

# ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 50: Wildlife and Fisheries

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Subpart H—Experimental Populations

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## **§17.84 Special rules—vertebrates.**

(a) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*). (1) The Delmarva Peninsula fox squirrel population identified in paragraph (a)(6) of this section is a nonessential experimental population.

(2) No person shall take this species, except:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations; or

(ii) Incidental to recreational activities.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species (other than incidental taking as described in paragraph (a)(2)(ii) of this section) will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (a)(2) or (4) of this section.

(6) The site for reintroduction of Delmarva Peninsula fox squirrel is totally isolated from existing populations of this species. The nearest extant population is in the Chincoteague National Wildlife Refuge approximately 50 miles from the reintroduction site. The reintroduction site is within the historic range of this species and is located at the Assawoman Wildlife Area, Sussex County, Delaware. Observation of previous releases have shown that fox squirrels have not traveled more than 2 or 3 miles from release sites, therefore, the possibility of this population contacting extant wild populations is unlikely.

(7) The reintroduced population will be checked periodically to determine its condition and the success of the reintroduction. Of special concern will be the establishment of breeding pairs and the reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

(b) Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagopterus argentissimus*). (1) The Colorado squawfish and woundfin populations identified in paragraph (b)(6) of this section, are experimental, nonessential populations.

(2) No person shall take the species, except in accordance with applicable State or Tribal fish and

wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Incidental to otherwise lawful activities, provided that the individual fish taken, if still alive, is immediately returned to its habitat.

(3) Any violation of applicable State or Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species (other than incidental taking as described in paragraph (b)(2)(ii) of this section) will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State or Tribal fish and wildlife laws or regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (b) (2) through (4) of this section.

(6) All of the sites for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado Rivers, an upstream distance of at least 800 miles including 6 mainstream dams, and 200 miles of dry riverbed. Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams). All reintroduction sites are within the probable historic range of these species and are as follows:

#### *Colorado Squawfish*

(i) *Arizona: Gila County.* Salt River from Roosevelt Dam upstream to U.S Highway 60 bridge.

(ii) *Arizona: Gila and Yavapai Counties.* Verde River from Horseshoe Dam upstream to Perkinsville.

The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabited by Colorado squawfish. Downstream movement of squawfish in these areas will be restricted by dams and upstream movement is limited by lack of suitable habitat.

#### *Woundfin*

(i) *Arizona: Gila and Yavapai Counties.* Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

(ii) *Arizona: Graham and Greenlee Counties.* Gila River from backwaters of San Carlos Reservoir upstream to Arizona/New Mexico State line.

(iii) *Arizona: Greenlee County.* San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

(iv) *Arizona: Gila County.* Tonto Creek, from Punkin Center upstream to Gisela.

(v) *Arizona: Yavapai County.* Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambed. Upstream movement from these areas is restricted due to the absence of habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

(7) The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or contraction, reproduction success, and general health condition of the fish.

(c) Red wolf (*Canis rufus*). (1) The red wolf populations identified in paragraphs (c)(9)(i) and (c)(9)(ii) of this section are nonessential experimental populations.

(2) No person may take this species, except as provided in paragraphs (c)(3) through (5) and (10) of this section.

(3) Any person with a valid permit issued by the Service under §17.32 may take red wolves for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations;

(4)(i) Any person may take red wolves found on private land in the areas defined in paragraphs (c)(9)(i) and (ii) of this section, *Provided* that such taking is not intentional or willful, or is in defense of that person's own life or the lives of others; and that such taking is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(ii) Any person may take red wolves found on lands owned or managed by Federal, State, or local government agencies in the areas defined in paragraphs (c)(9)(i) and (ii) of this section, *Provided* that such taking is incidental to lawful activities, is unavoidable, unintentional, and not exhibiting a lack of reasonable due care, or is in defense of that person's own life or the lives of others, and that such taking is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(iii) Any private landowner, or any other individual having his or her permission, may take red wolves found on his or her property in the areas defined in paragraphs (c)(9)(i) and (ii) of this section when the wolves are in the act of killing livestock or pets, *Provided* that freshly wounded or killed livestock or pets are evident and that all such taking shall be reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(iv) Any private landowner, or any other individual having his or her permission, may harass red wolves found on his or her property in the areas defined in paragraphs (c)(9)(i) and (ii) of this section, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer, as noted in paragraph (c)(6) of this section for investigation.

(v) Any private landowner may take red wolves found on his or her property in the areas defined in paragraphs (c)(9)(i) and (ii) of this section after efforts by project personnel to capture such animals have been abandoned, *Provided* that the Service project leader or biologist has approved such actions in writing and all such taking shall be reported within 24 hours to the Service project leader or biologist, the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(vi) The provisions of paragraphs (4)(i) through (v) of this section apply to red wolves found in areas outside the areas defined in paragraphs (c)(9)(i) and (ii) of this section, with the exception that reporting of taking or harassment to the refuge manager, Park superintendent, or State wildlife enforcement officer, while encouraged, is not required.

(5) Any employee or agent of the Service or State conservation agency who is designated for such purposes, when acting in the course of official duties, may take a red wolf if such action is necessary

to:

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

(ii) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study;

(iii) Take an animal that constitutes a demonstrable but non-immediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *Provided* That such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge or Park;

(iv) Move an animal for genetic purposes.

(6) Any taking pursuant to paragraphs (c) (3) through (5) of this section must be immediately reported to either the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473-1131, or the Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee, telephone 615/436-1294. Either of these persons will determine disposition of any live or dead specimens.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (c) (2) through (7) of this section.

(9)(i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrrell, and Washington Counties; because of its proximity and potential conservation value, Beaufort County is also included in the experimental population designation.

(ii) The red wolf also historically occurred on lands that now comprise the Great Smoky Mountains National Park. The Park encompasses properties within Haywood and Swain Counties in North Carolina, and Blount, Cocke, and Sevier Counties in Tennessee. Graham, Jackson, and Madison Counties in North Carolina, and Monroe County in Tennessee, are also included in the experimental designation because of the close proximity of these counties to the Park boundary.

(iii) Except for the three island propagation projects and these small reintroduced populations, the red wolf is extirpated from the wild. Therefore, there are no other extant populations with which the refuge or Park experimental populations could come into contact.

(10) The reintroduced populations will be monitored closely for the duration of the project, generally using radio telemetry as appropriate. All animals released or captured will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be in need of special care or that moves onto lands where the landowner requests their removal will be recaptured, if possible, by Service and/or Park Service and/or designated State wildlife agency personnel and will be given appropriate care. Such animals will be released back into the wild as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive-breeding facility.

(11) The status of the Alligator River National Wildlife Refuge project will be reevaluated by October 1, 1992, to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and overall health of the population. The duration of the first phase of the Park project is estimated to be 10 to 12 months. After that period, an assessment of the reintroduction potential of the Park for red wolves will be made. If a second phase of reintroduction is attempted, the duration of that phase will be better



defined during the assessment. However, it is presently thought that a second phase would last for 3 years, after which time the red wolf would be treated as a resident species within the Park. Throughout these periods, the experimental and nonessential designation of the animals will remain in effect.

(d) [Reserved]

(e) Yellowfin madtom (*Noturus flavipinnis*). (1) *Where is the yellowfin madtom designated as a nonessential experimental population (NEP)?* We have designated three populations of this species as NEPs: the North Fork Holston River Watershed NEP, the Tellico River NEP, and the French Broad River and Holston River NEP.

(i) The North Fork Holston River Watershed NEP area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs and because individuals of the species are not likely to move 100 river miles through these large reservoirs, the possibility that this population could come in contact with extant wild populations is unlikely.

(ii) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. This species is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iv) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP areas?* (i) Except as expressly allowed in paragraph (e)(3) of this section, all the prohibitions of §17.31(a) and (b) apply to the yellowfin madtom.

(ii) Any manner of take not described under paragraph (e)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means

whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (e)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (e)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the yellowfin madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(6) *Note:* Map of the NEP area for the yellowfin madtom in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(f) Guam rail (*Rallus owstoni*). (1) The Guam rail population identified in paragraph (f)(7) of this section is a nonessential experimental population.

(2) No person shall take this species, except:

(i) In accordance with a valid permit issued by the Service under §17.32 for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) As authorized by the laws and regulations of the Commonwealth of the Northern Mariana Islands, after the Service has made the determination that the experimental population has become well established and occupies all suitable habitat island-wide.

(3) Any employee of the Service, the Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife, or the Guam Division of Aquatic and Wildlife Resources who is designated for such purposes, may, when acting in the course of official duties, take a Guam rail without a permit if such action is necessary to:

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

(ii) Dispose of a dead specimen;

(iii) Salvage a dead specimen that may be useful for scientific study; or

(iv) Take an animal that is responsible for depredations to personal property if it has not been possible to otherwise eliminate such depredations and/or loss of personal property, provided that such taking must be done in a humane manner and may involve injuring or killing the bird only if it has not been possible to eliminate depredations by live capturing and releasing the specimen unharmed in other suitable habitats.

(4) Any violation of applicable commonwealth of the Northern Mariana Islands fish and wildlife conservation laws or regulations with respect to the taking of this species (other than taking as described in paragraph (f)(2)(ii) of this section) will also be a violation of the Endangered Species Act.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable

Commonwealth of the Northern Mariana Islands 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 paragraphs (f) (2) through (5) of this section.

(7) The sites for introduction of Guam rails on Rota, Commonwealth of the Northern Mariana Islands, are on an island separated from Guam by 50 kilometers of ocean. The last known observation of an individual of this species occurred near the northern tip of Guam, which is closest to the island of Rota. No intermingling of these populations will occur since this species has been extirpated in the wild on Guam. The Rota release sites are of necessity outside the historic range of the Guam rail, as described in this regulation, because its primary range has been unsuitably and irreversibly destroyed by the brown tree snake.

(8) The nonessential experimental population on Rota will be checked periodically by staff of the Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife and cooperating staff from the University of Tennessee to determine dispersal patterns, mortality, and reproductive success. The overall success of the releases and general health of the population will also be assessed.

(g) Black-footed ferret (*Mustela nigripes*). (1) The black-footed ferret populations identified in paragraph (g)(9)(i) through (vii) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population area, except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under section 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency designated for such purposes, acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Little Snake Black-footed Ferret Management Area/Coyote Basin Primary Management Zone or the Rosebud Sioux Reservation Experimental Population Area when that relocation is necessary to protect the ferret or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section.

(iv) To relocate ferrets within the experimental population area to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct is not considered intentional or "knowing take" for the purposes of this regulation, and the Service will not take legal action for such conduct. However, we will refer cases of knowing take to the

appropriate authorities for prosecution.

(6) You must report any taking pursuant to paragraphs (g)(3), (4)(vi) and (vii), and (5) of this section to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Report such taking in the Shirley Basin/Medicine Bow experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772-2374).

(ii) Report such taking in the Conata Basin/Badlands experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224-8693).

(iii) Report such taking in the northcentral Montana experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449-5225).

(iv) Report such taking in the Aubrey Valley experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona (telephone: 602/640-2720).

(v) Report such taking in the northwestern Colorado/northeastern Utah experimental population area to the appropriate Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Lakewood, Colorado (telephone: 303/275-2370), or Salt Lake City, Utah (telephone: 801/524-5001).

(vi) Report such taking in the Cheyenne River Sioux Tribe Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605/224-8693).

(vii) Report such taking in the Rosebud Sioux Reservation Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605/224-8693).

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

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to commit, any offense defined in paragraphs (g)(2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) We consider the Shirley Basin/Medicine Bow Management Area on the attached map of Wyoming to be the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population are that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases constituted the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases comprise the nonessential experimental population, thereafter.

(ii) We consider the Conata Basin/Badlands Reintroduction Area on the attached map for South Dakota to be the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area occur north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I-90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild

within these boundaries is part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferret in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota is considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the Reintroduction Area or to a captive facility.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(iii) We consider the Northcentral Montana Reintroduction Area shown on the attached map for Montana to be the core recovery area for this species in northcentral Montana. The boundaries of the nonessential experimental population are those parts of Phillips and Blaine Counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases constituted the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the experimental area in Montana is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the reintroduction area or to a captive facility.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(iv) We consider the Aubrey Valley Experimental Population Area shown on the attached map for Arizona to be the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area is those parts of Coconino, Mohave, and Yavapai Counties that include the Aubrey Valley west of the Aubrey Cliffs, starting from Chino Point, north along the crest of the Aubrey cliffs to the Supai Road (State Route 18), southwest along the Supai Road to Township 26 North, then west to Range 11 West, then south to the Hualapai Indian Reservation boundary, then east and northeast along the Hualapai Indian Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 6 km (2.3 miles) to a point intercepting the east boundary of section 27, Township 25 North, Range 9 West; then south along a line to where the Atchison-Topeka Railroad enters Yampa Divide Canyon; then southeast along the Atchison-Topeka Railroad alignment to the intersection of the Range 9 West/Range 8 West boundary; then south to the SE corner of section 12, Township 24 North, Range 9 West; then southeast to SE corner section 20, Township 24 West, Range 8 West; then south to the SE corner section 29, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of section 33, Township 24 North, Range 8 West; then northeast to the SE corner of section 27, Township 24 North, Range 8 West; then southeast to the SE corner Section 35, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of section 12, Township 23 North, Range 8 West; then southeast to the SE corner of section 8, Township 23 North, Range 7 West; then southeast to the SE corner of section 16, Township 23 North, Range 7 West; then east to the half section point of the north

boundary line of section 14, Township 23 North, Range 7 West; then south to the half section point on the north boundary line of section 26, Township 23 North, Range 7 West; then east along section line to route 66; then southeast along route 66 to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries is part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets into the reintroduction area. A black-footed ferret occurring outside the experimental area in Arizona is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the reintroduction area or to a captive facility. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(v) We consider the Little Snake Black-footed Ferret Management Area in Colorado and the Coyote Basin Black-footed Ferret Primary Management Zone in Utah as the initial recovery sites for this species within the Northwestern Colorado/Northeastern Utah Experimental Population Area (see Colorado/Utah map). The boundaries of the nonessential Experimental Population Area will be all of Moffat and Rio Blanco Counties in Colorado west of Colorado State Highway 13; all of Uintah and Duchesne Counties in Utah; and in Sweetwater County, Wyoming, the line between Range 96 and 97 West (eastern edge), Range 102 and 103 West (western edge), and Township 14 and 15 North (northern edge). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of release will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases of ferrets into the reintroduction area will comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the Experimental Population Area is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the Reintroduction Area or to a captive facility.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(vi) The Cheyenne River Sioux Tribe Reintroduction Area is shown on the map of north-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area are the exterior boundaries of the Cheyenne River Sioux Reservation which includes all of Dewey and Ziebach Counties, South Dakota. Any black-footed ferret found in the wild within these counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the Experimental Population Area in north-central South Dakota would initially be considered as endangered but may be captured for genetic testing. When a ferret is found outside the Experimental Population Area, the following may occur:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for

use in the captive-breeding program.

(vii) The Rosebud Sioux Reservation Experimental Population Area is shown on the map of south-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area include all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the nonessential experimental population area in south-central South Dakota will initially be considered as endangered but may be captured for genetic testing. If necessary, disposition of the captured animal may occur in the following ways:

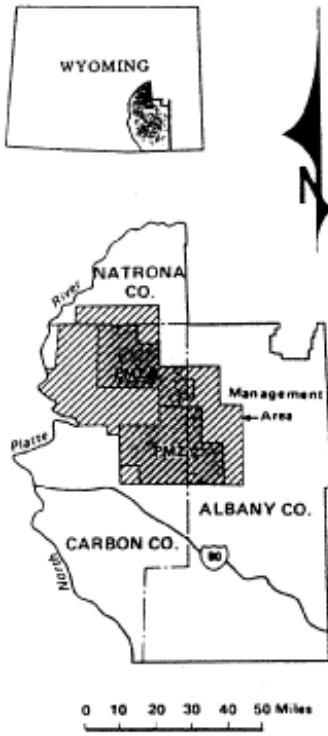
(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

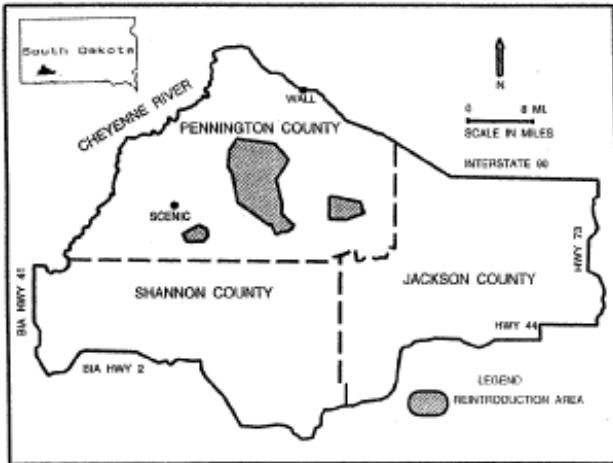
(10) Monitoring the reintroduced populations will occur continually during the life of the project, including the use of radio telemetry and other remote sensing devices, as appropriate. Vaccination of all released animals will occur prior to release, as appropriate, to prevent diseases prevalent in mustelids. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or appropriate State wildlife agency or their agents and given appropriate care. Such an animal may be released back to its appropriate reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) We will reevaluate the status of the experimental population within the first five years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. We will propose reclassification of the black-footed ferret when we meet the appropriate recovery objectives for the species.

(12) We will not include a reevaluation of the “nonessential experimental” designation for these populations during our review of the initial five year reintroduction program. We do not foresee any likely situation justifying alteration of the nonessential experimental status of these populations. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on their lands may rescind their consent, and at their request, we will relocate the ferrets pursuant to paragraph (g)(4)(iii) of this section.

