

(4) Other reasons in the public interest.

(c) An authorized official establishing a special use area must document in writing the determination described in paragraph (b) of this section. Such documentation must occur before the action, except in emergencies or situations of immediate need as described in § 423.61(c), in which case the documentation is required within 30 days after the date of the action. Reclamation will make documents produced under this section available to the public upon request except where such disclosure could compromise national or facility security, or human safety.

§ 423.61 Notifying the public of special use areas.

When establishing, revising, or terminating a special use area, Reclamation must notify the public as required by this section.

(a) *What notices must contain.* The notice must specify:

(1) The location of the special use area; and

(2) The public use limits, conditions, restrictions, allowances, or prohibitions on uses and activities that are to be applied to the area or that are to be revised or terminated.

(b) *How notice must be made.* Reclamation must notify the public at least 15 days before the action takes place by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the special use area;

(2) Maps available in the local Reclamation office and other places convenient to the public;

(3) Publication in a newspaper of general circulation in the affected area; or

(4) Other appropriate methods, such as the use of electronic media, brochures, and handouts.

(c) *When notice may be delayed.*

(1) Notice under this section may be delayed in an emergency or situation of immediate need where delaying designation, revision, or termination of a special use area would result in significant risk to:

(i) National security;

(ii) The safety or security of a Reclamation facility, Reclamation employees, or the public; or

(iii) The natural or cultural environment.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

(3) Failure to meet the notice deadlines in paragraphs (b) or (c)(2) of this section will not invalidate an action, so long as Reclamation meets the remaining notification requirements of this section.

(d) *When advance notice is not required.* Advance notice as described in paragraph (b) of this section is not required if all the following conditions are met:

(1) The action will not result in a significant change in the public use of the area;

(2) The action will not adversely affect the area's natural, esthetic, scenic, or cultural values;

(3) The action will not require a long-term or significant modification in the resource management objectives of the area; and

(4) The action is not highly controversial.

§ 423.62 Reservations for public use limits.

To implement a public use limit, an authorized official may establish a registration or reservation system.

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006 that differ from the rules set forth in Subpart C are considered existing special use areas, and such differing rules remain in effect to the extent allowed by Subpart A, and to the extent they are consistent with § 423.28. For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Subpart F—Violations and Sanctions

§ 423.70 Violations.

(a) When at, in, or on Reclamation facilities, lands, or waterbodies, you must obey and comply with:

(1) Any closure orders established under Subpart B of this part 423;

(2) The regulations in Subpart C of this part 423;

(3) The conditions established by any permit issued under Subpart D of this part 423; and

(4) The regulations established by an authorized official in special use areas under Subpart E of this part 423.

(b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

(c) Any continuous or ongoing violation of these regulations constitutes a separate violation for each calendar day in which it occurs.

§ 423.71 Sanctions.

Under section (1)(a) of Public Law 107-69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

(a) The provisions of this part 423; or
(b) Any condition, limitation, closure, prohibition on uses or activities, or public use limits, imposed under this part 423.

[FR Doc. E8-29088 Filed 12-10-08; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-008; 92220-1113-0000; C6]

RIN 1018-AW35

Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Western Great Lakes and Northern Rocky Mountains in Compliance With Court Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are issuing this final rule to comply with three court orders which have the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf (*Canis lupus*) in the western Great Lakes and the northern Rocky Mountains. This rule corrects the gray wolf listing at 50 CFR 17.11 to reinstate the listing of wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, the northwestern portion of Ohio, the northern half of Montana, the northern panhandle of Idaho, the eastern third of Washington and Oregon, and in north-central Utah as endangered, and reinstate the listing of wolves in Minnesota as threatened. This rule also reinstates the former designated critical habitat in 50 CFR 17.95(a) for gray wolves in Minnesota and Michigan, special regulations in 50 CFR 17.40(d) for the gray wolf in Minnesota, and special rules in 50 CFR 17.84 designating the gray wolf in the remainder of Montana and Idaho and all of Wyoming as nonessential experimental populations.

This action revises the CFR to comply with three court orders. In addition, this final rule takes additional administrative action that removes archaic provisions from the gray wolf special regulation at 50 CFR 17.84(i) and makes corrections to the gray wolf special regulation at § 17.84(n) by removing language referring to a Western DPS.

DATES: This action is effective December 11, 2008. However, the court orders had legal effect immediately upon their filing on July 18, 2008, September 29, 2008, and October 14, 2008.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Office of the Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601. Call 406-449-5225 to make arrangements. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111. Call 612-713-5350 to make arrangements.

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains contact Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone 406-449-5225, extension 204. For information on wolves in the western Great Lakes, contact Laura Ragan, Regional Listing Coordinator, U.S. Fish and Wildlife Service, at our Fort Snelling, Minnesota Regional Office (see **ADDRESSES**) or telephone 612-713-5350. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Information about the life history of the gray wolf and previous Federal actions can be found in our February 8, 2007 (72 FR 6052), final rule for the Western Great Lakes Distinct Population Segment (WGL DPS) of the gray wolf and our February 27, 2008 (73 FR 10514), final rule for the Northern Rocky Mountains Distinct Population Segment (NRM DPS) of the gray wolf.

On April 16, 2007, three parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's February 8, 2007 (72 FR 6052), for the WGL DPS. On September 29, 2008, the

U.S. District Court for the District of Columbia ruled in favor of the plaintiffs (*Humane Society of the United States v. Kempthorne*, 1:07-CV-00677 (D. Columbia)). The court granted the plaintiffs' motion for summary judgment and vacated and remanded the Service's application of the February 8, 2007 (72 FR 6052), final rule for the WGL DPS of the gray wolf.

