation, with appropriate oversight by USFWS as is or will be detailed herein as this Alternative is crafted. Indeed, State and Tribal wildlife agencies have participated in the stakeholders coalition since August 2013 and have been actively engaged in discussion and development of the content of this document. Nevertheless, they are in no way responsible or accountable for the content of this document. Whether or not the affected State and Tribal authorities support this Alternative will be determined as their governing bodies consider and

respond to the alternatives that the USFWS must evaluate during the DEIS and NEPR processes over the coming months (or years).

In developing this Alternative, the Stakeholders have given careful consideration to the Arizona Game and Fish Commission's "guiding principles and requirements" relative to Mexican wolf conservation and to the White Mountain Apache Tribe's commitments to wolf conservation. They have also considered the formal position taken by the San Carlos Apache Tribe to prohibit wolf presence on the San Carlos Apache Reservation. This Alternative respects those sometimes disparate approaches and defers to each jurisdictional entity regarding their future shaping of wolf management plans. The Coalition's intent is to provide those entities and other interested and affected parties with a clear delineation of its perspectives on how and by whom Mexican wolves should be managed in AZ-NM. Whether those entities agree fully or at all with the Coalition's preferences will become evident as the DEIS process unfolds.

**Tribal Reservations.** In keeping with the concept of Tribal Sovereignty, this Alternative proposes no requirements for, or restrictions on, Tribal Governments. Tribal Reservations are not included in the 1998 MWEPA and are not proposed in this Alternative to be a part of the MWEPA that is described in the draft nonessential experimental population rule included herein. Decisions regarding Mexican wolf presence and management on Tribal Reservations within the MWEPA shall be made by the jurisdictional Tribal Government through policy or through a wolf management plan approved under a Statement of Relationship with the Service. This Alternative only references Tribal Reservations as necessary to describe State wildlife agency management actions within the MWEPA and to describe actions the Service should take to increase wolf tolerance on Tribal Reservations. The preceding notwithstanding, wolves present on Tribal Reservations within the MWEPA must be included in the respective statewide tally and count as part of the population objective described for each State.

## **GUIDING PRINCIPLES**

The following guiding principles are among those that drive Coalition development of this Alternative:

- About 90 percent of Mexican wolf historical range is in Mexico and recovery is not possible without significant progress in wolf conservation in Mexico.
- USFWS failure to revise the binational 1982 Mexican Wolf Recovery Plan and drive effective approaches to achieving approved population objectives and rangewide recovery is almost beyond comprehension, given that three Recovery Teams have been convened since 1993 to accomplish that fundamental step toward recovery of the subspecies, yet not even a draft plan has been released for public scrutiny.
- The current (1998) NEPR and current USFWS approach to Mexican wolf management in AZ-NM are dysfunctional relative to accomplishing wolf conservation objectives and minimizing operational impacts on rural communities and back-country residents. They

emphasize management of individual (problem) wolves rather than coordinated management at the population level for both wolves and native ungulates.

- Successful reintroduction and management of Mexican wolves in AZ-NM is dependent upon wolves being accepted or at least tolerated by the public in the context of modern working landscapes, which provide for multiple public uses.
- State and Tribal wildlife agencies and U.S.D.A.-APHIS Wildlife Services are best suited to operational wolf management and should be recognized and empowered by USFWS to collaboratively exercise their wildlife management authorities for Mexican wolves. They are uniquely positioned to form partnerships with local communities, stakeholders and businesses that might be positively or negatively affected by Mexican wolves.
- USFWS oversight of wolf management should be provided through a current, approved Recovery Plan, ESA Section 6 Cooperative Agreements with the States, cooperative agreements with Tribes and an AZ-NM Mexican Wolf Management Plan that covers all non-Reservation lands within both States.
- Wolf management in AZ-NM must be transparent, with ample opportunity for stakeholder engagement in shaping current and future approaches.
- If Mexican wolves must be restored to the landscape in AZ-NM, their presence should be restricted to historical range of the subspecies, which in AZ-NM is restricted to the highlands (typically but not always above about 4000 feet elevation) from south of Interstate 40 to the Mexican border. Patchy habitats, diminished prey base and landscape dynamics (i.e. the human footprint) preclude wolf occupancy west of Highway 87/Interstate 19 in AZ or east of I-25 in NM. Again, decisions about Mexican wolf occupancy on or exclusion from Tribal Reservations must be made by the jurisdictional Tribal authority.
- The current reintroduction project in AZ-NM is approaching its population objective of at least 100 Mexican wolves in the Blue Range Mexican Wolf Recovery Area. It may already have exceeded the objective, given that uncounted wolves are likely to exist. In either case, management approaches must be significantly revised to accommodate and to limit future growth so balance is maintained relative to other species of wildlife and to lawful human uses of the areas occupied by wolves (e.g. livestock production and outdoor recreation activities such as hunting, trapping, fishing, camping, hiking, bird watching, etc.).
- The maximum number of Mexican wolves that can be managed and supported by the existing prey base (elk and deer) in AZ-NM with any realistic degree of certainty at this time is 200 to 300, split evenly between the two States. These numbers are based on impact information from the Northern Rockies indicating that when wolves exceed a ratio of about 3 wolves per 1000 elk, they have increasingly negative impacts on native ungulate prey populations. The numbers suggested to date by USFWS of 900 to a thousand or more are unrealistic, unmanageable and unacceptable.

- The current population of Mexican wolves in AZ-NM is entirely wild born and population growth and dispersal should be dependent mainly on natural growth of that wild population. Dispersal should also be assisted by active translocation of wolves from an area of concentration to habitat-appropriate areas in which densities are lower. Further releases of captive-born wolves should be minimized, primarily being restricted to replacement of adult wolves that have been unlawfully killed or which disappear, or to maintain or (if possible) enhance genetic composition of the wild population. Captive-born wolves present greater problems in terms of habituation (nuisance) behavior, livestock depredation and susceptibility to various causes of mortality.
- Genetic exchange between wolf populations in AZ-NM and Mexico will be essential to long-term conservation of the subspecies in the wild.
- Wolves have significant effects on other wildlife and on livestock and thus require active, intensive management to prevent, lessen or mitigate any negative impacts on such resources (or on sport hunting or trapping opportunity) while attaining wolf conservation goals that have been approved by USFWS and the affected State and Tribal wildlife agencies.
- Mexican wolf management must be accompanied by Congressionally-appropriated funding to support a program of federally-authorized impact mitigation measures that is administered by USDA-APHIS Wildlife Services for interdiction, incentives and compensation payments to prevent or offset direct (e.g. depredation) and indirect (e.g. weight loss) economic impacts incurred by livestock owners as a result of Mexican wolf depredation behavior.
- Mexican wolf numbers must not exceed the capacity of State, Tribal and Federal wildlife agencies to manage them. Approved levels of funding and human resource (staff) capacity are finite and may limit wolf populations in AZ-NM.
- By law (i.e. ESA, Section 10(j)), any wolf in the AZ-NM Nonessential Experimental Population is expendable in terms of survival of the Mexican wolf subspecies and management of wild wolves should reflect that legal fact. If livestock depredation, predation on native ungulates, or other wolf behavior rises to the point at which recapture and/or removal is warranted, State and Tribal wildlife agencies and U.S.D.A.-APHIS Wildlife Services must be able to use any available, approved means of effecting immediate removal.
- Mexican wolf conservation efforts must not cause unacceptable impacts to the economic well-being of rural communities or to State and Tribal sport hunting and trapping opportunity. Because wolves can, in some circumstances, dramatically influence native ungulate populations, the States and Tribes must implement management strategies to drive an AZ-NM Mexican wolf management plan that considers long-term sustainability of predators and their prey such that baseline sport hunting and trapping opportunity is maintained (or enhanced) in terms of both quality and quantity. It is fundamental in wildlife conservation in the United States that State and Tribal wildlife agencies are

statutorily mandated to manage wildlife populations. Such management is not static but rather is subject to influence by (among other factors) habitat conditions, short and long-term population trends and societal preferences.

