

social services, or because of their religious character or affiliation.

(f) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the religious organization receives direct or indirect financial assistance from Department. Some Department programs, however, contain independent statutory provisions requiring that all recipients agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office if they have questions about the scope of any applicable requirement.

(g) In general, the Department does not require that a recipient, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of a solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state or other governmental taxing body or the state secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the state; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (g)(1) through (3) of this section if that item applies to a state or national parent organization, together with a statement

by the state or parent organization that the applicant is a local nonprofit affiliate.

(h) If a state or local government contributes its own funds, including but not limited to matching funds, to supplement activities carried out under the applicable programs, the state or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(i) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or through a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

Dated: March 1, 2004.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 04-5110 Filed 3-4-04; 8:58 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AT61**

#### Endangered and Threatened Wildlife and Plants; Regulations for Nonessential Experimental Populations of the Western Distinct Population Segment of the Gray Wolf

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) propose regulations for the nonessential experimental populations of the western distinct population segment (DPS) of the gray wolf (*Canis lupus*). In addition, we

propose regulations so that States with wolf management plans approved by the Service can apply for additional authorities to manage wolves consistent with those approved plans. These proposed regulations would only have effect in States that have an approved State management plan for gray wolves. Within the western DPS of the gray wolf, only the States of Idaho and Montana have approved State management plans for gray wolves; the State of Wyoming has prepared a wolf management plan which was not approved by the Service; therefore, if finalized, these regulatory changes would not affect existing wolf management in Wyoming. As we discussed in our advance notice of proposed rulemaking regarding delisting the western DPS of the gray wolf, once all the States have approved wolf management plans, we intend to propose removing the western DPS from the List of Endangered and Threatened Vertebrates. This proposed rule would also not affect the eastern DPS or the southwestern DPS of the gray wolf.

**DATES:** Comments on this proposed rule must be received by May 10, 2004. Public hearings will be scheduled for Boise, ID, and Helena, MT, during the comment period (see "Public Hearings" in the **SUPPLEMENTARY INFORMATION** section). Requests for additional public hearings must be received by April 8, 2004.

**ADDRESSES:** U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, #320, Helena, MT 59601. Comments on this proposed rule may be sent to this address, or by electronic mail to [WesternGrayWolf@fws.gov](mailto:WesternGrayWolf@fws.gov). If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AT61" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Helena office at telephone number 406-449-5225.

**FOR FURTHER INFORMATION CONTACT:** Ed Bangs, Western Gray Wolf Recovery Coordinator, at telephone number 406-449-5225, ext. 204.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 1, 2003, we published in the **Federal Register** (69 FR 15879) an advance notice of proposed rulemaking that announced our intention to propose rulemaking under the Endangered

Species Act of 1973, as amended (Act), to remove the western distinct population segment (DPS) of the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. At the time, we indicated that the numbers of wolves in the western DPS had exceeded our recovery goals; we reported that, at the end of 2001, 563 wolves could be found in 34 packs in the northern U.S.

Rockies. We also emphasized the importance of State and tribal wolf management plans to our delisting decision; we believe these plans will be the major determinants of wolf protection and prey availability, and will set and enforce limits on human utilization and other forms of taking, once the wolf is delisted. In short, these State and tribal management plans will determine the overall regulatory framework for the future conservation of gray wolves after delisting. For reasons we discuss in more detail below, we are not yet prepared to propose delisting the western DPS of gray wolves; here, we propose new regulations for the nonessential experimental populations of the western DPS of gray wolves that are found in States with Service-approved State wolf management plans.

Gray wolf (*Canis lupus*) populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada, by the 1930s (Young and Goldman 1944). After human-caused mortality of wolves in southwestern Canada was regulated in the 1960s, populations expanded southward (Carbyn 1983). Dispersing individuals occasionally reached the northern Rocky Mountains of the United States (Ream and Mattson 1982, Nowak 1983), but lacked legal protection there until 1974 when they were listed as endangered.

Section 10(j) of the Act gives the Secretary of the Interior the authority to designate populations of listed species that are reintroduced outside their current range, but within their probable historical range, as "experimental populations" for the purposes of promoting the recovery of those species by establishing additional wild populations. Such a designation increases our flexibility in managing reintroduced populations, because experimental populations are generally treated as threatened species under the Act. Threatened status, in comparison to endangered status, allows the promulgation of special regulations to further promote the conservation of the species.

Furthermore, the Secretary is authorized to designate experimental populations as "nonessential" if they

are determined to be not essential to the continued existence of the species. For the purposes of section 7(a)(2) of the Act (Interagency Cooperation), nonessential experimental populations, except where they occur within areas of the National Wildlife Refuge System or the National Park System, are treated as species proposed to be listed as threatened or endangered species, rather than as a listed species.

In 1994, we promulgated special regulations under Section 10(j) of the Act for the purposes of wolf reintroduction. Those regulations, codified at 50 CFR 17.84(i), established two non-essential experimental populations, the central Idaho non-essential experimental population area and the Yellowstone non-essential experimental population area, and were meant to address the potential negative impacts or concerns regarding wolf reintroduction.

Since reintroduction began in 1994, wolf populations in both experimental areas have exceeded expectations. This success has prompted the Service to upgrade the current status of gray wolves, outside of the experimental populations, to threatened; we also published an advance notice of proposed rule making indicating our intention to delist the western DPS of gray wolves in the near future (68 FR 15879). However, this reclassification had no effect on the status of the experimental populations in Idaho or Yellowstone, which were already treated as threatened.

In the preamble to the 1994 regulations where we established the nonessential experimental populations, we also identified protective measures and management practices necessary for the populations' conservation and recovery. As wolves in the nonessential experimental populations are treated as a threatened species, these regulations provided additional flexibility in managing wolf populations within the experimental population areas compared to outside, where wolves were listed as endangered. In 2003, however, when we reclassified wolves in the western DPS as threatened, we also published special regulations (found in 50 CFR 17.40(n)) that provided more flexible management for the species outside the experimental population areas.

The rule we adopted in 2003, however, did not apply within the experimental population areas; as a result, State wolf management is currently more flexible outside the experimental population areas. We now propose, under this rule, regulations at 50 CFR 17.84, for States with Service-

approved State wolf management plans only, that would adopt similar provisions which expand allowable management for the experimental population areas, providing more consistent management rules both inside and outside experimental population areas. In addition, these proposed regulations also provide for the transition from the provisions of this rule to those provisions of Service-approved State wolf management plans consistent with federal regulations for nonessential experimental wolves within the boundaries of the State, with the exception of lands managed by the National Park Service and the Fish and Wildlife Service. This change would provide States with much of the flexibility in wolf management now limited to the Service, but only where the Secretary has already determined that the State's wolf management would be consistent with the protections already provided to wolves under the Act. For States without approved management plans the existing regulations are retained.

#### Previous Federal Actions

The northern Rocky Mountain wolf (*Canis lupus irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (USDI 1974). To eliminate problems with listing separate subspecies of the gray wolf and identifying relatively narrow geographic areas in which those subspecies are protected, on March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*Canis lupus*) as endangered throughout the conterminous 48 States and Mexico, except Minnesota, where the gray wolf was reclassified to threatened. In addition, critical habitat was designated in that rulemaking.

On November 22, 1994, we designated areas in Idaho, Montana, and Wyoming as nonessential experimental populations in order to initiate gray wolf reintroduction projects in central Idaho and the Greater Yellowstone area (59 FR 60252, 59 FR 60266). These experimental population designations also contain special regulations that govern the take of wolves within the geographical areas (codified at 50 CFR 17.84(i)). The rules governing these experimental populations allowed for incremental increases in the authority of States to manage the wolves under a State management plan approved by the Service. Specifically, the rules allowed States to define livestock for purposes of managing conflicts between wolves and livestock, and the rule also allowed

States to document adverse effects of wolves on ungulates for the purposes of managing conflicts in this regard.

In January 1995, fifteen young adult wolves captured in Alberta, Canada, were released in central Idaho. During January 1996, an additional twenty wolves from British Columbia were released into the central Idaho experimental population area. In March 1995, fourteen wolves from Alberta, representing three family groups were released in Yellowstone National Park. In April 1996, this procedure was repeated with seventeen wolves from British Columbia.

On January 12, 1998, we established a third nonessential experimental population area to reintroduce the Mexican gray wolf into its historical habitat in the southwestern States (63 FR 1752).

We received several petitions during the past decade requesting consideration to delist the gray wolf in all or part of the 48 conterminous States. We subsequently published findings that these petitions did not present substantial information that delisting gray wolves in all or part of the conterminous 48 States may be warranted (54 FR 16380, April 24, 1989; 55 CFR 48656, November 30, 1990; 63 FR 55839, October 19, 1998).

