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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2020–0007; FXES111302WOLF0-201-FF02ENEH00]

RIN 1018–BE52

Endangered and Threatened Wildlife and Plants; Revision to the Nonessential

Experimental Population of the Mexican Wolf (*Canis lupus baileyi*); Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: We, the U.S. Fish and Wildlife Service, will prepare a draft environmental impact statement supplement pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), in conjunction with a proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended. The revised rule and environmental impact statement supplement are being developed in response to a court-ordered remand by the District Court of Arizona of our 2015 final rule to revise the nonessential experimental population designation and management of Mexican wolves in the Mexican Wolf Experimental Population Area in Arizona and New Mexico.

DATES: We will accept public comments received or postmarked on or before 11:59 p.m.

Eastern Time on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE**

FEDERAL REGISTER]. We may not consider any comments we receive after the closing date in the final decision.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments to Docket No. FWS–R2–ES–2020–0007, which is the docket number for this notice of intent.

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2020–0007; U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments **only** by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Requested** section below for more information.). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, 505-248-6651; or the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113 or by telephone 505–761–4704; or by facsimile 505–761–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339. Additional information can be found on the Mexican Wolf Recovery Program’s Web site at <https://www.fws.gov/southwest/es/mexicanwolf/>.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

We established a nonessential experimental population of Mexican wolves in Arizona and New Mexico in 1998 (63 FR 1752, January 12, 1998) pursuant to section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). We published a final rule to revise the designation and management of the nonessential experimental population in 2015 (80 FR 2512, January 16, 2015) (2015 final rule). We analyzed the effects of our proposed revision in the Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf (*Canis lupus baileyi*) (EIS). We opened a public comment period and announced public meetings for the draft environmental impact statement on July 25, 2014 (79 FR 43358), and announced the availability of our EIS and draft Record of Decision in the *Federal Register* on November 25, 2014 (79 FR 70154). The EIS and other documents are available at <http://www.regulations.gov> in Docket No. FWS-R2-ES-2013-0056 under Supporting Documents.

Background

The Service previously opened a public scoping period on August 5, 2013, to seek public input on the scope, issues, and alternatives under consideration in the Service's revision of the 1998 Mexican wolf nonessential experimental population designation (78 FR 47268). At that time, the Service was seeking to improve the conservation and management of the experimental population as designated in 1998, and requested input from the public on potential changes to the geographic boundaries of the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico, as well as the management provisions associated with it. In the 2015 final rule, the Service revised the designation and management of the MWEPA from its original 1998 designation by:

- (1) Establishing a population objective for the experimental population of 300 to 325 wolves within the MWEPA;
- (2) Expanding the area in which initial releases of Mexican wolves from captivity and translocations could occur;
- (3) Extending the southern boundary of the MWEPA in Arizona and New Mexico to the United States–Mexico international border;
- (4) Discontinuing the use of the “Blue Range Wolf Recovery Area” designation within the MWEPA, including its divisions of primary and secondary recovery zones;
- (5) Establishing three management zones within the MWEPA defined as “Zone 1,” “Zone 2,” and “Zone 3,” each with specific provisions for Mexican wolf occupancy, initial releases, and translocations;
- (6) Adopting a phased management approach for up to 12 years to minimize or avoid impacts to wild ungulate populations in western Arizona;
- (7) Authorizing removal of Mexican wolves identified as coming from the experimental population that disperse to establish territories outside of the MWEPA in a revised section 10(a)(1)(A) research and recovery permit;
- (8) Providing revised and additional provisions for take of Mexican wolves under certain circumstances to protect livestock and non-feral dogs, or as needed to manage wild ungulate populations (particularly elk and deer); and
- (9) Providing for the development of management actions on tribal trust land or on private land in management Zones 1 and 2.

On March 31, 2018, the District Court of Arizona remanded the 2015 final rule to the Service based on the Court’s finding that the 2015 final rule failed to further the long-term

conservation and recovery of the Mexican wolf and that the essentiality determination was arbitrary and capricious (*Center for Biological Diversity v. Jewell*, No. 4:15-cv-00019-JGZ (D. Ariz.) (March 31, 2018, Order). The Service is under a court-ordered deadline to address the remanded issues in a new revised rule by May 1, 2021. The 2015 final rule remains in place until we finalize the new revised rule.