- Adaptive management principles must be used in wolf management that enable and defer to State (or Tribal) wildlife commissions to make changes in wild ungulate population objectives that require shifts in Mexican wolf numbers. Adaptive management processes must be sufficiently well defined but also sufficiently flexible to enable managers to address unforeseen as well as predicted events, by defining methods of determination, analysis, documentation, selection and implementation of effective, efficient options.
- States and Tribes must use the best available science each year to define acceptable wolf densities that enable them to sustain populations of prey species and thus preserve associated hunting and trapping opportunity and maintain economic viability of State and Tribal wildlife agencies in AZ-NM.
- Any effort by USFWS to expand Mexican wolf presence in AZ-NM to a broader area or to greater numbers than are set forth in this Alternative may be aggressively litigated by one or more entities among the Cooperating Agencies and the supporting stakeholders.

#### **AZ-NM MEXICAN WOLF MANAGEMENT PLAN**

The State and Tribal wildlife agencies in AZ-NM will collectively develop a wolf management (conservation) plan (hereafter Plan) that identifies specific numbers of Mexican wolves (population objectives) and identifies the geographic areas or zones that wolves will be allowed to occupy and those from which they will be excluded. The Plan will also describe the specific management practices intended and allowed for each management zone. The population objectives and the attendant management practices must reflect acceptable occupation by wolves at population levels that are biologically, socially and economically sustainable on the AZ-NM landscape. The Plan should be the primary mechanism by which the States and Tribes continue to represent their interests in all areas of Mexican wolf conservation, including how reintroduction in AZ-NM relates to overall (rangewide) Mexican wolf recovery. The Plan must:

- Assume a revised NEPR allowing State and Tribal management of Mexican wolves under Service-approved management plans.
- Be supported by appropriate ESA Section 4(d) and/or Section 10(j) rules that define acceptable management practices that accord with the authorities conveyed to the States by their ESA Section 6 Cooperative Agreements.
- Be endorsed by USFWS under auspices of State and/or Tribal Memoranda of Agreement with the Secretary of the Interior and it must be endorsed by USFWS concomitantly with or prior to a Record of Decision on the EIS for the proposed revised Mexican wolf NEPR.



- Be developed through strong public engagement, including effective outreach with targeted constituents such as livestock producers, sportsmen conservationists, local governments, Tribal governments, conservation groups (and the public at large).
- Recognize that a strong wolf conservation program in Mexico is essential to achieving and then maintaining a range-wide population sufficient to meet recovery population objectives;
- Clearly articulate the limited potential contribution that AZ and NM can make and emphasize the critical role that Mexico must play in achieving recovery of the Mexican wolf.
- Include a research component to ensure that questions are answered with sound science (biological, economic and sociological) and must incorporate quantitative and qualitative measures of effectiveness and success where applicable. Questions to be clearly addressed include: annual population survey methodology; prey requirements, predator-prey relationships, genetic purity and taxonomic validity.
- Define where in AZ-NM Mexican wolf conservation will be supported, such that:
  - Mexican wolf conservation will only occur within components of its historical range as defined in the Plan;
  - Identified management areas will provide contiguous, suitable habitat that serves to minimize human conflict while supporting wolves;
  - Presence of Mexican wolves is supported or least tolerated (with appropriate impacts mitigation measures in place) by Tribes participating in Mexican wolf recovery and acceptable to other affected Tribes such that they will participate in productive planning efforts;
  - Wolf-dog hybridization potential is minimized by limiting presence of feral dogs limiting wolf occupation of areas in close proximity to known areas of domestic (or feral) dog concentration.
- Provide for deference to State and Tribal statutory responsibilities to manage wild ungulate populations (and predator populations) as management strategies and population objectives change.
- Include an **enforceable** upper limit on wolf impacts on game ungulate populations such that the current quantity and quality of hunting opportunity is sustained at or above current levels, and **enforceable** provisions to successfully manage wolf populations to maintain those levels;
- Include a provision to ensure manageability for wolves that move outside the NEPR area;
- Provide for clear delineation of an **affordable** (fiscally sustainable) Interagency Field Team (IFT) structure and function that can:
  - Be cost effective;
  - Be implemented primarily within the NEPR area, such that responses to potential depredation incidents continue to be initiated within 24 hours of receiving such reports;

- Ensure that initial releases and planned translocations of Mexican wolves are vetted with the public; and
  - Ensure that depredation incident investigations are timely and transparent.
- Ensure that wolf conservation efforts are appropriately balanced by on-the-ground interdiction, incentive and compensation measures that effectively offset impacts to the private sector;
- Ensure that appropriate federal funds are secured (appropriated) and directed to USDA-APHIS Wildlife Services to support wolf conservation (including necessary control and translocation actions) by providing interdiction incentives and measures, to include:
  - Productively engaging public lands grazing permittees and private lands livestock operators in voluntary, incentives-based Mexican wolf conservation measures;
  - Cooperating with any interdiction, incentives and compensation program that attempts to address the direct and indirect impacts of Mexican wolf reintroduction on the private sector and create incentives for enhanced conservation and stewardship; and
  - Cooperating with willing Native American Tribes within the newly-described MWEPA, particularly the White Mountain Apache Tribe, which has demonstrated its substantial commitment to wolf conservation over several years.

Key elements of the AZ-NM Mexican Wolf Management Plan should include but should not be limited to:

1. A statement of purpose and need to establish a Mexican wolf population that contributes to recovery with a clear understanding that recovery cannot be accomplished entirely within the United States.
2. Clarification that all Mexican wolf recovery efforts have to occur in historical range, which is described as: the area extending from the Sierra Madre Occidental in northwestern Mexico (i.e. Durango and Michoacán through Chihuahua and Sonora) to the highlands in the United States that lie south of Interstate 40 (I-40) in east-central AZ and west-central NM.
3. Provision for Federal approval of State and Tribal management of Mexican wolves, pursuant to USFWS-approved wolf management plans.
4. Definition of a bi-state Mexican Wolf Experimental Population Area (i.e. all of AZ and NM) that includes defined management zones as follows:
  - a. No wolves north of Interstate 40.
  - b. No wolves west of Highway 87 or I-19 in AZ or east of I-25 in NM.
  - c. A Permanent Occupancy Zone (POZ) described as the Blue Range Mexican Wolf Recovery Area (BRMWRA) that is the focal area for wolf conservation efforts.
  - d. A Dispersal Occupancy Zone (DOZ) that wolves will be allowed to occupy through natural dispersal or by translocation but within which agencies or other entities shall not be allowed to release wolves from captivity.
5. A population objective or goal of 100 – 150 Mexican wolves in AZ and 100 – 150 in NM (the 2-State total may not exceed 300), with all wolves occurring within the POZ and DOZ.

- a. When wolves reach the maximum acceptable population level of 150 in a State, removals will occur as necessary to reduce the State-wide population to no more than 150 wolves and a bi-State total of no more than 300 wolves.
  - b. Wolves removed from AZ-NM, in order to restore a Statewide population to no more than 150 individuals and the bi-State total to no more than 300 wolves, may be:
    - i. Provided to USFWS for the captive breeding program.
    - ii. Re-released in another State or Tribally-approved area.
    - iii. Provided to Mexico.
    - iv. Euthanized if captured alive.
    - v. Lethally removed.
  - c. If the wolf population in either AZ or NM decreases below 100, active management will be employed to restore the population to 100 – 150 wolves and the bi-State total to no more than 300 wolves.
6. An “escape clause” that provides for voluntary State and/or Tribal termination of wolf conservation efforts for cause, and an immediate return to the 1998 NEPR and its population objective of at least 100 Mexican wolves (defined as 100 to 125 individuals of all sex and age classes) in the currently defined BRWRA (i.e. including AZ and NM). Such causes must be defined in the new NEPR (as they are, in the attached draft).
7. A description of genetic management strategies that provide for bidirectional management of wolves, whereby wolves from the wild can be returned for breeding in the captive program and captive wolves can be released in the wild to maintain or if possible enhance genetic diversity. The genetic management strategies must also include appropriate use of releases and translocations.
8. Clearly defined limits on tolerance of nuisance behavior by wolves, including management actions that will remedy such problems when those limits have been reached.
9. Clearly defined limits on tolerance of livestock depredation, viz. 3 confirmed depredation incidents within 12 months must require removal.
10. A clearly defined upper limit of 15 percent for wolf impacts on ungulate populations. At that number, wolves shall be removed by any authorized method until excessive depredation has been terminated. State and Tribal wolf management plans must define how they will determine when that upper limit is being approached or has been reached and how they will determine when excessive depredation has ceased.