On July 13, 2000, we published a proposal (65 FR 43450) to revise the current listing of the gray wolf across most of the conterminous United States. On April 1, 2003, we published a final rule establishing three DPSs (Western, Eastern, and Southwestern) and reclassifying the gray wolf from endangered to threatened in the Western and Eastern DPSs except where nonessential experimental populations existed (68 FR 15804). We also established special regulations under section 4(d) of the Act for the reclassified DPSs. Also on April 1, 2003, we published two Advance Notices of Proposed Rulemaking announcing our intent to delist the gray wolf in the Eastern (68 FR 15876) and Western (68 FR 15879) DPSs at some point in the future.

### Recovery Goals

Current population figures from the Service indicate that the experimental populations within central Idaho and Yellowstone have exceeded current recovery goals (30 packs well-distributed in recovery areas). In 2002, the Service published population figures for the gray wolf, which indicate there were between 650 to 700 wolves in about 41 breeding pairs equitably distributed throughout Montana (about 120 wolves in 13 breeding packs), Idaho

(about 285 wolves in 10 breeding packs), and Greater Yellowstone (270 wolves in 18 breeding packs). 2002 was the third year that the wolf population in the northern Rocky Mountains has had thirty or more breeding pairs.

### Currently Designated Nonessential Experimental Populations of Gray Wolves

The Secretary has designated three nonessential experimental population areas for the gray wolf, and wolves have subsequently been reintroduced into these areas. These nonessential experimental population areas are the Yellowstone Nonessential Experimental Population Area, the Central Idaho Nonessential Experimental Population Area, and the Mexican Wolf Nonessential Experimental Population Area. The first two of these are intended to further the recovery of gray wolves in the northern U.S. Rocky Mountains, and the third is part of our Mexican wolf recovery program, as described in their respective recovery plans (Service 1982, 1987).

The Yellowstone Experimental Population Area consists of that portion of Idaho east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming (59 FR 60252; November 22, 1994). However, as explained below, the new regulations proposed here will not apply in Wyoming.

The Central Idaho Experimental Population Area consists of that portion of Idaho that is south of Interstate Highway 90 and west of Interstate 15; and that portion of Montana south of Interstate 90, west of Interstate 15, and south of Highway 12 west of Missoula (59 FR 60266; November 22, 1994).

A third similar nonessential experimental population area was established to reintroduce the Mexican gray wolf into its historical habitat in the southwestern States. The Mexican Gray Wolf Nonessential Experimental Population Area consists of that portion of Arizona lying south of Interstate Highway 40 and north of Interstate Highway 10; that portion of New Mexico lying south of Interstate Highway 40 and north of Interstate Highway 10 in the west and north of the Texas-New Mexico border in the east; and that part of Texas lying north of U.S. Highway 62/180 (63 FR 1752; January 12, 1998).

This proposed rule will not affect the Mexican Gray Wolf Nonessential Experimental Population, nor will it

affect the existing special regulations that apply to it.

### Current Special Regulations for the Western DPS

Two different special regulations currently apply to the Western DPS.

In 1994, the Service established special regulations found at 17.48(i) for these two experimental populations allow flexible management of wolves, including authorization for private citizens to take wolves in the act of attacking livestock on private land. These rules also provide a permit process that similarly allows the taking, under certain circumstances, of wolves in the act of attacking livestock grazing on public land. In addition, they allow opportunistic noninjurious harassment of wolves by livestock producers on private and public grazing lands, and designated government employees may perform lethal and nonlethal control efforts to remove problem wolves under specified circumstances.

As mentioned above, we promulgated a special rule under 4(d) for the Western DPS outside of the nonessential experimental population areas (the Central Idaho and Yellowstone nonessential experimental population areas) found at 17.40(n) (Western DPS 4(d) rule). The Western DPS 4(d) rule allows landowners and permittees on Federal grazing allotments to harass wolves in a noninjurious manner at any time. As discussed in the rule, this type of harassment will not affect the wolf population other than by making some individual wolves more wary of people. Wolves are adept social learners. Harassing wolves that have begun to be comfortable around people will cause those wolves to become more wary. Wolves that are wary of people and places that are frequented by people may be less likely to be involved in livestock and pet depredations. Wolves that are not wary of people are more vulnerable to being illegally killed or being hit by cars and, in rare and the most extreme circumstances, wolves can become habituated to human foods and can become a potential threat to human safety.

In some situations the Western DPS 4(d) rule also allows the injurious harassment (for example, by rubber bullets) of wolves under a permit from us. This type of harassment will permit management of situations (for example, loitering around vulnerable livestock, approaching humans, trying to attack pets) before they have escalated into a situation that calls for more drastic measures such as lethal control. To prevent abuse, this type of activity would be limited by case-by-case

evaluation and controlled by a permit. In the experimental population areas, this type of management has been used in a few situations, and no wolves have been permanently injured.

**State Management Plans**

In order to delist the Western DPS wolf population due to recovery the demographic criteria (a minimum of 30 breeding pairs of wolves [an adult male and a female wolf] that raise at least 2 pups until December 31 or the biological equivalent of that definition that are equitably distributed through Montana, Idaho, and Wyoming) must be met, and the Service must determine, based on the best scientific and commercial data available, that the species is no longer in danger of extinction and is not likely to be in danger of extinction in the foreseeable future throughout all or a significant portion of its range. The basis for the determination is a review of the status of the species in relation to five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

State management plans have been determined by the Service as the most appropriate means of maintaining a recovered wolf population and demonstrating adequacy of regulatory mechanisms (*i.e.* addressing factor D) because the primary responsibility for management of the species will rest with the States upon delisting (and subsequent removal of the protections of the ESA). Based on the demographic criteria mentioned above, each State, therefore, needs to maintain at least 10 breeding pairs, so the wolf population will not fall below 30 breeding pairs overall and so that an equitable

distribution of wolf breeding pairs is maintained among the three States. All three States submitted wolf management plans to the Service for review. The Service developed an independent review process for these three plans. Twelve recognized authorities in wolf management or research were asked their individual professional review and opinion of whether the State plans of Montana, Idaho, and Wyoming would achieve the stated objectives of each plan, and if collectively the plans will maintain, as a minimum, the Western DPS wolf population at recovery levels into the foreseeable future.

Based on our review of the State management plans, the independent reviewers' comments, and the States' responses to those comments, the Service approved the Montana and Idaho wolf management plans as they were determined to be adequate to maintain their share of the tri-state wolf population above recovery levels. Neither Montana nor Idaho is required to take any additional action in order for the Service to proceed with a delisting proposal.

Wyoming's wolf management plan, however, was not approved by the Service. Consequently, the proposed regulatory changes, which define the expanded authorities, would not affect the portion of the Yellowstone nonessential experimental population area in Wyoming. We intend to continue working with the State of Wyoming as they develop a State wolf management plan that we can approve; once we have approved wolf management plans for all three States, and barring the identification of any new threats to the species, we expect to propose rulemaking to remove the western DPS of the gray wolf from the List of Endangered and Threatened Vertebrates (for additional discussion, see our ANPR at 68 FR 15879).

**Idaho**

In preparation for delisting, the Idaho Legislature chartered the Legislative

Wolf Oversight Committee to prepare an Idaho post-delisting Wolf Management Plan to facilitate the transfer of management authority to the State following delisting. In March 2002 the Legislature adopted the Idaho Wolf Conservation and Management Plan.

The Idaho Department of Fish and Game (IDFG) is charged by statute with the management of Idaho's wildlife (Idaho Code 36-103(a)). Tribes in Idaho, however, manage wildlife with authorities that are similar to, but separate from, the State of Idaho. In managing for wolves, IDFG will consult with Tribes. The Idaho Wolf Conservation and Management Plan is summarized below.

**Wolf Classification in Idaho**

In order to protect wolf populations by enforcing regulations and issuing citations for illegal take and by limiting and regulating legal take, wolves will be classified as either a big game animal, furbearer, or special classification predator that provides for controlled take after delisting, at the discretion of the Idaho Fish and Game Commission (IC 36-201). This classification will enable IDFG to provide protection for wolves as well as consider the impacts of wolves on other big game species, those sectors of the economy dependent upon sport hunting, livestock, domestic animals and humans.

**Idaho Wolf Management Goals**

The goal of Idaho's conservation and management plan is to ensure the long-term survival of wolves in Idaho while minimizing wolf-human conflicts that result when wolves and people live in the same vicinity. Management for wolves means ensuring adequate number for long-term persistence of the species as well as ensuring that landowners, land managers, other citizens, and their property are protected. IDFG will manage wolves within the State according to the following table.

