

U.S. Department of Interior, Fish and Wildlife Service

**RECORD OF DECISION**

**DRAFT**

Proposed Revision to the Regulations  
for the  
Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*)

This draft Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 40 CFR 1505.2). The purpose of this draft ROD is to document the draft decision of the Service for the selection of an alternative to implement the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*). The alternatives we considered have been fully described and evaluated in the November 2014, Final Environmental Impact Statement (EIS) for the project.

This ROD states the Service's draft decision and presents the rationale for its selection. In the ROD we provide a summary of the alternatives considered in the EIS and address the measures we adopted to avoid or minimize environmental harm from implementation of the selected alternative.

**Decision**

Based on our review of the alternatives and their environmental consequences, as described in our final EIS, we intend to implement Alternative One (Proposed Action and Preferred Alternative). The selected action will be implemented through issuance of a final nonessential experimental population rule (final 10(j) rule), an Endangered Species Act Section 10(a)(1)(A) research and recovery permit, and provision of federal funding.

**Alternatives Considered**

We developed a range of alternatives, including the Proposed Action and No Action alternative, for our proposal to revise the regulations established in our 1998 Final Rule for the nonessential experimental population of the Mexican wolf. The alternatives we selected for further evaluation were developed based on the experience and information we have gained since we began the reintroduction of Mexican wolves in the United States in 1998, the recommendations of our three- and five-year program reviews, our 2010 Mexican Wolf Conservation Assessment, and scientific literature on gray wolves. We also incorporated input received from the public, cooperating agencies, tribes, stakeholder groups, agencies, and local governments during scoping and the public comment periods on the proposed revisions to the experimental population rule and draft EIS. Using selection criteria, we eliminated from further consideration a number of proposals for geographic boundary and management changes that were not economically or technically practical or feasible and/or did not substantially meet the purpose of, and need for, the Proposed Action. Alternatives brought forward for detailed analysis in the final EIS were the Proposed Action, two additional action alternatives, and the no action alternative.

**Alternative One (Proposed Action and Preferred Alternative)**

Alternative One is our proposed action and preferred alternative. Under this alternative we will expand the area in which initial releases of Mexican wolves from captivity could occur and extend the southern boundary of the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico to the United States-Mexico international border. Within the expanded MWEPA, we will designate three wolf management zones and we will discontinue the designation of the Blue Range wolf Recovery Area

(BRWRA) and its divisions of primary and secondary recovery zones. Within the proposed management zones we will conduct management actions intended to further the conservation of the Mexican wolf while being responsive to the needs of the local community in cases of depredation or nuisance behavior by wolves. Under this alternative we will adopt a phased management approach to minimize or avoid possible impacts to wild ungulate populations (specifically elk) in portions of western Arizona from Mexican wolf predation. We intend to achieve a Mexican wolf experimental population objective of from 300 to 325 wolves within the entire MWEPA. Phase 1 will be in effect in the first through the fifth year after the effective date of the final 10(j) rule. Execution of each subsequent phase will be dependent upon evaluations conducted in the fifth and eighth year after the effective date of the final 10(j) rule. Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulates, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after the effective date of the final 10(j) rule the population is at least 150 Mexican wolves, and 8 years after the effective date of the final 10(j) rule the population is at least 200 Mexican wolves. If we have not achieved this population growth, we will move forward to the next phase. Regardless of the outcome of the two evaluations, at the beginning of year twelve from the effective date of the final 10(j) rule, we will move to full implementation of the final 10(j) rule throughout the MWEPA, and the phased management approach will no longer apply. The phasing may be expedited with the concurrence of participating State game and fish agencies.

#### **Alternative Two**

Alternative Two would include all the initiatives proposed under Alternative One except under this alternative we would **not**: adopt a phased management approach; or establish a Mexican wolf experimental population objective of from 300 to 325 wolves within the entire MWEPA; or expand the geographic boundaries of the proposed management Zone 1 beyond the Apache and Gila National Forests (the existing BRWRA).