## DRAFT MEXICAN WOLF NONESSENTIAL EXPERIMENTAL POPULATION RULE

### § 17.84 Special rules—vertebrates

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

- (1) **Purpose.** The primary purpose of this rule is to establish and maintain an experimental population of Mexican wolves in the middle to high elevations of east-central Arizona and west-central New Mexico, within Mexican wolf historical range as it is described in paragraph (k)(4) of this rule and in accordance with the primary objective of the bi-national 1982 Mexican Wolf Recovery Plan. To achieve this conservation goal, the U.S. Fish and Wildlife Service (Service) and its designated agent(s), including State wildlife agencies, Tribes and USDA-APHIS Wildlife Services (USDA-WS) as provided in paragraph (k)(3) of this rule, will maintain the experimental population between 200 and 300 Mexican wolves, i.e. 100/150 in Arizona and 100/150 in New Mexico, including individuals of all sex and age classes, as estimated by annual end-of-year-counts (EOYCs). The Service may change this population objective as necessary to accommodate: (a) an approved revision of the 1982 bi-national Mexican Wolf Recovery Plan; and (b) agreements and plans that are approved pursuant to paragraph (k)(3) of this rule, including any such agreements or plans that cooperating States or Tribes amend (with Service concurrence) to reflect new guidance pursuant to a Service-approved revision of the 1982 binational Mexican Wolf Recovery Plan.
- (2) **Nonessential Experimental Population.** The Mexican wolves identified in this rule are designated a nonessential experimental population (NEP), unless this rule is rescinded, revised or extended pursuant to paragraphs (k)(13), (k)(14) or (k)(15) of this rule, through regulatory processes defined under the Endangered Species Act (ESA or Act) of 1973, as amended. This timeframe is intended to enable willing State wildlife agencies and Tribes an opportunity to succeed in wolf management within the Arizona-New Mexico Mexican Wolf Experimental Population Area (MWEPA), consistent with conservation purposes of the ESA. These NEP wolves will be managed in accordance with the provisions of this rule.
- (3) **Agency Memorandums of Agreement.** The State wildlife agencies of Arizona and New Mexico can petition the Secretary of the Department of the Interior (Secretary) to establish a Memorandum of Agreement (MOA) to implement Mexican wolf conservation in that State, consistent with this rule and pursuant to a State Mexican Wolf Management Plan (MWMP) that will be approved by the Service, as provided under this paragraph. Under an approved MWMP, the State wildlife agency will become a designated agent of the Service and shall assume lead management responsibility and authority to implement this rule within the MWEPA in its respective area of jurisdiction. USDA-WS can also petition the Secretary to establish an MOA to provide wolf management assistance to the

Service and to cooperating States and Tribes. Petitions and MWMPs may be submitted and will be approved as follows:

- (a) A petition to the Secretary for Mexican wolf management under an MOA must describe and affirm the following:
  - (i) The State wildlife agency has or will acquire the requisite authority, management capability and capacity to maintain an adequate and active conservation program for any or all Mexican wolf experimental populations within the State, in accordance with a MWMP that has been approved by the Service or which, subsequent to Secretarial approval of the petitioned MOA, will be submitted to the Service for approval; and
  - (ii) Which specific parts of the State, including methods and means of intentional and incidental take, the State intends to implement itself, in cooperation with USDA-WS or through other designated agents and permittees within the framework of this rule; and
  - (iii) How State progress will be monitored and reported to the Service on a triennial basis, so the Service can determine if State management has maintained the NEP within the agreed-upon population objective and was fully compliant with this rule.
- (b) The Secretary will approve the petition upon finding the applicable criteria are met and approval is not likely to jeopardize continued existence of the Mexican wolf, as defined in 50 CFR (Code of Federal Regulations) § 17.11(h).
- (c) If the Secretary approves the petition, the Secretary will enter into an MOA with the Director of that State wildlife agency, thereby recognizing the State wildlife agency as the Service's designated agent(s) as management lead for Mexican wolf NEPs within the State's jurisdictional boundaries, except that the MOA may not:
  - (i) Provide for any form of take or management that is inconsistent with the protections provided to the Mexican wolf under this rule, without further opportunity for public comment and review and amendment of this rule;
  - (ii) Vest the State wildlife agency with any authority over matters concerning Section 4 of the ESA (determining whether a species warrants listing); or
  - (iii) Provide for public hunting or trapping of Mexican wolves, absent a finding by the Secretary of an extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved; or
  - (iv) Vest a State wildlife agency with authority to issue written authorizations for lethal take of Mexican wolves. The Service will retain the authority to issue lethal take authorizations until it has approved a State wildlife agency MWMP that provides for such actions by the State wildlife agency and/or their employees or designated agent(s).

- (d) Notwithstanding the stipulations in paragraph (k)(3)(c)(iv) of this rule, the MOA:
  - (i) Must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce State prohibitions on take of Mexican wolves; and
  - (ii) May not authorize take of Mexican wolves beyond that provided in this rule but may be more restrictive, and
  - (iii) Must expressly affirm that the results of implementing the MOA may be the primary basis upon which State regulatory measures will be judged for Mexican wolf delisting purposes.
- (e) Further:
  - (i) The authority for the MOA will be the ESA, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and any applicable treaty or Statement of Relationship between the Service and a Tribe.
  - (ii) For the MOA to remain in effect, the Secretary must find, on a triennial basis not later than September 30, with written declaration to the State wildlife agency, that management under the MOA is benefitting conservation of the Mexican wolf and not jeopardizing its continued existence, as defined in § 17.11(h).
  - (iii) The Secretary or State or USDA-WS may terminate the MOA upon 90 days written notice to the other signatory if:
    - (1) Management under the MOA is determined to be likely to jeopardize the continued existence of the Mexican wolf; or
    - (2) The Service or the State wildlife agency or USDA-WS has failed materially to comply with this rule, the MOA, or any provision of the State wildlife agency MWMP; or
    - (3) The State wildlife agency or USDA-WS determines that it no longer wants the wolf management authority vested in them by the Secretary through the MOA.
- (4) **Tribal Reservations.** Mexican wolves shall not be allowed to occupy Tribal Reservations within the MWEPA, except as allowed by Tribal policy or pursuant to management plans approved under Statements of Relationship with the Service. Unless a Tribal Government has expressly consented to their presence, wolves that move onto a Tribal Reservation within the MWEPA will immediately be captured and removed by the Tribal Government or its designated agent(s) or by the Service or its designated agent(s). Problem wolves from within the MWEPA may not be released on a Tribal Reservation and problem wolves removed from a Tribal Reservation may not be released in the MWEPA. Federal land-use restrictions will not be imposed on Tribal Reservations for Mexican wolf management or conservation without permission of the jurisdictional Tribal Government. If a Tribal Government has by policy consented to wolf presence, in cooperation with the Service and, if so desired, another federal agency and/or a State wildlife agency, the Tribal Government and the Service may agree to a wolf management plan with actions that are consistent with this rule, to the extent

practicable. The preceding notwithstanding, wolves present on Tribal Reservations within the MWEPA shall be included in the respective statewide tally and count as part of the population objective described for each State.