Less than 15 packs	More than 15 packs
Management	Management
<p>Control</p> <p>Depredation control becomes increasingly stringent until at &lt;10 packs it reverts to the control plan specified in the final rule (50 CFR 17.40(n)). In the unlikely event the number of packs in Idaho falls below 10, depredations will be addressed with nonlethal control unless unusual circumstances absolutely necessitate the use of lethal control to end the depredation problem.</p>	<p>Control</p> <p>Depredation control is treated like all other large mammalian predators.</p>
<p>Monitoring</p> <p>Monitoring becomes increasingly intensive to the point that each pack contains some radio-collared individuals and reproduction and survival in each pack is monitored on a regular basis.</p>	<p>Monitoring</p> <p>Monitoring is done primarily by indicators such as wolf depredation complaints, autumn scent station surveys, telemetry, winter tracking surveys, and other observations of field personnel.</p>

Less than 15 packs	More than 15 packs
Management	Management
Listing Under ESA Listing remains a possibility for wolves if they are likely to become endangered as determined by Section 4 of the ESA (16 U.S.C. 1533).	

Moreover, the Idaho plan provides:

(1) The wolf populations will be managed at recovery levels that will ensure viable, self-sustaining populations until it can be established that wolves in increasing numbers will not adversely affect big game populations, the economic viability of IDFG, outfitters and guides, and others who depend on a viable population of big game animals. If the population falls below 15 packs, institute remedial management measures.

(2) Assurances that resident wolf populations are able to interchange with wolves in adjacent States and provinces, thereby making Idaho's wolves part of a larger metapopulation. It is expected that adjacent States and provinces will also encourage this interchange.

(3) Management of wolves as part of the native resident wildlife resource. This species will be managed similar to other large mammalian carnivores resident in Idaho.

(4) Minimize wolf-human conflicts by coordinating with USDA Wildlife Services to achieve prompt response to notifications of wolf depredation and prompt resolution of conflicts.

(5) Establish a strong public education program that emphasizes wolf biology, management, and conservation and presents a balanced view of the societal impacts and costs of wolf reintroduction. Outreach should address all issues concerning conservation and management and present a balanced view of the impacts of wolves on big game species, those sectors of the economy dependent upon sport hunting, livestock, domestic animals, and humans. It is expected that Idaho Fish & Game will solicit cooperation and advice from all vested interests in developing educational materials.

#### **Wolf Population Objectives**

Wolf management programs will influence the size and distribution of the population, although it will fluctuate with the availability and vulnerability of native prey. Where wolves are causing depredations, their distribution and numbers will have to be altered.

When circumstances cause declines in the natural prey that are demonstrated as being attributable to wolf predation, management may be

needed to temporarily reduce populations. In most instances, wolves can be managed similarly to how other large native mammalian predators are traditionally managed. However, sport hunting has not proven effective in the past to effectively manage wolf populations. After delisting, IDFG is authorized to evaluate and use sport hunting or any other means necessary to maintain wolf populations at recovery levels that will ensure a viable, self-sustaining population until such time as all impacts are known.

In the unlikely event the population falls below 10 packs, depredations will be addressed with nonlethal control unless unusual circumstances absolutely necessitate the use of lethal control to end the depredation problem. Except for the lethal control measures, wolf management will revert to the same provisions that were in effect to recover the wolf population prior to delisting.

#### **Incidental Take**

Human-related accidental deaths of wolves (capture myopathy, automobile accidents, etc.) are expected to occur occasionally, and inadvertent take of wolves by hunters and trappers during the course of otherwise legal actions is not expected to adversely affect wolf population objectives. In an effort to minimize such accidental take of wolves, IDFG will include a section on wolf identification, and a brief history of the reintroduction and conflict created thereby, as part of all required hunter education classes and provide similar information to all trapping license buyers.

Hunters are responsible for accurately identifying their target before pulling the trigger. Cases of incidental take due to "mistaken identity" of the intended quarry will be subject to the same penalties applicable to other illegally/accidentally taken big game species. Incidents of illegal take deemed deliberate shall be punishable under the rules of illegal take of wildlife (Idaho Code 36-1402 and 36-1404). If convicted of a flagrant violation involving the killing, illegal possession, or illegal waste of a trophy big game animal as defined in Idaho Code 36-202(h), restitution must also be paid to the State for each wolf so killed,

possessed, or wasted at the cost specified in Idaho Code 36-1404.

Although wolves may occasionally be captured inadvertently in traps legally set for other furbearer species, relatively few people participate in trapping in Idaho (608 Idaho trapping licenses were sold in 2000). However, in the event that the frequency of nontarget capture is deemed unacceptable (exceeding the lethal capture of >4 wolves per year), IDFG may consider implementing trap-size restrictions on land sets and set a minimum 36-hour check requirement for trappers using traps of that maximum size on land-based sets in the core area.

IDFG may further consider implementing restrictions on the use of snares in occupied wolf areas to require all neck snares set in these areas to be equipped with break-away snare locks designed to hold coyotes or similar sized furbearers (e.g., bobcat) but release large nontarget species such as wolves or ungulates accidentally captured by a leg. After adoption by the Idaho Fish and Game Commission, specific rules and restrictions will be published in the furbearer trapping regulations section of the Upland Game Seasons brochure.

Mandatory trapper education classes would be considered for all new trappers, including first-time nonresident trapping applicants, and education could be provided to all trapping license buyers on protocol for releasing an inadvertently captured wolf and/or contacting IDFG for assistance. Any incidental capture must be reported to IDFG within 5 days of the incident. The complete carcass of any wolf lethally injured as a result of a nontarget capture must be salvaged and turned over to IDFG. The hide and skull will remain the property of IDFG.

#### **Wolf Management**

Wolves, when delisted, will become a component of the native resident wildlife in Idaho. The designation of the wolf as a big game species, furbearer, or special classification of predator that provides for controlled take provides legal authorization for Idaho Department of Fish and Game to manage the species. Management includes inventory; predator-prey research; harvest monitoring; cooperation with agencies, individuals, tribes, other

States, and Canada; control to reduce depredations; and dissemination to the public of current, accurate information. In Idaho, hunting and trapping may be considered in the future when populations are at levels that justify public taking. If this is proposed by IDFG, there will be opportunity for full public comment and decisions will be based on sound biological data. Hunting of wolves may be authorized when necessary to meet big game harvest objectives and eliminate conflicts, while at the same time maintaining wolves at recovery levels that will ensure viable, self-sustaining populations.

If management zones, similar to game management units, become helpful to IDFG as experience with wolf management dictates, then such zones may be established. Distribution patterns of the wolf population range from monitoring the movements of individually marked individuals representing study packs to see how their home ranges change, to documentation of the presence of packs using observations of field personnel and the public. Scent station and winter track surveys will also provide information on wolf distribution. The distributions of study packs that persist in a given area are expected to become predictable relative to prey movements and other factors as experience in monitoring grows. Continual monitoring will be needed to determine the pattern, but when it can be predicted with some degree of reliability, changes in that pattern will need to be explained and will provide additional insight into their management.

The major mortality factor accruing to wolves throughout their range is humans (Fuller 1989). Thus, the human dimension is ultimately the most important component in management of this species. Rigorous enforcement of laws and regulations in order to minimize illegal take, and to reduce adverse public perception of management will be needed. When legal harvest is planned, harvest monitoring will be based on a requirement to report the location and sex of animals taken, similar to requirements for mountain lions and bears.

#### **Wolf Monitoring and Prey Base Monitoring**

Monitoring wolf populations is the cornerstone of a management program. Wolf numbers, distribution, and breeding success will be estimated and compared with management goals. The monitoring program should focus on selected packs from representative areas across the State as support dictates. Annual, long term monitoring of

selected packs allows for assessment of changes, an understanding of factors affecting pack size, and eventually, prediction of pack size relative to major influencing factors. Monitoring of prey populations, especially the deer species and elk, will need to be continued. Similar to the predator, annual census of selected, important prey populations should be conducted by IDFG and compared with data collected prior to wolf reintroduction.

In the future, wolf management will have to evaluate the effects of predation on native prey, specifically other big game (National Research Council 1997). When adverse weather patterns representing combinations of drought and severe winter depress native ungulates, predation in combination with harvest may inhibit big game population recovery. Annual census of selected, important prey populations within the range of study packs should be conducted. It is extremely important that annual census of these populations is conducted in order to detect trends and eventually to aid in developing predictions of population size and trend. Factors that affect prey numbers, including weather, habitat conditions, predation, and hunter harvest, need to be fully assessed for these selected populations.