#### **Alternative Three**

Alternative Three would include all the initiatives proposed under Alternative One except under this alternative we would **not**: adopt a phased management approach; or establish a Mexican wolf experimental population objective of from 300 to 325 wolves within the entire MWEPA; or include proposed management changes that would modify the regulations for take of Mexican wolves within the MWEPA.

#### **Alternative Four (No Action)**

Under Alternative Four no changes to the 1998 Final Rule for the Mexican wolf or the Mexican Wolf Recovery Program's section 10(a)(1)(A) research and recovery permit (TE-091551-8 dated 04/04/2013) would be made.

#### **Environmentally Preferred Alternative**

We consider Alternative Three to be the environmentally preferred alternative based on the conservation benefit that would be achieved for the Mexican wolf compared with the other alternatives. Under Alternative Three, we predict the experimental population would grow to around 534 wolves within 17 years. The population would reach a similar size under Alternative Two at 19 years, but will be managed to maintain a smaller population size of 300-325 under Alternative One. Generally speaking, larger populations are more persistent than smaller populations; therefore the larger population achieved under Alternatives Two and Three would better contribute to the persistence of the experimental population compared with Alternative One. Alternative Three does not include several take measures that are included in Alternatives One and Two related to unacceptable impacts to ungulates and Mexican wolf depredation of livestock or domestic animals. As a result, Alternative Three would result in slightly faster

population growth than either of the other action alternatives. The area available for the initial release of wolves is limited to the Apache and Gila National Forests under Alternative Two and in Alternative One is constrained to the area of Zone 1 east of Highway 87 in Arizona during at least the first 5 years (and up to 12 years) of implementation. Therefore, Alternative Three provides a larger area of unoccupied suitable habitat in which to conduct initial releases sufficient to achieve the level of effective migration (i.e., recruitment from the captive population) we estimate is necessary to improve the genetic variation of the experimental population. Based on these comparisons, Alternative Three maximizes the population growth, distribution, and recruitment that would contribute to the persistence of, and improve the genetic variation within, the experimental population of Mexican wolves. For these reasons, we consider Alternative Three to be the environmentally preferred alternative.

### **Rationale for Decision**

Under all three of the action alternatives we brought forward for further consideration we would: expand the area in which initial releases of Mexican wolves from captivity could occur; extend the southern boundary of the MWEPA in Arizona and New Mexico from I-10 to the United States-Mexico international border; expand the area within which Mexican wolves can disperse and occupy; expand the area within which we can translocate wolves; designate three wolf management zones; and conduct management actions within these zones intended to further the conservation of the Mexican wolf while being responsive to the needs of the local community in cases of depredation or nuisance behavior by Mexican wolves. All alternatives have provisions for take for the protection of human life and opportunistic harassment of Mexican wolves.

We intend to select Alternative One (the Proposed Action and Preferred Alternative) for implementation based on consideration of a number of environmental (e.g. improving the effectiveness of the Reintroduction Project) and social (e.g. minimize and mitigate the possible impacts of our action on local communities) factors as well as national policy and the Service's statutory mission as set forth under the Endangered Species Act of 1973, as amended. While all of the action alternatives meet our purpose to conserve the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population as described in the Final EIS, Alternative One provides more mechanisms to minimize and mitigate the possible impacts of our action on local communities, including ranching and livestock production entities, and on the native ungulate prey base, than the other alternatives. In other words, Alternative One achieves our conservation objective in a manner that is responsive to many of the concerns we have heard from the public and our state, federal, tribal, and local partners.

#### *Alternative One Compared to Alternative Two*

We selected Alternative One over Alternative Two for several reasons. All of the action alternatives provide additional suitable, unoccupied habitat for the initial release of Mexican wolves from captivity to improve the genetic variation of the Mexican wolf and provide for population growth. Alternatives One (and Three) have a larger area available for initial releases compared with Alternative Two. While Alternative Two would expand the area (Zone 1) for the initial release of Mexican wolves, it would only expand it to the entire Gila and Apache National Forests, which are currently designated as the BRWRA under the 1998 Final Rule. Compared to Alternative One (and Three), we would have less flexibility in selecting the best possible initial release sites with Alternative Two and may become constrained over time in our ability to locate appropriate sites. Based on the current distribution of wolves and available suitable habitat, we predict that Alternative Two would provide for an additional 2 to 3 packs to be established via initial release, while Alternative One will provide for 7 to 8 packs. For this reason, Alternative One will further the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population better than Alternative Two.