- (5) **Service Finding: Historical Range.** The Service finds that the historical range of the Mexican wolf extends from the Sierra Madre Occidental in northwestern Mexico (i.e. Durango and Michoacán through Chihuahua and Sonora) to the highlands in the United States that lie south of Interstate 40 (I-40) in east-central Arizona and west-central New Mexico. This historical range is consistent with the Service's 1996 Final Environmental Impact Statement on Mexican wolf reintroduction in the Southwest and with a Service proposal in 2013 (Docket #FWS-R2-ES-2013-0056) to modify its 1998 experimental population rule (61 FR 54044) under which reintroduction in Arizona and New Mexico has occurred.
- (6) **Service Finding: Mexican Wolf Management Areas.** The Service further finds that the MWEPA, the Blue Range Mexican Wolf Recovery Area (BRMWRA) and the Mexican Wolf Management Area (MWMA) described in this paragraph are wholly within, or include portions of, the probable historical range of the Mexican wolf and they are wholly separate geographically from the current range of any known population of wild gray wolves (*Canis lupus*), other than Mexican wolves that the Service classified as nonessential experimental on January 12, 1998 (61 FR 54044).
- (a) The MWEPA (see Fig. 1) established by this rule includes the entire States of Arizona and New Mexico, including the BRMWRA, MWMA and any Tribal lands managed for wolf presence through a Tribal MWMP, as provided in paragraph (k)(3) of this rule. The MWEPA:
- (i) Will enable the Service and its cooperators to achieve and maintain the population objective defined in paragraph (k)(1) of this rule; and
  - (ii) Will enable Mexican wolves to disperse between Arizona, New Mexico and Mexico; but
  - (iii) May not be used to facilitate temporary, transient, seasonal or year-round presence or persistence of Mexican wolves as individuals or packs in Arizona except within the BRMWRA and the MWMA as described below in paragraphs (k)(5)(b) and (k)(5)(c) of this rule.
- [Figure 1. Image of MWEPA]
- (b) The BRMWRA (see Fig. 2) established in Arizona-New Mexico by this rule includes: the Apache National Forest in east-central Arizona and west-central New Mexico; the Gila National Forest in west-central New Mexico; the Magdalena District of the Cibola National Forest, south of Interstate 40 and west of Interstate 25 in west-central New Mexico; and any Tribal lands within the MWEPA in Arizona-New Mexico that are managed for wolf presence through a Tribal MWMP, as provided in paragraph (k)(4) of this rule. Within the BRMWRA, the Service or its designated agent(s):
- (i) May release captive-born and raised (naïve) Mexican wolves; and

- (ii) May re-release or translocate captured Mexican wolves, regardless of captive or wild origin, and release progeny born in captivity to captured wolves; and
- (iii) May take Mexican wolves as provided in paragraph (k)(8) of this rule; and
- (iv) Will actively support reestablishment of the reintroduced nonessential experimental population, to help achieve and maintain the population objective established in paragraph (k)(1) of this rule.

[Figure 2. Image of BRMWRA]

- (c) The MWMA (see Fig. 3) established in Arizona and New Mexico by this rule includes all lands, except those within the BRMWRA, that lie: (in Arizona) south of I-40 and east of State Highway 87 from its junction with I-40 at Winslow to its southerly junction with Interstate 19 (I-19) and then south on I-19 to the U.S.-Mexico border; (in New Mexico) south of I-40, west of I-25 and north of the U.S.-Mexico border; and in both States including any Tribal lands that are managed for wolf presence through a Tribal MWMP as provided in paragraph (k)(3) of this rule. Within the MWMA, the Service or its designated agent(s):
  - (i) May allow natural dispersal and establishment of Mexican wolves to help achieve and maintain the population objective established in paragraph (k)(1) of this rule; and
  - (ii) May actively manage (i.e. capture, mark, release, translocate), as provided in paragraph (k)(8) of this rule, any wolves that as a result of birth, natural dispersal or translocation occur in the MWMA; but
  - (iii) May not release Mexican wolves from captivity; and
  - (iv) May not translocate or release problem wolves; and
  - (v) May not translocate wolves from elsewhere in the BRMWRA or the MWMA into areas that lie south of I-10.

[Figure 3. Image of MWMA]

- (7) **Other Service Findings.** Based on the best available scientific information, the Service also finds that:
  - (a) There are no naturally-occurring wild populations of Mexican wolves in the United States or Mexico and no wild populations of any other form of gray wolf in Arizona, New Mexico or Mexico, therefore the experimental population established by this rule is wholly separate geographically from all other wolf populations; and
  - (b) All Mexican wolves in captivity and all those known to exist in the wild in the United States or Mexico are progeny from the same stock of captive-born individuals that is maintained for and by the Service in a Species Survival Plan captive-breeding program; and
  - (c) Reintroduction of the experimental population established by this rule into probable historical range for the Mexican wolf will further conservation of the subspecies *Canis lupus baileyi*, the Mexican wolf; and



- (d) This experimental population is not “essential” under 50 CFR § 17.81(c)(2); therefore:
  - (e) Within the MWEPA all wild wolves, including wolves that disperse into the MWEPA from elsewhere in the United States or from Mexico, are members of the NEP in Arizona-New Mexico and will be managed as part of the NEP under the provisions of this rule.
- (8) **Definitions.** Definitions of terms used in this rule are as follows:
- (a) *Act* means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*
  - (b) *Active den site* means a wolf-made den or a specific site above or below ground that is used by wolves on a daily basis to raise pups, typically between March 1 and July 31. More than 1 den site may be used in a single season.
  - (c) *Annual end-of-year-count (EOYC)* means a standardized population count that is conducted each year throughout the MWEPA, including the BRMWRA and cooperating Tribal Reservations. The EOYC is tallied in January and provides a minimum estimate of NEP wolves for the previous calendar year, by enumerating all wolves known or reasonably thought to have been alive on December 31 of the count year, based on data gathered throughout the count year and by intensive ground and aerial surveys conducted in January immediately following the count year. EOYC results are announced to the public on or before February 15, following completion of data analysis for the count year.
  - (d) *Blue Range Mexican Wolf Recovery Area (BRMWRA)* means the area in Arizona and New Mexico that is described in paragraph (k)(5)(b) of this rule, in which the Service and its designated agent(s) will actively support reestablishment of the NEP.
  - (e) *Capture* means to capture a wild wolf for purposes of radiocollaring, marking, biological sampling, treatment of injury or disease, translocation or euthanasia, or to place it in captivity temporarily before returning it to the wild.
  - (f) *Code of Federal Regulations (CFR)* means the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the *Federal Register* by the executive departments and agencies of the Federal Government of the United States.
  - (g) *Depredation incident* means the act of a Mexican wolf killing, mortally wounding, injuring, biting or otherwise physically harming livestock or other domestic animals that are lawfully present on private or public lands, at and near a single location within a 24-hour period that begins with the first act of harm. Depredation incidents do not include harm of livestock or other domestic animals that is associated with, or the result of, prior purposeful actions to attract, track, wait for, chase or search out a wolf or wolves. Depredation incidents must be confirmed by USDA-WS or by the State wildlife agency or Tribal authority with jurisdiction for the area(s) in which the incident occurred.

- (h) *Designated agent* means Federal agencies, States and Tribes acting under cooperative agreements with or permits from the Service and/or an MOA with the Secretary, to execute MWMPs that assist the Service in implementing this rule, all or in part.
  - (i) Federal agencies, States or Tribes may become “designated agents” through cooperative agreements with or permits from the Service whereby they agree to assist the Service in implementing this rule or portions thereof. If a Federal agency, State or Tribe becomes a “designated agent” through a cooperative agreement, the Service will retain authority for program direction, oversight and guidance and will help the designated agent coordinate their activities with other designated agents.
  - (ii) States may also become “designated agents” by submitting a petition and a MWMP to the Secretary to establish an MOA under paragraph (k)(3) of this rule. Once a petition and MWMP have been accepted by the Secretary, the MOA may allow the State to assume lead authority for wolf management within their area of jurisdiction and to implement portions of its MWMP that are consistent with this rule. Under an MOA with a State, the Service is limited to (apart from conducting law enforcement investigations) monitoring State compliance with this rule and conducting a review of the State program (as provided in paragraph (k)(13) of this rule) every 3 years to ensure the NEP population is being maintained at a level sufficient to achieve the conservation purposes of this rule.
  - (iii) USDA-WS may also become a “designated agent” by submitting a petition to the Secretary to establish an MOA under paragraph (k)(3) of this rule. The MOA may allow USDA-WS, subject to approval by a State or Tribe with an MWMP, to assume lead authority for wolf capture, depredation investigation and wolf removal. Under an MOA with USDA-WS, Service oversight is limited to (apart from conducting law-enforcement investigations) monitoring USDA-WS compliance with this rule; issuing written authorizations for take of wolves on Reservations without approved MWMPs; and an annual review of the USDA-WS program (as provided in paragraph (k)(13) of this rule) to determine its adequacy and effectiveness in helping to achieve the conservation purposes of this rule.
- (i) *Disturbance-causing land-use activity* means any land-use activity the Service determines could adversely affect reproductive success, natural behavior or survival of Mexican wolves. These activities may be temporarily (seasonally) restricted on public land within a 1-mile radius of release pens, active den sites and rendezvous sites. Such activities may include, but are not limited to: timber or wood harvesting, management-ignited fire, mining or mine development, camping outside designated campgrounds, livestock drives and branding camps, off-road vehicle use,

hunting, trapping and any other use or activity with the potential to adversely affect Mexican wolves. The following activities are excluded from this definition:

- (i) Legally-permitted livestock grazing and use of water sources by livestock; and
  - (ii) Livestock drives if no reasonable alternative route or timing exists; and
  - (iii) Vehicle access over established roads to private property and to areas on public land where lawfully-permitted activities are ongoing if no reasonable alternative route exists; and
  - (iv) Use of lands under management authority of the Department of Defense and lands within the national park or national wildlife refuge systems that are managed as safety buffer zones for military activities; and
  - (9) Prescribed natural fire except in the vicinity of release pens and known den sites; and
  - (10) Any other authorized, specific land use or government-approved or permitted activity that was active and ongoing at the time wolves located a den site or rendezvous site nearby or within the area.
- (j) *Domestic animals* means species that have been bred selectively over many generations to enhance specific traits for use by humans, including use as pets or guard animals. This only includes livestock as defined in paragraph (k)(7)(r) of this rule and non-feral dogs as defined in paragraph (k)(7)(l) of this rule. Poultry are not considered livestock under this rule.
- (k) *Due care* means adherence to all applicable regulations, written guidelines or procedures and commonly-practiced wildlife management techniques to avoid inadvertently killing, injuring or causing other harm to a Mexican wolf.
- (l) *Feral dog* means any dog (*Canis familiaris*) or wolf-dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely over a rural landscape without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leashed or otherwise restrained (e.g. by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.
- (m) *Harass* means an intentional or negligent act or commission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior that includes, but is not limited to: breeding, feeding or sheltering (50 CFR § 17.3). This rule authorizes limited harassment of Mexican wolves, as set forth in paragraphs (k)(8)(a) and (b) of this rule.
- (n) *Intentional harassment* means deliberate, pre-planned harassment of 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. The wolf or wolves may have

- been intentionally or unintentionally attracted, tracked, waited for, chased or searched out and then harassed.
- (o) *In the act of attacking* means the actual biting, wounding or killing of domestic animals, or chasing or harassing by wolves that would indicate to a reasonable person that biting, wounding or killing of a domestic animal is likely to occur at any moment.
  - (p) *Landowner* means an owner of private land, or their immediate family member(s), or the owner's employee(s) or designated agent(s) who actively work on that private land. For purposes of this rule, landowner includes:
    - (i) On private lands, the owner(s) (and their employee(s) or designated agent(s)) of livestock that are currently and lawfully being grazed on that private land and any lease-holder(s) on that private land (such as but not limited to outfitters or guides who lease angling, hunting or trapping rights from landowners).
    - (ii) Individuals, including (but not limited to) licensed hunters, anglers, guides and outfitters who are lawfully using Tribally-acquired (non-Reservation) lands.
    - (iii) Lawful grazing permittees or their current employee(s) or designated agent(s) on any public grazing lands or on Tribal grazing lands.
  - (q) *Lawfully present* means:
    - (i) A person is lawfully present when:
      - (1) On their own property; or
      - (2) Not trespassing on someone else's private property and has the landowner's permission to bring livestock and/or non-feral dogs onto the property; or
      - (3) On public land in compliance with regulations and permits governing lawful presence.
    - (ii) Livestock are lawfully present when:
      - (1) On private land with the landowner's permission; or
      - (2) On public or State land in compliance with Federal or State regulations and permits governing their presence.
  - (r) *Livestock* means: cattle, domestic bison, goats, horses, mules and sheep; and herd, guard and stock animals (i.e. donkeys, horses, llamas, mules and certain breeds of domestic dogs commonly used for herding or guarding livestock or for transporting humans or their possessions). Livestock excludes feral dogs and domestic dogs that are not being used for livestock guarding or herding. It also excludes poultry.
  - (s) *Mexican Wolf Experimental Population Area (MWEPA)* means the area of Arizona and New Mexico (i.e. the entirety of both States) that is described in paragraph (k)(5)(a) of this rule.
  - (t) *Mexican Wolf Management Area* means the area in Arizona and New Mexico that is described in paragraph (k)(5)(c) of this rule.
  - (u) *NEP* means the nonessential experimental population in Arizona and New Mexico that is described by this rule.

- (v) *NEPA* means the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*
- (w) *Non-injurious* means the activity might cause temporary, non-debilitating physical injury but is not reasonably anticipated to cause permanent physical injury or death.
- (x) *Occupy* means that one or more wolves use an area with sufficient regularity that they are likely to be present during a reasonable span of time, including areas used for an essential behavioral function, such breeding, feeding or sheltering. An area that wolves might briefly use while they are moving across the landscape is not considered occupied.
- (y) *Opportunistic harassment* means harassment without conduct of prior purposeful actions to attract, track, wait for, chase or search out a wolf or wolves.
- (z) *Population objective* means the population objective or range for the MWEPA as a whole, which is at least 200 and not more than 300 Mexican wolves of all sex and age classes (see paragraph (k)(1)) of this rule, as estimated in annual EOYCs. This objective will be met and maintained through guidelines and procedures established by the Service or in State and Tribal MWMPs. This objective shall remain in effect until such time as Service guidelines or State and Tribal MWPs are revised to address any relevant recommendations from a Service-approved, revised binational Mexican Wolf Recovery Plan.
- (aa) *Private land* means all land other than Tribal Reservations and public land that is under Federal Government ownership and administration. Tribal Reservations are neither public land nor private land; they are sovereign lands. Land that has been acquired by Tribes by lease or purchase but which has not been reserved by Congress as part of a Reservation may be private or public. For purposes of this rule, State-owned land is considered private land.
- (bb) *Problem wolves* means wolves that the Service or its designated agent(s), for purposes of management and control, have determined to:
  - (i) Have depredated, killed, wounded, attacked, chased or molested livestock or domestic animals other than livestock in 3 or more confirmed incidents on private or public land within the past 365 days; or
  - (ii) Be members of a group or pack (including adults, yearlings and young-of-the-year) that has depredated, killed, wounded, bitten, attacked or chased livestock or domestic animals other than livestock in 3 or more confirmed incidents on private or public land within the past 365 days; or
  - (iii) Be young-of-the-year that have been fed by, or which are dependent on, adult wolves that have been involved with 2 or more confirmed livestock depredation incidents within the past 180 days (these thresholds are lower because such pups are more likely to acquire livestock depredation habits); or

- (iv) Are habituated to humans or to human residences or other facilities.
- (cc) *Public land* means land under administration of a Federal agency, including, but not limited to: National Park Service, Bureau of Land Management, Fish and Wildlife Service, Forest Service, Department of Energy, and Department of Defense. Land that has been acquired by Tribes, but which has not been reserved by Congress as Reservation land, may be private or public, depending on whether a Tribe has purchased it or leased it.
- (dd) *Public-land permittee* means a person or that person's employee(s) or agent(s) who have an active, valid Federal land-use permit to use specific public lands to graze livestock or to operate an outfitter, guiding or other business that uses livestock. This definition does not include private individuals or organizations that have Federal permits for other activities on public land, such as: camping; collecting firewood or Christmas trees; fishing; trapping; logging; mining, oil or gas exploration or development; or other uses that do not require presence or use of livestock. In recognition of the special and unique authorities of Tribes and their relationship with the Federal Government, for the purposes of this rule, this definition includes Tribal members who lawfully graze livestock on ceded public lands under recognized Tribal treaty rights.
- (ee) *Release* means to release a wolf, whether the wolf was captive-born or previously captured after being born or spending time in the wild. See also *Translocate*.
- (ff) *Remove* means kill or place permanently in captivity.
- (gg) *Research* means scientific studies of Mexican wolves, their prey or competitors and/or their occupied or potentially-occupied habitats that are intended to result in data that could contribute to making sound management recommendations and thus enhance survival of the Mexican wolf.
- (hh) *Rendezvous site* means a gathering and activity area that is regularly used by 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 (e.g. June 1 to September 30). Several rendezvous sites may be used in succession within a single season.
- (ii) *Rule* means this final NEP rule for the Mexican wolf.
- (jj) *Secretary* means the Secretary of the Department of the Interior.
- (kk) *Take*, for purposes of this rule and consistent with 16 U.S.C. 1532(19), means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, remove, salvage or collect, or to attempt to engage in any such conduct. This rule authorizes limited take of Mexican wolves, as set forth in paragraph (k)(8) of this rule.
- (ll) *Translocate* means to capture and move a wild Mexican wolf from a location anywhere within the MWEPA to a location within the BRMWRA or the MWMA. Translocate includes re-release as defined above but does not include removal of a wolf from the wild (removal is defined above).