Some study packs will inevitably range into neighboring States and British Columbia. Coordination in their monitoring with those jurisdictions, including the wildlife agencies, associated tribes and land management agencies will be needed. Eventually a wolf population size range will be reached that appears to be compatible with other uses of the prey base and is at levels that are tolerable as far as livestock depredations are concerned. This level will be ascertained with the population indices that may be used to estimate minimum numbers present, and will consider the distribution of wolves as well. Depredation management considerations will be involved in ascertaining the distribution and numbers of wolves within the State.

#### **Idaho Indian Tribes**

Tribes with reservations or reserved rights in Idaho manage fish and wildlife species with authorities that are similar to, but separate from, the State of Idaho. The Nez Perce Tribe has done a commendable job, in conjunction with the Service, of managing wolf recovery efforts in Idaho since 1995. During wolf recovery, under contract with the Service, the Nez Perce Tribe has, in a very professional and successful way, provided such services as wolf monitoring, communications with

affected and interested parties, and research. Upon delisting, IDFG shall clearly delineate roles and responsibilities of the several participating agencies and shall do so in consultation with the Nez Perce Tribe.

#### **Coordination With Other Entities**

Natural resource land management agencies such as the USDA Forest Service (USFS) and the Bureau of Land Management (BLM) are responsible for managing lands for various goods and services, including providing the habitat necessary to maintain fish and wildlife species. Close coordination is necessary between IDFG and the land management agencies to meet the objectives of each agency. Through a Memorandum of Understanding with the Idaho State Animal Damage Control Board, USDA APHIS Wildlife Services is responsible for dealing with a wide variety of wildlife damage problems including predation on livestock. After delisting, including during the first five years, the Wildlife Services Agency of the U.S. Department of Agriculture, in cooperation with the Idaho Department of Fish and Game, will be responsible for depredation management necessary for the protection of private property.

Upon delisting, IDFG will coordinate monitoring of wolves and their impact on other wildlife populations. IDFG will coordinate among the federal and State land management agencies, USDA Wildlife Services, the Governor's Office of Species Conservation, the FWS, and the Nez Perce Tribe in their respective roles in wolf monitoring during the 5-year post-delisting monitoring period as required by the ESA. IDFG will coordinate monitoring of wolves that border or range into neighboring States with wildlife staffs of those States.

This plan must be flexible enough to be compatible with the dynamics of society and wildlife management. The plan must satisfy the needs of the State of Idaho in its efforts to minimize the impact of wolves on the Idaho outfitting industry, Idaho sportsmen, a diverse public and all others affected by wolf introduction. IDFG will update this plan periodically and submit any changes to the Idaho Legislature as if it were a new plan submitted for approval, amendment or rejection under Section 36-2405, Idaho Code.

#### **Montana**

To provide the assurance to the Service that the State of Montana has adequate regulatory mechanisms in place to manage the wolf after the protections of the ESA are removed, the Governor of Montana appointed a 12-member Wolf Management Advisory

Council to provide recommendations to the Governor on an approach for wolf management once the wolf is delisted. In response to the Council's recommendations, Montana Department of Fish, Wildlife & Parks (FWP) undertook the development of the Montana Gray Wolf Conservation and Management Plan EIS, under the Montana Environmental Policy Act, to consider alternative approaches to conserve and manage a recovered gray wolf population in Montana. In September 2003, FWP adopted a conservation and management plan for managing wolves in Montana.

Under Montana statute, FWP is the agency charged with conservation and management of resident wildlife. FWP recognizes the gray wolf as a native species and is committed to recovery of the species within Montana. The purpose of the Montana Gray Wolf Conservation and Management Plan is to manage wolves consistent with Montana's own State laws, policies, rules and regulations, except where management authority is otherwise explicitly reserved to other jurisdictions, such as Montana's Indian tribes. Ultimately, the management and conservation plan will be implemented through combined decisions and actions of FWP, the FWP Commission, the Montana Department of Livestock (MDOL), USDA Wildlife Services (WS), local law enforcement or county authorities, and other cooperators.

The gray wolf remains listed as endangered under the Montana Nongame and Endangered Species Conservation Act of 1973 (87-5-131 MCA). Upon federal delisting, provisions of Montana's SB163 take effect and wolves would automatically be reclassified under State law from "endangered" to a "species in need of management." This statutory classification offers full legal protection under State law. Implementation of SB 163 requires FWP to develop and adopt final administrative rules and regulations under the "species in need of management" designation. In addition SB 163 deletes gray wolf from the list of species designated as "predatory in nature" which are systematically controlled by MDOL. State laws and administrative rules become the regulatory and legal mechanisms guiding management. FWP and the FWP Commission will establish the regulatory framework to manage the species. FWP is responsible for implementing monitoring, research, law enforcement, public outreach, and other functions.

In general Montana's Gray Wolf Conservation and Management Plan provides:

#### *Wolf Management and Population Objectives*

FWP would recognize the gray wolf as a native species and would integrate wolves as a valuable part of Montana's wildlife heritage. Wolves will be integrated and sustained in suitable habitats within complex management settings. The wolf program will be based on principles of adaptive management. Management strategies and conflict resolution tools will be more conservative as the number of breeding pairs according to the federal recovery definition decreases, approaching the legal minimum. In contrast, management strategies become more liberal as the number of breeding pairs increases.

Ultimately, the status of the wolf population itself identifies the appropriate management strategies. Fifteen breeding pairs will be used as the signal to change management strategies. An adaptive approach will help FWP implement its wolf program over the wide range of social acceptance values. Sensitivity towards and prompt resolution of conflict where and when it develops is an important condition of not administratively capping wolf numbers or defining distribution. By applying the federal recovery definition of breeding pair, FWP would incorporate an added measure of security and margin for error in the face of unforeseen future events, as well as greater flexibility for management decisions on a day-to-day basis. Successful reproduction would be documented as well. Because not every pack (or social group) of wolves would meet the federal recovery definition as a breeding pair, more groups of wolves would also exist on the landscape in assurance that Montana's minimum contribution towards the tri-state total is achieved.

As the Montana wolf population becomes more established, through the monitoring program, FWP will evaluate a more general definition of a social group (four or more wolves traveling in winter) as a potential proxy for a breeding pair. Wolf distribution in Montana, just as for all wildlife, will ultimately be defined by the interaction of the species ecological requirements and public acceptance, not through artificial delineations. Wolves will be encouraged on large contiguous blocks of public land, managed primarily as back country areas or National Parks where there is the least potential for conflict, particularly with livestock.

Wolf packs in areas of interspersed public and private lands will be managed like other free-ranging wildlife in Montana and within the constraints of the biological and social characteristics, the physical attributes of the environment, land ownership, and land uses. Some agency discretion and flexibility will be exercised to accommodate the unique attributes of each pack, its history, the site-specific characteristics of its home range, landowner preferences, or other factors that cannot be reasonably predicted at this time.

Management flexibility will be crucial to address all of the public interests that surround wolves. Wolf population management will include the full range of tools from non-lethal to lethal and will incorporate public outreach, conservation education, law enforcement, and landowner relations. An effective management program should match the management strategies to the environments or setting in which each wolf pack occurs, recognizing that wolves interact with and respond to the environment in which they live, too.

#### *Wolf Monitoring*

FWP has the primary responsibility to monitor the wolf population, although collaborative efforts with other agencies and universities will be important. FWP will estimate wolf numbers, pack distribution, as well as document reproduction and tabulate mortality. FWP will also tabulate the number of breeding pairs meeting the federal recovery definition.

Concurrently, FWP would also tabulate packs according to a more general definition of social group, meaning four or more wolves traveling in winter. While there is no guarantee that a group of four wolves traveling in winter would include young of the year, it is indicative of a socially cohesive group holding a territory and capable of reproduction. Four or more wolves traveling together will likely contain a male and female as an alpha pair and that has or will produce young in the spring. Determining pack counts in winter would follow the peak of human-caused mortality on adult wolves associated with summer/fall livestock grazing seasons, potential illegal mortality during the fall big game hunting seasons, and the harvest expected through regulated hunting and trapping seasons.

The monitoring program also will help confirm reproduction. FWP will use the monitoring program to verify that the more general definition is adequate to document that the population is reproducing and secure.



Once FWP becomes more confident that the more general definition is adequate, it will be applied within the adaptive management framework and FWP would not monitor packs using the more rigorous federal recovery definition.