Alternative One contains two provisions that provide for coordination with the State of Arizona that are not included in Alternative Two. First, Alternative One includes a phased management approach in

western Arizona. Under this phased approach, for at least the first 5 years (and up to 12 years) we will limit the initial release and translocation of wolves and their natural dispersal and occupancy in portions of western Arizona (west of Highway 87) in Zones 1 and 2 where potentially vulnerable elk herds occur. Second, Alternative One includes a population objective of 300-325 wolves. A population objective of from 300 to 325 Mexican wolves is large enough to meet our objective of improving the probability of persistence of the experimental population while minimizing the potential adverse impacts from Mexican wolf predation on wild ungulates and Mexican wolf depredation of livestock. Based on best available information, we consider that with a population of 300 to 325 Mexican wolves within the MWEPA throughout both Arizona and New Mexico, this experimental population will be able to contribute toward recovery of the Mexican wolf in the future.

Including these two provisions in this action will address the State of Arizona's concerns regarding possible impacts from Mexican wolves on potentially vulnerable elk herds, especially those west of Highway 87. Such coordination with the State of Arizona will improve the effectiveness of the management of the experimental population of Mexican wolves. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population. Under 50 CFR 17.81(d), the Service must consult with appropriate State game and fish agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. In accordance with CFR 17.81(d), to the maximum extent practicable, this final 10(j) rule represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of this experimental population. We invited 84 Federal and State agencies, local governments, and tribes to participate as cooperating agencies in the development of the EIS, 27 of which signed a Memorandum of Understanding (MOU). The purpose of this MOU was for the signatory entities to contribute to the preparation of the EIS that analyzes the proposed revision to the regulations for the Mexican Wolf Experimental Population. For these reasons, Alternative One will further the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population better than Alternative Two.

#### *Alternative One Compared to Alternative Three*

Alternatives One and Three have the same basic geographic features, but differ in their management features. At full implementation of the final 10(j) rule, Alternatives One and Three are equivalent in the amount of additional suitable and unoccupied habitat available for initial releases, and therefore would be equivalent in the degree to which they support increased recruitment and an improvement in the genetic variation within the experimental population. However, Alternative Three does not include a phased management approach or population objective (see discussion under "Alternative One Compared to Alternative Two"), nor does it include several take provisions which we consider important to minimize and mitigate impacts and provide a balanced, incremental, responsive approach to the implementation of our action.

Alternative Three would not include the revised take provisions for Mexican wolves within the MWEPA, including: 1) revising the conditions that determine when we would issue a permit to allow livestock owners or their agents to take (including intentional harassment or kill) any Mexican wolf that is in the act of biting, wounding or killing livestock (see definition of *livestock* in the List of Definitions) on federal land; 2) allowing domestic animal owners or their agents to take (including kill or injure) any Mexican wolf that is in the act of biting, wounding or killing domestic animals on non-federal land anywhere within the MWEPA; 3) providing that, in conjunction with a removal action authorized by the Service, the Service or designated agency may issue permits to allow domestic animal owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or kill) any Mexican

wolf that is present on non-federal land where specified in the permit; 4) revising the conditions under which take will be authorized in response to unacceptable impacts of Mexican wolf predation on wild native ungulate herds. Under Alternative Three, an unacceptable impact would be defined as it was in the 1998 Final Rule: *2 consecutive years with a cumulative 35 percent decrease in population or hunter harvest estimates for a particular species of ungulate in a game management unit or distinct herd segment compared to the pre-wolf 5-year average (unit or herd must contain average of greater than 100 animals). If wolf predation is shown to be a primary cause of ungulate population declines (greater than 50 percent of documented adult or young mortality), then wolves may be moved to reduce ungulate mortality rates and assist in herd recovery, but only in conjunction with application of other common, professionally acceptable, wildlife management techniques.*