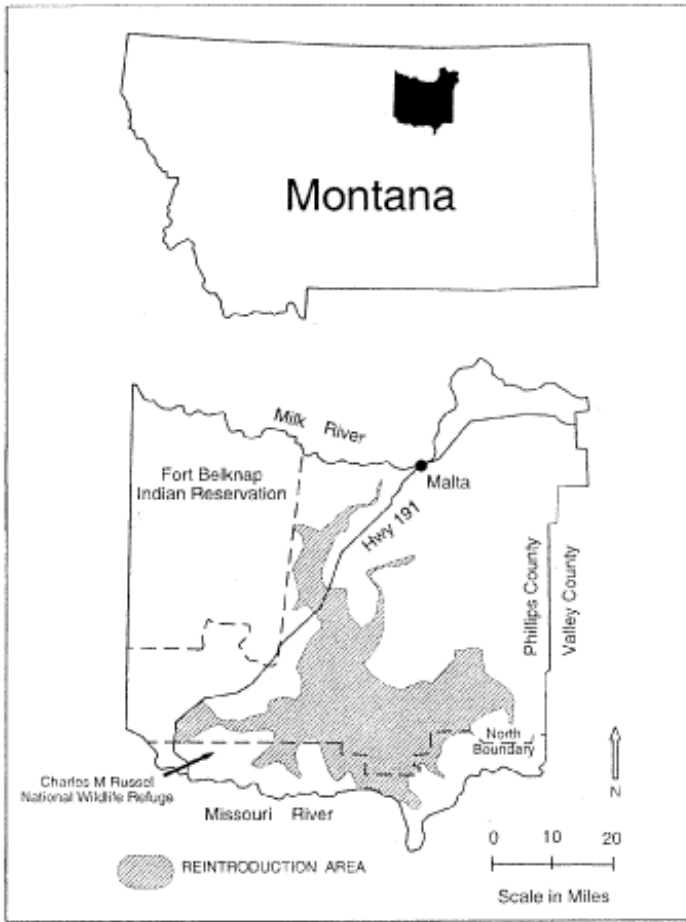


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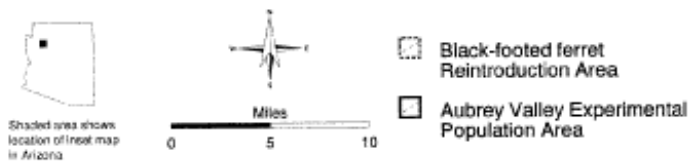
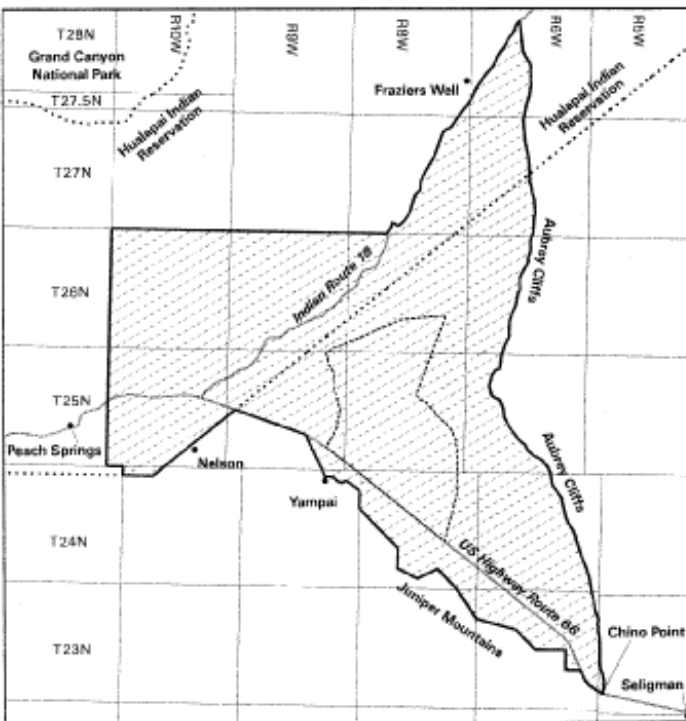


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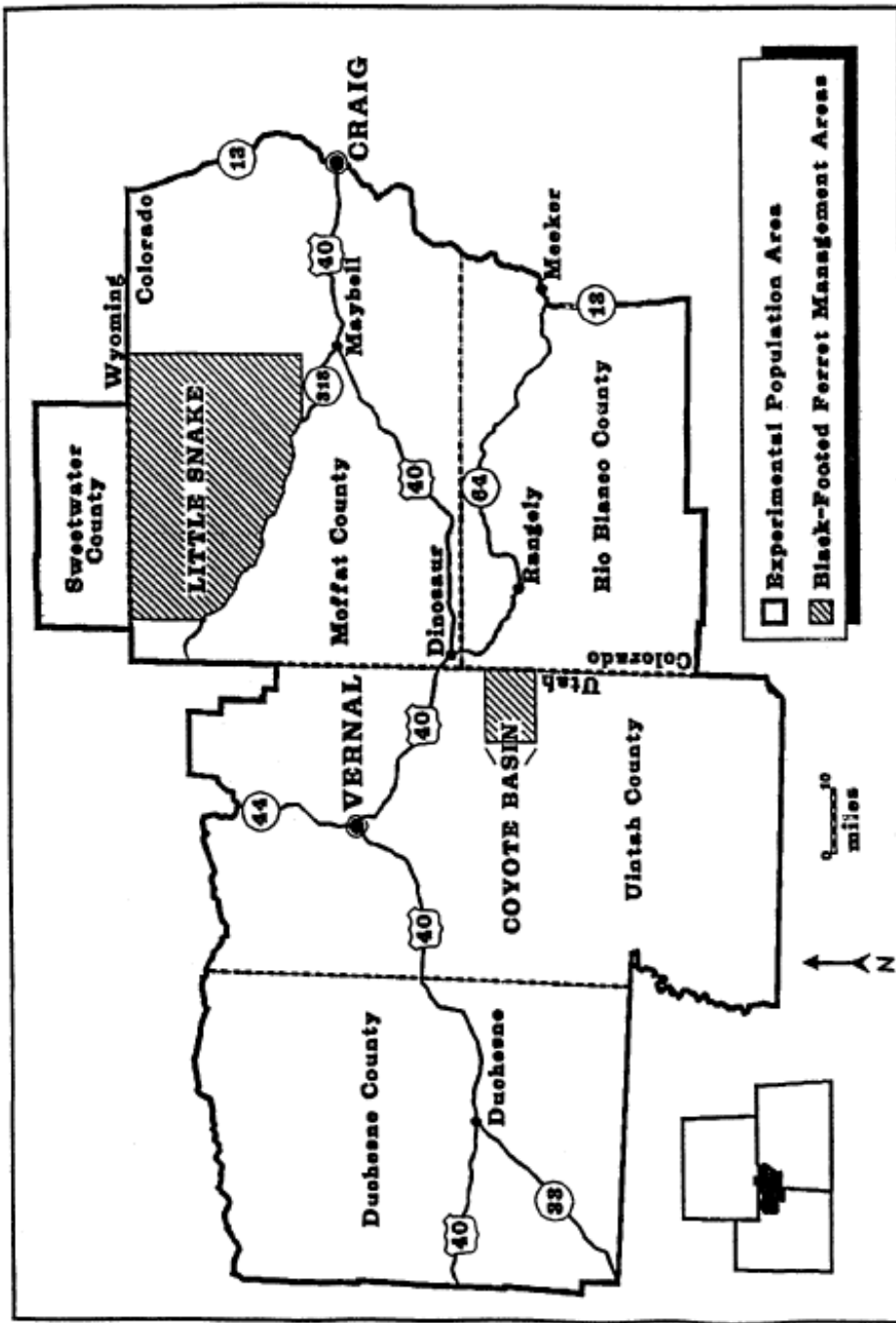




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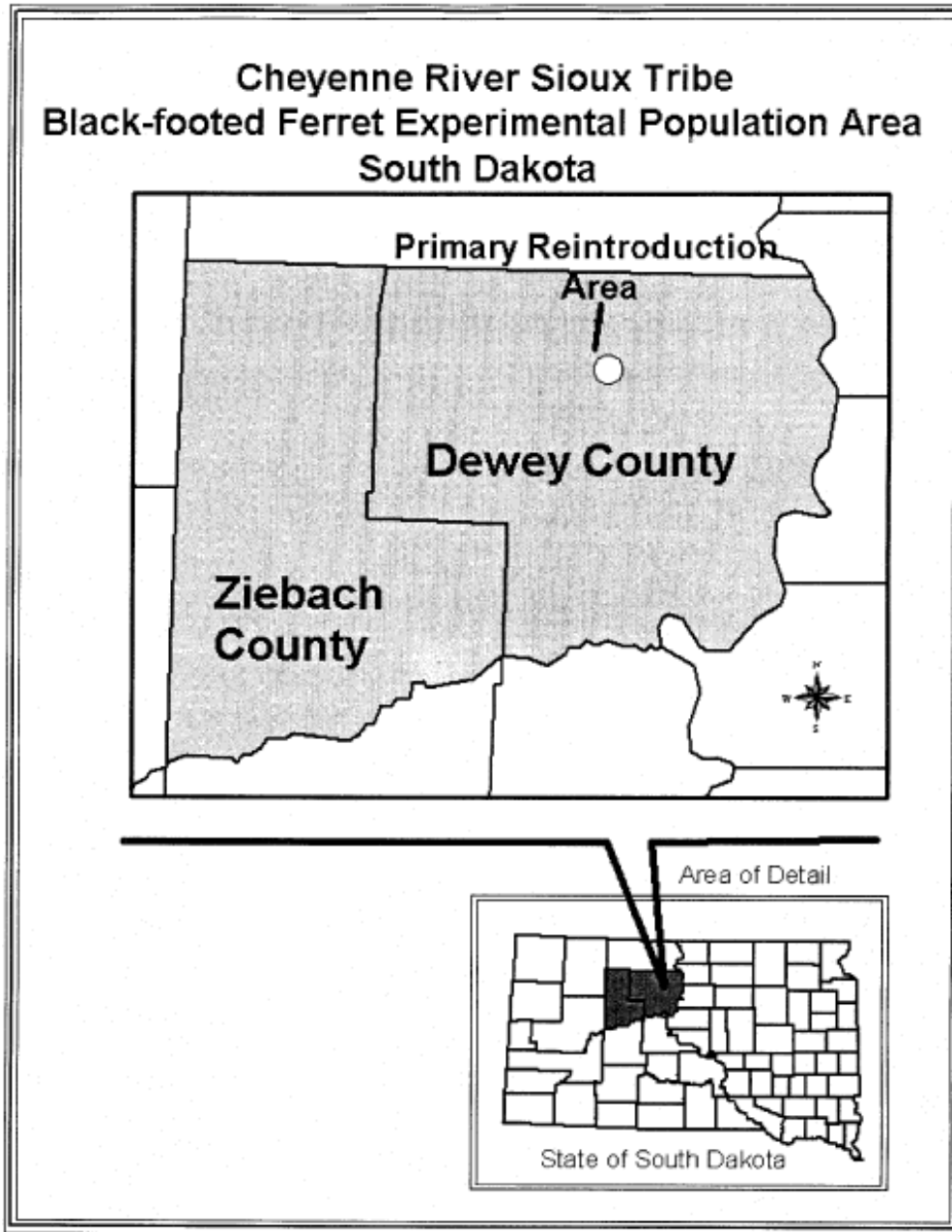


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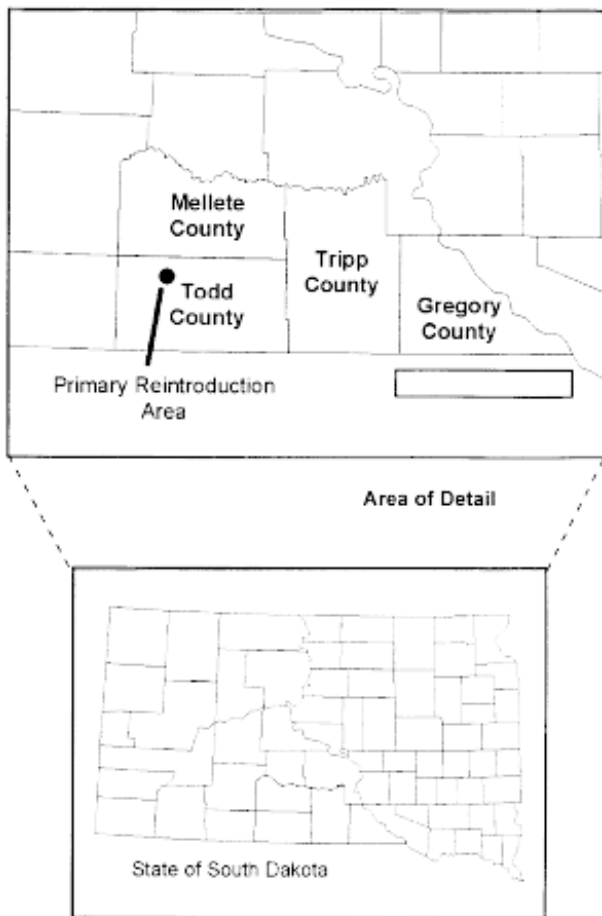


Map Showing the Boundaries of the Black-footed Ferret Experimental Population Area and the Management Area/PMZ for Northwestern Colorado/Northeastern Utah.

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Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret)  
Experimental Population Area - South Dakota

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(h) Whooping crane (*Grus americana*). (1) The whooping crane populations identified in paragraphs (h)(9)(i) through (iv) of this section are nonessential experimental populations (NEPs) as defined in §17.80.

(i) The only natural extant population of whooping cranes, known as the Aransas/Wood Buffalo National Park population, occurs well west of the Mississippi River. This population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge.

(ii) No natural populations of whooping cranes are likely to come into contact with the NEPs set forth in paragraphs (h)(9)(i) through (iv) of this section. Whooping cranes adhere to ancestral breeding grounds, leaving little possibility that individuals from the extant Aransas/Wood Buffalo National Park population will stray into the NEPs. Studies of whooping cranes have shown that migration is a learned rather than an innate behavior.

(2) No person may take this species in the wild in the experimental population areas, except when such take is accidental and incidental to an otherwise lawful activity, or as provided in paragraphs (h)(3) and (4) of this section. Examples of otherwise lawful activities include, but are not limited to, oil and gas exploration and extraction, aquacultural practices, agricultural practices, pesticide application, water management, construction, recreation, trapping, or hunting, when such activities are in full compliance with all applicable laws and regulations.

(3) Any person with a valid permit issued by the Fish and Wildlife Service (Service) under §17.32 may take whooping cranes in the wild in the experimental population areas for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, and other conservation purposes consistent with the ESA and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a whooping crane in the wild in the experimental population areas if such action is necessary to:

(i) Relocate a whooping crane to avoid conflict with human activities;

(ii) Relocate a whooping crane that has moved outside any of the areas identified in paragraphs (h)(9)(i) through (iv) of this section, when removal is necessary or requested and is authorized by a valid permit under §17.22;

(iii) Relocate whooping cranes within the experimental population areas to improve survival and recovery prospects;

(iv) Relocate whooping cranes from the experimental population areas into captivity;

(v) Aid a sick, injured, or orphaned whooping crane; or

(vi) Dispose of a dead specimen or salvage a dead specimen that may be useful for scientific study.

(5) Any taking pursuant to paragraphs (h)(3) and (4) of this section must be immediately reported to the National Whooping Crane Coordinator, U.S. Fish and Wildlife Service, P.O. Box 100, Austwell, TX 77950 (Phone: 361-286-3559), who, in conjunction with his counterpart in the Canadian Wildlife Service, will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (h)(2) through (6) of this section.

(8) The Service will not mandate any closure of areas, including National Wildlife Refuges, during hunting or conservation order seasons, or closure or modification of hunting or conservation order seasons, in the following situations:

(i) For the purpose of avoiding take of whooping cranes in the NEPs identified in paragraphs (h)(9)(i) through (iv) of this section;

(ii) If a clearly marked whooping crane from the NEPs identified in paragraphs (h)(9)(i) through (iv) of this section wanders outside the designated NEP areas. In this situation, the Service will attempt to capture the stray bird and return it to the appropriate area if removal is requested by the State.

(9) All whooping cranes found in the wild within the boundaries listed in paragraphs (h)(9)(i) through (iv) of this section will be considered nonessential experimental animals. Geographic areas the nonessential experimental populations may inhabit are within the historic range of the whooping crane in the United States and include the following:

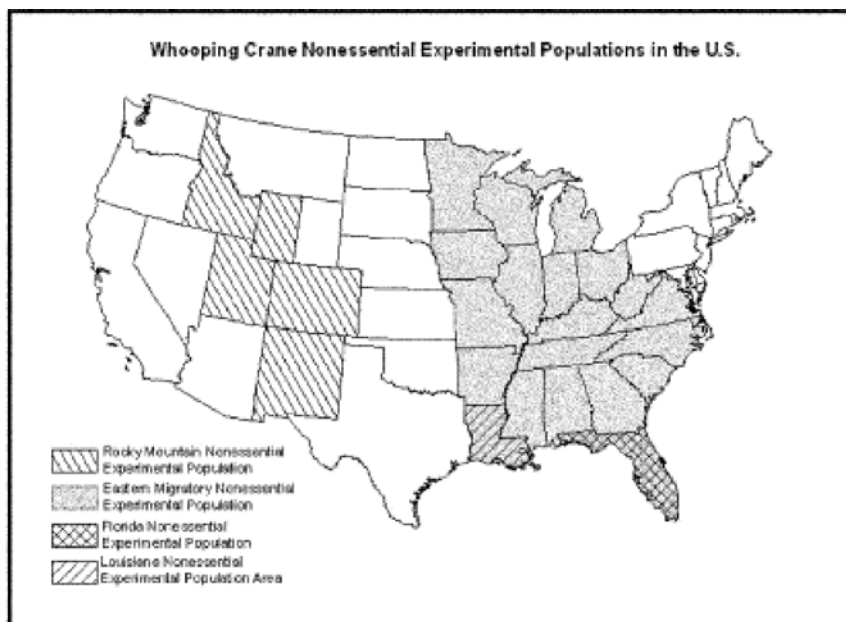
(i) The entire State of Florida (the Kissimmee Prairie NEP). The reintroduction site is the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee Counties. The experimental population released at Kissimmee Prairie is expected to remain mostly within the prairie region of central Florida.

(ii) The States of Colorado, Idaho, New Mexico, and Utah, and the western half of the State of Wyoming (the Rocky Mountain NEP).

(iii) That portion of the eastern contiguous United States that includes the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin (the Eastern Migratory NEP). Whooping cranes within this population are expected to occur mostly within the States of Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida. The additional States included within the experimental population area are those expected to receive occasional use by the cranes, or which may be used as breeding or wintering areas in the event of future population expansion.

(iv) The entire State of Louisiana (the Louisiana Nonmigratory NEP). The reintroduction site is the White Lake Wetlands Conservation Area of southwestern Louisiana in Vermilion Parish. Current information indicates that White Lake is the historic location of a resident nonmigratory population of whooping cranes that bred and reared young in Louisiana. Whooping cranes within this nonmigratory population are expected to occur mostly within the White Lake Wetlands Conservation Area and the nearby wetlands in Vermilion Parish. The marshes and wetlands of southwestern Louisiana are expected to receive occasional use by the cranes and may be used in the event of future population expansion.

(v) A map of all NEP areas in the United States for whooping cranes follows:



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(10) The reintroduced populations will be monitored during the duration of the projects by the use of radio telemetry and other appropriate measures. Any animal that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State wildlife personnel or their designated agent and given appropriate care. Such animals will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility.

(11) The Service will reevaluate the status of the experimental populations periodically to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released within the experimental population areas.

(i) [Reserved]

(j) California condor (*Gymnogyps californianus*). (1) The California condor (*Gymnogyps californianus*) population identified in paragraph (j)(8) of this section is a nonessential experimental population, and the release of such population will further the conservation of the species.

(2) You must not take any California condor in the wild in the experimental population area except as provided by this rule:

(i) Throughout the entire California condor experimental population area, you will not be in violation of the Endangered Species Act (Act) if you unavoidably and unintentionally take (including killing or injuring) a California condor, provided such take is non-negligent and incidental to a lawful activity, such as hunting, driving, or recreational activities, and you report the take as soon as possible as provided under paragraph 5 below.

(ii) [Reserved]

(3) If you have a valid permit issued by the Service under §17.32, you may take California condors in the wild in the experimental population area, pursuant to the terms of the permit.