Maintaining the federal recovery definition as the monitoring metric under adaptive management over the long term may be too stringent for a recovered population, especially in light of the difficulty in distinguishing pups from similar sized adults in December and the expense of radio telemetry. FWS data indicate that there is a significant correlation between the number of packs meeting the federal recovery definition as a breeding pair and the number of social groups according to the more general definition of four or more wolves traveling in winter (Maier *et al.* in prep), lending greater confidence that the more general definition will prove adequate for the purposes of the monitoring program as well as the basis for decision-making within an adaptive management framework. When the wolf population no longer fits the definition of a species in need of management, or when wolf numbers have increased and population regulation is needed, the FWP Commission may reclassify the wolf as a big game animal or a furbearer.

#### *Regulated Harvest*

Regulated public harvest of wolves by hunting and trapping during designated seasons will help FWP manage wolf numbers, fine tune distribution, and would take place within a comprehensive management program. Regulated wolf harvest would take place within the larger context of multi-species management programs, would be biologically sustainable, and would not compromise the investments made to recover the gray wolf. Within the context of a comprehensive program, regulated harvest should advance overall conservation goals by building social tolerance, interest in, and value for the species among those who would otherwise view wolf recovery as detrimental to their ungulate hunting experiences. Harvest management would proceed adaptively, but all hunting and trapping is precluded if there are fewer than 15 breeding pairs in Montana. The Montana Legislature would establish the license, fees, and penalties for illegal activities. The FWP Commission could then establish season structure and regulations to implement a public harvest program for wolves as it does for other hunting, trapping or fishing seasons. Initiating a public harvest program is a separate administrative process from this EIS.

The FWP Commission follows a process that requires public notification of the proposal, public meetings, and a comment period of at least 30 days. The FWP Commission would initiate this process at a later date when a harvest program becomes biologically sustainable.

The Montana Legislature would establish license fees and penalties. FWP would seek State legislation to make the unlawful taking of a gray wolf a misdemeanor under MCA 87-1-102. This statute makes it a misdemeanor to purposely, knowingly, or negligently violate State laws pertaining to taking, killing, possessing, or transporting certain species of wildlife. Including the gray wolf under this statute would be consistent with the inclusion of other legally classified wildlife species, such as deer, elk, moose, mountain lion, or black bear. FWP would also seek legislation to include the gray wolf under the restitution sections of MCA 87-1-111 that require a person convicted of illegally taking, killing, possessing certain wildlife species to reimburse the State for each animal or fish. Restitution values could also be defined in MCA 87-1-115 for illegally killing or possessing trophy wildlife.

#### *Wolf and Prey Base Integration*

FWP would seek to maintain the public's opportunity to hunt a wide variety of species under a variety of circumstances, and to do so in a sustainable, responsible manner. Wolf presence within the year-long range of a specific ungulate herd adds a new factor that FWP biologists must consider among all environmental and human-related factors. FWP will integrate management of predators and prey in an ecological, proactive fashion to prevent wide fluctuations in both predator and prey populations. To that end, FWP may increase or decrease hunter opportunity for either predators or prey species, depending on the circumstances. If reliable data indicate that a local prey population is significantly impacted by wolf predation in conjunction with other environmental factors, FWP would consider reducing wolf pack size. Wolf management actions would be paired with other corrective management actions to reduce ungulate mortality or enhance recruitment. Concurrent management efforts for wolves and ungulates would continue until the prey population rebounded, recognizing that by the time prey populations begin to respond they may be influenced by a new set of environmental factors.

Prey species are managed according to the policy and direction established by

the programmatic review of the wildlife program (FWP 1999) and by species plans. Even though plans are written for individual species, the underlying foundation of those plans is based on an ecosystem perspective and recognizes the inherent variation in wildlife populations in response to the environment and human activities, including hunting. These plans typically describe a management philosophy that protects the long-term sustainability of the resource, with management objectives based on biological and social considerations. Furthermore, populations will be managed to keep them at or near FWP objectives—rather than significantly above or below objectives. As recommended by the council, the gray wolf will be incorporated into ungulate management and future planning efforts. Livestock producers and other landowners provide many benefits to the long-term conservation of gray wolves, not the least of which is the maintenance of open space and habitats that support a wide variety of wildlife, including deer and elk. At the same time, they can suffer financial losses due to wolves. These losses tend to be sheep and young cattle, although occasionally llamas, guarding dogs, or other livestock are lost. Some losses can be documented reliably but others cannot.

#### *Wolf Conflicts*

Addressing wolf-livestock conflicts will entail two separate, but parallel elements. One element will be management activities by WS and FWP to minimize the potential for wolf-livestock conflicts and to resolve the conflicts where and when they occur. This would be funded, administered, and implemented by the cooperating agencies. Livestock producers should report any suspected wolf depredations (injuries or death) or the disruption of livestock or guarding animals to WS directly. If the investigating WS agent determines that a wolf or wolves were responsible, management response will be guided by the specific recommendations of the investigator, the provisions of this plan and by the multi-agency MOU. WS will take an incremental approach to address wolf depredations, guided by wolf numbers, depredation history, and the location of the incident.

When wolf numbers are low and incidents take place on remote public lands, WS would use more conservative management tools. WS could apply progressively more liberal methods as wolf numbers increase and for incidents on private lands. Conflict history of the



pack, time of year, attributes of the pack (e.g., size or reproductive status), or the physical setting will all be considered before a management response is selected. FWP will determine the disposition of wolves involved in livestock depredations. FWP may also approve lethal removal of the offending animal by livestock owners or their agents by issuing a special kill permit. A special kill permit is required for lethal action against any legally classified wildlife in Montana, outside the defense of life/property provision or FWP Commission approved regulations. FWP will not issue special kill permits to livestock producers to remove wolves on public lands when wolf numbers are low. If Montana has at least 15 packs, FWP may issue a special kill permit to livestock producers that would be valid for public and private lands. FWP will be more liberal in the number of special kill permits granted as wolf numbers increase and for depredations in mixed land ownership patterns.

In a proactive manner, WS and FWP will also work cooperatively with livestock producers and non-governmental organizations with an increased emphasis on proactive efforts to reduce the risk of wolf-livestock conflicts developing in the first place. Landowners could contact a management specialist (FWP or WS) for help with assessing risk from wolves or other predators and identifying ways to minimize those risks while still acknowledging that the risk of livestock depredation by wolves will never be zero. Incentives may even be provided to participating producers.

Beyond technical assistance from WS or FWP and other collaborative efforts, livestock producers (or their agents) may non-lethally harass wolves when they are close to livestock on public or private lands. Private citizens may also non-lethally harass wolves that come close to homes, domestic pets, or people. Upon delisting, private citizens could kill a wolf if it is threatening human life or domestic dogs. Livestock producers or their agents could also kill a wolf if it is attacking, killing, or threatening to kill livestock. This is consistent with Montana statutes that permit private citizens to defend life or property from imminent danger caused by wildlife. The definition of "livestock" is clarified to mean cattle, sheep, horses, mules, pigs, goats, emu, ostrich, poultry, and herding or guarding animals (llama, donkeys, and certain special-use breeds of dogs commonly used for guarding or herding of livestock) for the purposes of addressing wolf-livestock conflicts.

Dogs used for other purposes such as hunting or as pets are not covered under this definition. FWP also clarifies the use of non-lethal harassment to refer to situations in which a wolf is discovered testing or chasing livestock and the owner attempts to scare or discourage the wolf in a non-injurious manner and without prior attempts to search out, track, attract or wait for the wolf. A special permit would be required to actually injure or kill the wolf or if a person purposefully attracted, tracked, or searched for the wolf. The second element addresses the economic losses of individual livestock producers through a compensation program when livestock are injured or killed by wolves.

#### *Montana Indian Tribes*

Montana's Indian Tribes have jurisdictional authority for wildlife conservation and management programs within reservations boundaries. FWP coordinates with tribal authorities on issues of mutual concern. Tribal coordination already takes place for other wildlife species through annual interagency meetings, working agreements and informal contacts at the field level.

#### *Coordination With Other Entities*

An MOU will be signed by FWP, MDOL, and WS to address wolf-livestock conflicts. The ongoing interagency, tribal, and interstate coordination activities are important cornerstones of program implementation and administration. The U.S. Forest Service (USFS), the National Park Service (NPS), the Bureau of Land Management (BLM), the Service, or other federal jurisdictions administer federally owned lands. These agencies manage these lands according to their enabling legislation and relevant federal laws, rules and regulations. FWP coordinates with federal agencies on wildlife and habitat issues of mutual concern, but has no jurisdiction over how those lands are managed.

FWP would coordinate with other agencies and responsible parties to resolve any concerns about how cross boundary packs would be managed or how conflicts would be resolved to make sure all entities goals are being met or addressed.