In the interim between the 2015 final rule and the March 31, 2018, Order, the Service finalized the Mexican Wolf Recovery Plan, First Revision (2017). The revised recovery plan, which updates the original 1982 Mexican Wolf Recovery Plan, provides objective and measurable recovery criteria for the Mexican wolf, as well as management actions and time and cost estimates to achieve recovery, pursuant to section 4(f) of the Act. The recovery criteria focus on achieving specific population sizes, growth rate trends, and genetic diversity in the MWEPA and a second population in Mexico, as well as ensuring regulatory mechanisms are in place for both populations to address human-caused mortality of Mexican wolves. The recovery plan serves as our roadmap for the long-term conservation and recovery of the Mexican wolf. It is available at <http://www.regulations.gov> in Docket No. FWS-R2-ES-2017-0036 under Supporting Documents.

Information Requested

We are currently seeking comments or suggestions from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning specific provisions of the 2015 final rule identified by the District Court of Arizona in the March 31, 2018, Order. We will revise the 2015 final rule only to the extent necessary to address the Court's ruling; no additional provisions of the rule are subject to revision. To the extent possible, and as described below, we will address the remanded issues by aligning the new

revised rule with the revised recovery plan, which provides an overarching strategy for the long-term conservation and recovery of the Mexican wolf. We will analyze any new proposed rule revisions in a supplemental EIS to the 2014 EIS.

Due to the focus of the remand, we are seeking input from the public only on a narrow range of topics, as follows:

(1) We will make a new essentiality determination for the experimental population of Mexican wolves in the MWEPA under section 10(j) of the Act. We are interested in feedback from the public and our partners on the benefits or potential impacts to the Mexican wolf or the public and our partners of an “essential” versus “nonessential” designation.

(2) We intend to align the population objective and release recommendations in the new revised rule with the recovery criteria in the revised recovery plan for the MWEPA to ensure the new revised rule supports the long-term conservation and recovery of the Mexican wolf. We are interested in feedback from the public and our partners on any information or data available since we finalized the revised recovery plan in 2017 pertinent to establishing a population objective or release recommendations for the MWEPA. We are also interested in any other considerations related to the relationship between the population objective and release recommendations for the MWEPA and the long-term conservation and recovery of the Mexican wolf.

(3) We intend to ensure the new revised rule supports population-level genetic health for the Mexican wolf in the MWEPA as a key component of the long-term conservation and recovery of the Mexican wolf. We will ensure our management provisions facilitate our ability to achieve the genetic recovery criterion for the MWEPA, which serves as our long-term conservation and recovery target. The genetic criterion in the revised recovery plan for the

MWEPA states that we will release a sufficient number of captive Mexican wolves to result in 22 released Mexican wolves surviving to breeding age in the MWEPA (USFWS 2017a, pp. 18–19). As explained in the revised recovery plan (USFWS 2017a, pp. 9, 13) and the supporting Biological Report for the Mexican Wolf (USFWS 2017b, pp. 27–29, 33–34, and 36–38), the genetic criterion ensures that the threat of continuing or accelerated loss of genetic diversity of Mexican wolves in the wild is adequately alleviated. Both of these documents are available online at <http://www.regulations.gov> in Docket No. FWS–R2–ES–2017–0036 under Supporting Documents.

In the 2015 final rule, we expanded several allowable forms of take of Mexican wolves from the 1998 rule after analyzing their effects in the 2014 EIS and determining a significant beneficial effect for the Mexican wolf (USFWS 2014, pg. ES-18). In the District Court of Arizona’s March 31, 2018, Order, the judge stated that, after the Service identified loss of genetic diversity as a primary threat to the Mexican wolf, “...the expanded take provisions lack protections for the loss of genetic diversity (*Center for Biological Diversity v. Jewell*, No. 4:15-cv-00019-JGZ (D. Ariz.), pg. 29).” In response to the ruling, we will assess the effects of three of the expanded take provisions on the long-term conservation and recovery of the Mexican wolf, in particular as they relate to our ability to achieve the genetic criterion in the revised recovery plan. The take provisions we will evaluate include: Take on non-Federal lands in conjunction with a removal action (50 CFR 17.84(k)(7)(iv)(C)); take on Federal land (§ 17.84(k)(7)(v)(A)); and take in response to unacceptable impacts to a wild ungulate herd (§ 17.84(k)(7)(vi)). Lethal control will remain an allowable form of take under these three provisions.