(4) Any employee or agent of the Fish and Wildlife Service (Service), Bureau of Land Management or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a California condor from the wild in the experimental population area and vicinity if such action is necessary:

(i) For scientific purposes;

(ii) To relocate California condors within the experimental population area to improve condor survival, and to address conflicts with ongoing or proposed activities, or with private landowners, when removal is necessary to protect the condor, or is requested by an adversely affected landowner or land manager, or other adversely affected party. Adverse effects and requests for condor relocation will be documented, reported and resolved in as an expedient manner as appropriate to the specific situation to protect condors and avoid conflicts. Prior to any efforts to relocate condors, the Service will obtain permission from the appropriate landowner(s);

(iii) To relocate California condors that have moved outside the experimental population area, by returning the condor to the experimental population area or moving it to a captive breeding facility. All captures and relocations from outside the experimental population area will be coordinated with Service Cooperators, and conducted with the permission of the landowner(s) or appropriate land management agency(s).

(iv) To aid a sick, injured, or orphaned California condor;

(v) To salvage a dead specimen that may be useful for scientific study; or

(vi) To dispose of a dead specimen.

(5) Any taking pursuant to paragraphs (j)(2), (j)(4)(iv), (j)(4)(v), and (j)(4)(vi), of this section must be reported as soon as possible to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Arizona Field Office, Phoenix, 2321 W. Royal Palm Road, Suite 103, Arizona (telephone 602/640-2720) who will determine the disposition of any live or dead specimens.

(6) You must not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any California condor or part thereof from the experimental population taken in violation of this paragraph (j) or in violation of applicable State or Tribal laws or regulations or the Act.

(7) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (j)(2) and (j)(6) of this section.

(8) The designated experimental population area of the California condor includes portions of three

states—Arizona, Nevada, and Utah. The southern boundary is Interstate Highway 40 in Arizona from its junction with Highway 191 west across Arizona to Kingman; the western boundary starts at Kingman, goes northwest on Highway 93 to Interstate Highway 15, continues northeasterly on Interstate Highway 15 in Nevada and Utah, to Interstate Highway 70 in Utah; where the northern boundary starts and goes across Utah to Highway 191; where the eastern boundary starts and goes south through Utah until Highway 191 meets Interstate Highway 40 in Arizona (See map at end of this paragraph (j)).

(i) All California condors released into the experimental population area, and their offspring, are to be marked and visually identifiable by colored and coded patagial wing markers.

(ii) The Service has designated the experimental population area to accommodate the potential future movements of a wild population of condors. All released condors and their progeny are expected to remain in the experimental area due to the geographic extent of the designation.

(9) The nonessential experimental population area includes the entire highway rights-of-way of the highways in paragraph (j)(8) of this section that constitute the perimeter boundary. All California condors found in the wild within these boundaries will comprise the experimental population.

(i) The experimental population is to be monitored during the reintroduction project. All California condors are to be given physical examinations before being released.

(ii) If there is any evidence that the condor is in poor health or diseased, it will not be released to the wild.

(iii) Any condor that displays signs of illness, is injured, or otherwise needs special care may be captured by authorized personnel of the Service, Bureau of Land Management, or appropriate State wildlife agency or their agents, and given the appropriate care. These condors are to be re-released into the reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to keep them in captivity for an extended period of time, or permanently.

(10) The status of the reintroduction project is to receive an informal review on an annual basis and a formal evaluation within the first 5 years after the initial release, and every 5 years thereafter. This evaluation will include, but not be limited to: a review of management issues; compliance with agreements; assessment of available carrion; dependence of older condors on supplemental food sources; post release behavior; causes and rates of mortality; alternative release sites; project costs; public acceptance; and accomplishment of recovery tasks prescribed in California Condor Recovery Plan. The number of variables that could affect this reintroduction project make it difficult to develop criteria for success or failure after 5 years. However, if after 5 years the project is experiencing a 40 percent or greater mortality rate or released condors are not finding food on their own, serious consideration will be given to terminating the project.

(11) The Service does not intend to pursue a change in the nonessential experimental population designation to experimental essential, threatened, or endangered, or modify the experimental population area boundaries without consulting with and obtaining the full cooperation of affected parties located within the experimental population area, the reintroduction program cooperators identified in the memorandum of understanding (MOU) for this program, and the cooperators identified in the agreement for this program.

(i) The Service does not intend to change the status of this nonessential population until the California condor is recovered and delisted in accordance with the Act or if the reintroduction is not successful and the rule is revoked. No designation of critical habitat will be made for nonessential populations (16 U.S.C. §1539(j)(2)(C)(ii)).

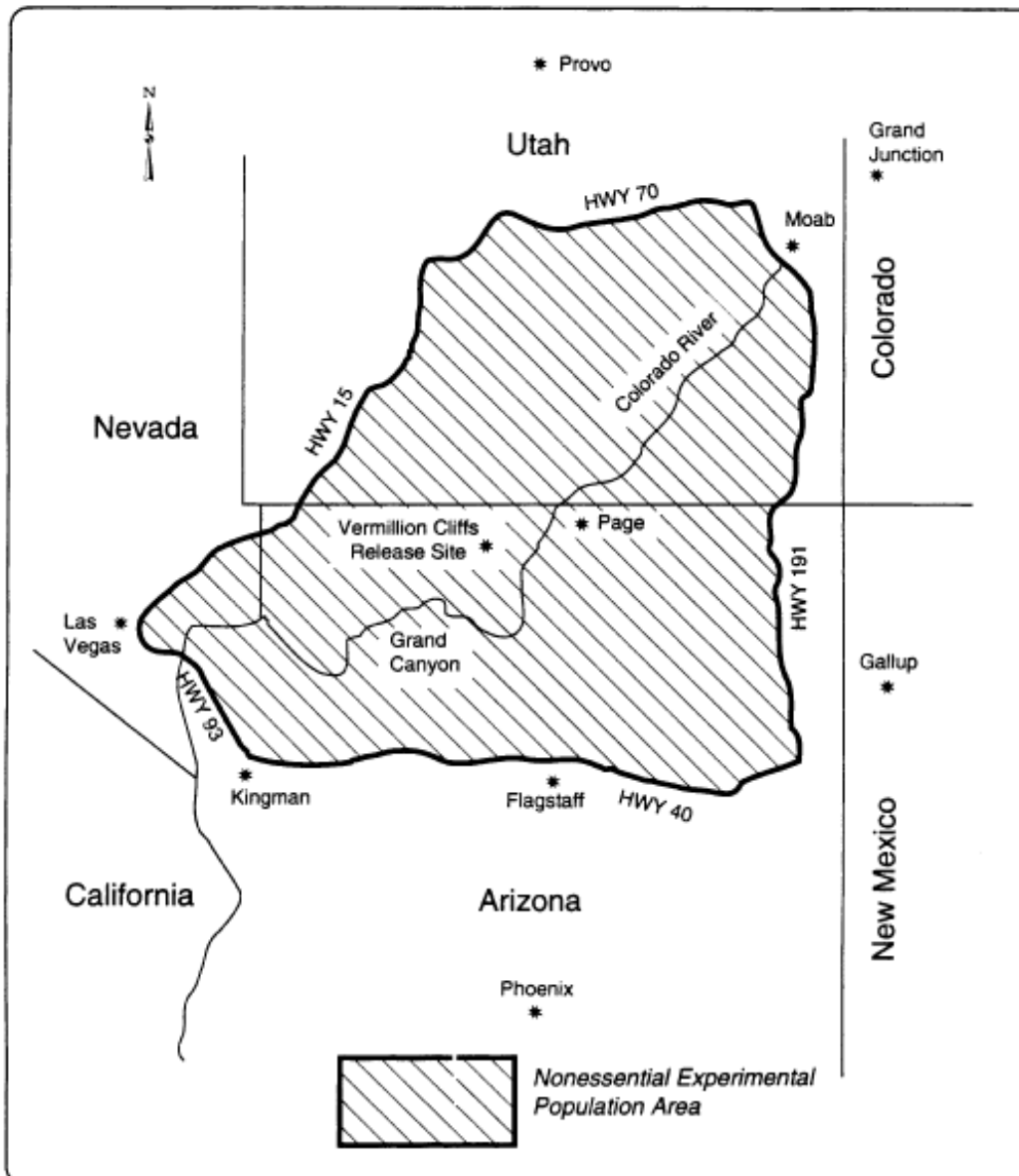
(ii) Legal actions or other circumstances may compel a change in this nonessential experimental population's legal status to essential, threatened, or endangered, or compel the Service to designate critical habitat for the California condors within the experimental population area defined in this rule. If this happens, all California condors will be removed from the area and this experimental population rule



will be revoked, unless the parties to the MOU and agreement existing at that time agree that the birds should remain in the wild. Changes in the legal status and/or removal of this population of California condors will be made in compliance with any applicable Federal rulemaking and other procedures.

## CALIFORNIA CONDOR

### Nonessential Experimental Population Area And Release Site



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(k) Mexican gray wolf (*Canis lupus baileyi*). (1) The Mexican gray wolf (Mexican wolf) populations reestablished in the Blue Range Wolf Recovery Area and in the White Sands Wolf Recovery Area, if used, within the Mexican Wolf Experimental Population Area, identified in paragraph (k)(9) of this section, are one nonessential experimental population. This nonessential experimental population will be managed according to the following provisions.

(2) Based on the best available information, the Service finds that reintroduction of an experimental population of Mexican wolves into the subspecies' probable historic range will further the conservation

of the Mexican wolf subspecies and of the gray wolf species; that the experimental population is not “essential,” under 50 CFR 17.81(c)(2); that the experimental population is wholly separate geographically from any other wild gray wolf population or individual wild gray wolves; that no wild Mexican wolves are known to exist in the experimental population area or anywhere else; and that future migration of wild Mexican wolves into the experimental population area is not possible.

(3) No person, agency, or organization may “take” [see definition in paragraph (k)(15) of this section] any wolf in the wild within the Mexican Wolf Experimental Population Area, except as provided in this rule. The Service may investigate each take of a Mexican wolf and may refer the take of a wolf contrary to this rule to the appropriate authorities for prosecution.

(i) Throughout the Mexican Wolf Experimental Population Area, you will not be in violation of the Act or this rule for “unavoidable and unintentional take” [see definition in paragraph (k)(15) of this section] of a wolf. Such take must be non-negligent and incidental to a legal activity, such as military training and testing, trapping, driving, or recreational activities. You must report the take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(ii) Throughout the Mexican Wolf Experimental Population Area, you may “harass” [see definition in paragraph (k)(15) of this section] wolves that are within 500 yards of people, buildings, facilities, pets, “livestock” [see definition in paragraph (k)(15) of this section], or other domestic animals in an opportunistic, noninjurious manner [see definition of “opportunistic, noninjurious harassment” in paragraph (k)(15) of this section] at any time—provided that wolves cannot be purposely attracted, tracked, searched out, or chased and then harassed. You must report harassment of wolves within 7 days to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(iii) Throughout the Mexican Wolf Experimental Population Area, excluding areas within the national park system and national wildlife refuge system, no Federal agency or their contractors will be in violation of the Act or this rule for unavoidable or unintentional take of a wolf resulting from any action authorized by that Federal agency or by the Service, including, but not limited to, military training and testing. This provision does not exempt agencies and their contractors from complying with sections 7(a)(1) and 7(a)(4) of the Act, the latter of which requires a conference with the Service if they propose an action that is likely to jeopardize the continued existence of the Mexican wolf.

(iv) In areas within the national park system and national wildlife refuge system, Federal agencies must treat Mexican wolves as a threatened species for purposes of complying with section 7 of the Act.

(v) On private land anywhere within the Mexican Wolf Experimental Population Area, livestock owners or their agents may take (including kill or injure) any wolf actually “engaged in the act of killing, wounding, or biting livestock” [see definition in paragraph (k)(15) of this section]; provided that evidence of livestock freshly wounded or killed by wolves is present; and further provided that the take is reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(vi) On tribal reservation land anywhere within the Mexican Wolf Experimental Population Area, livestock owners or their agents may take (including kill or injure) any wolf actually engaged in the act of killing, wounding, or biting livestock; provided that evidence of livestock freshly wounded or killed by wolves is present; and further provided that the take is reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(vii) On “public lands” [see definition in paragraph (k)(15) of this section] allotted for grazing anywhere within the Mexican Wolf Experimental Population Area, including within the designated “wolf recovery areas” [see definition in paragraph (k)(15) of this section], livestock owners or their agents may be issued a permit under the Act to take wolves actually engaged in the act of killing, wounding, or biting “livestock” [see definition in paragraph (k)(15) of this section]. Before such a permit is issued, the following conditions must be met—livestock must be legally present on the grazing allotment; six or more “breeding pairs” [see definition in paragraph (k)(15) of this section] of Mexican wolves must be

present in the Blue Range Wolf Recovery Area; previous loss or injury of livestock on the grazing allotment, caused by wolves, must be documented by the Service or our authorized agent; and agency efforts to resolve the problem must be completed. Permits issued under this provision will be valid for 45 days or less and will specify the maximum number of wolves you are allowed to take. If you take a wolf under this provision, evidence of livestock freshly wounded or killed by wolves must be present. You must report the take to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(viii) Throughout the Mexican Wolf Experimental Population Area, take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on public, tribal, and private lands, is permitted. If you become aware that such take by your guard dog has occurred, you must report the take to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(ix) Personnel authorized by the Service may take any Mexican wolf in the nonessential experimental population in a manner consistent with a Service-approved management plan, special management measure, or a valid permit issued by the Service under §17.32. This may include, but is not limited to, capture and translocation of wolves that—prey on livestock; attack pets or domestic animals other than livestock on private or tribal land; “impact game populations in ways which may inhibit further wolf recovery” [see definition in paragraph (k)(15) of this section]; prey on members of the desert bighorn sheep herd found on the White Sands Missile Range and San Andres National Wildlife Refuge so long as the State of New Mexico lists it as a species to be protected; are considered “problem wolves” [see definition in paragraph (k)(15) of this section]; are a nuisance; endanger themselves by their presence in a military impact area; need aid or veterinary care; or are necessary for authorized scientific, research, or management purposes. Lethal methods of take may be used when reasonable attempts to capture wolves alive fail and when the Service determines that immediate removal of a particular wolf or wolves from the wild is necessary. Authorized personnel may use leg-hold traps and any other effective device or method for capturing or controlling wolves to carry out any measure that is a part of a Service-approved management plan, notwithstanding any conflicts in State or local law. The disposition of all wolves (live or dead) or their parts taken as part of a Service-authorized management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(x) As determined by the Service to be appropriate, the Service or any agent so authorized by the Service may capture, kill, subject to genetic testing, place in captivity, euthanize, or return to the wild (if found to be a pure Mexican wolf) any feral wolf-like animal, feral wolf hybrid, or feral dog found within the Mexican Wolf Experimental Population Area that shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes; being an animal raised in captivity, other than as part of a Service-approved wolf recovery program; or being socialized or habituated to humans.

(xi) The United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (WS) division will discontinue use of M-44's and choking-type snares in “occupied Mexican wolf range” [see definition in paragraph (k)(15) of this section]. The WS division may restrict or modify other predator control activities pursuant to a cooperative management agreement or a conference between the Service and the WS division.

(xii) You may harass or take a Mexican wolf in self defense or defense of the lives of others, provided that you report the harassment or take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service. If the Service or an authorized agency determines that a wolf presents a threat to human life or safety, the Service or the authorized agency may kill it, capture and euthanize it, or place it in captivity.

(xiii) Intentional taking of any wolf in the Mexican Wolf Experimental Population Area, except as described above, is prohibited. The Service encourages those authorized to take wolves to use nonlethal means when practicable and appropriate.

(4) You must not possess, sell, deliver, carry, transport, ship, import, or export by any means

whatsoever, any wolf or wolf part from the experimental population except as authorized in this rule or by a valid permit issued by the Service under §17.32. If you kill or injure a wolf or find a dead or injured wolf or wolf parts, you must not disturb them (unless instructed to do so by an authorized agent of the Service), you must minimize your disturbance of the area around them, and you must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(5) You must not attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule.

(6) No land use restrictions will be imposed on private lands for Mexican wolf recovery without the concurrence of the landowner.

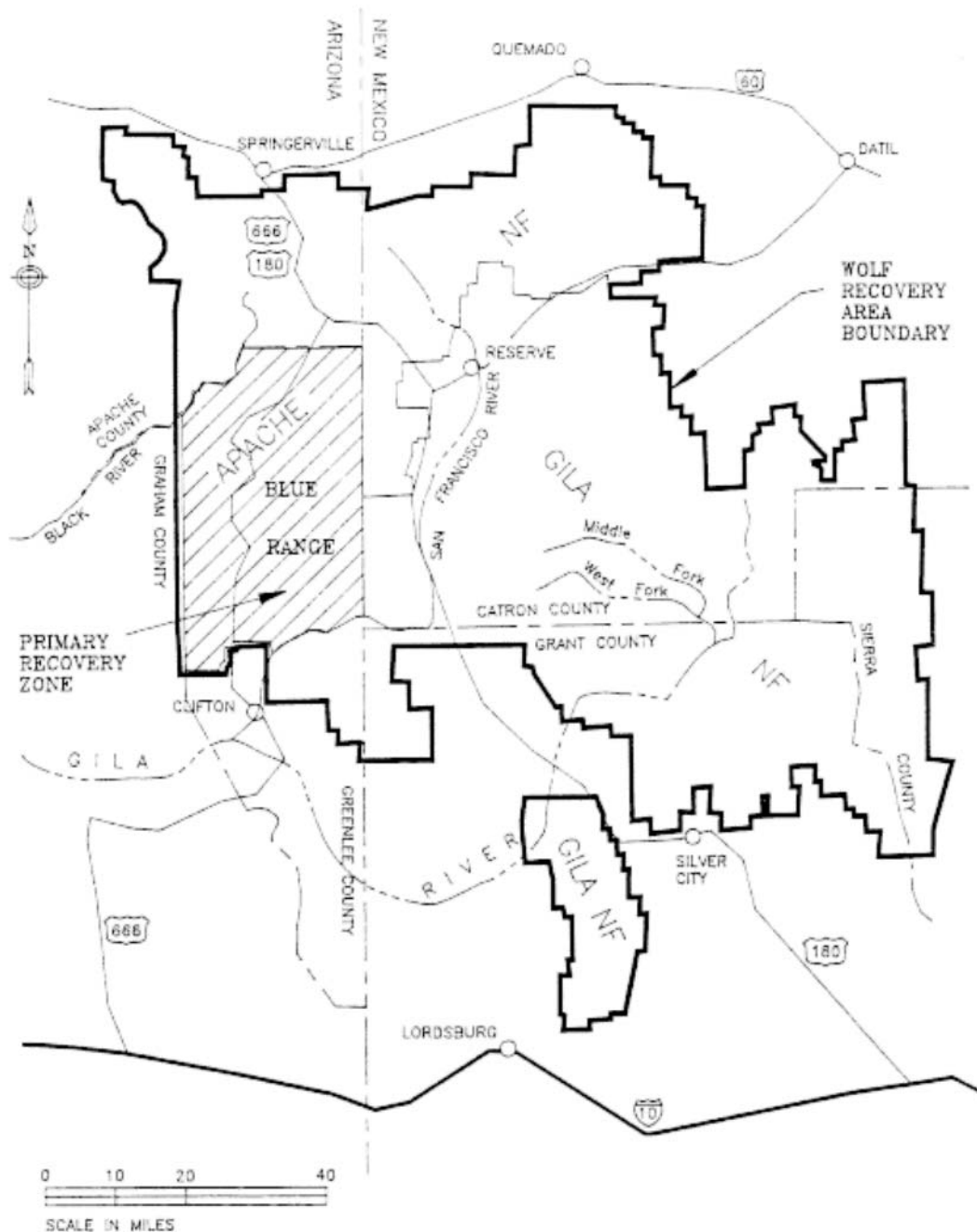
(7) No land use restrictions will be imposed on tribal reservation lands for Mexican wolf recovery without the concurrence of the tribal government.