We do not expect the take provisions that are included in Alternatives One and Two to significantly alter the growth of the experimental population as compared with Alternative Three; we project that take of Mexican wolves in the act of biting, wounding or killing domestic animals may slow the population's growth from 11% annually (in Alternative Three) to 10% (in Alternatives One and Two). We do not expect our permits to domestic animal owners or their agents on non-federal land and livestock owners or their agents on federal land to assist the Service or designated agency with removal of problem Mexican wolves (those that have engaged in nuisance or depredation) to alter the amount of take occurring from current levels; rather, they empower local individuals to assist the Service or designated agency in reducing impacts to their business. Alternative Three would maintain provisions that only allow this provision for livestock; therefore Alternative One provides the most management flexibility to address local concerns.

We recognize that the expanded MWEPA has a more varied matrix of landownerships than Mexican wolves have experienced to date in the Blue Range Wolf Recovery Area. Without the revised take provisions, Alternative Three does not provide the additional flexibility needed to effectively manage a larger experimental population of Mexican wolves within an expanded MWEPA in a manner that furthers the conservation of the Mexican wolf while being responsive to the needs of the local community in cases of depredation or nuisance behavior by wolves. Without these revised take provisions and the establishment of a population objective or phased management, there could be greater impacts on small businesses in the livestock production sector and on small businesses involved in hunting and guiding.

The experimental designation enables the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with endangered status. This includes allowing limited take of individual Mexican wolves under narrowly defined circumstances (50 CFR 17.84(k)(6)). Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting. It is also critical to obtaining needed State, tribal, local, and private landowner cooperation. The Service believes this flexibility has and will continue to improve the likelihood of success of this reestablishment effort. For these reasons, Alternative One will further the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population better than Alternative Three.

We expect that modifying the take provisions for Mexican wolves will provide clarity and consistency in our take determinations and contribute to our efforts to find the appropriate balance between enabling wolf population growth and minimizing nuisance and depredation impacts on local communities. For these reasons we intend to select Alternative One for implementation.

#### *Alternative One Compared to Alternative Four*

Alternative Four, compared to Alternative One, would not provide additional suitable, unoccupied habitat within which we could conduct initial releases, and therefore it would not allow for improvement in the genetic variation with the experimental population of the Mexican wolf. It would also not provide for

growth of the population to ensure its persistence so that it can contribute to recovery in the future. Because there is no population cap, the Mexican wolf population would be expected to grow for the next 7 years to a population of 178, at which point Mexican wolves would occupy all suitable habitat within the MWEPA, which would be at a higher density of wolves per square mile than Alternative One. However, there would be no revision to the existing take provisions for issuance of permits to livestock producers for take of Mexican wolves in the act of biting, killing or wounding livestock on Federal lands or to owners of domestic animals for take of Mexican wolves in the act of biting, killing, or wounding domestic animals on non-Federal lands. Furthermore, the provision for addressing unacceptable impacts to native ungulate herds would be that which is provided in the 1998 Final Rule. For these reasons, we intend to select Alternative One, which will further the conservation of the Mexican wolf by improving the effectiveness of the Reintroduction Project in managing the experimental population better than Alternative Four.

### *Summary*

Therefore, we intend to select Alternative One for implementation because, compared with the other alternatives, it:

- Maximizes additional suitable, unoccupied habitat in Zone 1 for the initial release of Mexican wolves from captivity to improve the genetic variation of the Mexican wolf and provide for population growth.
- Maximizes the area within which the Mexican wolf population can disperse and occupy within Zones 1, 2, and 3 to allow for population growth.
- Maximizes our management flexibility to respond to depredation or nuisance behavior by a larger and more widely distributed experimental population of Mexican wolves.
- Is responsive to concerns expressed by the State of Arizona regarding potentially vulnerable elk herds in the western portion of the state by implementing a phased approach to wolf management west of Highway 87.
- Incorporates an experimental population objective of from 300 to 325 Mexican wolves in the MWEPA in Arizona and New Mexico, which will improve the probability of persistence of the experimental population so that it can contribute to recovery in the future.
- Minimizes the impact of Mexican wolves to local communities, while still meeting the purpose of furthering the conservation of Mexican wolves.