For clarity, we are not assessing or considering modification to the allowable take of Mexican wolves by livestock guarding dogs on Federal or non-Federal land as specified in the 2015 final rule (§ 17.84(k)(7)(iv)(B) and § 17.84(k)(7)(v)(B), respectively), or take, including killing, on non-Federal land by a domestic animal owner or that person's agent of any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal (§ 17.84(k)(7)(iv)(A)). Finally, take in defense of human life as specified in the 2015 final rule (§ 17.84(k)(7)(i)) would remain an allowable form of take, including the potential for lethal take of a Mexican wolf.

We are interested in feedback from the public and our partners on the impact of take on non-Federal lands in conjunction with a removal action (50 CFR 17.84(k)(7)(iv)(C)), take on Federal land (§ 17.84(k)(7)(v)(A)), and take in response to unacceptable impacts to a wild ungulate herd on the genetic health of the experimental population in the MWEPA in the context of long-term conservation and recovery of the Mexican wolf. We are also interested in feedback on the social or economic benefits or impacts of modifying any of these three allowable forms of take of Mexican wolves to the public or our partners, as well as other recommendations to protect the genetic health of the experimental population in the MWEPA and achieve the genetic recovery criterion.

(4) We intend to produce a draft and final supplemental EIS to the 2014 EIS that includes updated data, information, and analyses pertinent to any of the revisions under consideration in the new revised rule. Specifically, we intend to modify the Purpose and Need of the 2014 EIS only as necessary to explain the role of the MWEPA in the recovery of the Mexican wolf, based on the revised recovery plan. We intend to evaluate and revise specific features of two alternatives from the 2014 EIS, as follows: In Alternative One (Proposed Action and Preferred Alternative), we will revise the population objective and release recommendations, and may

revise any of the three forms of allowable take discussed above. In Alternative Two, we may revise any of the three forms of allowable take discussed above, consistent with revisions made in Alternative One. We do not intend to revise any of the components of Alternatives Three or Four from the 2014 EIS, and we do not intend to consider any new alternatives in the supplemental EIS that were not included in the 2014 EIS.

As necessary and based on information availability, we will provide updated data in the supplemental EIS at the relevant State or county level for Arizona and New Mexico to analyze the environmental consequences (i.e., effects or impacts) of our revisions on the land use, biological resources, economic activity, health and human safety, and environmental justice in the project area. Updated data may include:

- Changes in land use such as significant shifts in land ownership, management, or special use;
- Human population census data, including information on low-income populations, racial minorities, and Indian tribes;
- The number of permitted and authorized Animal Unit Months in National Forests (An Animal Unit Month, or AUM, is a measure of the amount of forage required to sustain one cow, either dry or with calf at side up to 6 months of age, for 1 month);
- An inventory of cattle and calves, including the number of cattle and calf operations, cattle sales (including calves), and herd sizes;
- Sheep and lamb inventory;
- Big game hunting data, including the number of license holders and applicants, days spent hunting and average hunter financial expenditures, and total number of hunters, harvest, and success ratio for elk and deer;

- Incidences of human–wolf encounters; and
- Parasite or disease events related to Mexican wolves.

Therefore, we are requesting any new information from the public or our partners available since the publication of the 2014 EIS and 2015 final rule (80 FR 2487, January 16, 2015) related to these topics that is not readily available on Federal, State, tribal, or county websites.

Please note that submissions merely stating support for or opposition to the items under consideration, without providing supporting information, although noted, will not be considered. Similarly, issues raised that are outside of the scope of items under consideration will not be considered in making a determination. Please consider the following when preparing your comments:

- Be as succinct as possible.
- Organize comments beginning with general comments and then move on to specific issues.
- Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.
- State suggestions and recommendations clearly with an expectation of what you would like the Service to do.
- If you provide alternate interpretations of science from the revised recovery plan or other cited Service document, please support your analysis with appropriate citations.
- If possible, coordinate your comments with other like-minded individuals and organizations. This can strengthen the comment and help us understand the depth of concern.

References and Availability of Documents for Review

We will post information pertinent to NEPA planning on our Mexican Wolf Recovery Program web site, <http://www.fws.gov/southwest/es/mexicanwolf/NEPA>. The references cited in this notice are also available at that website.

Authors

The primary authors of this notice are the staff members of the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, Interior Regions 7 and 8.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Amy Lueders,

Regional Director.

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