(8) On public lands, the Service and cooperating agencies may temporarily restrict human access and "disturbance-causing land use activities" [see definition in paragraph (k)(15) of this section] within a 1-mile radius around release pens when wolves are in them, around active dens between March 1 and June 30, and around active wolf "rendezvous sites" [see definition in paragraph 17.84(k)(15) of this section] between June 1 and September 30, as necessary.

(9) The two designated wolf recovery areas and the experimental population area for Mexican wolves classified as a nonessential experimental population by this rule are described in the following subsections. Both designated wolf recovery areas are within the subspecies' probable historic range and are wholly separate geographically from the current range of any known Mexican wolves or other gray wolves.

(i) The Blue Range Wolf Recovery Area includes all of the Apache National Forest and all of the Gila National Forest in east-central Arizona and west-central New Mexico (Figure 1). Initial releases of captive-raised Mexican wolves will take place, generally as described in our Preferred Alternative in the FEIS on Mexican wolf reintroduction, within the Blue Range Wolf Recovery Area "primary recovery zone" [see definition in paragraph (k)(15) of this section]. This is the area within the Apache National Forest bounded on the north by the Apache-Greenlee County line; on the east by the Arizona-New Mexico state line; on the south by the San Francisco River (eastern half) and the southern boundary of the Apache National Forest (western half); and on the west by the Greenlee-Graham County line (San Carlos Apache Reservation boundary). The Service will allow the wolf population to expand into the Blue Range Wolf Recovery Area "secondary recovery zone" [see definition in paragraph (k)(15) of this section], which is the remainder of the Blue Range Wolf Recovery Area not in the primary recovery zone.

Fig. 1: Blue Range Wolf Recovery Area

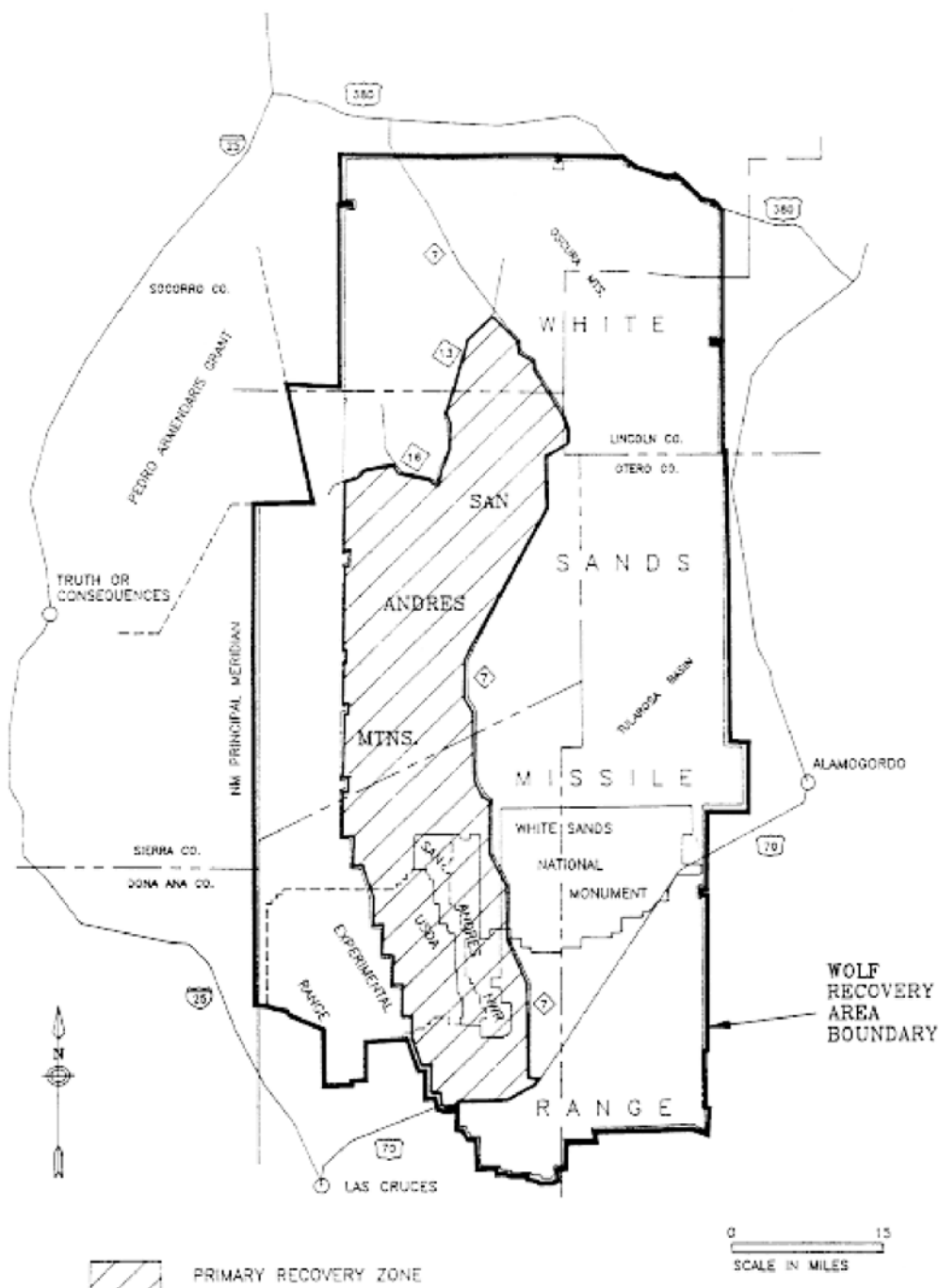


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(ii) The White Sands Wolf Recovery Area in south-central New Mexico includes all of the White Sands Missile Range; the White Sands National Monument; the San Andres National Wildlife Refuge; and the area adjacent and to the west of the Missile Range bounded on the south by the southerly boundary of the USDA Jornada Experimental Range and the northern boundary of the New Mexico State University Animal Science Ranch, on the west by the New Mexico Principal Meridian, on the north by the Pedro Armendaris Grant boundary and the Sierra-Socorro County line, and on the east by the western boundary of the Missile Range (Figure 2). This is the back-up reintroduction area, to be used only if later determined to be both necessary and feasible in accordance with the Preferred Alternative as set forth in the FEIS on Mexican wolf reintroduction. If this area is used, initial releases of captive-raised wolves would take place within the White Sands Wolf Recovery Area primary recovery zone. This is the area within the White Sands Missile Range bounded on the north by the road from the

former Cain Ranch Head quarters to Range Road 16, Range Road 16 to its intersection with Range Road 13, Range Road 13 to its intersection with Range Road 7; on the east by Range Road 7; on the south by Highway 70; and on the west by the Missile Range boundary. The Service would allow the wolf population to expand into the White Sands Wolf Recovery Area secondary recovery zone, which is the remainder of the White Sands Wolf Recovery Area not in the primary recovery zone.

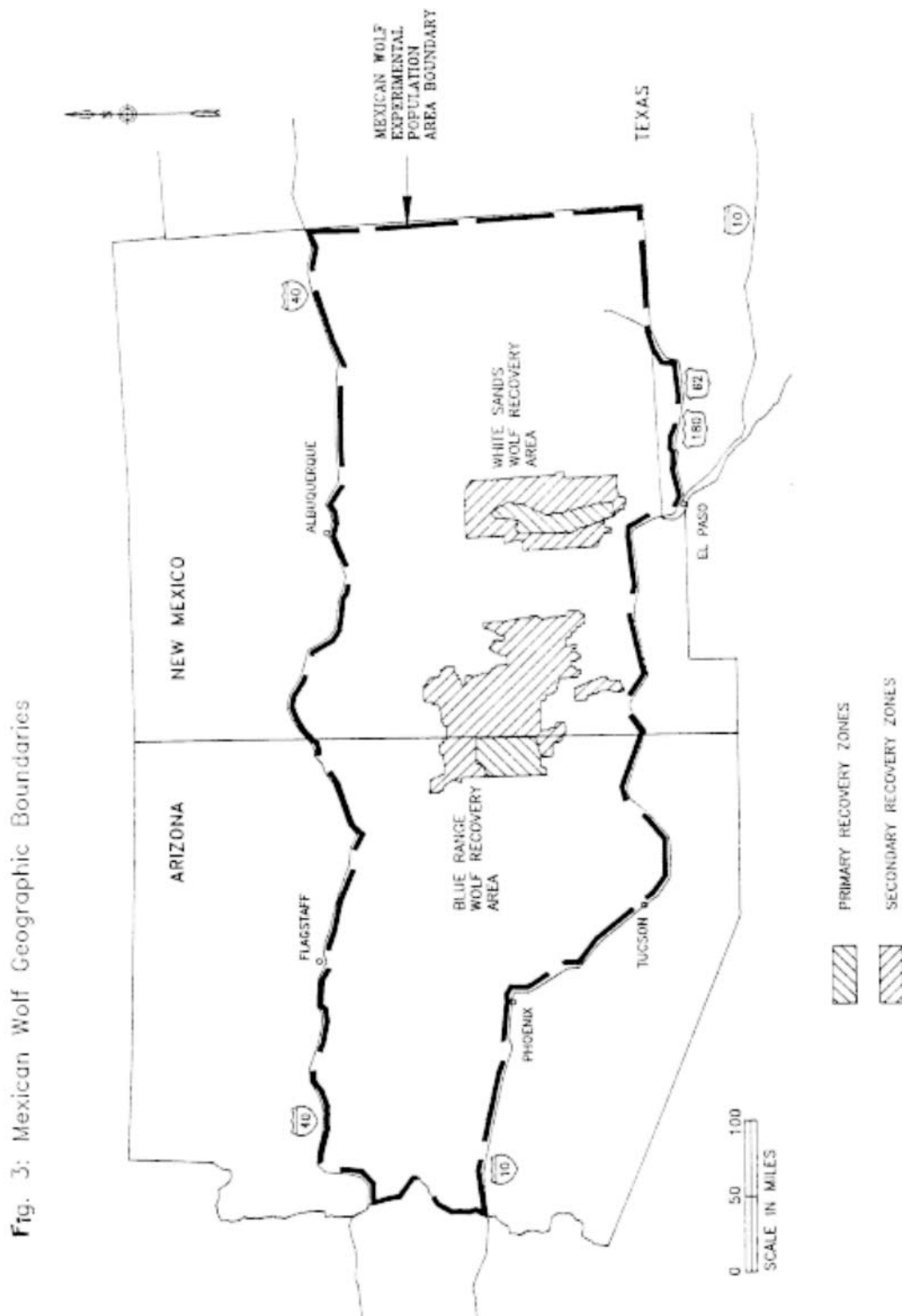
Fig. 2: White Sands Wolf Recovery Area



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(iii) The boundaries of the Mexican Wolf Experimental Population Area are the portion of Arizona lying north of Interstate Highway 10 and south of Interstate Highway 40; the portion of New Mexico lying north of Interstate Highway 10 in the west, north of the New Mexico-Texas boundary in the east, and south of Interstate Highway 40; and the portion of Texas lying north of United States Highway 62/180 and south of the Texas-New Mexico boundary (Figure 3). The Service is not proposing wolf reestablishment throughout this area, but only within the Blue Range Wolf Recovery Area, and possibly

later in the White Sands Wolf Recovery Area, respectively described in paragraphs (k)(9) (i) and (ii) of this section. If a member of the nonessential experimental population is captured inside the Mexican Wolf Experimental Population Area, but outside the designated wolf recovery areas, it will be re-released within the recovery area, put into the captive population, or otherwise managed according to provisions of a Service-approved management plan or action. If a wolf is found in the United States outside the boundaries of the Mexican Wolf Experimental Population Area (and not within any other wolf experimental population area) the Service will presume it to be of wild origin with full endangered status (or threatened in Minnesota) under the Act, unless evidence, such as a radio collar, identification mark, or physical or behavioral traits (see paragraph (k)(3)(x) of this section), establishes otherwise. If such evidence exists, the Service or an authorized agency will attempt to promptly capture the wolf and re-release it within the recovery area, put it into the captive population, or carry out any other management measure authorized by this rule or a Service-approved management plan. Such a wolf is otherwise not subject to this rule outside the designated Mexican Wolf Experimental Population Area.



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(10) If Mexican wolves of the experimental population occur on public lands outside the designated wolf recovery area(s), but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will attempt to capture any radio-collared lone wolf and any lone wolf or member of an established pack causing livestock “depredations” [see definition in paragraph (k)(15) of this section]. The agencies will not routinely capture and return pack members that make occasional forays onto public land outside the designated wolf recovery area(s) and uncollared lone wolves on public land. However, the Service will capture and return to a recovery area or to captivity packs from the nonessential experimental population that establish territories on public land wholly outside the designated wolf recovery area(s).



(11) If any wolves move onto private land outside the designated recovery area(s), but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will develop management actions in cooperation with the landowner including capture and removal of the wolf or wolves if requested by the landowner.

(12) If any wolves move onto tribal reservation land outside the designated recovery area(s), but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will develop management actions in cooperation with the tribal government including capture and removal of the wolf or wolves if requested by the tribal government.

(13) The Service will evaluate Mexican wolf reintroduction progress and prepare periodic progress reports, detailed annual reports, and full evaluations after 3 and 5 years that recommend continuation, modification, or termination of the reintroduction effort.

(14) The Service does not intend to change the “nonessential experimental” designation to “essential experimental,” “threatened,” or “endangered” and foresees no likely situation which would result in such changes. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(15) *Definitions.* Key terms used in this rule have the following definitions.

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

*Depredation* means the confirmed killing or wounding of lawfully present domestic livestock by one or more wolves. The Service, WS, or other Service-authorized agencies will confirm cases of wolf depredation on domestic livestock.

*Disturbance-causing land use activity* means any land use activity that the Service determines could adversely affect reproductive success, natural behavior, or survival of Mexican wolves. These activities may be temporarily restricted within a 1-mile radius of release pens, active dens, and rendezvous sites. Such activities may include, but are not limited to—timber or wood harvesting, management-ignited fire, mining or mine development, camping outside designated campgrounds, livestock drives, off-road vehicle use, hunting, and any other use or activity with the potential to disturb wolves. The following activities are specifically excluded from this definition—

(1) Legally permitted livestock grazing and use of water sources by livestock;

(2) Livestock drives if no reasonable alternative route or timing exists;

(3) Vehicle access over established roads to private property and to areas on public land where legally permitted activities are ongoing if no reasonable alternative route exists;

(4) Use of lands within the national park or national wildlife refuge systems as safety buffer zones for military activities;

(5) Prescribed natural fire except in the vicinity of release pens; and

(6) Any authorized, specific land use that was active and ongoing at the time wolves chose to locate a den or rendezvous site nearby.

*Engaged in the act of killing, wounding, or biting livestock* means to be engaged in the pursuit and grasping, biting, attacking, wounding, or feeding upon livestock that are alive. If wolves are observed feeding on a livestock carcass, you cannot assume that wolves killed the livestock because livestock can die from many causes and wolves will feed on carrion.

*Harass* means “intentional or negligent act or omission which creates the likelihood of injury to the wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which

include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3). This experimental population rule permits only “opportunistic, noninjurious harassment” (see definition below).

*Impact on game populations in ways which may inhibit further wolf recovery.* The Service encourages states and tribes to define unacceptable impacts from wolf predation on game populations in Service-approved management plans. Until such time the term will mean the following—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.

*Livestock* means cattle, sheep, horses, mules, and burros or other domestic animals defined as livestock in State and Tribal wolf management plans approved by the Service.

*Occupied Mexican wolf range* means an area of confirmed presence of resident breeding packs or pairs of wolves or area consistently used by at least one resident wolf over a period of at least one month. The Service must confirm or corroborate wolf presence. Exact delineation of the area will be described by:

- (1) 5-mile (8 km) radius around all locations of wolves and wolf sign confirmed as described above (nonradio-monitored);
- (2) 5-mile (8 km) radius around radio locations of resident wolves when fewer than 20 radio locations are available (for radio-monitored wolves only); or
- (3) 3-mile (4.8 km) radius around the convex polygon developed from more than 20 radio locations of a pack, pair, or single wolf acquired over a period of at least 6 months (for radio-monitored wolves).

This definition applies only within the Mexican Wolf Experimental Population Area.

*Opportunistic, noninjurious harassment* (see “harass”) means as the wolf presents itself (for example, the wolf travels onto and is observed on private land or near livestock). This is the only type of harassment permitted by this rule. You cannot track, attract, search out, or chase a wolf and then harass it. Any harassment must not cause bodily injury or death to the wolf. The basic intent of harassment permitted by this rule is to scare wolves away from the immediate area. It is limited to approaching wolves and discharging firearms or other projectile launching devices in proximity to but not in the direction of wolves; throwing objects in the general direction of but not at wolves; or making any loud noise in proximity to wolves.

*Primary recovery zone* means an area where the Service—

- (1) Will release captive-raised Mexican wolves,
- (2) May return and re-release previously released Mexican wolves,
- (3) May release translocated wild-born Mexican wolves, and
- (4) Will actively support recovery of the reintroduced population.

*Problem wolves* means wolves that—

- (1) Have depredated lawfully present domestic livestock,
- (2) Are members of a group or pack (including adults, yearlings, and young-of-the-year) that were directly involved in livestock depredations,

(3) Were fed by or are dependent upon adults involved with livestock depredations (because young animals will likely acquire the pack's livestock depredation habits),

(4) Have depredated domestic animals other than livestock on private or tribal lands, two times in an area within one year, or

(5) Are habituated to humans, human residences, or other facilities.

*Public land* means land under administration of Federal agencies including, but not limited to the National Park Service, Bureau of Land Management, Fish and Wildlife Service, Forest Service, Department of Energy, and Department of Defense; and State-owned lands within the boundary of a designated wolf recovery area. All State-owned lands within the boundary of the experimental population area, but outside designated wolf recovery areas, will be subject to the provisions of this rule that apply to private lands.

*Rendezvous site* means a gathering and activity area regularly used by a litter of young wolf pups after they have emerged from the den. Typically, the site is used for a period ranging from about one week to one month in the summer. Several sites may be used in succession.

*Secondary recovery zone* means an area adjacent to a primary recovery zone in which the Service allows released wolves to disperse, where wolves captured in the wild for authorized management purposes may be translocated and released, and where managers will actively support recovery of the reintroduced population.