- (mm) *Unacceptable impact* means the impact to an ungulate population or herd when a State or Tribe has determined wolves are contributing to the population or herd not meeting established State or Tribal management objectives.
  - (nn) *Ungulate population or herd* means an assemblage of wild ungulates (such as bighorn sheep, deer, elk or pronghorn) living in a given area.
  - (oo) *Wounded* means exhibiting scraped or torn hide or flesh, bleeding or other evidence of physical damage caused by a wolf bite.
- (8) **Allowable Forms of Take of Mexican Wolves.** The following actions involving take are allowed in the MWEPA only as described in this paragraph (k)(8): take in the form of opportunistic harassment or intentional harassment; take on private land; take on public land (except land administered by the Department of Defense and land within the national parks system and the national wildlife refuge system); take in response to unacceptable impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take to capture, translocate or re-release wolves; take to remove problem wolves; take under permits; take by Service employees, designated agent employees and volunteers identified by the Service or its designated agent(s); take for research or salvage purposes; take to protect domestic animals; take to prevent hybridization and incidental take. Other than as expressly provided in this rule, all other forms of take are considered a violation of Section 9 of the ESA. Any wolf or wolf part taken lawfully as provided by this rule must be turned over to the Service unless otherwise specified in this paragraph (k)(8) or unless otherwise directed by the Service or its designated agent(s). Any take of wolves or parts thereof must be reported as required in this paragraph (k)(8) and in accordance with paragraph (k)(10) of this rule:
- (a) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of a Mexican wolf in a non-injurious manner at any time.
  - (b) *Intentional harassment.* After the Service or its designated agent(s) have confirmed wolf activity on private land, on a public-land grazing allotment or on a Tribal Reservation, the Service or its designated agent(s) may issue written take authorization valid for not longer than one year, with appropriate stipulations or conditions, to any landowner or public-land permittee to harass wolves intentionally. The harassment must occur in the area and under the conditions specifically identified in the written take authorization.
  - (c) *Take by landowners or their employee(s) or designated agent(s) on the landowner's private or leased public land.* Any landowner (including livestock producers) and their employee(s) or designated agent(s) may take a wolf on the landowner's private or leased public land in the following circumstances:
    - (i) If that wolf is in the act of attacking lawfully-present domestic animals (including livestock and non-feral dogs), provided that:
      - (1) Within 24 hours the landowner or their employee(s) or designated agent(s) present the Service or its designated

- agent(s) with evidence of lawfully-present domestic animals that wolves recently (less than 48 hours) killed, wounded, bit, harmed or harassed; and
- (2) The Service or its designated agent(s) can confirm that wolves killed, wounded, bit, harmed or harassed the domestic animal(s) within the past 48 hours and that the landowner(s) or their employee(s) or designated agent(s) did not deploy or allow to be used livestock herding or branding operations, wolf-attractants or artificial or intentional feeding to induce wolf presence in the area.
- (ii) If the Service or its designated agent(s) have issued a written, "shoot-on-sight" lethal-take removal authorization (limited to 45 days or less) after determining that problem wolves are present on that private or leased public land and that they are a significant risk to the health and safety of lawfully-present domestic animals.
- (iii) If, within 45 days prior to a new problem-wolf incident confirmed by the Service or its designated agent(s), a problem wolf was removed from that same private property or public-land grazing allotment by the Service, its designated agent(s) or the private landowner or their employee(s) or designated agent(s).
- (iv) A landowner or their employee(s) or designated agent(s) taking a wolf or wolves pursuant to paragraph (k)(8)(c) of this rule must not remove or otherwise intentionally disturb the carcass of any wolf taken or the area around it, including any killed or injured domestic animals, in order to preserve physical evidence that the take was conducted according to this rule.
- (v) Take of any wolf pursuant to paragraph (k)(8)(c) of this rule, without compliance with this rule, may be referred to appropriate authorities for prosecution.
- (d) *Take on public land by public-land permittees and recreationists other than livestock producers or their employee(s) or designated agent(s).* Any public-land permittee or other recreationist, other than livestock producers and their employee(s) or designated agent(s) as addressed in this paragraph (k)(8)(d), may immediately take a wolf on lawfully-used public land in the following circumstances:
- (i) If that wolf is in the act of attacking lawfully-present domestic animals, provided that:
- (1) Within 24 hours the permittee or recreationist presents the Service or its designated agent(s) with evidence of lawfully-present domestic animals that wolves recently (less than 48 hours) killed, wounded, bit, harmed or harassed; and
- (2) The Service or its designated agent(s) can confirm that wolves killed, wounded, bit, harmed or harassed the domestic animal(s) and that the permittee or recreationist



- did not deploy or use wolf-attractants or artificial or intentional feeding to induce wolf presence in the area.
- (ii) A public-land permittee or recreationist taking a wolf or wolves pursuant to paragraph (k)(8)(d) of this rule must not remove or otherwise intentionally disturb the carcass of any wolf taken or the area around it, including any killed or injured domestic animal(s), in order to preserve physical evidence the take was conducted according to this rule.
  - (iii) Take of a wolf pursuant to paragraph (k)(8)(d) of this rule, without compliance with this rule, may be referred to appropriate authorities for prosecution.
- (e) *Take by State wildlife agencies in response to wild ungulate impacts.* A State wildlife agency or its employee(s) and designated agent(s) may remove, by lethal or other means, any wolf or wolves that it has determined, pursuant to a Service-approved MWMP, to be having an unacceptable impact on wild ungulate populations or herds, including elk, deer, bighorn sheep or pronghorn.
- (i) Before exercising such removal, the State wildlife agency must notify the Service that an unacceptable impact to wild ungulate populations or herds has occurred and must provide to the Service a policy and science-based document consistent with its Service-approved MWMP that:
    - (1) Describes: the basis for its ungulate population or herd management objectives; what data indicate the ungulate population or herd is below management objective(s); why wolf removal is warranted to help restore the ungulate population or herd to management objective(s); the level and duration of wolf removal that is proposed; and how wolf control will be adjusted when ungulate population or herd management objective(s) have been achieved again; and
    - (2) Demonstrates: attempts have been and are being made to address other major causes of ungulate herd or population declines; or that the State commits to implementing other possible remedies or conservation measures in addition to wolf removal; and
    - (3) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence. The State wildlife agency must:
      - (a) Conduct peer review in conformance with the Office of Management and Budget's (OMB) Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005); and
      - (b) Obtain at least 3 independent peer reviews from individuals with relevant expertise other than staff

- employed by a State, Tribal or Federal agency directly or indirectly involved with predator control or ungulate management in Arizona or New Mexico; and
- (c) Include in their proposal an explanation of how the OMB standards were considered and satisfied.
- (ii) The Service must determine that the State wildlife agency proposal for lethal removal is not likely to contribute to reducing the MWEPA population below 100 wolves in the State for which action is proposed, based on the most recent EOYC. If the Service determines that the proposal for wolf removal meets the criteria set forth above in paragraph (k)(8)(e) of this rule, it must approve the request as submitted and shall authorize removal and notify the State wildlife agency within 7 calendar days of the Service determination.
- (f) *Take in defense of human life.* Per the Act, any person may take a Mexican wolf in immediate defense of the individual's life or the life of another person. Unauthorized take of a wolf without demonstration of an immediate and direct threat to human life may be referred to appropriate authorities for further investigation and possible prosecution.
- (g) *Take to protect human safety.* The Service or its designated agent(s) may immediately capture or remove any wolf the Service or its designated agent(s) determines to be a threat to human life or safety.
- (h) *Take of problem wolves by Service employees and designated agent(s).* Service employees and designated agent(s) may carry out harassment, nonlethal control measures, capture, relocation, placement in captivity, or lethal control of problem wolves. Take of female wolves with nursing pups to alleviate problem wolf situations shall be deferred to October 1. Such females or pups taken incidentally prior to September 1 shall be released immediately at or near the capture site; those taken incidentally between September 1 and September 30 shall be released immediately at or near the capture site, translocated or removed as deemed appropriate to the problem-wolf situation by the Service or its designated agent(s). To determine presence of problem wolves, the Service or its designated agent(s) must confirm the following:
  - (i) Evidence of wounded, lawfully-present domestic animals, or remains of lawfully-present domestic animals, that show injury or death was caused by wolves, or evidence that wolves were in the act of attacking lawfully-present domestic animals; and
  - (ii) That additional wolf-caused losses or attacks of lawfully-present domestic animals are likely to occur if control action is not taken; and
  - (iii) Evidence that animal-husbandry practices required in approved allotment plans and annual operating plans were followed prior to the depredation; and