On April 28, 2008, twelve parties filed a lawsuit in the U.S. District Court for the District of Montana challenging the Service's February 27, 2008, final rule (73 FR 10514) for the NRM DPS. On July 18, 2008, the court enjoined the Service's implementation of the February 27, 2008, final rule and ordered the reinstatement of Endangered Species Act protections for the northern Rocky Mountain gray wolf. At the Service's request, the court issued an order on October 14, 2008, that vacated the final delisting rule and remanded it back to the Service for further consideration.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule we established three DPSs for the gray wolf, including a Western DPS. On January 6, 2005, we published a final rule establishing a special regulation at 50 CFR 17.84(n) for the Yellowstone and central Idaho nonessential experimental populations (NEP) (70 FR 1286). At that time, these NEPs were correctly described as existing within the boundaries of a Western DPS. However, on January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that our April 1, 2003, final rule violated the Act (*Defenders of Wildlife v. Norton*, 1:03-1348-JO, D. OR 2005; *National Wildlife Federation v. Norton*, 1:03-CV-340, D. VT. 2005). The Courts' rulings invalidated the three DPS designations in the April 2003 rule, including the Western DPS. Therefore, as we reinstate the special regulations at § 17.84(n) for the Yellowstone and central Idaho NEPs, we also remove from the regulation erroneous language referring to the defunct Western DPS. In addition, we are removing archaic provisions from the gray wolf special regulation at 50 CFR 17.84(i) that applied only in the immediate aftermath of the NEP reintroductions.

Administrative Procedure

This rulemaking is necessary to comply with the July 18, 2008, September 29, 2008, and October 14, 2008, court orders. Therefore, under these circumstances, the Director has

determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

As of the filing of the respective court orders, any and all wolves in the northern Rocky Mountains and western Great Lakes, except in Minnesota, are listed as an endangered species under the ESA. Any and all wolves in Minnesota are listed as a threatened species under the ESA. The reinstated regulations found at 50 CFR 17.95 designate critical habitat for gray wolves in Minnesota and Michigan, and the reinstated special regulations in 50 CFR 17.40(d) govern the regulation of gray wolves in Minnesota. The provisions of these regulations are the same as those in the prior regulations that were removed per our February 8, 2007, final delisting rule (72 FR 6052).

The reinstated special rules found at 50 CFR 17.84(i) and (n) designate part of the wolves in the northern Rocky Mountains as nonessential experimental populations. The provisions of the special rules are the same as those in the prior special rules that were removed per our February 27, 2008, final delisting rule (73 FR 10514).

This means that wolves in Wisconsin, Michigan, North Dakota, South Dakota, Iowa, Illinois, Indiana, Ohio, Washington, Oregon, Utah, the Idaho panhandle, and northern Montana are hereby listed as endangered (50 CFR 17.11(h)). Wolves in Minnesota are listed as threatened (50 CFR 17.11(h)). Wolves in southern Montana, Idaho south of Interstate 90, and all of Wyoming are hereby listed as nonessential experimental populations under section 10(j) of the ESA (50 CFR 17.84(i) and (n)). The maps in the rule portion of this document illustrate the boundaries of the nonessential experimental population areas.

This rule will not affect the status of the gray wolf in the western Great Lakes or northern Rocky Mountains under State laws or suspend any other legal protections provided by State law. This rule will not affect the gray wolf's Appendix II status under the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).

Additionally, pursuant to section 6 of the Act, we are able to grant available funds to the States for management actions promoting the protection of gray wolves in the western Great Lakes and northern Rocky Mountains.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, in order to comply with the court orders discussed above, we

amend part 17, subchapter B of chapter I, title 50 of the CFR, 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. Amend § 17.11 by revising the entry in the table at paragraph (h) for “Wolf, gray” as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
Wolf, gray ...	<i>Canis lupus</i>	Holarctic	U.S.A., conterminous States, except MN and where listed as an experimental population below; Mexico.	E	1, 6, 13, 15, 35	17.95(a)	N/A
Do	do	do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	do	do	U.S.A. (MT, ID, WY—see sections 17.84(i) and 17.84(n)).	XN	561, 562	N/A	17.84(i), 17.84(n)
Do	do	do	U.S.A. (portions of AZ, NM, and TX—see section 17.84(k)).	XN	631	N/A	17.84(k)

■ 3. Amend § 17.40 by adding paragraph (d) as set forth below:

§ 17.40 Special rules—mammals.

* * * * *

(d) Gray wolf (*Canis lupus*) in Minnesota.

(1) *Zones.* For purposes of these regulations, the State of Minnesota is divided into the following five zones:

(i) Zone 1—4,488 square miles. Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27 and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis county lines to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and

Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE ¼, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Sections 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermilion River; thence southerly along the Vermilion River to Vermilion Lake; thence along the Superior National Forest boundary in a southeasterly direction through Vermilion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence westerly along the

Canadian Border to the point of beginning in Rainy Lake.

(ii) Zone 2—1,856 square miles. Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwestly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwestly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwestly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence in a westerly direction along Forest Road 122 to the junction with the Duluth, Missable and Iron Range Railroad; thence in a southwestly direction along the said railroad tracks to the junction with County Route 14; thence in a northwestly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and

subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

(iii) Zone 3—3,501 square miles. Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State

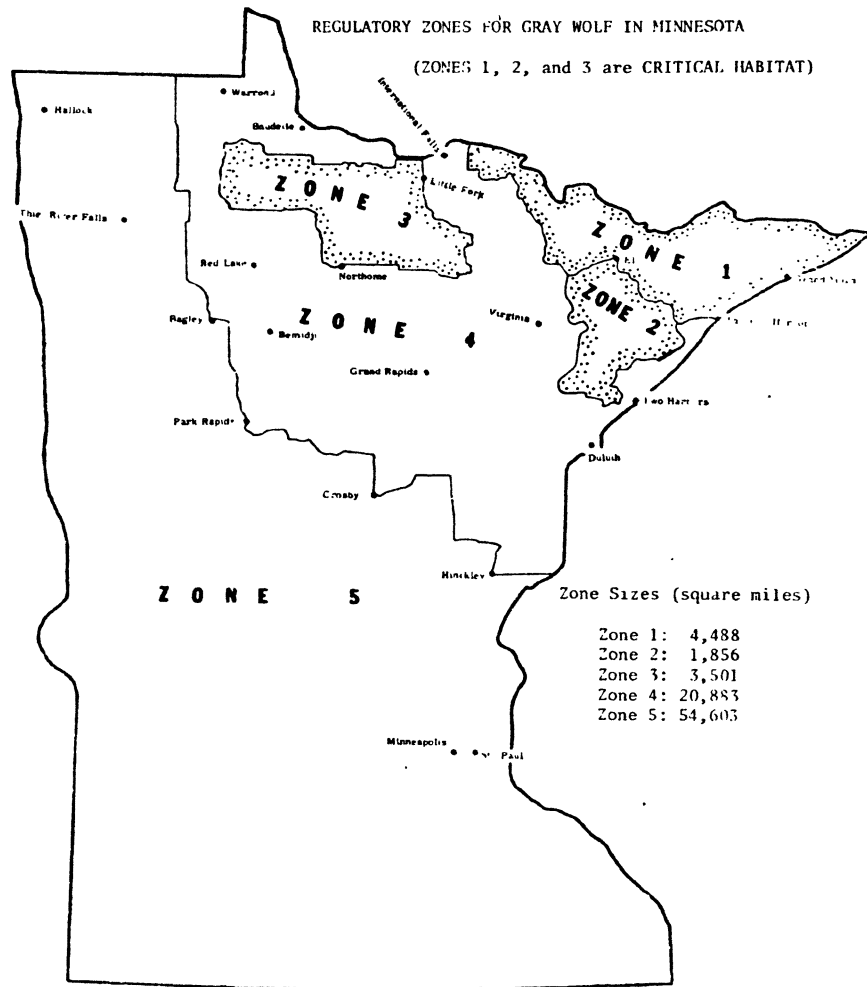
Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95; thence westerly along SFR 95 and continuing west through the southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89; thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63; thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158 North, Range 30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State

Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

(iv) Zone 4—20,883 square miles. Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the state; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I-35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Truck Highway 310 to the Canadian border.

(v) Zone 5—54,603 square miles. All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

(vi) Map of regulatory zones follows:



(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(1) Aid a sick, injured or orphaned specimen; or

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(4) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this

section, in response to depredations by a gray wolf on lawfully present domestic animals: Provided, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: And provided further, that any young of the year taken on or before August 1 of that year must be released.

(C) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial

activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

* * * * *

■ 4. Amend § 17.84 by adding paragraphs (i) and (n) as set forth below:

§ 17.84 Special rules—vertebrates.

* * * * *

(i) Gray wolf (*Canis lupus*).

(1) The gray wolves (wolf) identified in paragraph (i)(7) of this section are nonessential experimental. These wolves will be managed in accordance with the respective provisions of this paragraph (i).

(2) The Service finds that reintroduction of nonessential experimental gray wolves, as defined in paragraph (i)(7) of this section, will further the conservation of the species.

(3) No person may take this species in the wild in an experimental population area except as provided in paragraphs (i)(3), (7), and (8) of this section.

(i) Landowners on their private land and livestock producers (i.e., producers of cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service) who are legally using public land (Federal land and any other public lands designated in State and tribal wolf management plans as approved by the Service) may harass any wolf in an opportunistic (the wolf cannot be purposely attracted, tracked, waited for, or searched out, then harassed) and noninjurious (no temporary or permanent physical damage may result) manner at any time, provided that such harassment is nonlethal or is not physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) a wolf in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), provided that such incidents are reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service-authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit, valid for up to 45 days, from the Service or other agencies designated by the Service, to take (including to kill or injure) a wolf that is in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as

approved by the Service), provided that six or more breeding pairs of wolves have been documented in the experimental population area and the Service or other agencies authorized by the Service has confirmed that the livestock losses were caused by wolves and has completed agency efforts to resolve the problem. Such take must be reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service. There must be evidence of freshly wounded or killed livestock by wolves. Service or other Service-authorized agencies will investigate and determine if the livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) Potentially affected States and tribes may capture and translocate wolves to other areas within an experimental population area as described in paragraph (i)(7) of this section, provided the level of wolf predation is negatively impacting localized ungulate populations at an unacceptable level. Such translocations cannot inhibit wolf population recovery. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal wolf management plans. These plans must be approved by the Service before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service, may promptly remove (place in captivity or kill) any wolf that the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, provided that such take is reported within 24 hours to the Service reintroduction project leader or Service designated agent. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are determined to be "problem" wolves. Problem wolves are defined as wolves that in a calendar year attack livestock (cattle, sheep, horses, and mules or as defined by State and tribal wolf management plans approved by the Service) or wolves that twice in a calendar year attack domestic animals (all domestic animals other than livestock). Authorized take includes, but is not limited to, nonlethal measures such as: Aversive conditioning, nonlethal control, and/or

translocating wolves. Such taking may be done when five or fewer breeding pairs are established in an experimental population area. If the take results in a wolf mortality, then evidence that the mortality was nondeliberate, accidental, nonnegligent, and unavoidable must be provided. When six or more breeding pairs are established in the experimental population area, lethal control of problem wolves or permanent placement in captivity will be authorized but only after other methods to resolve livestock depredations have been exhausted. Depredations occurring on Federal lands or other public lands identified in State or tribal wolf management plans and prior to six breeding pairs becoming established in an experimental population area may result in capture and release of the female wolf and her pups at or near the site of capture prior to October 1. All wolves on private land, including female wolves with pups, may be relocated or moved to other areas within the experimental population area if continued depredation occurs. Wolves attacking domestic animals other than livestock, including pets on private land, two or more times in a calendar year will be relocated. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three criteria will be used in determining the status of problem wolves within the nonessential experimental population area:

(A) There must be evidence of wounded livestock or partial remains of a livestock carcass that clearly shows that the injury or death was caused by wolves. Such evidence is essential since wolves may feed on carrion that they found and did not kill. There must be reason to believe that additional livestock losses would occur if no control action is taken.

(B) There must be no evidence of artificial or intentional feeding of wolves. Improperly disposed of livestock carcasses in the area of depredation will be considered attractants. Livestock carrion or carcasses on public land, not being used as bait under an agency-authorized control action, must be removed or otherwise disposed of so that it will not attract wolves.

(C) On public lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take a gray wolf found in an area defined in paragraph (i)(7) of this section, provided that the take is incidental to an otherwise lawful activity, accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking a gray wolf. Such taking is to be reported within 24 hours to a Service or Service-designated authority. Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or tribal personnel may receive written authorization from the Service to take animals under special circumstances. Wolves may be live-captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Act, or when they are found outside of the designated experimental population area. Take procedures in such instances would involve live-capture and release to a remote area or placement in a captive facility, if the animal is clearly unfit to remain in the wild. Killing of wolves will be a last resort and is only authorized when live-capture attempts have failed or there is clear endangerment to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the

wild within the experimental population area, if such action is for:

- (A) Scientific purposes;
- (B) To relocate wolves to avoid conflict with human activities;
- (C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;
- (D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;
- (E) To aid or euthanize sick, injured, or orphaned wolves;
- (F) To salvage a dead specimen that may be used for scientific study; or
- (G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported within 24 hours to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

(4) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and tribal land management agencies. When five or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when five or fewer breeding pairs are established in an experimental population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites and would apply only to public lands or other such lands

designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed outside of national parks or national wildlife refuges, unless wolf populations fail to maintain positive growth rates toward population recovery levels for 2 consecutive years. If such a situation arose, State and tribal agencies would identify, recommend, and implement corrective management actions within 1 year, possibly including appropriate land-use restrictions to promote growth of the wolf population.