These outcomes are expected to substantially contribute to our efforts to further the conservation of the Mexican wolf by improving the effectiveness of our Reintroduction Project in managing the experimental population to a greater degree collectively than the other alternatives.

### **Measures to Minimize and Mitigate for effects to native wild prey species and ranching/livestock production**

Based on our analysis, Alternative One will have no significant direct or indirect effects in proposed management Zone 3 and will have no significant direct or indirect effects in proposed management Zone 1 or 2 on Biological Resources (Vegetation), Biological Resources (Other predator and non-ungulate wild prey species), Economic Activity (Tourism), Land Use, and Human Health/Public Safety. We do predict that implementation of Alternative One could have less than significant direct adverse effects in proposed management Zones 1 and 2 on: Biological Resources (native wild prey species, specifically elk) and Economic Activity (Ranching/Livestock Production). Although we predict less than significant overall direct adverse economic impacts to ranching/livestock production within Zones 1 and 2, we also recognize that adverse economic impacts to individual small ranch operations could be significant. Because a large percentage of focus minority groups in Arizona and New Mexico are identified as

principal operators of beef cattle ranches these adverse economic impacts could be disproportionately distributed. Tribal members are also engaged in livestock production and could also suffer disproportionate economic impacts from implementation of Alternative One. However, we expect any adverse disproportionate impacts that might be experienced by these population groups of concern to be less than significant due to the mitigation measures available under this alternative.

All of the proposed mitigation measures to avoid or minimize environmental harm provided in Alternative One are adopted for implementation:

- Management to maintain an experimental population of from 300 to 325 Mexican wolves within the entire MWEPA. So as not to exceed this population objective, we will exercise all management options with preference for translocation to other Mexican wolf populations to further the conservation of the subspecies. The Service may change this provision as necessary to accommodate a new recovery plan.
- A phased management approach to minimize or avoid possible impacts to wild ungulate populations (specifically elk) in portions of western Arizona during the first 12 years. Our phased management approach includes:
  - Phase 1: Initial release of Mexican wolves will be conducted throughout Zone 1 **with the exception of** the area west of State Highway 87 in Arizona. No translocations will be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves will be allowed to disperse naturally from Zone 1 into, and within the MWEPA (Zones 2 and 3) and occupy the MWEPA (Zones 1, 2 and 3). However, during Phase 1 dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17.
  - Phase 2: If determined to be necessary by either the 5-Year or 8-Year evaluation: initial release of Mexican wolves will occur throughout the entire Zone 1 **including** the area west of State Highway 87 in Arizona; No translocations will be conducted west of Interstate Highway 17 in Arizona. Mexican wolves will be allowed to disperse naturally from Zone 1 into, and within the MWEPA (Zones 2 and 3) and occupy the MWEPA (Zones 1, 2 and 3) **with the exception of** those areas in Zone 2 west of State Highway 89 in Arizona.
  - Phase 3: If determined to be necessary by the 5-Year or 8- Year evaluation: Initial release of Mexican wolves will be conducted throughout the entire Zone 1 **including** the area west of State Highway 87 in Arizona; no translocations will be conducted west of State Highway 89 in Arizona; Mexican wolves will be allowed to disperse naturally from Zone 1 into, and within the MWEPA (Zones 2 and 3) and occupy the MWEPA (Zones 1, 2 and 3).
  - Year 12 and beyond: Phased management approach ends: Initial release of Mexican wolves could be conducted throughout entire Zone 1; Translocations could be conducted at selected translocation sites on federal land and initial releases and translocations could be conducted on non-federal private and tribal land with voluntary management agreements within Zones 1 and 2 of the MWEPA. Mexican wolves will be allowed to disperse naturally from Zone 1 into, and within the MWEPA (Zones 2 and 3) and occupy the MWEPA (Zones 1, 2 and 3).
- Management actions to be carried out by the Reintroduction Project will include, but not limited to:
  - Public education and outreach in those areas of the three proposed Management Zones which contain suitable wolf habitat and are thus areas with a potential for wolf occupancy.
  - Investigation by authorized agencies of reported wolf incidents no later than 48 hours after a report is received.