*Take* means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). Also, see definitions of "harass", "opportunistic, noninjurious harassment", and "unavoidable and unintentional take."

*Unavoidable and unintentional take* means accidental, unintentional take (see definition of "Take") which occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. Examples would be striking a wolf with an automobile and catching a wolf in a trap outside of known occupied wolf range. Taking a wolf with a trap, snare, or other type of capture device within occupied wolf range (except as authorized in paragraph (k)(3)(ix) and (x) of this section) will not be considered unavoidable, accidental, or unintentional take, unless due care was exercised to avoid taking a wolf. Taking a wolf by shooting will not be considered unavoidable, accidental, or unintentional take. Shooters have the responsibility to be sure of their targets.

*Wolf recovery area* means a designated area where managers will actively support reestablishment of Mexican wolf populations.

(l) Grizzly bear (*Ursus arctos horribilis*). (1) *Where does this special rule apply?* The special rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined as follows:

The boundaries of the Experimental Population Area are delineated by U.S. 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).

(2) *What is the legal status of the grizzly bear?* (i) The grizzly bear is listed as "threatened" in §17.11 (h) and protected under this part. However, the grizzly bear population to which this paragraph (l) applies is considered a nonessential experimental population in accordance with section 10(j) of the Act.

(ii) We have determined that, as of December 18, 2000, no grizzly bear population exists in the Experimental Population Area. We find, in accordance with §17.81 (b), that the reintroduction of grizzly bears as a nonessential experimental population, as defined in §17.81 (b), will further the conservation of the species and will be consistent with provisions of section 10(j) of the Act, which requires that an experimental population be geographically separate from other nonexperimental populations of the same species. We also find, in accordance with §17.81 (c)(2), that the experimental population of grizzly bears in the Experimental Population Area is not essential to the survival of the species in the wild.

(iii) Grizzly bears within the Experimental Population Area and the Recovery Area will be accommodated through management provisions provided for in this paragraph (I) and through management plans and policies developed by the Citizen Management Committee (Committee; see paragraph (I)(6) of this section). After reintroduction, every grizzly bear found within the Experimental Population Area will be considered a member of the nonessential experimental population.

(iv) In the conterminous United States, a grizzly bear that is outside the Experimental Population Area identified in paragraph (I)(1) of this section will be considered as threatened.

(3) *Where will grizzly bears be released, and where will recovery be emphasized?* The Bitterroot Grizzly Bear Recovery Area identifies the area of recovery emphasis within the Experimental Population Area. The Recovery Area consists of the Selway-Bitterroot Wilderness and the Frank Church-River of No Return Wilderness (See map at the end of paragraph (I) of this section). All reintroductions will take place in the Selway-Bitterroot Wilderness unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate. If, in the future, new wilderness areas are designated adjacent to the Recovery Area, the Committee may recommend to the Secretary their addition to the Recovery Area. The Secretary would have to amend this paragraph (I) to change the definition of the Recovery Area.

(4) *What activities are prohibited in the Experimental Population Area?* (i) You may not take (see definition in §10.12 of this subchapter) any grizzly bear in the Experimental Population Area, except as provided in this paragraph (I). We may refer unauthorized take of grizzly bears to the appropriate authorities for prosecution.

(ii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any grizzly bear or parts thereof that are taken from the Experimental Population Area or possessed in violation of the regulations in this paragraph (I) or in violation of applicable State wildlife conservation laws or regulations or the Act.

(iii) You may not attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this paragraph (I).

(5) *What activities are allowed in the Experimental Population Area?* (i) For purposes of this paragraph (I), except for persons engaged in hunting or shooting activities, you will not be in violation of the Act for “unavoidable and unintentional take” (see definition in paragraph (I)(16) of this section) of grizzly bears within the Experimental Population Area when such take is incidental to a legal activity and is not a result of negligent conduct lacking reasonable due care, and when due care was exercised to avoid the taking. Any taking must be reported within 24 hours to appropriate authorities as listed in paragraph (I)(5)(iii) of this section. Persons lawfully engaged in hunting or shooting activities must correctly identify their target before shooting in order to avoid illegally shooting a grizzly bear. Shooting a grizzly bear as a result of mistaking it for another species is considered a lack of reasonable due care. The act of taking a grizzly bear that is wrongly identified as another species may be referred to appropriate authorities for prosecution.

(ii) Any person with a valid permit issued by us may take grizzly bears in the Experimental Population Area for scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. Such permits must be consistent with the Act, with management plans adopted for the nonessential experimental population, and with applicable

## State wildlife conservation laws and regulations.

(iii) You may take grizzly bears in the Experimental Population Area in self-defense or in defense of the lives of others. Such taking must be reported within 24 hours as to date, exact location, and circumstances to the Grizzly Bear Recovery Coordinator, University Hall, Room 309, University of Montana, Missoula, Montana 59812 (406-243-4903); or the Assistant Regional Director for Law Enforcement, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503-231-6125); or the Assistant Regional Director for Law Enforcement, P.O. Box 25486, DFC, Denver, Colorado 80225 (303-236-7540); and either the Idaho Department of Fish and Game, P.O. Box 25, Boise Idaho 83707 (208-334-3700); or the Montana Department of Fish, Wildlife and Parks, 1420 E. Sixth Avenue, Helena, Montana 59620 (406-444-2535); and Nez Perce Tribal authorities (208-843-2253) (as appropriate).

(iv) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, or appropriate Tribal authorities to harass (see definition in §17.3) grizzly bears found in the Experimental Population Area that are actually pursuing or killing livestock (to include permitting the use of livestock guard dogs around livestock to harass such grizzly bears). Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. All such harassment must be accomplished by an opportunistic, noninjurious method (see definition of “opportunistic, noninjurious harassment” in paragraph (l)(16) of this section) to the grizzly bear, and such harassment must be reported within 24 hours as to date, exact location, and circumstances to the authorities listed under paragraph (l)(5)(iii) of this section.

(v) Livestock owners may obtain a permit from the Service, and the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks or appropriate Tribal authorities to take grizzly bears on private lands found in the Experimental Population Area in a manner other than harassment as defined in this paragraph (l), in order to protect livestock actually pursued or being killed on private property. Prior to issuance of such a permit, authorized State, Federal, or Tribal officials must document pursuit or killing of livestock. Any response protocol established by the Committee must have been satisfied and efforts to capture depredating grizzly bears by Service or State or Tribal wildlife agency personnel must have proven unsuccessful. All such taking must be reported as to date, exact location, and circumstances within 24 hours to the authorities listed under paragraph (l)(5)(iii) of this section.

(vi) Any authorized employee or agent of the Service or appropriate State wildlife agency or Nez Perce Tribe who is lawfully designated for such purposes, when acting in the course of official duties, may take a grizzly bear from the wild in the Experimental Population Area if such action is necessary to:

(A) Aid a sick, injured, or orphaned grizzly bear;

(B) Dispose of a dead grizzly bear, or salvage a dead grizzly bear that may be useful for scientific study;

(C) Take a grizzly bear that constitutes a demonstrable but nonimmediate threat to human safety or that is responsible for depredations to lawfully present domestic animals or other personal property, if otherwise eliminating such depredation or loss of personal property has not been possible, and after eliminating such threat by live-capturing and releasing the grizzly bear unharmed in the area defined in paragraph (l)(2) of this section or other areas approved by the Committee has been demonstrated not to be possible;

(D) Move a grizzly bear for genetic management purposes;

(E) Relocate grizzly bears within the Experimental Population Area to improve grizzly bear survival and recovery prospects; or (F) Relocate a grizzly bear to avoid conflict with human activities. However, grizzly bears in the Experimental Population Area will not be disturbed unless they demonstrate a real

and imminent threat to human safety, livestock, or bees. Unless the Committee determines otherwise, this rule provides that on private lands outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in the exclusion area, and grizzly bears found there will be captured and returned to the Recovery Area, or placed in captivity, or destroyed, depending on the history of each bear. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(6) *How will local citizens be involved in the management of the Bitterroot nonessential experimental grizzly bear population?* (i) The Secretary will establish a Citizen Management Committee for the Bitterroot grizzly bear experimental population and will authorize management implementation responsibility as described in paragraph (l)(9) of this section, in consultation with the Governors of Idaho and Montana. As soon as possible after the effective date of this rule, the Secretary will organize the Committee by requesting nominations of citizen members from the Governors of Idaho and Montana and the Nez Perce Tribe and nominations of agency members by represented agencies.

(ii) The Committee will be composed of 15 members serving 6-year terms. Appointments may initially be of lesser terms to ensure staggered replacement.

(A) Membership will consist of seven individuals appointed by the Secretary based upon the recommendations of the Governor of Idaho, five members appointed by the Secretary based upon the recommendations of the Governor of Montana, one member representing the Nez Perce Tribe appointed by the Secretary based on the recommendation of the Nez Perce Tribe, one member representing the Forest Service appointed by the Secretary of Agriculture, and one member representing the Fish and Wildlife Service appointed by the Secretary. Members recommended by the Governors of Idaho and Montana will be based on the recommendations of interested parties and will include at least one representative each from the appropriate State wildlife agencies. If either Governor or the Tribe fails to make recommendations within 60 days, the Secretary (or his/her designee) will accept recommendations from interested parties, and will make the appointments.

(B) The Committee will consist of a cross-section of interests reflecting a balance of viewpoints, and members are to be selected for their diversity of knowledge and experience in natural resource issues, and for their commitment to collaborative decision-making. In their recommendations to the Secretary, the Governors of Idaho and Montana will attach written documentation of the qualifications of those nominated relating to their knowledge of, and experience in, natural resource issues and their commitment to collaborative decision-making.

(C) Except for the representatives from Federal agencies, the Committee will be selected from communities within and adjacent to the Recovery and Experimental Population Areas.

(D) The Secretary will fill vacancies as they occur with the appropriate members based on the recommendation of the appropriate Governor, the Nez Perce Tribe, or agency.

(7) *Will independent scientific information be readily available to the Committee?* The Secretary will appoint two scientific advisors to the Committee as nonvoting members to attend all meetings of the Committee and to provide scientific expertise to the Committee. These scientific advisors will not be employed by Federal agencies involved in grizzly bear recovery. The Secretary will contact the Wildlife Society Chapters in Idaho and Montana and the Universities of Idaho and Montana for nominations and will select one wildlife scientist representing each State and appoint them as advisors to the Committee.

(8) *What is the overall mission of the Committee, and how will it operate?* (i) The mission of the

Committee is to facilitate recovery of the grizzly bear in the Bitterroot ecosystem by assisting in implementing the Bitterroot ecosystem chapter of the recovery plan (Bitterroot Ecosystem Recovery Plan Chapter—Supplement to the Grizzly Bear Recovery Plan, U.S. Fish and Wildlife Service, Missoula, Montana, 1996). The Committee will make recommendations to land and wildlife management agencies that it believes will lead to recovery of the grizzly bear. Decisions on, and implementation of, these recommendations are the responsibility of the land and wildlife management agencies.

(ii) The Committee will meet a minimum of two times per year. These meetings will be open to the public. Additionally, the committee will provide reasonable public notice of meetings, produce and provide written minutes of meetings to interested persons, and involve the public in its decision-making process. This public participation process will allow members of the public and/or special interest groups to have input to Committee decisions and management actions.

(9) *What authority will the Committee have, and what will be its primary tasks?* The Committee will have the authority and the responsibility to carry out the following functions:

(i) Developing a process for obtaining the best biological, social, and economic data. This process will include an explicit mechanism for soliciting peer-reviewed, scientific articles on grizzly bears and their management, and holding periodic public meetings not less than every 2 years, in which qualified scientists may submit comments to and be questioned by the Committee. The two scientific advisors will lead this process. The Committee will base its decisions upon the best scientific and commercial data available. All decisions of the Committee, including components of its management plans, must lead toward recovery of the grizzly bear in the Bitterroot ecosystem and minimize social and economic impacts to the extent practicable within the context of the existing recovery goals for the species.

(ii) Soliciting technical advice and guidance from outside experts. The scientific advisors will lead the development of an ongoing process to provide the Committee with the best scientific and commercial data available. The scientific advisors will provide this information in the form of peer-reviewed scientific articles on grizzly bears and their management, Committee meetings with presentations by scientific experts, and requests to State and Federal management agencies and the private sector for scientific expertise and advice.

(iii) Implementing the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan consistent with this paragraph (I). The Committee will develop recommendations on existing management plans and policies of land and wildlife management agencies, as necessary, for the management of grizzly bears in the Experimental Population Area. The Committee will make recommendations to land and wildlife management agencies regarding changes to plans and policies, but the final decision on implementation of those recommendations will be made by those agencies. If Committee recommendations require significant changes to existing plans and policy, and the agencies tentatively agree to accept those recommendations, then the requirements of the National Environmental Policy Act may apply. Such management plans and policies will be in accordance with applicable State and Federal laws. The Committee will give full consideration to Service comments and opinions and those of the Forest Service, Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe.

(iv) Providing means by which the public may participate in, review, and comment on the decisions of the Committee. The Committee must thoroughly consider and respond to public input prior to making decisions.

(v) Developing its internal processes, where appropriate, such as governance, decision-making, quorum, terms of members, officers, meeting schedules and location, public notice of meetings, and minutes.

(vi) Requesting staff support from the Service, the Idaho Department of Fish and Game, Montana Department of Fish, Wildlife and Parks, Forest Service, other affected Federal agencies, and the Nez Perce Tribe, when necessary to perform administrative functions, and requesting reimbursement from

us for non-Federal Committee members for costs associated with travel, lodging, and incidentals.

(vii) Reviewing existing grizzly bear standards and guidelines used by the Forest Service and other agencies and landowners. The Committee will perform an annual review of grizzly bear mortalities and the number and location of bear/human conflicts. This review will be the primary mechanism to assess the adequacy of existing management techniques and standards. If the Committee deems such standards and guidelines inadequate for recovery of grizzly bears, the Committee may recommend changes to the Forest Service and other agencies and landowners.

(viii) Developing grizzly bear guidance for proper camping and sanitation within the Experimental Population Area and making recommendations to land management agencies for adoption of such guidelines. Existing camping and sanitation procedures developed in other ecosystems with grizzly bears will serve as a basis for such guidelines.

(ix) Developing a protocol for responding to grizzly/human encounters, livestock depredations, damage to lawfully present property, and other grizzly/human conflicts within the Experimental Population Area. Any response protocol developed by the Committee will have to undergo public comment and be revised as appropriate based on comments received. Any conflicts or mortalities associated with these activities will result in review by the Committee to determine what the Committee may do to help prevent future conflicts or mortalities. The Committee will recommend, as necessary, policy changes on trail restrictions for human safety to appropriate wildlife and land management agencies.

(x) Recommending to the Service changes to recovery criteria, including mortality limits, population determinations, and other criteria for recovery as appropriate.

(xi) Reviewing all human-caused grizzly bear mortalities to determine whether new measures for avoiding future occurrences are required and make recommendations on such measures to appropriate land and wildlife management agencies. If grizzly bear mortalities occur as a result of black bear hunting, the Committee will work with the State Fish and Game Departments in both Idaho and Montana to develop solutions to minimize the effects on grizzly bears of black bear hunting.

(xii) Developing strategies to emphasize recovery inside the Recovery Area and to accommodate grizzly bears inside other areas of the Experimental Population Area.

(A) Grizzly bears may range outside the Recovery Area because grizzly bear habitat exists throughout the Experimental Population Area. The Committee will not recommend that bears be disturbed or moved unless conflicts are both significant and cannot be corrected as determined by the Committee. This provision includes conflicts associated with livestock, for which the Committee will develop strategies to discourage grizzly bear occupancy in portions of the Experimental Population Area outside of the Recovery Area.

(B) Unless the Committee determines otherwise, this rule provides that private land outside the national forest boundary in the Bitterroot Valley, Montana (exclusion area), is an area where any human/grizzly conflicts will be considered unacceptable. Grizzly bear occupancy will be discouraged in these areas, and grizzly bears will be captured and returned to the Recovery Area. If a grizzly bear enters the exclusion area, State and Federal wildlife management agencies will attempt to capture it immediately and notify the public of its presence as soon as possible. The public will be kept updated until the bear is caught. Further, any grizzly bear that occupies the exclusion area or other inhabited human settlement areas on private land within the Experimental Population Area that, in the judgment of the management agencies or Committee, presents a clear threat to human safety or whose behavior indicates that it may become habituated to humans, will be relocated or destroyed by management agencies.

(xiii) Establishing standards for determining whether the experimental reintroduction has been successful and making recommendations on the inclusion of such standards in the Grizzly Bear Recovery Plan. These standards will be based on the best scientific and commercial information



available and will reflect that, absent extraordinary circumstances, the success or failure of the program cannot be measured in fewer than 20 years. General guidelines for the standards by which failure will be measured include, but are not limited to, one or more of the following conditions:

(A) If, within the number of years established by the Committee following initial reintroduction, no relocated grizzly bear remains within the Experimental Population Area and the reasons for emigration or mortality cannot be identified and/or remedied; or

(B) If, within the number of years established by the Committee following initial reintroduction, no cubs of the year or yearlings exist and the relocated bears are not showing signs of successful reproduction as evidenced by no cubs of the year or yearlings.

(xiv) Developing procedures for the expeditious issuance of permits described in paragraphs (I)(5)(iv) and (I)(5)(v) of this section, and making recommendations on such procedures to appropriate agencies.

(xv) Developing 2-year work plans for the recovery effort for submittal to the Secretary pursuant to paragraph (I)(11)(i) of this section.

(xvi) Establishing, based on the best available science, a refined interim recovery goal for the Bitterroot Ecosystem Chapter of the Grizzly Bear Recovery Plan and a final recovery goal when sufficient information is available and after grizzly bears are reintroduced and occupy suitable habitats in the Experimental Population Area. As this information becomes available, the Committee may recommend the recovery goal to the Secretary along with procedures for determining how this goal will be measured. The recovery goal for the Bitterroot grizzly bear population will be consistent with the habitat available within the Recovery Area. Additional adjacent areas of public land can be considered for contribution of suitable habitat when setting the recovery goal if additional land is shown to be necessary by the best scientific and commercial data available. Any recommendations for revised recovery goals developed by the Committee will require public review and our approval as appropriate prior to revision of any recovery plan. Grizzly bears outside the Recovery Area and within the Experimental Population Area can contribute to meeting the recovery goal if their long-term occupancy in such habitats outside the Recovery Area is reasonably certain.

(10) *What agencies will be responsible for day-to-day management activities?* The Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, the Nez Perce Tribe, and the Forest Service, in coordination with us, will exercise day-to-day management responsibility within the Experimental Population Area in accordance with this paragraph (I). The Service and these cooperating agencies will share management responsibility as per agreements with, and in consideration of, recommendations from the Committee.