- (iv) Unusual attractants were not used and there was no artificial or intentional feeding of wolves in the depredation-incident area.
- (i) *Incidental take.* Take of a Mexican wolf is also allowed if the take is accidental (unintentional) and incidental to an otherwise lawful activity (including hunting, trapping and livestock management or protection, e.g. as in coyote trapping), if reasonable due care was practiced to avoid such take and if such take is reported within 24 hours. Take is not lawfully incidental if it was not accidental, if reasonable due care was not practiced to avoid such take or if it was not reported within 24 hours (unless the Service or its designated agent(s) have allowed additional time to report, if access to the site of take is limited). 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 may not be considered incidental take. The Service or its designated agent(s) may refer apparent non-incidental take to appropriate authorities for further investigation and possible prosecution.
- (j) *Take under permits.* Any person with a valid permit issued by the Service or its designated agent(s) under 50 CFR § 17.32, when such permits are accompanied by a companion permit required and issued by a State wildlife agency, may take wolves in the wild, pursuant to terms of the permit.
- (k) *Additional take authorization for agency employees.* When acting in the course of their official duties, subject to any permit restrictions imposed by a State wildlife agency for lands and activities under their jurisdiction, any employee of the Service or its designated agent(s) may take a wolf or wolf-like canid for the following purposes:
  - (i) Scientific purposes;
  - (ii) To avoid conflict with human activities;
  - (iii) To further the conservation of wolves, consistent with this rule;
  - (iv) To aid or euthanize sick, injured, or orphaned wolves;
  - (v) To dispose of a dead specimen;
  - (vi) To salvage a dead specimen that may be used for scientific study;
  - (vii) To aid in law enforcement investigations involving wolves; or
  - (viii) To prevent wolves or wolf-like canids from passing on abnormal physical, genetic or behavioral characteristics to other wolves, or from teaching other wolves abnormal behaviors.
- (l) *Take for research purposes.* The Service may issue permits under 50 CFR § 17.32, and its designated agent(s) 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 wolves and/or for the area in which the study will occur. Such take may include salvage of wolves or parts thereof in the wild or in captivity. Scientific studies are reasonably expected to result in data on Mexican wolves, their prey, their competitors and/or their occupied or potentially-occupied habitats that might lead to management recommendations for, and thus enhance survival of, the Mexican wolf.

- (m) *Take to prevent hybridization.* The Service and its designated agent(s) may capture, kill, subject to genetic testing, place in captivity, euthanize or return to the wild (if found to be a pure Mexican wolf) any feral wolf-like animal, feral wolf-dog hybrid or feral dog found within the MWEPA that shows physical or behavioral evidence of:
  - (i) Hybridization with other canids, including domestic dogs or coyotes; or
  - (ii) Being raised in captivity, other than as part of a Service-approved wolf recovery program; or
  - (iii) Being socialized or habituated to humans.
- (9) **Prohibited Acts.** No person may attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule. No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any Mexican wolf or Mexican wolf part from the NEP except as authorized by this rule or by a valid permit issued by the Service under 50 CFR § 17.32.
- (10) **Reporting.** If a Mexican wolf is taken, or if Mexican wolf parts are taken, with prior authorization by the Service or its designated agent(s), as take is defined in paragraph (k)(8) of this rule and 50 CFR § 17.32, within 24 hours that take must be reported to the Service's Mexican Wolf Recovery Coordinator at (505) 761-4748 or to the Service's designated agent(s), including the Arizona Game and Fish Department at (800) 352-8407 or the New Mexico Department of Game and Fish at (800) 432-4263. Further, if without prior authorization as provided in paragraph (k)(8) of this rule or in 50 CFR § 17.32, a Mexican wolf is taken or found dead or injured, or if Mexican wolf parts are found:
  - (a) The Mexican wolf or wolf parts must be retained or disposed of only in accordance with direction from the Service.
  - (b) The Mexican wolf or wolf parts must not be touched, disturbed, possessed or retained unless directed to do so by the Service or designated agent who is contacted as provided in paragraph (k)(10) of this rule; and
  - (c) Within 24 hours of take, the incident must be reported to the Service's Mexican Wolf Recovery Coordinator at (505) 761-4748 or to the Service's designated agent(s), including the Arizona Game and Fish Department at (800) 352-8407 or the New Mexico Department of Game and Fish at (800) 432-4263; and
  - (d) Disturbance of the area around the wolf or wolf parts must be minimized until the incident has been investigated by the Service or its designated agent(s).
- (11) **Occupancy and Restrictions on Lands within the MWEPA.**
  - (a) **Private Lands.** Mexican wolves shall be allowed to occupy private lands within the MWEPA for the purposes described in paragraphs (k)(1), (k)(2), (k)(3), (k)(5), (k)(6) and (k)(11) of this rule, except as provided pursuant to paragraphs (k)(8) and (k)(11) of this rule. No Federal land-use

restrictions will be imposed on private land for Mexican wolf management or conservation without permission of the landowner.

- (b) **Tribal Reservations.** Mexican wolves shall not be allowed to occupy Tribal Reservations within the MWEPA, except as allowed by Tribal policy or pursuant to paragraph (k)(3) of this rule or by the Service through consultation with Tribal Governments and Tribally-authorized designated agent(s). If wolves move onto a Tribal Reservation within the MWEPA, they will immediately be captured and removed by the Service or its designated agent(s) or by the Tribal Government or its designated agent(s) unless the Tribal Government has expressly consented to their presence. When a Tribal Government has consented to wolf presence, the Service or another authorized agency will, in cooperation with the Tribal Government, develop management actions that are consistent with this rule, including any agreement(s) established as provided in paragraph (k)(15) of this rule. Problem wolves removed from a Tribal Reservation may not be released in the BRMWRA, MWMA or elsewhere in the MWEPA. No Federal land-use restrictions will be imposed on Tribal Reservations for Mexican wolf management or conservation without permission of the Tribal Government.
- (c) **Public and State Wildlife Agency-managed Lands.** Mexican wolves shall be allowed to occupy public State wildlife agency-managed lands only within the BRMWRA and MWMA portions of the MWEPA, for the purpose of reestablishing the NEP as described in paragraphs (k)(1), (k)(2), (k)(3), (k)(5), (k)(6) and (k)(11) of this rule. On such lands, the Service and its designated agent(s) may release, re-release, translocate and otherwise manage Mexican wolves as allowed by paragraphs (k)(5) and (k)(8) of this rule and, if such a plan exists, a State MWMP that is approved pursuant to paragraph (k)(3) of this rule. These management actions are subject to the provisions of paragraphs (k)(8), (k)(9) and (k)(10) of this rule but are not otherwise authorized or restricted, except as described below in this paragraph:
  - (i) *BRMWRA (excluding Tribal Reservations).* On these lands:
    - (1) Release, re-release and translocation of Mexican wolves must be preceded by a plan that is developed by the Service or its designated agent(s) pursuant to this rule and, if such a plan exists, a State MWMP pursuant to paragraph (k)(3) of this rule. The release, re-release or translocation proposal and plan must:
      - (a) Select, to the extent practicable, potential release, translocation and persistence areas to avoid areas of substantial human development and lawful land-use activities in order to reduce, to the extent practicable, the likelihood of negative human-wolf interaction; and
      - (b) Document presence of a wild ungulate prey base that is sufficient to support wolves; and