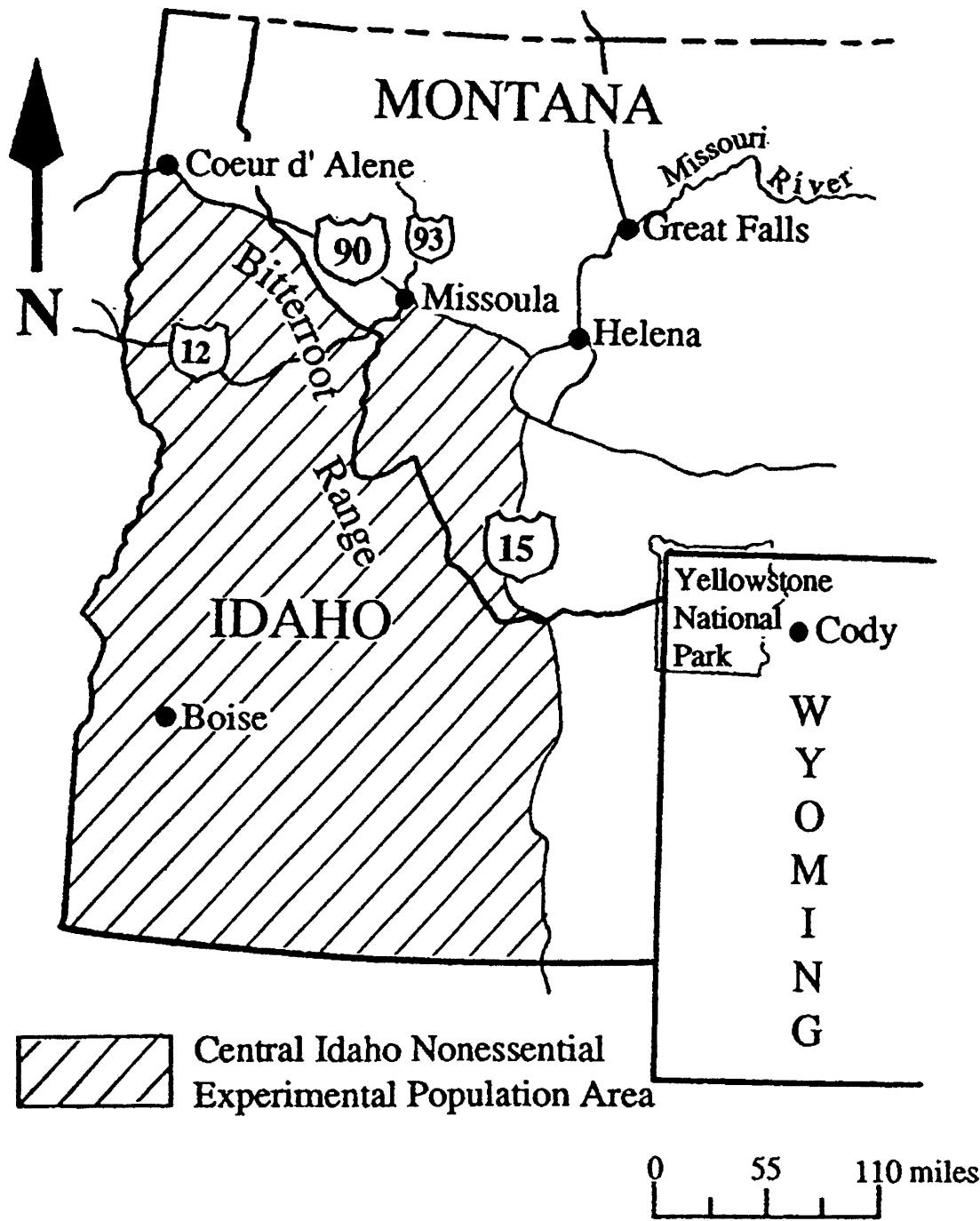
(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (i) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Endangered Species Act.

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

(7) The sites for reintroduction are 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, Highways 93 and 12 from Missoula, Montana, west of Interstate 15.