- Aversive conditioning (hazing/ harassment, scare devices) of problem wolves to stop or modify undesirable behaviors such as displaying fearless behavior of humans or interacting with domestic animals or pet dogs.
  - Working with livestock producers and other landowners to eliminate attractants and to use guard animals, range riders, fladry, and other techniques to reduce conflicts between Mexican wolves and human activities.
  - Using monitoring as a means of improving non-lethal control measures to aversively condition wolves through hazing and harassment; using non-lethal control, trapping, translocation, or removal of wolves conducted by authorized personnel of the Service, tribes, and/or designated agents of the Service as authorized under a Service permit.
  - Using lethal removal for problem wolves under circumstances where the Service determines that immediate removal of a particular wolf, or wolves, from the wild is necessary, and other options for resolution of the conflict, including live capture, have been exhausted.
  - On tribal trust land within Zones 1 and 2 of the MWEPA, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: occupancy by natural dispersal; initial release; and translocation of Mexican wolves onto such lands. No agreement between the Service and a Tribe is necessary for the capture and removal of Mexican wolves from tribal trust lands if requested by the tribal government.
  - On private land within Zones 1 and 2 of the MWEPA, the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including: occupancy by natural dispersal; initial release; and translocation of Mexican wolves onto such lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency.
- Allowable forms of take of Mexican wolves:
    - *Take in defense of human life.* Under section 11(a)(3) of the Act and § 17.21(c)(2), any person may take (which includes killing as well as nonlethal actions such as harassing or harming) a Mexican wolf in self-defense or defense of the lives of others.
    - *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed.
    - *Intentional harassment.* After the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves.
    - On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal. *Domestic animal* means livestock and non-feral dogs. *Livestock* means domestic alpacas, bison, burros (donkeys), cattle, goats, horses, llamas, mules, and sheep, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans.
    - Based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to take



(including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed.

- Based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service may issue permits to livestock owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit.
- Take of Mexican wolves by livestock guarding dogs, when used to protect livestock on is allowed on Federal and non-Federal lands within the MWEPA.
- An *Unacceptable impact to a wild ungulate herd* shall be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates.
- *Take in response to unacceptable impacts to a wild ungulate herd.* If Arizona or New Mexico game and fish agency determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd, the respective State game and fish agency may request approval from the Service that Mexican wolves be removed from the area of the impacted wild ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with the following provisions:
  - Arizona or New Mexico game and fish agency must prepare a science-based document that:
    - Describes what data indicate that the wild ungulate herd is below management objectives, what data indicate that the impact on the wild ungulate herd is influenced by Mexican wolf predation, why Mexican wolf removal is a warranted solution to help restore the wild ungulate herd to State game and fish agency management objectives, the type (level and duration) of Mexican wolf removal management action being proposed, and how wild ungulate herd response to wolf removal will be measured and control actions adjusted for effectiveness;
    - Demonstrates that attempts were and are being made to identify other causes of wild ungulate herd declines and possible remedies or conservation measures in addition to wolf removal;
    - If appropriate, identifies areas of suitable habitat for Mexican wolf translocation; and
    - Has been subjected to peer review and public comment prior to its submittal to the Service for written concurrence. In order to comply with this requirement, the State game and fish agency must:

- (i) Conduct the peer review process in conformance with the Office of Management and Budget's most recent Final Information and Quality Bulletin for Peer Review and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and
  - Obtain at least three independent peer reviews from individuals with relevant expertise other than staff employed by the State (Arizona or New Mexico) requesting approval from the Service that Mexican wolves be removed from the area of the impacted wild ungulate herd.
- Before the Service will allow Mexican wolf removal in response to impacts to wild ungulates, the Service will evaluate the information provided by the requesting State (Arizona or New Mexico) and provide a written determination to the requesting State game and fish agency on whether such actions are scientifically based and warranted.
  - If all of the provisions above are met, the Service will, to the maximum extent allowable under the Act, make a determination providing for Mexican wolf removal. If the request is approved, the Service will include in the written determination which management action (capture and translocate in MWEPA, move to captivity, transfer to Mexico, lethally take, or no action) is most appropriate for the conservation of the Mexican wolf subspecies.
  - Because tribes are able to request the capture and removal of Mexican wolves from tribal trust lands at any time, take in response to impacts to wild ungulate herds is not applicable on tribal trust lands.
- *Take by Service personnel or a designated agency.* The Service or a designated agency may take any Mexican wolf in the experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as authorized pursuant to § 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service under § 17.32.
  - The Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, the Service will consider all of the following:
    - Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by Mexican wolves, or evidence that Mexican wolves were in the act of biting, killing, or wounding a domestic animal:
    - The likelihood that additional Mexican wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken; and
    - Evidence of attractants or intentional feeding (baiting) of Mexican wolves.