Proposed Special Regulations Under 17.84—Nonessential Experimental Population Established Under Section 10(j) of the ESA (Vertebrates)

The new special regulations proposed in this rule are intended to expand authorities under section 10(j) for States

with approved wolf management plans in the experimental population areas. The special regulations are intended to provide that wolves near livestock could be harassed in a noninjurious manner at any time on private land or on public land by the livestock permittee. Intentional or potentially injurious harassment could occur by permit on private land and public land. Wolves attacking not only livestock, but also dogs, on private land could be taken without a permit if they are in the act of attacking such animals; on public land a permit will be required for such take. Permits could be issued by the Service to take wolves on private land if they are a risk to livestock or dogs.

The new special regulations proposed in this rule will allow for take of wolves determined to be causing unacceptable impacts to wild ungulate populations. In addition, the new special regulations define livestock to include herding and guard animals. Finally, the new special regulations do not apply in the portion of the Yellowstone Management Area within the State of Wyoming.

The special regulations also provide for States with wolf management plans approved by the Service to implement a transition from the provisions of this rule to the those provisions of the State wolf management plan consistent with federal regulations for nonessential experimental wolves within the boundaries of the State with the cooperation of the Service. Specifically we intend to provide any State in which the gray wolf is resident and which has a wolf management plan approved by the Service with the discretion to petition the Service to assume management responsibility of nonessential experimental gray wolves within the boundaries of that State.

#### **Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN AT61" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Helena Office at telephone number 406-449-5225.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at our Helena office (*see ADDRESSES*).

In making any final decision on this proposal, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

#### Public Hearings

In anticipation of public interest in this issue, we will schedule public hearings in Boise, ID, and Helena, MT. Anyone wishing to make oral comments for the record at a public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. We will announce the date, time, and location of the public hearings through a notice in the **Federal Register** and in local media.

#### Required Determinations

##### *Regulatory Planning and Review*

This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(a) This proposed rule would not have an annual economic effect of \$100 million, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This regulation would result in only minor positive economic effects for a small percentage of livestock producers.

(b) This regulation will not create inconsistencies with other agencies' actions. This regulation reflects continuing success in recovering the gray wolf through long-standing cooperative and complementary programs by a number of Federal, State, and tribal agencies.

(c) This regulation will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) This regulation does not raise any novel legal or policy issues.

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

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

The majority of wolves in the West are currently protected under nonessential experimental population designations that cover Wyoming, most of Idaho, and southwestern Montana and that treat wolves as a threatened species. Special regulations exist for these experimental populations that currently allow government employees and designated agents, as well as livestock producers, to take problem wolves. An additional, naturally occurring population of wolves is found in northwestern Montana. This proposed rule does not change the nonessential experimental designation, but does propose additional special regulations so that States with wolf management plans approved by the

Service can petition the Service to manage nonessential experimental wolves under those approved State management plans. These proposed changes would only have effect in States that have an approved State management plan for gray wolves. Within the Western DPS of the gray wolf, only the States of Idaho and Montana have approved plans. Therefore, the proposed regulation is expected to result in a small economic gain to some livestock producers in States with approved wolf management plans (*i.e.*, Idaho and Montana) within the boundary of the nonessential experimental populations of gray wolves in the Western DPS (Central Idaho nonessential experimental population area and Yellowstone nonessential experimental population area); it will have no economic impact on livestock producers in Wyoming as their plan has not been approved.

We propose special regulations that would adopt certain provisions of the 2003 special rule (under section 4(d)), which covered the area outside of the two nonessential experimental population areas mentioned above, providing for more consistent management both inside and outside of the nonessential experimental population areas, unless identified otherwise. Additionally new regulations were added that expand or clarify current prohibitions. Secondly, we propose to identify a process for transferring authorities within the experimental population boundaries to States with approved plans. Finally, the new special regulations identify the allowable forms of take in the portion of the Yellowstone Management Area within the State of Wyoming.

Expanded or clarified prohibitions proposed in this rule include the following. Intentional or potentially injurious harassment could occur by permit on private land and public land. Wolves attacking not only livestock, but also dogs, on private land could be taken without a permit if they are in the act of attacking such animals; on public land a permit will be required for such take. Permits could be issued by the Service to take wolves on private land if they are a risk to livestock or dogs.

The new special regulations proposed in this rule clarify take of wolves determined to be causing unacceptable impacts to wild ungulate populations. In addition, the new special regulations define livestock to include herding and guard animals.

The new special regulations proposed in this rule provide for States with wolf management plans approved by and in cooperation with the Service to

implement a transition from the provisions of this rule to the provisions of the State wolf management plan for wolves that are consistent with federal regulations within the boundaries of the nonessential experimental population areas. States may, at their discretion, administer this transition through new or existing cooperative agreements or programs with the Service.

In anticipation of delisting the Western DPS of the gray wolf, we have been working very closely with States to insure that their plans provide the protection and flexibility necessary to manage wolves at or above recovery levels. Approved plans are those plans that have passed peer review scrutiny and Service review aimed at insuring that these recovery levels are maintained. It is appropriate to have States which have met this approval standard begin managing wolves according to their approved plans for several reasons. The States already assume an important role in the management of this species, the goals for recovery have been exceeded, and a gradual transfer of responsibilities while the wolves are protected under the ESA will provide an opportunity for both the State wildlife agencies, federal agencies (FWS, USDA), and Tribes an adjustment period. The adjustment period will allow time to work out any unforeseen issues that may arise.

The reduction of the restrictions on taking problem wolves proposed in this rule will make their control easier and more effective, thus reducing the economic losses that result from wolf depredation on livestock and guard animals and dogs. Furthermore, a private program compensates livestock producers if they suffer confirmed livestock losses by wolves. Since 1996, average compensation for livestock losses has been slightly over \$10,000 in each recovery area per year. The potential effect on livestock producers in western States is small, but more flexible wolf management will be entirely beneficial to their operation.

#### *Small Business Regulatory Enforcement Fairness Act*

This regulation will not be a major rule under 5 U.S.C. 801 *et seq.*, the Small Business Regulatory Enforcement Fairness Act.

(a) This regulation will not produce an annual economic effect of \$100 million. The majority of livestock producers within the range of the wolf are small family-owned dairies or ranches and the total number of livestock producers that may be affected by wolves is small. The finalized take regulations will further reduce the effect

that wolves will have on individual livestock producers by eliminating permit requirements. Compensation programs are also in place to offset losses to individual livestock producers. Thus, even if livestock producers affected are small businesses, their combined economic effects will be minimal and the effects are a benefit to small business.

(b) This regulation will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) This regulation will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

The States within the Western DPS for which wolf management plans need approval in order to proceed with delisting of the species are Montana, Idaho, and Wyoming. The proposed regulations define a process for voluntary and cooperative transfer of management responsibilities back to the States. Therefore, in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(a) The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. As stated above, this regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

(b) This regulation will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This regulation will not impose any additional wolf management or protection requirements on the States or other entities.

#### *Takings (E.O. 12630)*

In accordance with Executive Order 12630, this regulation will not have significant implications concerning taking of private property by the Federal Government. This regulation will reduce regulatory restrictions on private lands and, as stated above, will result in minor positive economic effects for a small percentage of livestock producers.

#### *Federalism (E.O. 13132)*

In accordance with Executive Order 13132, this regulation will not have

significant Federalism effects. This regulation will not have a substantial direct effect on the States, on the relationship between the States and the Federal Government, or on the distribution of power and responsibilities among the various levels of government.

#### *Civil Justice Reform (E.O. 12988)*

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

#### *Paperwork Reduction Act*

This regulation does not contain any new collections of information other than those permit application forms already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094.

#### *National Environmental Policy Act*

In 1994, the Service issued an Environmental Impact Statement (EIS) (Service 1994) that addressed the impacts of introducing gray wolves to Yellowstone National Park and central Idaho and the nonessential experimental population rule for these reintroductions. The 1994 EIS addressed cooperative agreements whereby the States of Wyoming, Montana, and Idaho could assume the lead for implementing wolf recovery and anticipated that the States and tribes would be the primary agencies implementing the experimental population rule outside National Parks and National Wildlife Refuges. We intend to evaluate whether any revisions to the EIS are required prior to finalizing this proposed regulation.

#### *Government-to-Government Relationship with Tribes (E.O. 13175)*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we will closely coordinate this proposed rule with the affected tribes within the Western DPS. We intend to fully consider all of their comments on the proposed special regulations submitted during the public comment period.