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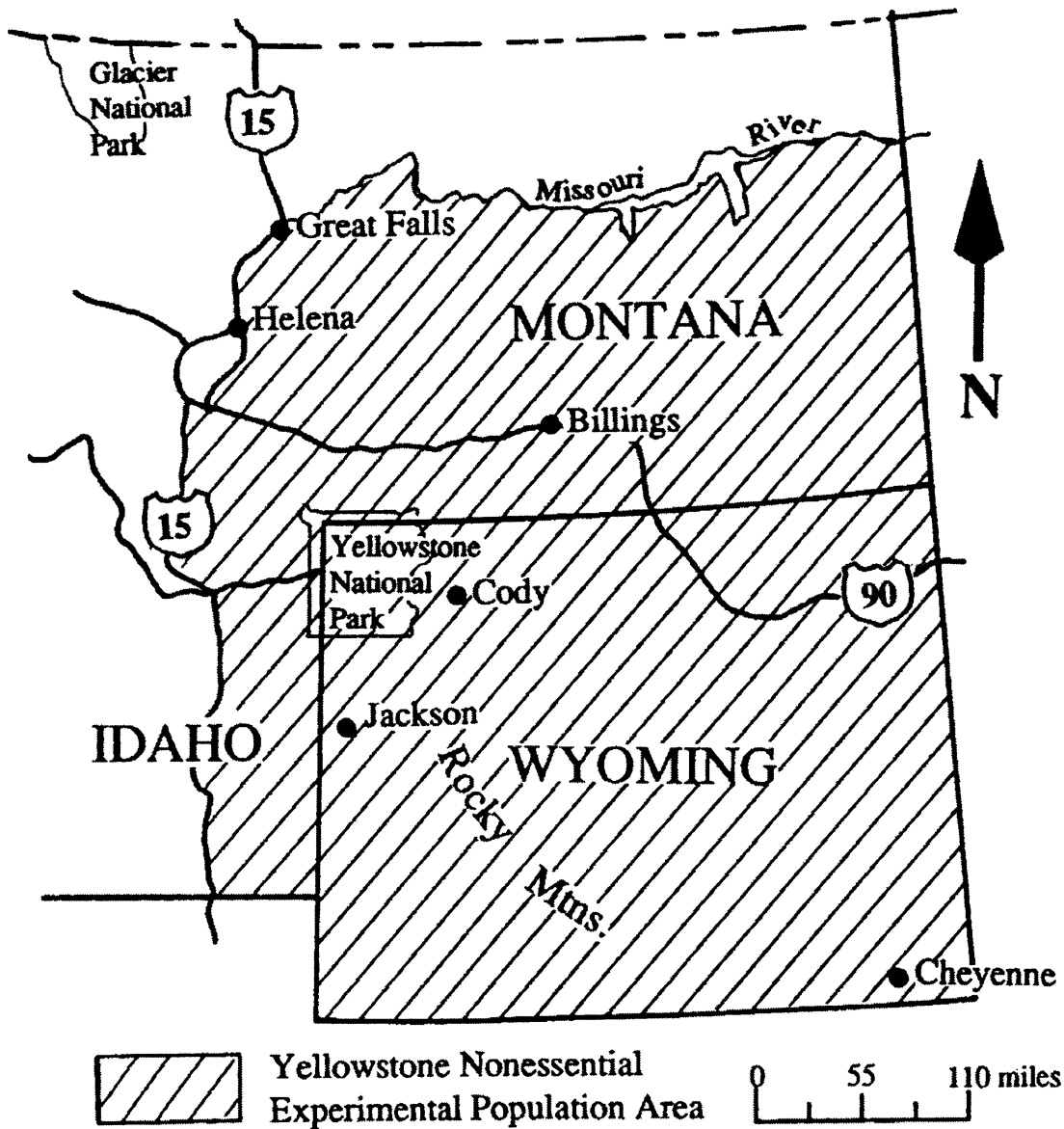


Map 1

(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.



Map 2

(iii) All wolves found in the wild within the boundaries of this paragraph (i)(7) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) 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 will 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 will be returned to captivity or killed.

(8) 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.

(9) The Service does not intend to reevaluate the “nonessential experimental” designation. The Service does not foresee any likely situation that would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the northern Rocky Mountains according to provisions outlined in the Act.

* * * * *

(n) Gray wolf (*Canis lupus*).

(1) The gray wolves (wolf) identified in paragraphs (n)(9)(i) and (ii) of this section are nonessential experimental populations. These wolves will be managed in accordance with the respective provisions of this paragraph (n) in the boundaries of the nonessential experimental population (NEP) areas within any State or Tribal reservation that has a wolf management plan that has been approved by the Service, as further provided in this paragraph (n). Furthermore, any State or Tribe that has a wolf management plan approved by the Service can petition the Secretary of the Department of the Interior (DOI) to assume the lead authority for wolf management under this rule within the borders of the NEP areas in their respective State or reservation.

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

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

Active den site—A den or a specific above-ground 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, produced at least two pups that survived until December 31 of the year of their birth.

Designated agent—Includes Federal agencies authorized or directed by the Service, and States or Tribes with a wolf management plan approved by the

Director of the Service and with established cooperative agreements with us or Memoranda of Agreement (MOAs) approved by the Secretary of the DOI. Federal agencies, States, or Tribes may become “designated agents” through cooperative agreements with the Service whereby they agree to assist the Service to implement some portions of this rule. If a State or Tribe becomes a “designated agent” through a cooperative agreement, the Service will help coordinate their activities and retain authority for program direction, oversight, and guidance. States and Tribes with approved plans also may become “designated agents” by submitting a petition to the Secretary to establish an MOA under this rule. Once accepted by the Secretary, the MOA may allow the State or Tribe to assume lead authority for wolf management and to implement the portions of their State or Tribal plans that are consistent with this rule. The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this rule, issuing written authorizations for wolf take on reservations without approved wolf management plans, and an annual review of the State or Tribal program to ensure the wolf population is being maintained above recovery levels.

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.

Intentional harassment—The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions (such as 12-gauge shotgun rubber-bullets and bean-bag shells), that are designed to cause physical discomfort and temporary physical injury but not death. The wolf may have been tracked, waited for, chased, or searched out and then harassed.

In the act of attacking—The actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.

Landowner—An owner of private land, or his/her immediate family members, or the owner’s employees who are currently employed to actively work on that private land. In addition, the owner(s) (or his/her employees) of livestock that are currently and legally grazed on that private land and other lease-holders on that private land (such as outfitters or guides who lease hunting rights from private landowners), are

considered landowners on that private land for the purposes of this regulation. Private land, under this regulation, also includes all non-Federal land and land within Tribal reservations. Individuals legally using Tribal lands in States with approved plans are considered landowners for the purposes of this rule. “Landowner” in this regulation includes legal grazing permittees or their current employees on State, county, or city public or Tribal grazing lands.

Legally present—A person is legally present when (i) on his or her own property, (ii) not trespassing and has the landowner’s permission to bring his or her stock animal or dog on the property, or (iii) abiding by regulations governing legal presence on public lands.

Livestock—Cattle, sheep, horses, mules, goats, domestic bison, and herding and guarding animals (llamas, donkeys, and certain breeds of dogs commonly used for herding or guarding livestock). Livestock excludes dogs that are not being used for livestock guarding or herding.

Non injurious—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.

Private land—All land other than that under Federal Government ownership and administration and including Tribal reservations.

Problem wolves—Wolves that have been confirmed by the Service or our designated agent(s) to have attacked or been in the act of attacking livestock or dogs on private land or livestock on public land within the past 45 days. Wolves that we or our designated agent(s) confirm to have attacked any other domestic animals on private land twice within a calendar year are considered problem wolves for purposes of agency wolf control actions.

Public land—Federal land such as that administered by the National Park Service, Bureau of Land Management, USDA Forest Service, Bureau of Reclamation, Department of Defense, or other agencies with the Federal Government.