### **Monitoring or Enforcement Program**

The Service will measure the success or failure of releases, translocations, and other management actions by monitoring, researching, and evaluating the status of Mexican wolves and their offspring. Using adaptive management principles the Service will continue to modify subsequent management actions depending on what is learned. We will prepare periodic progress reports, annual reports, and publications, as appropriate, to evaluate release strategies and other management actions.

#### *Annual Progress Reports*

The Service, in coordination with the other agencies that are partners in the reintroduction of the Mexican wolf (Arizona Game and Fish Department, USDA-APHIS Wildlife Services, U.S. Forest Service and the White Mountain Apache Tribe), prepares an annual progress report which details all aspects of the Mexican Wolf Recovery Program, including the Reintroduction Project. The review of the Reintroduction project addresses: the status of the experimental population (population estimate, mortality, reproduction, home range and movements); management actions (releases and translocations, removals, and investigations); proactive management activities to assist in reducing wolf-livestock conflict; wolf predation; wolf depredation; and public outreach.

#### *Phasing: 5- and 8-year evaluations*

Implementation of the phased approach of Alternative One requires that two evaluations be conducted: (1) covering the first 5 years and (2) covering the first 8 years after the effective date of the final 10(j) rule in order to determine if we will move forward with the next phase. Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulates, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after the effective date of the final 10(j) rule the population is at least 150 Mexican wolves, and 8 years after the effective date of the final 10(j) rule the population is at least 200 Mexican wolves. The phasing may be expedited with the concurrence of participating State game and fish agencies. Regardless of the outcome of the two evaluations, by the beginning of year 12 from the effective date of the final 10(j) rule, we will move to full implementation of the final 10(j) rule throughout the MWEPA, and the phased management approach will no longer apply. We will incorporate the information for these reviews into our annual report, which will serve as the documentation for these 5- and 8-year evaluations on the phasing of the reintroduction project.

#### *5 year assessment of the effectiveness of the final experimental population rule*

We will conduct a one-time full evaluation of the final 10(j) rule 5 years after it becomes effective; the evaluation will focus on modifications needed to improve the efficacy of reestablishing Mexican wolves in the wild and the contribution the experimental population is making toward the recovery of the Mexican wolf. A one-time program review conducted 5 years after our final determination will provide an appropriate interval to assess the effectiveness of the project. This one-time program review is separate from the status review of the listed species that we will conduct once every 5 years as required by section 4(c)(2) of the Act.

### **Public Comments on Final EIS**

To be provided in Final ROD. All substantive comments received on the final EIS will be identified and given appropriate responses. Other comments will be summarized and responses provided where appropriate.

**For More Information**

You may obtain a copy of the final EIS and draft ROD by going to the Mexican Wolf Recovery Program website at <http://www.fws.gov/southwest/es/mexicanwolf/>. Alternatively, you may obtain a compact disk with an electronic copy of the final EIS by writing to Ms. Sherry Barrett, Mexican Wolf Recovery Coordinator, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE, Albuquerque, NM 87113. The final EIS and draft ROD will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the New Mexico Ecological Services Field Office, 2105 Osuna Road, NE, Albuquerque, NM 87113. In cooperation with the U.S. Department of Agriculture, Forest Service, Southwest Region, we have also established information repositories at the Supervisor Offices for the National Forests throughout Arizona and New Mexico. Links to the National Forests with the addresses of the supervisor offices are available at <http://www.fs.usda.gov/r3>.