#### *Energy Supply, Distribution or Use (E.O. 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare

Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: Are the requirements in the document clearly stated? Does the proposed rule contain technical language or jargon that interferes with the clarity? Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? And is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### References Cited

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

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

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

#### Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter I, title 50 of the Code of Federal Regulations as set forth below:

#### PART 17—[AMENDED]

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

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

2. Section 17.84 is amended as follows:

a. Redesignate paragraphs (j) through (m) as paragraphs (k) through (n), respectively; and

b. Add a new paragraph (j) to read as set forth below:

#### § 17.84 Special rules—vertebrates

\* \* \* \* \*

(j) Gray wolf (*Canis lupus*). (1) The gray wolves (wolf) identified in paragraph (j)(11) of this section are nonessential experimental. These wolves will be managed in accordance with the respective provisions of this section in the boundaries of the nonessential experimental population area within any State that has a wolf management plan approved by the Service, as further provided in this paragraph (§ 17.84(j)).

(2) The Service finds that reintroduction of nonessential experimental gray wolves, as defined in this section, will further the conservation of the species.

(3) Definitions of terms used in paragraph (j) of this section follow:

**Active den site.** A den or a specific aboveground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

**Breeding pair.** An adult male and an adult female wolf that, during the previous breeding season, have produced at least two pups that survived until December 31 of the year of their birth.

**Designated agent.** Includes Federal agencies as directed by the Secretary, and States or Tribes with a management plan approved by the Secretary, cooperatively managing under the provisions of this section.

**Domestic animals.** Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

**In the act.** The actual biting, wounding, grasping, molesting, harassing or killing or reasonable belief that such biting, wounding, grasping, molesting, harassing or killing is imminent.

**Livestock.** Cattle, sheep, horses, mules, goats and herding or guard animals (llamas, donkeys, and certain special-use breeds of dogs commonly used for guarding or herding livestock) or as otherwise defined in any State or tribal wolf management plans as approved by the Service. This excludes dogs that are not being used for livestock guarding or herding.

**Noninjurious.** Does not cause either temporary or permanent physical damage or death.

**Opportunistic harassment.** Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

**Problem wolves.** Wolves that attack livestock, or wolves that once in a

calendar year attack domestic animals other than livestock.

**Public land.** Federal land and any other public land designated in State and tribal wolf management plans as approved by the Service.

**Remove.** Place in captivity or kill or release in another location.

**Unacceptable impact.** Any decline in an ungulate population so that population is not meeting established State population management goals, with recruitment that does not allow the population to recover.

**Wounded.** Exhibiting torn flesh and bleeding or other evidence of physical damage caused by a wolf bite.

(4) **Allowable forms of take of gray wolves.** The following activities, only in the specific circumstances described under this section, are allowed: opportunistic harassment; intentional harassment; taking on private land; taking on public land; taking in response to impacts on wild ungulates; taking in defense of human life; taking to protect human safety; taking by government agents to remove problem wolves; incidental take; taking under permits; and taking per authorizations for agency employees. Other than as expressly provided in this rule, all other take activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (j) of this section. Any taking of wolves must be reported as outlined in paragraph (j)(7) of this section.

(i) **Opportunistic harassment.** Landowners on their own land and livestock producers or permittees who are legally using public land under valid livestock grazing allotments may conduct opportunistic harassment of any gray wolf in a noninjurious manner at any time. Opportunistic harassment must be reported to the Service within 7 days as outlined in paragraph (j)(7) of this section.

(ii) **Intentional harassment.** After we or our designated agent have confirmed persistent wolf activity on privately owned land or on a public land grazing allotment, we or the State fish and game agency may issue a permit valid for not longer than 1 year, with appropriate conditions, to any landowner to harass wolves in a potentially injurious manner (such as by projectiles designed to be nonlethal to larger mammals). The harassment must occur as specifically identified in the permit.

(iii) **Taking by landowners on private land.** Landowners may take wolves on privately owned land in the following two additional circumstances:

(A) Any landowner may take a gray wolf that is in the act of biting, wounding, grasping, molesting, harassing, or killing livestock, livestock-guarding animals, or domestic animals, provided that the landowner provides evidence of animal(s) freshly (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent are able to confirm that the animal(s) were wounded, harassed, molested, or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(B) A private landowner may be issued a limited duration permit by us or the State fish and game agency to take a gray wolf on the landowner's private land if:

(1) This private property or an adjacent private property has had at least one depredation by wolves on livestock, livestock-guarding animals, or domestic animals that has been confirmed by us or our designated agent; or

(2) We or our designated agent have determined that wolves are routinely present on that private property and present a significant risk to the health and safety of livestock, livestock-guarding animals, or domestic animals. The landowner must conduct the take in compliance with the permit issued by the Service or a State with an approved management plan.

(iv) *Take on public land.* We or the State fish and game agency may issue permits to take gray wolves under certain circumstances to livestock producers or permittees who are legally using public land under valid livestock grazing allotments. The permits, which may be valid for not more than 1 year, can allow the take of a gray wolf if:

(A) Public land or adjacent public land has had at least one depredation by wolves on livestock, livestock-guarding animals, or domestic animals that has been confirmed by us or our designated agent; or

(B) We or our designated agent have determined that wolves are routinely present on public land and present a significant risk to the health and safety of livestock, livestock-guarding animals, or domestic animals. We or our designated agent will investigate and determine if the previously wounded or killed livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(v) *Take in response to wild ungulate impacts.* If wolves are causing unacceptable impacts to wild ungulate populations, a State or tribe may remove

the wolves. In order for this provision to apply, the States or tribes must consult with the Service and identify possible mitigation measures. Before wolves can be removed we must, in cooperation with the States or tribes, determine that such actions will not inhibit wolf recovery levels.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or a Federal land management agency or a State or tribal conservation agency may promptly remove any wolf that we or our designated agent determines to be a demonstrable but nonimmediate threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent.* We or our designated agent may carry out aversive conditioning, nonlethal measures, relocation, permanent placement in captivity, or lethal control of problem wolves. If nonlethal depredation measures occurring on public lands result in the capture, prior to October 1, of a female wolf showing signs that she is still raising pups of the year (e.g., evidence of lactation, recent sightings with pups), whether or not she is captured with her pups, then she and her pups may be released at or near the site of capture. Female wolves with pups may be removed if continued depredation occurs. Problem wolves that depredate on domestic animals more than once in a calendar year, including female wolves with pups regardless of whether on public or private lands, may be removed from the wild. To determine the presence of problem wolves, we or our designated agents will consider all of the following:

(A) Evidence of wounded livestock or other domestic animals or remains of a carcass that shows that the injury or death was caused by wolves;

(B) The likelihood that additional losses may occur if no control action is taken;

(C) Any evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that, on public lands, if animal husbandry practices were previously identified in existing approved allotment plans and annual operating plans for allotments, they were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take was accidental and incidental to an

otherwise lawful activity and if reasonable due care was practiced to avoid such taking. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such taking; we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32, or our designated agent, may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional taking authorizations for agency employees.* When acting in the course of official duties, any employee of the Service or appropriate Federal, State, or tribal agency, who is designated as an agent in writing for such purposes by the Service, may take a wolf or wolf-like canid for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (j)(7) of this section and specimens may be retained or disposed of only in accordance with directions from the Service:

(A) Scientific purposes;

(B) Avoiding conflict with human activities;

(C) Improving wolf survival and recovery prospects;

(D) Aiding or euthanizing sick, injured, or orphaned wolves;

(E) Disposing of a dead specimen;

(F) Salvaging a dead specimen that may be used for scientific study;

(G) Aiding in law enforcement investigations involving wolves; or

(H) Preventing wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves.