(11) *How will progress of the Committee be monitored; and what process will be followed by the Secretary to resolve disputes over whether Committee actions are leading to recovery?* (i) The Secretary or our representative on the Committee will review the Committee's 2-year work plans (see paragraph (I)(9)(xv) of this section). If the Secretary determines, through our representative on the Committee, that the Committee's decisions, work plans, or the implementation of those plans are not leading to the recovery of the grizzly bear within the Experimental Population Area or are not in compliance with this paragraph (I), our representative will ask the Committee to determine whether such a decision, plan, or implementation of a plan is leading to recovery and is in compliance with this paragraph (I). The Secretary, who retains final responsibility and authority for implementation of the Act, will review the Committee's determination, as provided in paragraphs (I)(11)(ii) through (iv) of this section, and then make a final determination. Should the Secretary find that a decision, work plan, or implementation of a plan by the Committee is inadequate for recovery of the grizzly bear or is not in compliance with this paragraph (I), the Secretary may assume lead management responsibility.

(ii) The Service representative will consider Committee input before making any determination that Committee actions are not leading to recovery or are not in compliance with this paragraph (I). In the event that our representative on the Committee determines that the actions of the Committee are not

leading to recovery of the Bitterroot grizzly bear population or are not in compliance with this paragraph (I), he or she will recommend to the Committee, based on the best scientific and commercial data available, alternative or corrective actions and provide 6 months for the Committee to accomplish those actions. Should the Committee reject these corrective actions, our representative will convene a Scientific Review Panel of three and will submit to the panel for review those Committee actions or decisions that he or she has determined are not leading to recovery or are not in compliance with this paragraph (I). The Service representative will consider the views of all Committee members prior to convening a Scientific Review Panel.

(iii) Members of the Scientific Review Panel will be professional scientists who have had no involvement with the Committee and are not employed by Federal agencies responsible for grizzly bear recovery efforts. The Secretary will select one member of the panel, and the Governors of Idaho and Montana in consultation with the Universities of Idaho and Montana (respectively), will select one panel member each. The Scientific Review Panel will review Committee actions or decisions, solicit additional information if necessary and, using the best scientific and commercial data available, make timely recommendations to the Committee as to whether Committee actions will lead to recovery of the grizzly bear in the Bitterroot ecosystem and are in compliance with paragraph (I). Examples of Committee actions, decisions, or lack of actions that can be submitted to the Scientific Review Panel include, but are not limited to, the following: sufficiency of public involvement in Committee activities; decisions involving sanitation and outreach activities; management of nuisance bears; adequacy of recommendations to land and wildlife management agencies; adequacy of Committee actions in addressing issues such as excessive human-caused grizzly bear mortality; and other actions important to recovery of the grizzly bear in the Bitterroot ecosystem. Committee compliance with paragraph (I) provides the basis for the recommendations of the Scientific Review Panel.

(iv) If, after timely review, the Committee rejects the recommendations of the Scientific Review Panel, and our representative determines that Committee actions are not leading to recovery of the Bitterroot population, he or she will notify the Secretary. The Secretary will review the Panel's recommendations and determine the disposition of the Committee.

(A) If the Secretary determines that the Committee should maintain lead management responsibility, the Committee will continue to operate according to the provisions of this paragraph (I) until the recovery objectives under paragraph (I)(9)(xvi) of this section or the Bitterroot Ecosystem Chapter of the Recovery Plan have been met and the Secretary has completed delisting.

(B) If the Secretary decides to assume lead management responsibility, the Secretary will consult with the Governors of Idaho and Montana regarding that decision and further attempt to resolve the disagreement. If, after such consultation, the Secretary assumes lead management responsibility, the Secretary will publish a notice in the FEDERAL REGISTER explaining the rationale for the determination and notify the Governors of Idaho and Montana. The Committee will disband, and all requirements identified in this paragraph (I) regarding the Committee will be nullified.

(12) *How will the Bitterroot grizzly bear population be monitored?* The reintroduced population will be monitored closely by Federal and State agencies in cooperation with the Committee for the duration of the recovery process, generally by use of radio telemetry as appropriate.

(13) *How will success or failure of the project be evaluated?* The status of Bitterroot grizzly bear recovery will be reevaluated separately by the Committee and by the Secretary at 5-year intervals. This review will take into account the reproductive success of the grizzly bears released, human-caused mortality, movement patterns of individual bears, food habits, and overall health of the population and will recommend changes and improvements in the recovery program. Evaluating these parameters will assist in determining success or failure of the restoration.

(14) *What process will be followed if the Secretary determines the project has failed?* (i) If, based on the criteria established by the Committee, the Secretary, after consultation with the Committee, the Governors of Idaho and Montana, the Idaho Department of Fish and Game, the Montana Department of Fish, Wildlife and Parks, and the Nez Perce Tribe, determines that the reintroduction has failed to

produce a self-sustaining population, this paragraph (l) will not be used to reintroduce additional bears. Any remaining bears will retain their experimental status.

(ii) Prior to declaring the experimental reintroduction a failure, we will investigate the probable causes of the failure. If the causes can be determined, and legal and reasonable remedial measures identified and implemented, we will consider continuing the recovery effort and maintaining the relocated population. If such reasonable measures cannot be identified and implemented, we will publish the results of our evaluation in the FEDERAL REGISTER in a proposed rulemaking to terminate the authority for additional experimental grizzly bear reintroductions in the Bitterroot ecosystem.

(15) *Will the legal status of grizzly bears in the Experimental Population Area change? We do not intend to change the “nonessential experimental” designation to “essential experimental,” “threatened,” or “endangered” and foresee no likely situation that would result in such changes. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).*

(16) *What are the definitions of key terms used in the special rule in this paragraph (l)? In addition to terms defined in §10.12 and 17.3 of this subchapter, the following terms apply to this paragraph (l):*

*Accommodate* means allowing grizzly bears that move outside the Recovery Area onto public land in the Experimental Population Area to remain undisturbed unless they demonstrate a real and imminent threat to human safety or livestock.

*Citizen Management Committee (Committee)* means that Committee described in paragraph (l) (6) of this section.

*Current range* means the area inside or within 10 miles of the recovery zone line of currently occupied grizzly bear recovery zones or any area where there is a grizzly bear population, as defined in this paragraph (l)(16).

*Exclusion area (Bitterroot Valley)* means those private lands in Montana lying within the Bitterroot Experimental Population Area in the Bitterroot Valley outside the Bitterroot National Forest boundary south of U.S. Highway 12 to Lost Trail Pass and west of Highway 93.

*Experimental Population Area (Bitterroot Grizzly Bear Experimental Population Area)* means that area delineated in paragraph (l)(1) of this section within which management plans developed as part of the Committee described in paragraph (l)(9) of this section will be in effect. This area includes the Recovery Area. The Experimental Population Area is within the historic range of the grizzly bear, but geographically separate from the current range of the grizzly bear.

*Geographically separate* means separated by more than 10 miles. The term refers to “wholly separate geographically” in section 10(j)(2) of the Act. The Experimental Population Area and the recovery zone boundary of any existing grizzly bear population must be geographically separate.

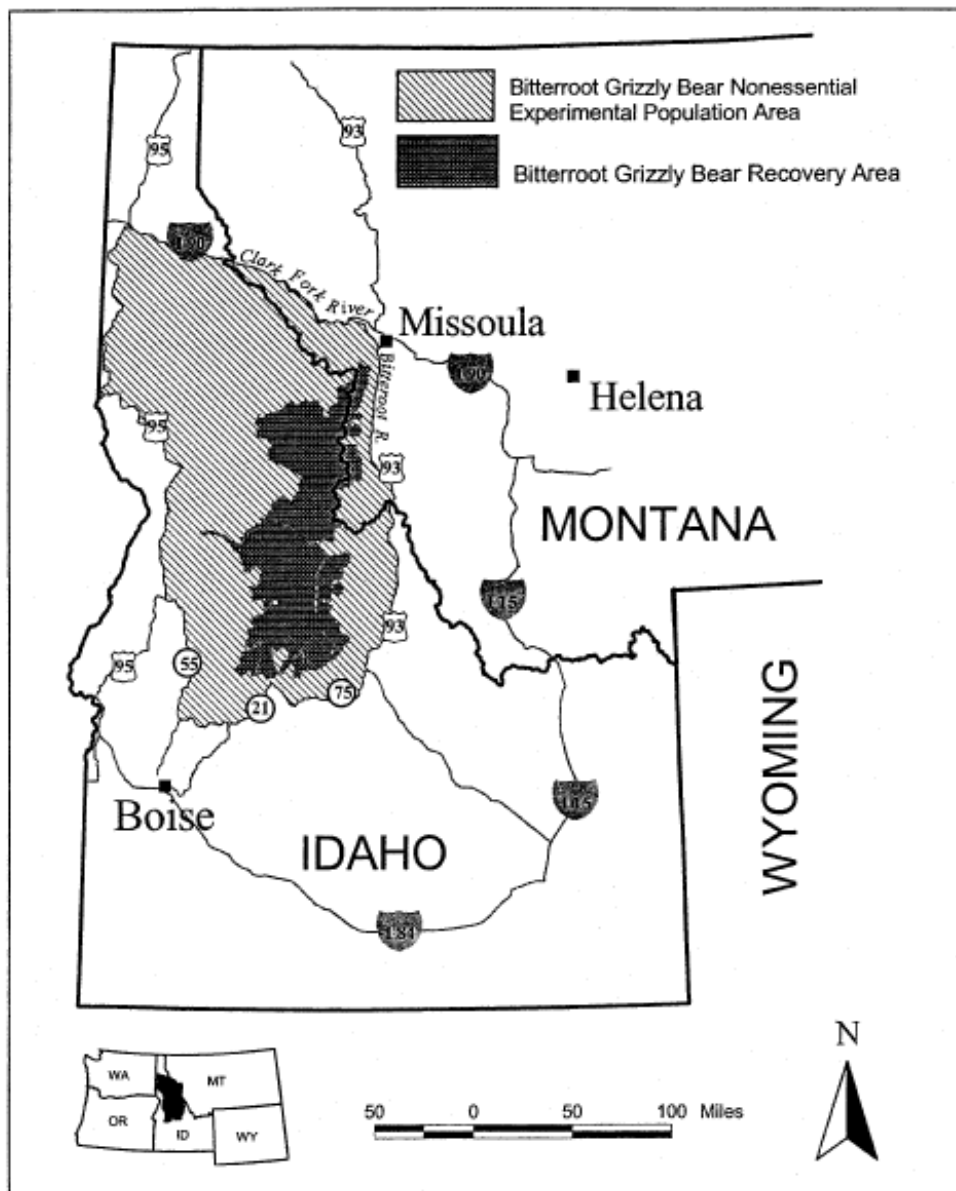
*Grizzly bear population* is defined by verified evidence within the previous 6 years which consists of photos within the area, verified tracks, or sightings by reputable scientists or agency personnel of at least two different female grizzly bears with young or one female with different litters in 2 different years in an area geographically separate from other grizzly bear populations. Verifiable evidence of females with young, to be geographically separate, would have to occur greater than 10 miles from the nearest nonexperimental grizzly bear population recovery zone boundary.

*Opportunistic, noninjurious harassment* means harassment (see definition of “harass” in §17.3) that occurs when the grizzly bear presents itself (for example, the bear travels onto and is observed on private land or near livestock). This paragraph (l) permits only this type of harassment. You cannot track, attract, search out, or chase a grizzly bear and then harass it. Any harassment must not cause bodily injury or death to the grizzly bear. The intent of harassment permitted by this definition is to scare bears away from the immediate area.

*Recovery Area* (Bitterroot Grizzly Bear Recovery Area) means the area of recovery emphasis within the Experimental Population Area, and is delineated in paragraph (l)(2) of this section. This area consists of the Selway-Bitterroot and Frank Church-River of No Return Wilderness areas. The Recovery Area is within the historic range of the species.

*Recovery emphasis* means grizzly bear management decisions in the Recovery Area will favor bear recovery so that this area can serve as core habitat for survival, reproduction, and dispersal of the recovering population. Reintroduction of grizzly bears is planned to occur within the Selway-Bitterroot Wilderness portion of the Recovery Area unless it is later determined that reintroduction in the Frank Church-River of No Return Wilderness is appropriate.

*Unavoidable and unintentional take* means accidental, unintentional take (see definition of take in §10.12 of this subchapter) that occurs despite reasonable care, is incidental to an otherwise lawful activity, and is not done on purpose. An example would be striking a grizzly bear with an automobile. Taking a grizzly bear by shooting will not be considered unavoidable and unintentional take. Shooters have the responsibility to be sure of their targets.



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(m) Spotfin chub (=turquoise shiner) (*Erimonax monachus*)—(1) *Where is the spotfin chub designated as a nonessential experimental population (NEP)?* We have designated three populations of this species as NEPs: the Tellico River NEP, the Shoal Creek NEP, and the French Broad River and Holston River NEP. This species is not currently known to exist in the Tellico River or its tributaries, the Shoal Creek or its tributaries, or any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside the NEP areas. However, if individuals move upstream or downstream or into tributaries outside any of the designated NEP areas, we would presume that those individuals came from the closest reintroduced population. We would then amend this regulation and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(i) The Tellico River NEP area is within the species' probable historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers (km)) and Tellico River mile 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) The Shoal Creek NEP area is within the species' historic range and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(iii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(iv) We do not intend to change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (m)(3) of this section, all the provisions of §17.31(a) and (b) apply to the spotfin chub.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (m)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (m)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* (i) In the Tellico River NEP

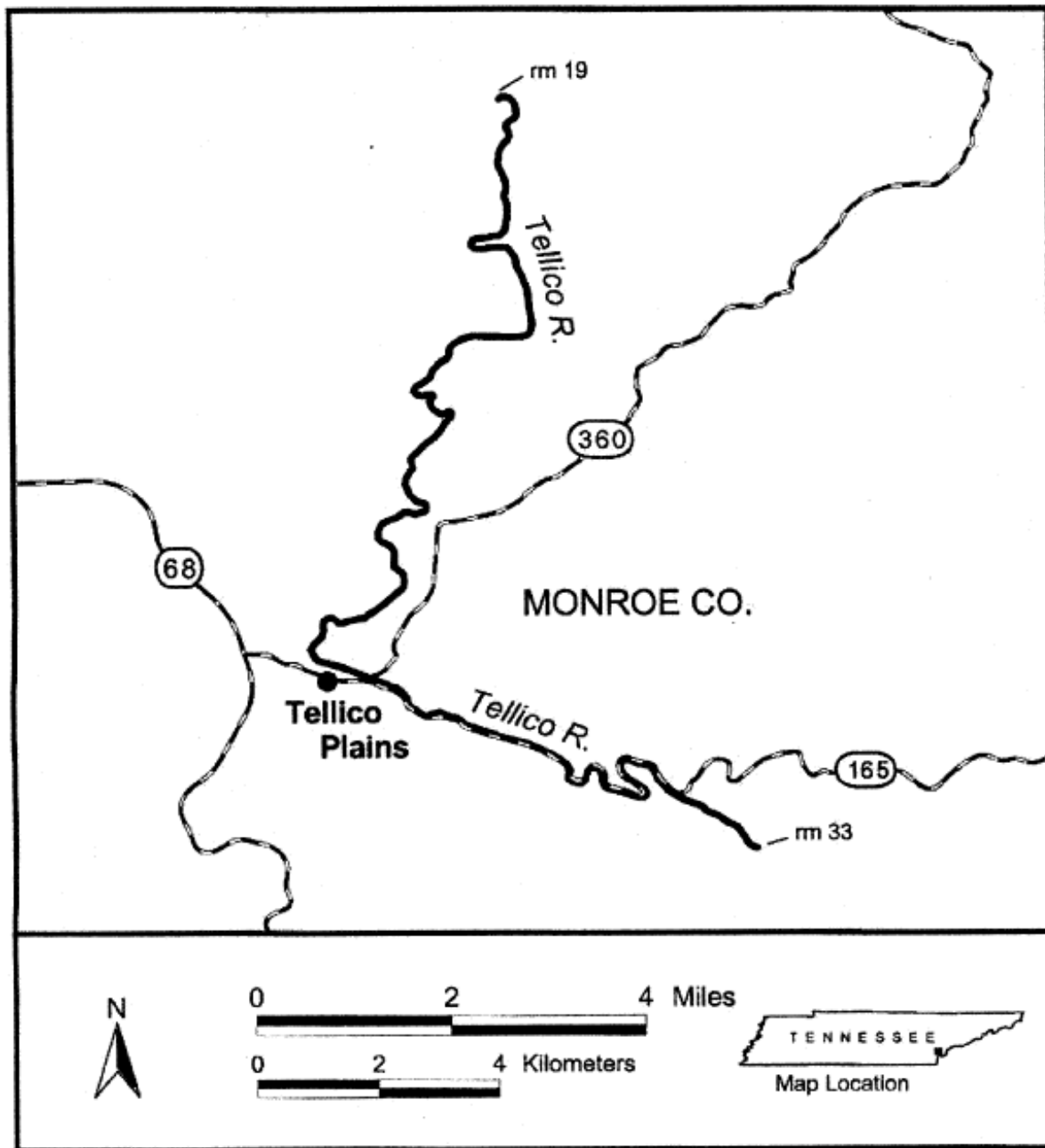
area, we will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(ii) In the Shoal Creek NEP area, after the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(iii) *In the Lower French Broad and Lower Holston Rivers NEP area*, after the initial stocking of these species, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. Annual reports will be produced detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the Tellico River NEP area for spotfin chub, dusky darter, smoky madtom, and yellowfin madtom in Tennessee follows:

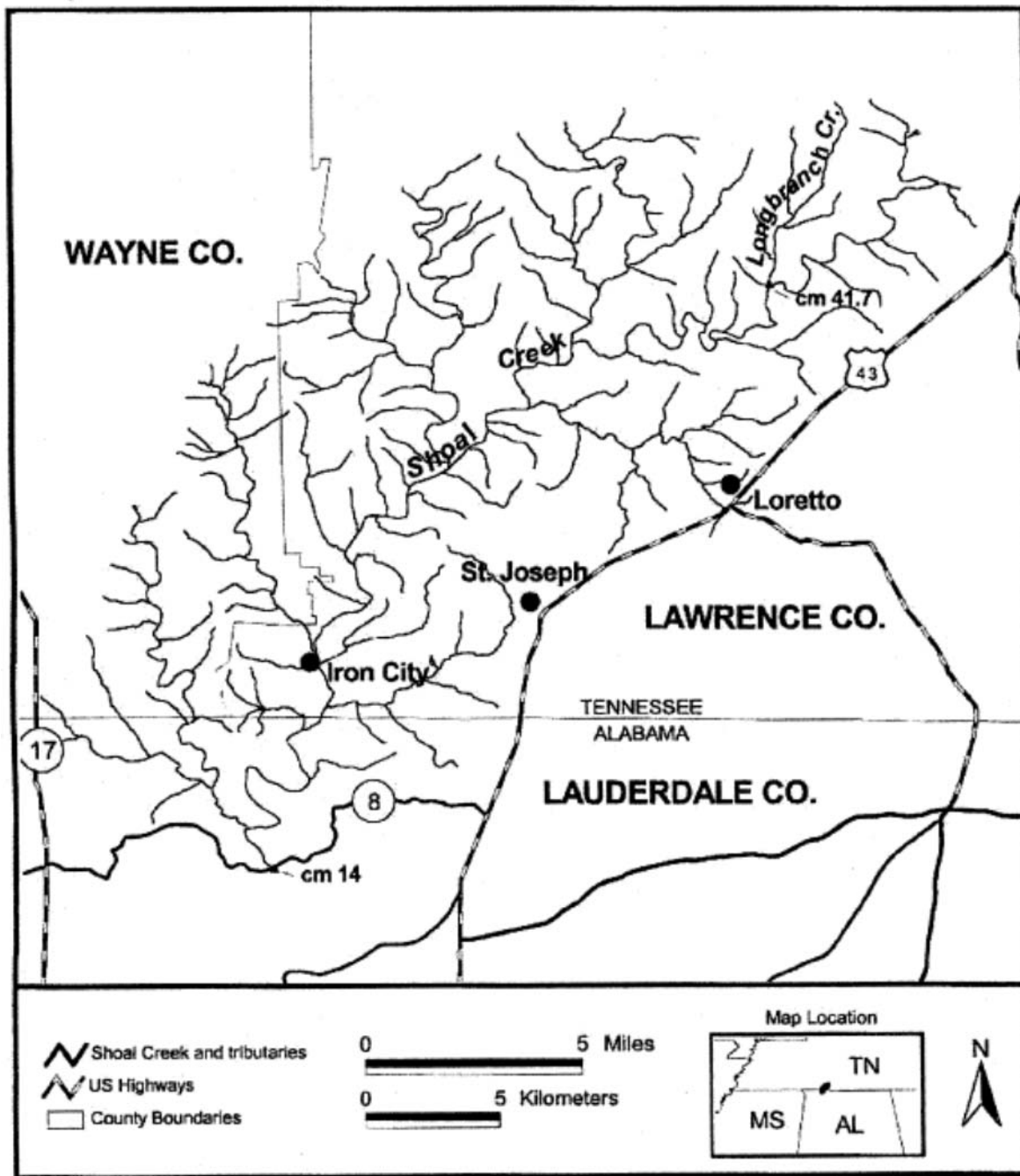
# Portion of the Tellico River Covered by the Spotfin Chub, Duskytail Darter, Smoky Madtom and Yellowfin Madtom Nonessential Experimental Population Designation



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(6) *Note:* Map of the Shoal Creek NEP area for spotfin chub and boulder darter in Tennessee and Alabama follows:

# Portion of Shoal Creek Watershed Covered by the Spotfin Chub and Boulder Darter Nonessential Experimental Population Designation

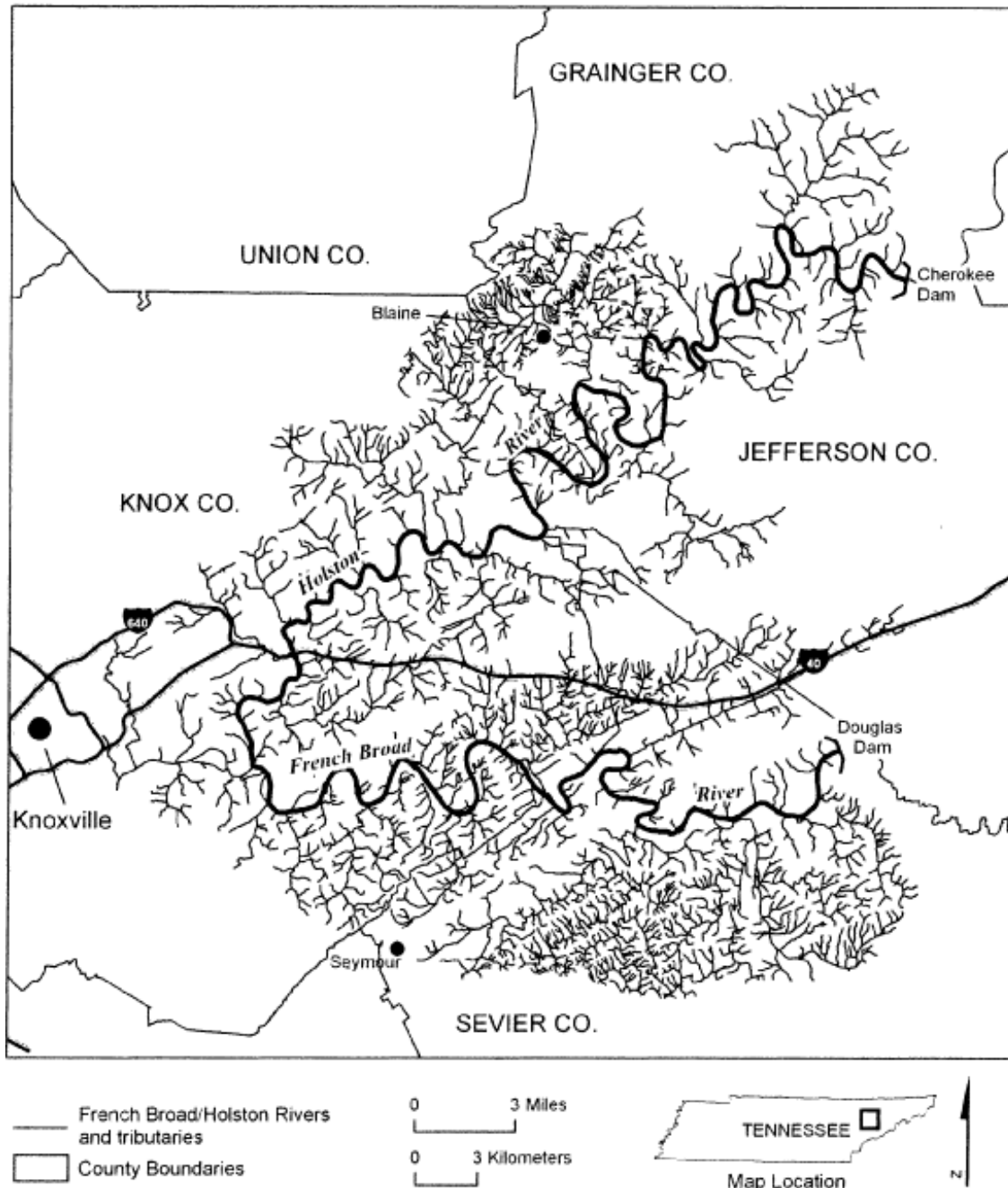


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(7) *Note:* Map of the French Broad River and Holston River NEP area for spotfin chub, slender chub, duskytail darter, pygmy madtom, and yellowtail madtom in Tennessee follows:



Portion of the Lower French Broad River Watershed and the Lower Holston River Watershed Covered by the 2 Federally Listed Endangered Fishes: Duskytail Darter and Pygmy Madtom; and 3 Federally Listed Threatened Fishes: Slender Chub, Spottfin Chub, and Yellowfin Madtom Nonessential Experimental Population Designation.



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(n) Topeka shiner (*Notropis topeka*).

(1) *Where is the Topeka shiner designated as a nonessential experimental population (NEP)?* (i) The NEP area for the Topeka shiner is within the species' historical range and includes those waters within the Missouri counties of Adair, Gentry, Harrison, Putnam, Sullivan, and Worth identified below in paragraph (n)(5) of this section.

(ii) The Topeka shiner is not known to currently exist in Adair, Gentry, Putnam, Sullivan, and Worth Counties in Missouri, or in those portions of Harrison County, Missouri, where the NEP is being designated. Based on its habitat requirements and potential predation by other fish predators, we do not expect this species to become established outside this NEP area, although there is a remote

chance it may.

(iii) We will not change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (n)(3) of this section, all the prohibitions of §17.21 apply to the Topeka shiner NEP.

(ii) Any manner of take not described under paragraph (n)(3) of this section is prohibited in the NEP area.

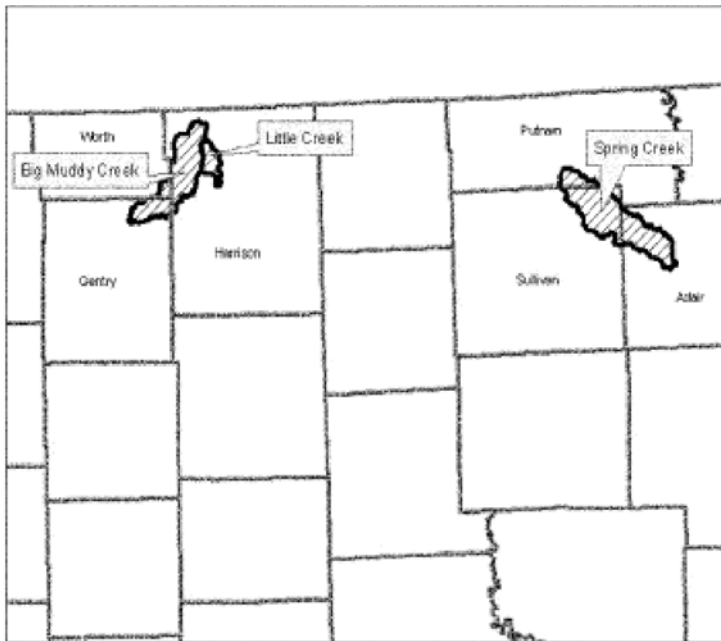
(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, Topeka shiners, or parts thereof, that are taken or possessed in violation of paragraph (n)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (n)(2)(iii) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is incidental to an otherwise legal activity, such as agriculture, forestry and wildlife management, land development, recreation, and other activities, is allowed provided that the activity is not in violation of any applicable State fish and wildlife laws or regulations.

(4) *How will the effectiveness of these reintroductions be monitored?* We will monitor reintroduction efforts to assess changes in distribution within each watershed by sampling ponds and streams where releases occur for 10 years after reintroduction. Streams will be sampled annually, and ponds will be sampled annually for the first 3 years and biennially thereafter.

(5) *Note:* Map of the NEP areas [Big Muddy Creek (Gentry, Harrison, and Worth Counties), Little Creek (Harrison County), and Spring Creek (Adair, Putnam, and Sullivan Counties)] for the Topeka shiner, follows:

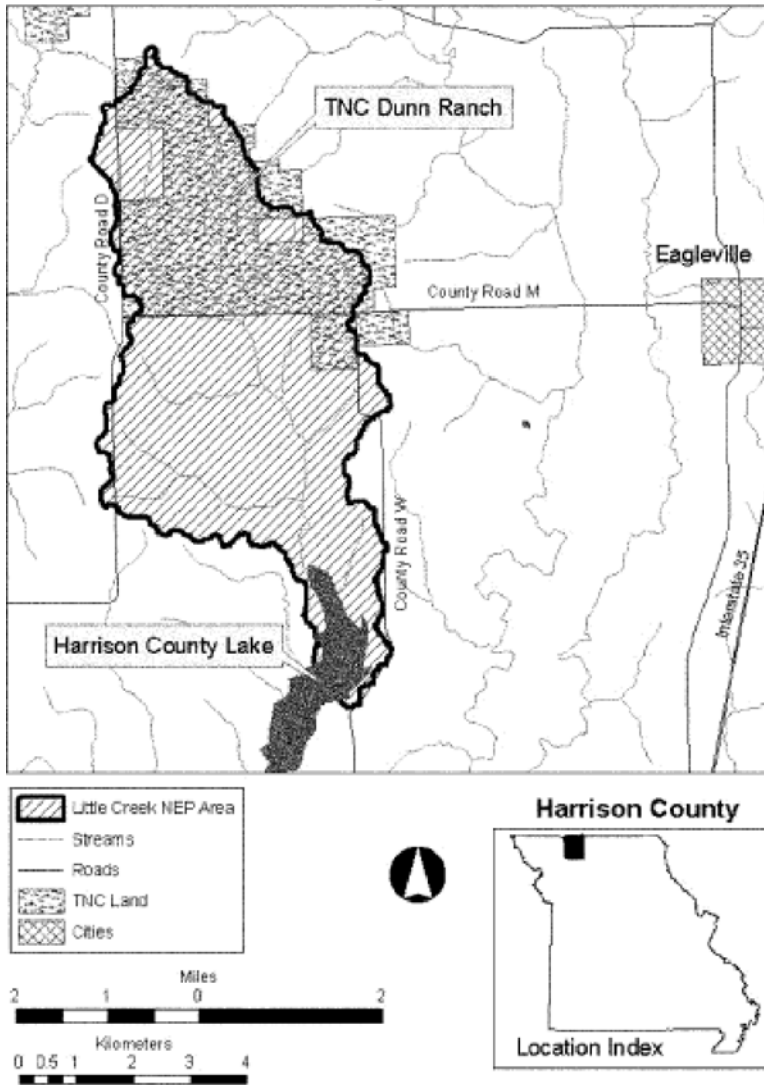


County Boundaries



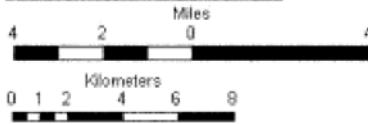
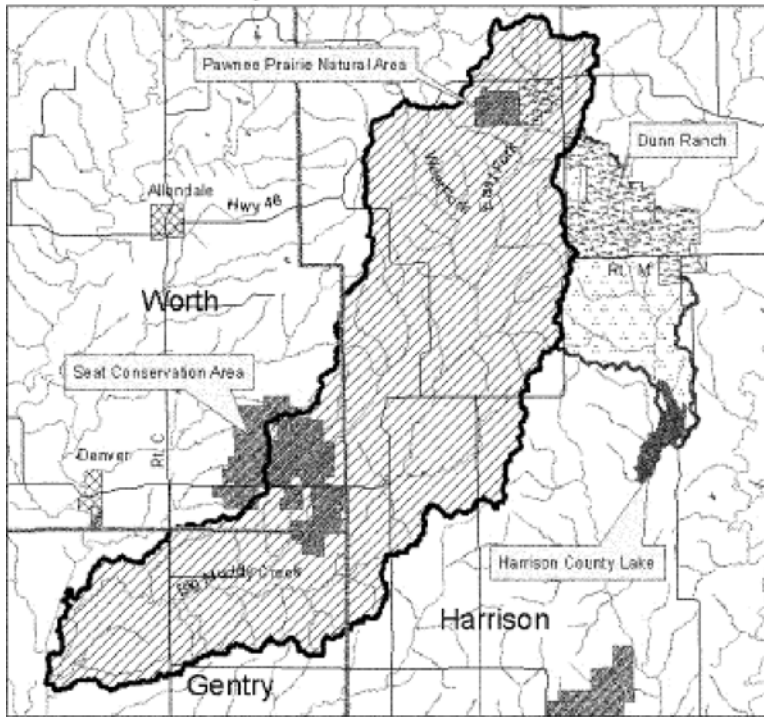
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(6) *Note:* Map of the NEP area for the Topeka shiner in Little Creek watershed, Harrison County, follows:



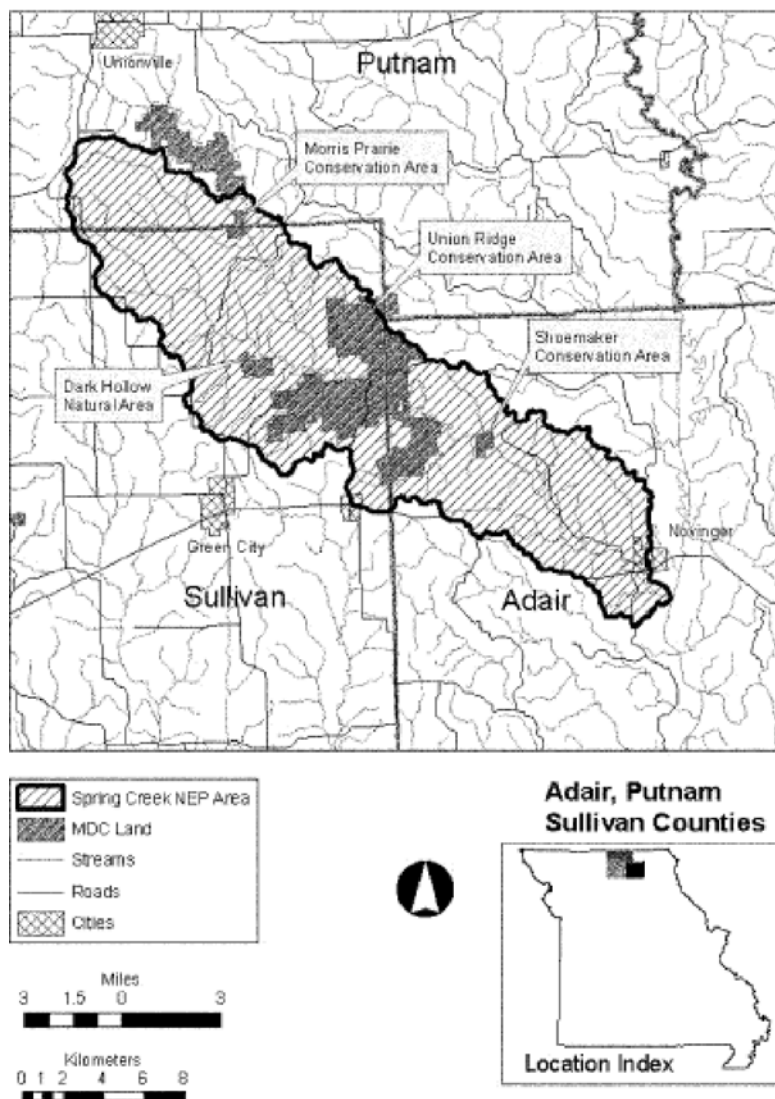
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(7) *Note:* Map of the NEP area for the Topeka shiner in Big Muddy Creek watershed, Gentry, Harrison, and Worth Counties, follows:



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(8) Note: Map of the NEP area for the Topeka shiner in Spring Creek watershed, Adair, Putnam, and Sullivan Counties, follows:



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(o) Boulder darter (*Etheostoma wapiti*). (1) *Where is the boulder darter designated as a nonessential experimental population (NEP)?* (i) The NEP area for the boulder darter is within the species' historic range and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(ii) The boulder darter is not currently known to exist in Shoal Creek or its tributaries. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this rule through our normal rulemaking process in order to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (o)(3) of this section, all the provisions of §17.31(a) and (b) apply to the boulder darter.

(ii) Any manner of take not described under paragraph (o)(3) of this section is prohibited in the

NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (o)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (o)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the boulder darter in the Shoal Creek, Tennessee and Alabama, appears immediately following paragraph (m)(6) of this section.

(p) Northern aplomado falcon (*Falco femoralis septentrionalis*). (1) The northern aplomado falcon (*Falco femoralis septentrionalis*) (falcon) population identified in paragraph (p)(9)(i) of this section is a nonessential experimental population (NEP).

(2) No person may take this species, except as provided in paragraphs (p)(3) through (5) and (p)(10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under §17.32 may take falcons for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act (Act);

(4) A falcon may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity; and that such taking is reported within 24 hours, as provided under paragraph (p)(6) of this section.

(5) Any employee of the Service, New Mexico Department of Game and Fish, or Arizona Game and Fish Department, who is designated for such purpose, or any person with a valid permit issued by the Service under 50 CFR 17.32, may, when acting in the course of official duties, take a falcon if such action is necessary to:

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

(ii) Dispose of a dead specimen, or salvage a dead specimen that may be useful for scientific study;

(iii) Move a bird within the NEP area for genetic purposes or to improve the health of the population;

(iv) Relocate falcons that have moved outside the NEP area, by returning the falcon to the NEP

area or moving it to a captive breeding facility. All captures and relocations from outside the NEP area will be conducted with the permission of the landowner(s) or appropriate land management agencies; or

(v) Collect nesting data or band individuals.