- (c) In draft form are subjected to site-specific analysis of the impacts of proposed release, translocation and persistence, including documenting compliance with NEPA; and
- (d) Are developed with, in addition to any public notice required by law, written or documented verbal notice to the county in which the proposed action would occur and to landowners and public-land grazing permittees residing or managing livestock within 5 miles of the proposed release, translocation or persistence area(s); and
- (e) In draft form, are presented for public comment and discussion in at least 1 public meeting in the vicinity of the proposed release, translocation or persistence area(s), at least 30 days prior to the plan proponent making a final decision whether or not to conduct the proposed release(s) or translocation(s) or to allow persistence. Public meetings held for purposes of this paragraph (11)(c)(i) of this rule shall be held by the proponent agency in cooperation with the county in which the proposed action would take place; and
- (f) Further, if the proponent agency decides to allow the proposed release(s), translocation(s) or persistence, it must provide notice of the decision to the county, public and to landowners and public-land grazing permittees residing or managing livestock within 5 miles of the release, translocation or persistence area(s) not less than 7 days prior to release(s), translocation(s) or allowing persistence.
- (g) State wildlife agencies and cooperating Federal land-management agencies may temporarily restrict human access and disturbance-causing land-use activities within a 1-mile radius around:
  - (i) Release pens when wolves are in them, for a period not to exceed 60 days; and
  - (ii) Active den sites between March 1 and July 31; and
  - (iii) Active rendezvous sites between June 1 and September 30.
  - (iv) Areas restricted pursuant to paragraph (k)(11)(c)(i)(1)(g) of this rule must be posted to advise the public of restricted access, unless, in the judgment of the Service, the State wildlife agency and the posting agency, doing so might compromise

the integrity of the site or jeopardize wolf use of the site.

- (ii) *MWMA (excluding the BRMWRA and Tribal Reservations).* On these lands, regardless of private, State or public ownership, the Service and its designated agent(s) will not: release, re-release, translocate or otherwise induce presence of Mexican wolves, regardless of their captive or wild origin, except, as necessary, consistent with paragraphs (k)(1), (k)(5) and (k)(8) of this rule, to capture (and release) free-ranging wolves in the MWMA to mark, radiocollar or treat for veterinary purposes any Mexican wolf that has reached such lands through natural dispersal or recruitment. The same closure restrictions as were noted for private lands in paragraph (k)(11)(c)(i)(1)(g), above, shall apply to all public and State lands that are within the MWMA but outside the BRMWRA and Tribal Reservations.
  - (iii) *MWEPA (outside the BRMWRA, MWMA and Tribal Reservations).* On these lands, including all public, private and State lands, the Service and its designated agent(s) shall not allow or promote temporary or other presence or persistence of individual wolves or wolf packs. Problem wolves on these lands shall be removed by the Service or its designated agent(s) for Service disposition, which in this instance is limited to permanent retention in captivity outside the State of Arizona or transfer to Mexico for captive breeding or release to the wild in Mexico (i.e. problem wolves may not be re-released anywhere in the MWEPA). On Tribal Reservations within the MWEPA but outside the BRMWRA and MWMA, wolves will be managed in accordance with Tribal preference, pursuant to paragraphs (k)(3) and (k)(11)(b).
- (12) **Wolves Outside the MWEPA.** Wild wolves found outside the MWEPA will be considered unprotected gray wolves and may be taken as allowed by State or Tribal regulation, including discretionary capture by a State wildlife agency, Tribe or USDA-WS to return a known Mexican wolf to the BRMWRA pursuant to paragraphs (k)(3) and (k)(11)(c) of this rule or to a Tribal Reservation pursuant to paragraph (k)(11)(b) of this rule.
- (13) **Progress Evaluation.** In the first February 3 years after this rule is approved, and triennially thereafter, the Service will submit a detailed, written report to MOA signatories on reintroduction progress and recommend continuation, modification or termination of their Mexican wolf conservation effort. MOA signatories shall have 90 calendar days from receipt of such reports to respond to the Service and accept the findings or to contest them.
- (14) **Service Commitments and Causes for Change or Rescission.** The Service does not intend to change, and foresees no likely situation that would result in changing, this “nonessential experimental” designation for the Mexican wolf to

experimental essential, threatened, or endangered, or that would result in modifying the MWEPA boundaries without consulting with and obtaining agreement on such change from affected jurisdictional State wildlife agencies or Tribes that are signatory to Mexican Wolf Conservation MOAs. Further:

- (a) No designation of critical habitat will be made for nonessential populations (16 U.S.C. § 1539(j)(2)(C)(ii)).
- (b) The Service does not intend to change the status of this NEP until the Mexican wolf is recovered rangewide, or recovered in Arizona-New Mexico pursuant to a Distinct Population Segment rule, and delisted under the ESA.
- (c) The preceding paragraphs notwithstanding, unforeseen legal actions or other circumstances might compel a change in this NEP's legal status to essential, threatened, or endangered, and might then compel the Service to designate critical habitat for Mexican wolves within the MWEPA defined in this rule. Therefore, the Service will rescind this rule and reinstate the 1998 Final Rule if:
  - (i) The Service announces intent to change the NEP status of Mexican wolves in the United States to essential experimental, threatened or endangered, or intent to designate critical habitat for the Mexican wolf in the United States; or
  - (ii) The State wildlife agency in Arizona or New Mexico:
    - (1) Withdraws from a Secretary-approved MOA for Mexican wolf conservation because the Service has failed to comply with any or all elements of this rule or a Service-approved State MWMP or because the Service has failed to provide funding or other support as described in the Secretary-approved MOA or Service-approved State MWMP.
    - (2) Determines the Service has failed to issue timely authorization for lethal or other take of Mexican wolves under a Service-approved State MWMP; or
    - (3) Determines the reintroduction effort to be a failure because, despite State wildlife agency compliance with its Service-approved wolf management plan, the wild population in Arizona-New Mexico has, for at least 3 consecutive years, as measured in annual EOYCs, remained at or below 50 percent of the minimum population objective established in paragraph (k)(1) of this rule, subject to modification when the Service has approved a revised, bi-national Mexican Wolf Recovery Plan and States have appropriately modified their Service-approved MWMPs.
- (d) This rule will not be rescinded due to State or Tribal unwillingness to participate in, or State or Tribal withdrawal from, an MOA approved by the Secretary, or a Service-approved Tribal MWMP. On all lands not covered under an MOA executed with the Secretary and a State or Tribal MWMP, the Service shall retain authority for implementing all aspects of this rule.



- (e) If any circumstance listed in paragraph (k)(14) of this rule occurs, except Tribal withdrawal from an MOA, the State wildlife agency and its designated agent(s), not less than 30 days after the State provides written notice to the Service and the Secretary, may remove, by any method the State wildlife agency deems practicable that is allowed by this rule, including live capture and lethal removal, any Mexican wolf that is present on non-Tribal Reservation lands in the State wildlife agency's area of jurisdiction. Such State removal may continue until the Service estimates through the next EOYC that the wild population in the entire MWEPA is at or above the 1998 baseline of "at least 100" Mexican wolves (which for purposes of this rule and clarification of the 1998 Final Rule is defined as at least 100 but not more than 125 Mexican wolves [total in Arizona and New Mexico], including all individuals of all sex and age classes). After such removal has been completed, any Mexican wolves and their future progeny that remain in the wild in Arizona-New Mexico shall retain their NEP status under the 1998 Final Rule and shall be further subject to State or Tribal removal as described in this paragraph when an EOYC places the Arizona-New Mexico population at more than 125 Mexican wolves (including all individuals of all sex and age classes).
- (15) **Requirement for Review.** Not less than 10 calendar years after the effective date of this rule, and every 10 years thereafter, the Service shall initiate formal revision of this rule by engaging all State, Federal and Tribal agencies that are signatory to MOAs and MWMPs pursuant to paragraph (k)(3) of this rule or to other Mexican Wolf Conservation Agreements approved by the Service. This initial step of interagency coordination and consultation shall be followed by timely publication in the Federal Register of a notice that the Service solicits public comment on this rule. This rule shall remain in standing until a new rule takes effect, unless rescinded by the Service pursuant to paragraph (k)(14) of this rule or as otherwise determined by a Federal court.

End