Public land permittee—A person or that person’s employee who has an active, valid Federal land-use permit to use specific Federal lands to graze livestock, or operate an outfitter or guiding business that uses livestock. This definition does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, or Christmas trees;

logging; mining; oil or gas development; or other uses that do not require livestock. In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.

Remove—Place in captivity, relocate to another location, or kill.

Research—Scientific studies resulting in data that will lead to enhancement of the survival of the gray wolf.

Rule—Federal regulations—“This rule” or “this regulation” refers to this final NEP regulation.

Stock animal—A horse, mule, donkey, llama, or goat used to transport people or their possessions.

Unacceptable impact—Impact to ungulate population or herd where a State or Tribe has determined that wolves are one of the major causes of the population or herd not meeting established State or Tribal management goals.

Ungulate population or herd—An assemblage of wild ungulates living in a given area.

Wounded—Exhibiting scraped or torn hide or flesh, 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 paragraph (n)(4), are allowed: Opportunistic harassment; intentional harassment; take on private land; take on public land except land administered by National Parks; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; take for research purposes; and take to protect stock animals and dogs. Other than as expressly provided in this rule, all other forms of take 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 this paragraph (n). Any take of wolves must be reported as outlined in paragraph (n)(6) of this section.

(i) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or our designated agent(s) within 7 days as outlined in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or our designated agent(s) have confirmed wolf activity on private land, on a public land grazing allotment, or on a Tribal reservation, we or our designated agent(s) may issue written take authorization valid for not longer than 1 year, with appropriate conditions, to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization.

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

(A) Any landowner may immediately take a gray wolf in the act of attacking livestock or dogs on his or her private land, provided the landowner provides evidence of livestock or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(B) A landowner may take wolves on his or her private land if we or our designated agent issued a “shoot-on-sight” written take authorization of limited duration (45 days or less), and if:

(1) This landowner’s property has had at least one depredation by wolves on livestock or dogs that has been confirmed by us or our designated agent(s) within the past 30 days; and

(2) We or our designated agent(s) have determined that problem wolves are routinely present on that private property and present a significant risk to the health and safety of other livestock or dogs; and

(3) We or our designated agent(s) have authorized lethal removal of problem wolves from that same property. The landowner must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(iv) *Take on public land.* Any livestock producer and public land permittee (see definitions in paragraph (n)(3) of this section) who is legally using public land under a valid Federal land-use permit may immediately take a gray wolf in the act of attacking his or her livestock on the person’s allotment

or other area authorized for his or her use without prior written authorization, provided that that producer or permittee provides evidence of livestock recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed, in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(A) At our or our designated agent(s)’ discretion, we or our designated agent(s) also may issue a shoot-on-sight written take authorization of limited duration (45 days or less) to a public land grazing permittee to take problem wolves on that permittee’s active livestock grazing allotment if:

(1) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by us or our designated agent(s) within the past 30 days; and

(2) We or our designated agent(s) have determined that problem wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock; and

(3) We or our designated agent(s) have authorized lethal removal of problem wolves from that same allotment.

(B) The permittee must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(v) *Take in response to wild ungulate impacts.* If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question.

(A) In order for this provision to apply, the State or Tribes must prepare a science-based document that:

(1) Describes the basis of ungulate population or herd management objectives, what data indicate that the ungulate population or herd is below management objectives, what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population or herd, why wolf removal is a warranted solution to help restore the ungulate population or herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population or herd response to wolf removal will be measured and

control actions adjusted for effectiveness;

(2) Demonstrates that attempts were and are being made to address other identified major causes of ungulate herd or population declines or the State or Tribe commits to implement possible remedies or conservation measures in addition to wolf removal; and

(3) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence. The State or Tribe must:

(i) Conduct the peer review process in conformance with the Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(ii) Obtain at least five independent peer reviews from individuals with relevant expertise other than staff employed by a State, Tribal, or Federal agency directly or indirectly involved with predator control or ungulate management in Idaho, Montana, or Wyoming.

(B) Before we authorize lethal removal, we must determine that an unacceptable impact to wild ungulate populations or herds has occurred. We also must determine that the proposed lethal removal is science-based, will not contribute to reducing the wolf population in the State below 20 breeding pairs and 200 wolves, and will not impede wolf recovery.

(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 demonstration of 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 our designated agent(s) may promptly remove any wolf that we or our designated agent(s) determines to be a threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent(s).* We or our designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, we or our designated agent(s) will consider all of the following:

(A) Evidence of wounded livestock, dogs, or other domestic animals, or remains of livestock, dogs, or domestic animals that show that the injury or death was caused by wolves, or

evidence that wolves were in the act of attacking livestock, dogs, or domestic animals;

(B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken;

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

(D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported within 24 hours.

Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such take, or it was not reported within 24 hours (we may allow additional time if access to the site of the take is limited), and 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(s), may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional take authorization for agency employees.* When acting in the course of official duties, any employee of the Service or our designated agent(s) may take a wolf or wolf-like canid for the following purposes:

(A) Scientific purposes;

(B) To avoid conflict with human activities;

(C) To further wolf survival and recovery;

(D) To aid or euthanize sick, injured, or orphaned wolves;

(E) To dispose of a dead specimen;

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

(G) To aid in law enforcement investigations involving wolves; or

(H) To prevent wolves or wolf-like canids with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent(s), from passing on or teaching those traits to other wolves.

(I) Such take must be reported to the Service within 7 days as outlined in paragraph (n)(6) of this section, and specimens are to be retained or disposed of only in accordance with directions from the Service.

(xii) *Take for research purposes.* We may issue permits under § 17.32, or our

designated agent(s) may issue written authorization, for individuals to take wolves in the wild pursuant to approved scientific study proposals. Scientific studies should be reasonably expected to result in data that will lend to development of sound management of the gray wolf, and lend to enhancement of its survival as a species.