(5) *Federal land use.* Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, may be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *Reporting requirements.* Except as otherwise specified in paragraph (j) of this section or in a permit, any taking of a gray wolf must be reported to the Service within 24 hours. We will allow

additional reasonable time if access to the site is limited. Report wolf takings, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, or a Service-designated representative of another Federal, State, or tribal agency. Unless otherwise specified in paragraph (j) of this section, 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) No person shall possess, sell, deliver, carry, transport, ship, import, or

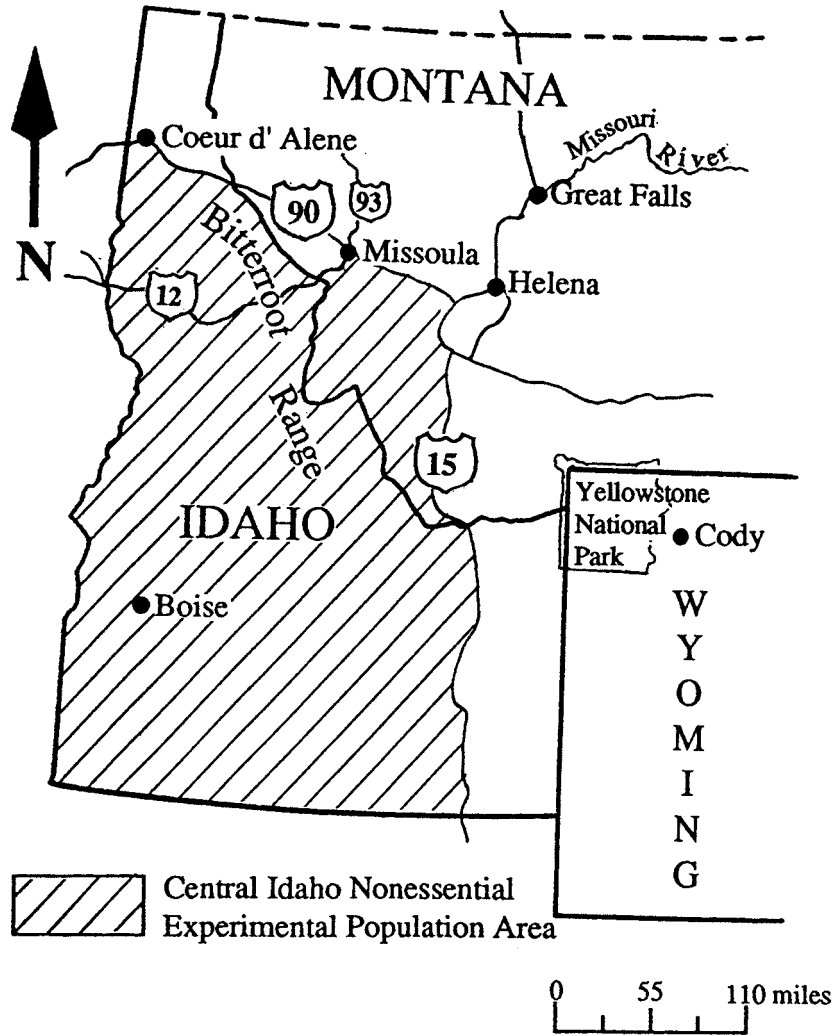
export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (j) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this section.

(9) The site for reintroduction is within the historic range of the species:

(i) The central Idaho area is shown on the following map. The boundaries of the nonessential experimental population area will be those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highway 93 and 12 from Missoula, Montana, west of Interstate 15.

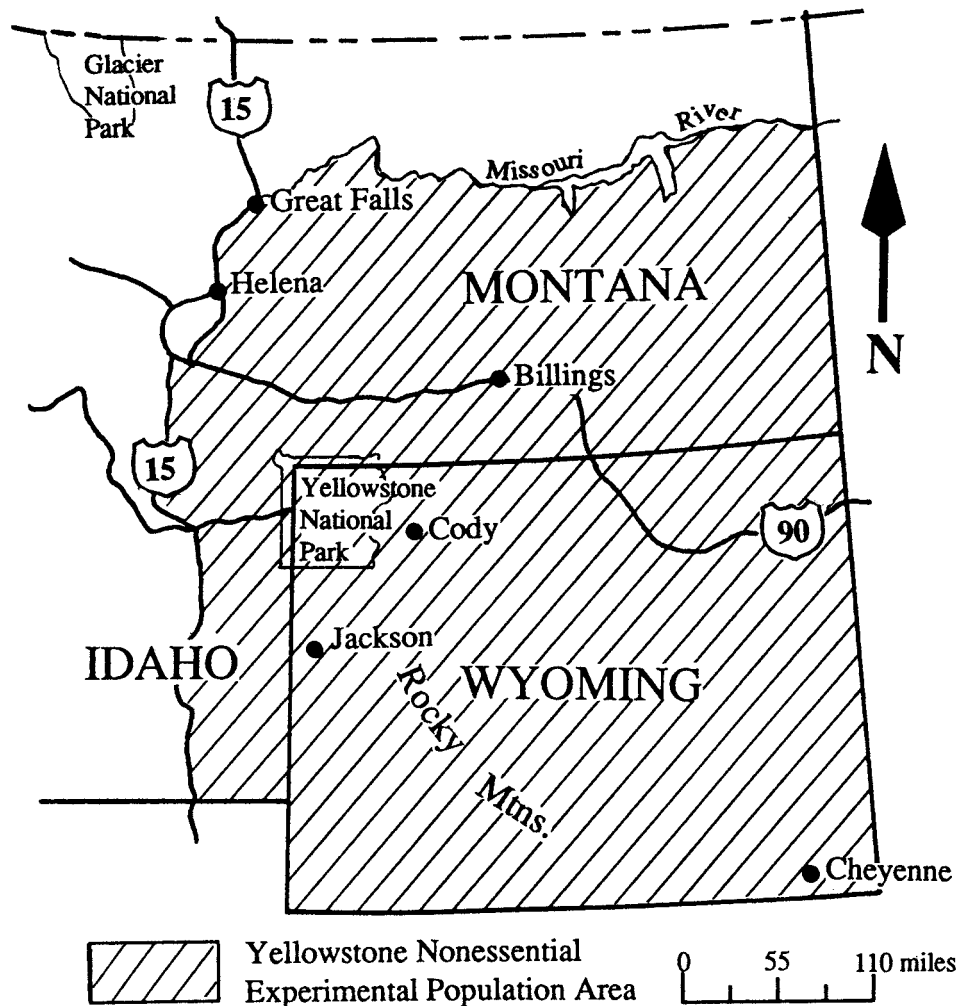
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(ii) The Yellowstone Management Area is shown on the following map. The boundaries of the nonessential experimental population area will be

that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri

River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.



(iii) All wolves found in the wild within the boundaries of this section after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area would be considered as threatened unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it may be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or

will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it may be returned to captivity or killed.

(10) The reintroduced wolves will be monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service-designated agencies and given appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems

make it necessary to return the animal to captivity or euthanize it.

(11) Once recovery goals are met for the species, a rule will be proposed to address delisting, as appropriate.

(12) Any State in which the gray wolf resides and is subject to the terms of § 17.84(j) may petition the Secretary for management responsibility of nonessential experimental gray wolves in that State provided that the State has a wolf management plan approved by the Secretary.

(i) A State petition for wolf management must show:

(A) That authority resides in the State to conserve the gray wolf throughout the geographical range of all experimental populations within the State;

(B) That the State is authorized to conduct investigations to determine the status and requirements for the conservation of the gray wolf throughout the State; and

(C) That the State has an acceptable conservation program for the gray wolf, throughout all of the nonessential experimental population areas within the State, including the requisite



authority and capacity to carry out that conservation program.

(ii) The Secretary shall approve such a petition within 30 days of receipt upon a finding that the applicable criteria are met and the completion of a consultation under section 7 of the Act that concludes that approval is not likely to jeopardize the continued existence of the gray wolf in the Western Distinct Population Segment (DPS), as defined in § 17.11(h).

(iii) If the Secretary approves the petition, the Secretary shall immediately enter into a Memorandum of Agreement (MOA) with the Governor of that State.

(iv) An MOA for State management as provided in this section may allow a State to manage nonessential experimental gray wolf populations within its borders in accordance with the State's management plan approved by the Service, except that:

(A) The MOA may not provide for any form of management that would be inconsistent with the protection provided to the species under the Act, and shall specify those portions of the State's post-delisting management plan for wolves that shall be implemented at this time;

(B) The MOA cannot vest the State with any authority over matters concerning section 4 of the Act; and

(C) It may not provide for sport hunting absent a finding by the Secretary of an extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.

(v) An MOA for State management must provide for co-law enforcement responsibilities to ensure that the Service has the authority to also enforce the State management program prohibitions on take.

(vi) Upon execution, an MOA, consistent with its terms, may augment the prohibitions on take contained in the experimental population rule applicable to the nonessential experimental gray wolf populations throughout the State, and any other specific section 9 or section 4(d) restrictions that may now apply or that could be applicable in the future, until delisting, so long as the MOA remains in legal effect.

(vii) The MOA will expressly provide that the agreement may be the basis upon which State regulatory measures will be judged for delisting purposes. The authority for the MOA will be the Endangered Species Act, the Fish and

Wildlife Act of 1956 and the Fish and Wildlife Cooperation Act.

(viii) In order for the MOA to remain in effect, the Secretary must find, on an annual basis, that the management under the MOA is not jeopardizing the continued existence of the gray wolf in the Western DPS. The Secretary may terminate the MOA upon 90 days notice to the State if:

(A) Management under the MOA is likely to jeopardize the continued existence of the gray wolf in the Western DPS; or

(B) The State has failed materially to comply with the MOA or any relevant provision of the State management plan; or

(C) Biological circumstances within the range of the gray wolf indicate that delisting the species would not be warranted.

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Dated: March 3, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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