(xiii) *Take to protect stock animals and dogs.* Any person legally present on private or public land, except land administered by the National Park Service, may immediately take a wolf that is in the act of attacking the individual's stock animal or dog, provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The person must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this rule, the person must not disturb the carcass and the area surrounding it. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(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 (n) of this section or in a permit, any take of a gray wolf must be reported to the Service or our designated agent(s) within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of wolves, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator (100 North Park, Suite 320, Helena, Montana 59601, 406-449-5225 extension 204; facsimile 406-449-5339), or a Service-designated agent of another Federal, State, or Tribal agency. Unless otherwise specified in paragraph (n) 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 (n) of this section or in violation of

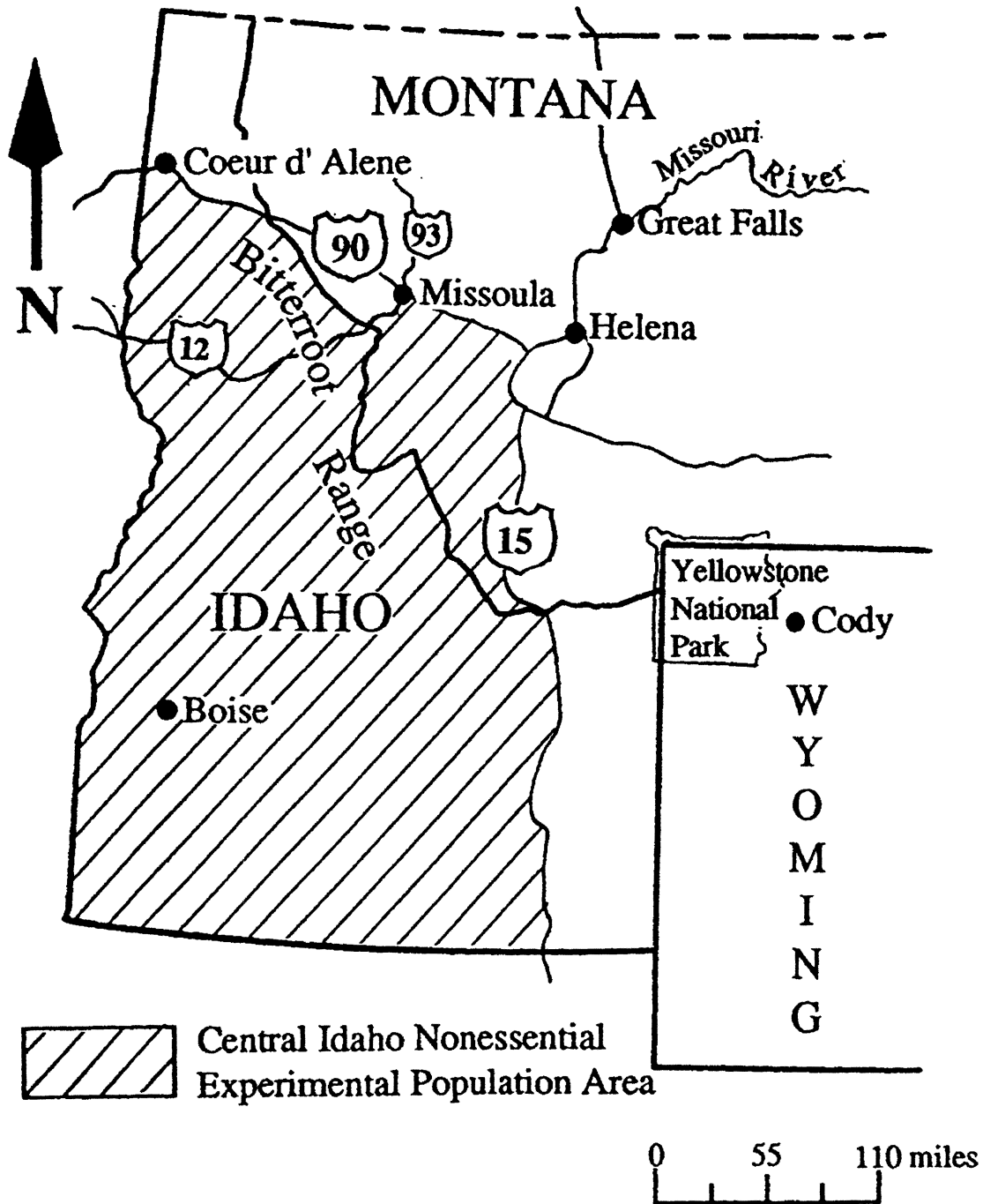
applicable State or Tribal fish and wildlife laws or regulations or the Act.

(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 sites for these experimental populations are within the historic range of the species as designated in § 17.84(i)(7):

(i) The central Idaho NEP area is shown on the following map. The boundaries of the NEP area are 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, Highways 93 and 12 from Missoula, Montana, west of Interstate 15.

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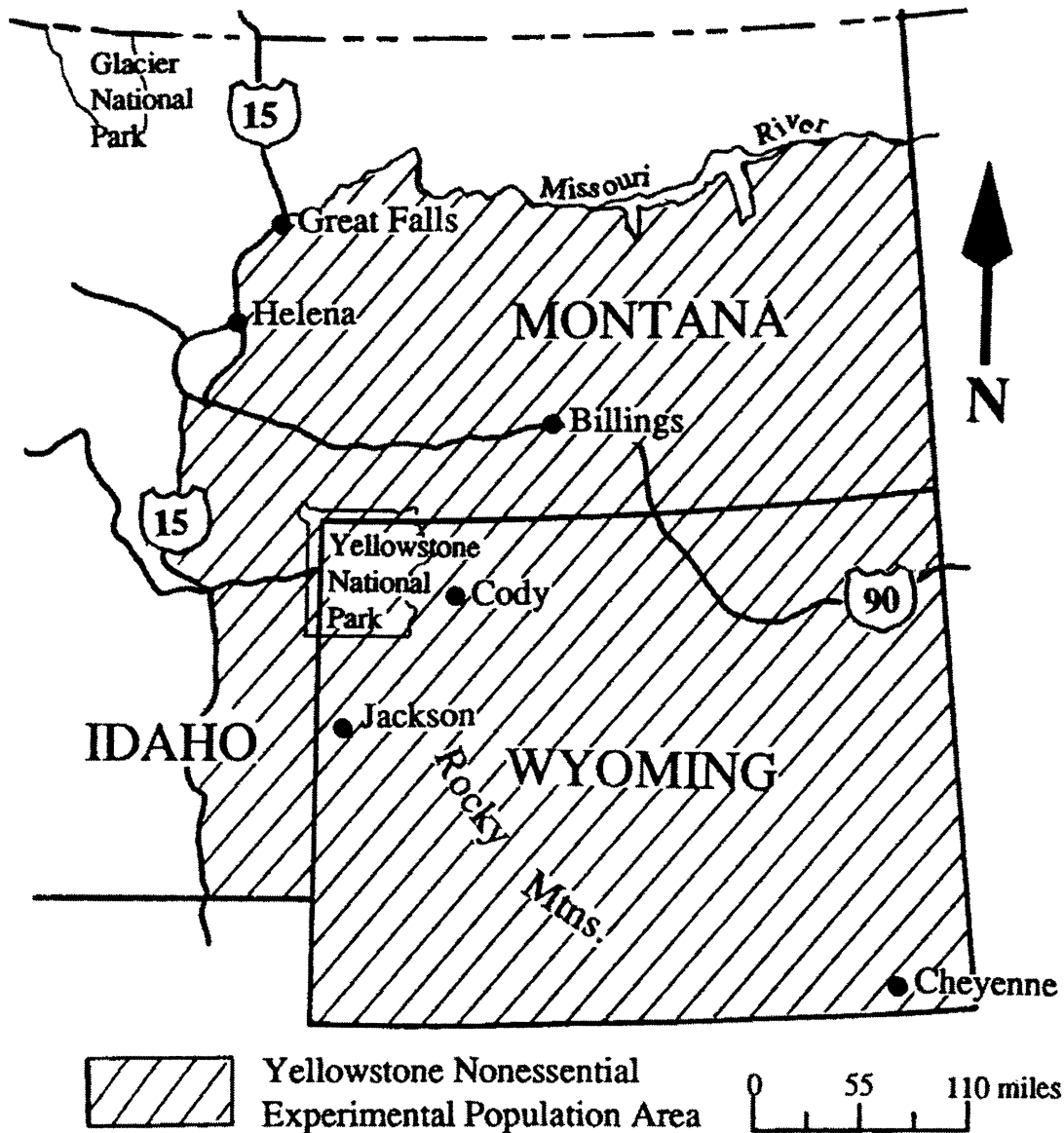


Map 1

(ii) The Yellowstone NEP is shown on the following map. The boundaries of the NEP area are 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.



Map 2

(iii) All wolves found in the wild within the boundaries of these experimental areas are considered nonessential experimental animals.

(10) Wolves in the experimental population areas will be monitored by radio-telemetry or other standard wolf population monitoring techniques as appropriate. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or our designated agent(s) and given appropriate care. Such an animal will be released back into its respective area as soon as possible, unless physical or behavioral problems make it necessary

to return the animal to captivity or euthanize it.

(11) *Memoranda of Agreement (MOAs)*. Any State or Tribe with gray wolves, subject to the terms of this paragraph (n), may petition the Secretary for an MOA to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in that State or on that Tribal reservation, and implement all parts of their approved State or Tribal plan that are consistent with this rule, provided that the State or Tribe has a wolf management plan approved by the Secretary.

(i) A State or Tribal petition for wolf management under an MOA must show:

(A) That authority and management capability resides in the State or Tribe to conserve the gray wolf throughout the geographical range of all experimental populations within the State or within the Tribal reservation.

(B) That the State or Tribe has an acceptable conservation program for the gray wolf, throughout all of the NEP areas within the State or Tribal reservation, including the requisite authority and capacity to carry out that conservation program.

(C) A description of exactly what parts of the approved State or Tribal

plan the State or Tribe intends to implement within the framework of this rule.

(D) A description of the State or Tribal management progress will be reported to the Service on at least an annual basis so the Service can determine if State or Tribal management has maintained the wolf population above recovery levels and was conducted in full compliance with this rule.

(ii) The Secretary will approve such a petition upon a finding that the applicable criteria are met and that approval is not likely to jeopardize the continued existence of the endangered gray wolf, as defined in § 17.11(h).

(iii) If the Secretary approves the petition, the Secretary will enter into an MOA with the Governor of that State or appropriate Tribal representative.

(iv) An MOA for State or Tribal management as provided in this section may allow a State or Tribe to become designated agents and lead management of nonessential experimental gray wolf populations within the borders of their jurisdictions in accordance with the State's or Tribe's wolf management plan approved by the Service, except that:

(A) The MOA may not provide for any form of management inconsistent with the protection provided to the species under this rule, without further opportunity for appropriate public comment and review and amendment of this rule;

(B) The MOA cannot vest the State or Tribe with any authority over matters concerning section 4 of the Act (determining whether a species warrants listing);

(C) The MOA may not provide for public hunting or trapping absent a finding by the Secretary of an

extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved; and

(D) In the absence of a Tribal wolf management plan or cooperative agreement, the MOA cannot vest a State with the authority to issue written authorizations for wolf take on reservations. The Service will retain the authority to issue these written authorizations until a Tribal wolf management plan is approved.

(v) The MOA for State or Tribal wolf management must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce the State or Tribal management program prohibitions on take.

(vi) The MOA may not authorize wolf take beyond that stated in the experimental population rules but may be more restrictive.

(vii) The MOA will expressly provide that the results of implementing the MOA may be the basis upon which State or Tribal regulatory measures will be judged for delisting purposes.

(viii) The authority for the MOA will be the Act, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and any applicable treaty.

(ix) 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 endangered gray wolf as defined in § 17.11(h). The Secretary or State or Tribe may terminate the MOA upon 90 days notice if:

(A) Management under the MOA is likely to jeopardize the continued

existence of the endangered gray wolf as defined in § 17.11(h); or

(B) The State or Tribe has failed materially to comply with this rule, the MOA, or any relevant provision of the State or Tribal wolf management plan; or

(C) The Service determines that biological circumstances within the range of the gray wolf indicate that delisting the species is not warranted; or

(D) The States or Tribes determine that they no longer want the wolf management authority vested in them by the Secretary in the MOA.

* * * * *

■ 5. Amend § 17.95(a) by adding an entry for “Gray Wolf (*Canis lupus*)” in the same alphabetical order in which this species appears in the table in § 17.11(h) to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Gray Wolf (*Canis lupus*)

Michigan. Isle Royale National Park.

Minnesota. Areas of land, water, and airspace in Beltrami, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Roseau, and St. Louis Counties, with boundaries (4th and 5th Principal meridians) identical to those of zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1).

* * * * *

Dated: December 4, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

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