(6) Any taking pursuant to paragraphs (p)(3) through (5) of this section must be reported within 24 hours by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; (505) 346-2525. Upon contact, a determination will be made as to the disposition of any live or dead specimens.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (p)(2) and (p)(7) of this section.

(9)(i) The boundaries of the designated NEP area are based on county borders and include the entire States of New Mexico and Arizona. The reintroduction area is within the historical range of the species in New Mexico.

(ii) All falcons found in the wild within the boundaries of the NEP area after the first releases will be considered members of the NEP. A falcon occurring outside of the NEP area is considered endangered under the Act unless it is marked or otherwise known to be a member of the NEP.

(iii) The Service has designated the NEP area to accommodate the potential future movements of a wild population of falcons. All released birds and their progeny are expected to remain in the NEP area due to the geographic extent of the designation.

(10) The NEP will be monitored closely for the duration of the reintroduction program. Any bird that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State or permitted Tribal wildlife personnel and given appropriate care. Such birds will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility or they are euthanized if treatment would be unlikely to be effective.

(11) The Service plans to evaluate the status of the NEP every 5 years to determine future management status and needs, with the first evaluation expected to be not more than 5 years after the first release of birds into the NEP area. All reviews will take into account the reproductive success and movement patterns of individuals released, food habits, and overall health of the population. This evaluation will include a progress report.

(q) Duskytail darter (*Etheostoma percnurum*). (1) *Where is the duskytail darter designated as a nonessential experimental population (NEP)?* We have designated two populations of this species as NEPs: The Tellico River NEP and the French Broad River and Holston River NEP. This species is not currently known to exist in the Tellico River or its tributaries or in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside these NEP areas. However, if individuals move upstream or downstream or into tributaries outside either of the designated NEP areas, we would presume that these individuals came from the reintroduced population. We would then amend this rule and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(i) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe



County, Tennessee.

(ii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(iii) We do not intend to change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (q)(3) of this section, all the prohibitions of §17.31(a) and (b) apply to the duskytail darter.

(ii) Any manner of take not described under paragraph (q)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (q)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (q)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the duskytail darter in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(6) *Note:* Map of the NEP area for the duskytail darter in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(r) Smoky madtom (*Noturus baileyi*). (1) *Where is the smoky madtom designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the smoky madtom is within the species' probable historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) The smoky madtom is not currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend paragraph (r)(1)(i) of this section and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (r)(3) of this section, all the prohibitions of §17.31(a) and (b) apply to the smoky madtom.

(ii) Any manner of take not described under paragraph (r)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (r)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (r)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the smoky madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(6) of this section.

(s) Slender chub (*Erimystax cahni*). (1) *Where is the slender chub designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the slender chub is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(ii) The slender chub is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (s)(3) of this section, all the prohibitions of §17.31(a) and (b) apply to the slender chub.

(ii) Any manner of take not described under paragraph (s)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for

prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (s)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (s)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the slender chub in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(t) Pygmy madtom (*Noturus stanauli*). (1) *Where is the pygmy madtom designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the pygmy madtom is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(ii) The pygmy madtom is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (t)(3) of this section, all the prohibitions of §17.31(a) and (b) apply to the pygmy madtom.

(ii) Any manner of take not described under paragraph (t)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (t)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (t)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the pygmy madtom in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(u) Rio Grande silvery minnow (*Hybognathus amarus*)—(1) *Where are populations of this fish designated as nonessential experimental populations (NEP)?*

(i) The NEP area for the Rio Grande silvery minnow is within the species' historical range and is defined as follows: Rio Grande, from Little Box Canyon downstream of Fort Quitman, Hudspeth County, Texas, through Big Bend National Park and the Rio Grande Wild and Scenic River, to Amistad Dam; and on the Pecos River, from its confluence with Independence Creek to its confluence with the Rio Grande.

(ii) The Rio Grande silvery minnow is not currently known to exist in the Rio Grande or Pecos River in Texas. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of this species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reestablished populations. We would then amend paragraph (u)(1)(i) of this section to enlarge the boundaries of the NEP to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designation to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed of this species in the NEP area?* (i) A Rio Grande silvery minnow may be taken within the NEP area, provided that such take is either not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. However, Federal agencies, must consult under section 7 of the Act on their activities that may affect the Rio Grande silvery minnow within Big Bend National Park or the Wild and Scenic River.

(ii) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under 50 CFR 17.32 may take Rio Grande silvery minnows for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act;

(iii) Any taking pursuant to paragraph (u)(2)(i) of this section must be reported within 7 days by contacting the Service, Austin Ecological Services Field Office, 107011 Burnet Road, Suite 200, Austin, TX 78758; (512) 490-0057. Once the Service is contacted, a determination will be made as to the disposition of any live or dead specimens. Reporting requirements for take pursuant to paragraph (u)(2)(ii) of this section will be specifically defined in the permit issued by the Service.

(3) *What take of this species is not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (u)(2) of this section, all the provisions of 50 CFR 17.31(a) and (b) apply to the fish identified in paragraph (u)(1) of this section.

(ii) Any manner of take not described under paragraph (u)(2) of this section is prohibited in the NEP area.

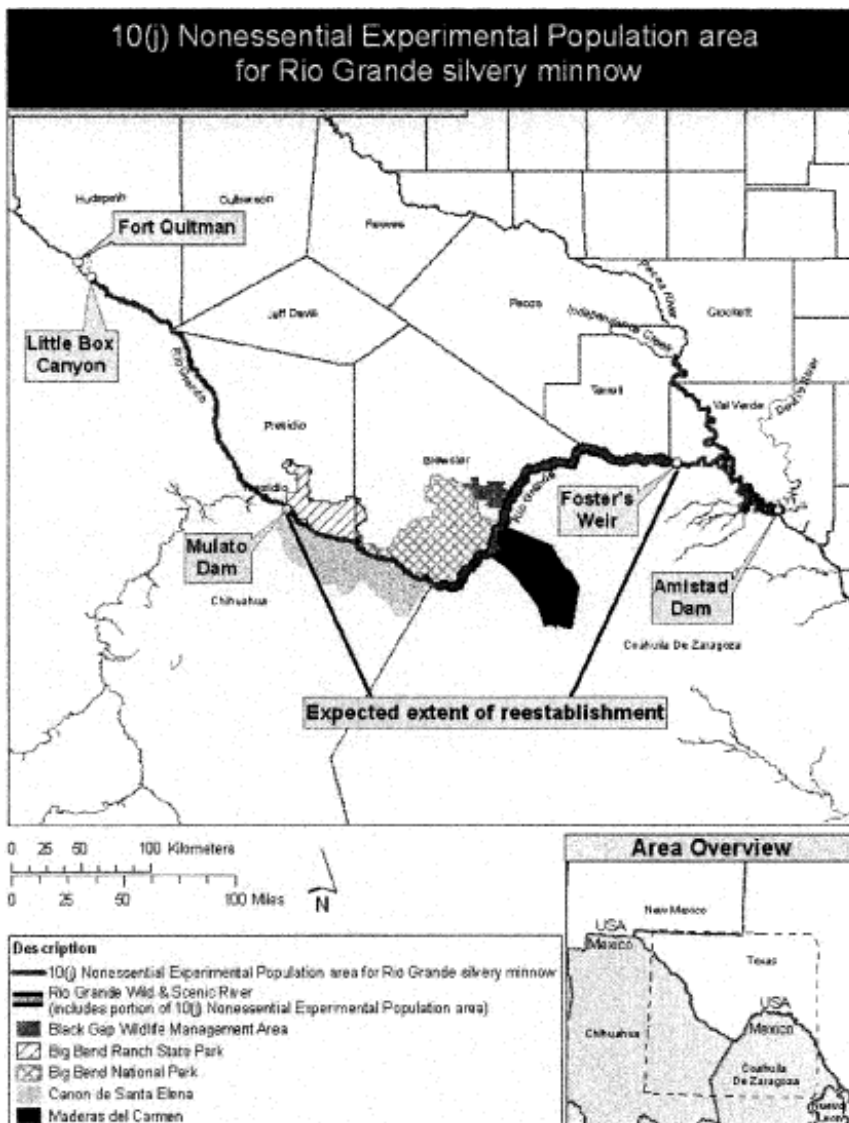
(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (u)(3) of this section or in violation of the applicable State or local fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (u)(3) of this section.

(4) *How will the effectiveness of the reestablishment be monitored?* (i) After the initial stocking of this fish, we will monitor their presence or absence at least annually and document any spawning behavior or young-of-year fish that might be present. Depending on available resources, monitoring may occur more frequently, especially during the first few years of reestablishment efforts. This monitoring will be conducted primarily by seining and will be accomplished by Service, National Park Service, or State employees or by contracting with the appropriate species experts. Annual reports will be produced detailing stocking and monitoring activities that took place during the previous year.

(ii) The Service will fully evaluate these reestablishment efforts every 5 years to determine whether to continue or terminate them.

(iii) *Note:* Map of the NEP area for the Rio Grande silvery minnow in Texas follows:



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(v) Sonoran pronghorn (*Antilocapra americana sonoriensis*). (1) The Sonoran pronghorn (*Antilocapra americana sonoriensis*) population identified in paragraph (v)(12) of this section is a nonessential experimental population (NEP).

(2) No person may take this species, except as provided in paragraphs (v)(3) through (v)(6) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service under §17.32 may take pronghorn within the NEP area for scientific purposes, the enhancement of propagation or survival of the species, and other conservation purposes consistent with the Endangered Species Act.

(4) A Sonoran pronghorn may be taken within the boundaries of Yuma Proving Grounds; Barry M. Goldwater Range; lands of the Arizona State Land Department; Bureau of Land Management lands; privately owned lands; and lands of the Tohono O'odham Nation, Colorado River Indian Tribes, Gila River Indian Reservation, Ak-Chin Indian Reservation, Pascua Yaqui Indian Reservation, and San Xavier Reservation within the NEP area, provided that such take is incidental to, and not the purpose of, carrying out any otherwise lawful activity; and provided that such taking is reported as soon as possible in accordance with paragraph (v)(6) of this section. Otherwise lawful activities are any activities in compliance with applicable land management regulations, hunting regulations, tribal law, and all other applicable law and regulations, and include, but are not limited to, military training and testing, border security and enforcement carried out by Federal law enforcement officials (e.g., U.S. Customs and Border Protection), agriculture, rural and urban development, livestock grazing, camping, hiking, hunting, recreational vehicle use, sightseeing, nature or scientific study, rockhounding, and geocaching, where such activities are permitted.

(5) Any employee or agent of the U.S. Fish and Wildlife Service, the Arizona Department of Game and Fish, and the tribes listed in paragraph (v)(4) of this section, who is designated for such purpose may, when acting in the course of official duties, take a Sonoran pronghorn if such action is necessary to:

(i) Aid a sick, injured, or orphaned Sonoran pronghorn, including rescuing such animals from canals;

(ii) Dispose of a dead Sonoran pronghorn specimen, or salvage a dead specimen that may be useful for scientific study;

(iii) Move a Sonoran pronghorn for genetic purposes or to improve the health of the population; or

(iv) Capture and release a Sonoran pronghorn for relocation, to collect biological data, or to attach, service, or detach radio-telemetry equipment.

(6) Any taking pursuant to paragraphs (v)(3) through (v)(5) of this section must be reported as soon as possible by calling the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 201 N Bonita Avenue, Suite 141, Tucson, AZ 85745 (520/670-6150), or the Cabeza Prieta National Wildlife Refuge, 1611 North Second Avenue, Ajo, AZ 85321 (520/387-6483). Upon contact, a determination will be made as to the disposition of any live or dead specimens.

(7) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any Sonoran pronghorn or Sonoran pronghorn parts taken in violation of these regulations.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v)(2) and (7) of this section.

(9) The boundaries of the designated NEP area are based on the maximum estimated range of pronghorn that are released in and become established within the NEP area. These boundaries are physical barriers to movements, including major freeways and highways, and the Colorado River. All release sites will be within the NEP area.

(i) All Sonoran pronghorn found in the wild within the boundaries of the NEP area will be considered members of the NEP. Any Sonoran pronghorn occurring outside of the NEP area are considered endangered under the Act.

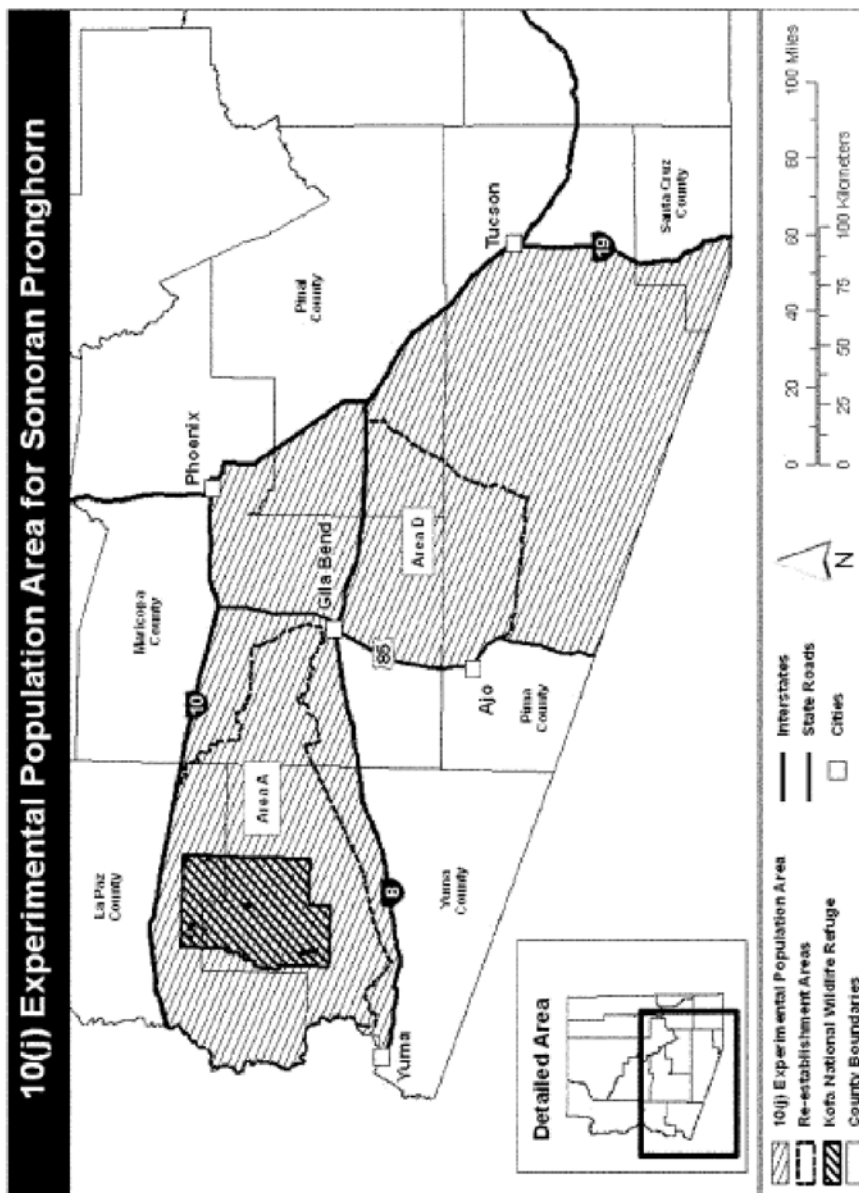
(ii) The Service has designated the NEP area to accommodate the potential future movements of wild Sonoran pronghorn. All released Sonoran pronghorn and their progeny are expected to remain in the NEP area due to the geographical extent of the designation and substantial barriers to movement that form the boundaries of the NEP.

(10) The NEP will be monitored closely for the duration of the program. Any pronghorn that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State or Tribal wildlife personnel or their designated agent and given appropriate care. Such pronghorn will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility.

(11) The Service plans to evaluate the status of the NEP every 5 years to determine future management status and needs, with the first evaluation occurring not more than 5 years after the first release of pronghorn into the NEP area. All reviews will take into account the reproductive success and movement patterns of individuals released, food habits, and overall health of the population. This evaluation will include a progress report.

(12) The areas covered by this proposed nonessential experimental population designation are in Arizona. They include the area north of Interstate 8 and south of Interstate 10, bounded by the Colorado River on the west and Interstate 10 on the east, and an area south of Interstate 8, bounded by Highway 85 on the west, Interstates 10 and 19 on the east, and the U.S.-Mexico border on the south.

(13) *Note:* Map of the NEP area for the Sonoran pronghorn in southwestern Arizona follows:



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(w) Bull Trout (*Salvelinus confluentus*)—(1) *Where are populations of this fish designated as nonessential experimental populations (NEPs)?*

(i) The NEP area for the bull trout is within the species' historical range and is defined as follows: the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.

(ii) Bull trout are not currently known to exist in the Clackamas River subbasin or the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel, in Oregon. Should any bull trout be found in the Willamette River within the NEP boundary, the U.S. Fish and Wildlife Service (Service) will assume the fish to be part of the reintroduced population, unless the fish is tagged or otherwise known to be from another population. Given the presence of suitable overwintering and forage habitat in the upper portion of the Clackamas River, as well as the geographic distance from spawning and rearing habitat in the upper Clackamas River to any overwintering and foraging habitat in the lower Clackamas and Willamette Rivers, we do not expect the reintroduced fish to become established outside the NEP. Bull trout found outside of the NEP boundary, but known to be part of the NEP, will assume the status of bull trout within the geographic area in which they are found.



(iii) We do not intend to change the NEP designation to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for the NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed of this species in the NEP area?* (i) Bull trout may be taken within the NEP area, provided that such take is:

(A) Not willful, knowing, or due to negligence.

(B) Incidental to and not the purpose of carrying out an otherwise lawful activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations.

(C) Consistent with Oregon Department of Fish and Wildlife (ODFW) fishing regulations that have been coordinated with the Service, if due to fishing.

(D) Incidental to any activities related to or associated with the operation and maintenance of the Clackamas River Hydroelectric Project (FERC Project No. 2195) by Portland General Electric (PGE) as administered under a license issued by FERC. Acceptable forms of taking of bull trout include, but are not limited to, mortality, stranding, injury, impingement and entrainment at project facilities, or delay in up- or downstream passage associated with or caused by any of the following activities. Activities related to the operation and maintenance of Project 2195 include, but are not limited to:

(1) Hydroelectric generation at any project facility;

(2) Maintenance of project facilities;

(3) Provision of upstream and downstream fish passage, whether through fish passage facilities, powerhouses, bypass facilities, bypass reaches, or spillways;

(4) Fish handling at fish separation and counting facilities;

(5) Fish removal from fish passage facilities and areas critical to downstream migrant passage testing at the time of testing (Bull trout removed for this testing do not need to be returned to the Clackamas River subbasin.);

(6) Fish conservation activities;

(7) Fish handling, tagging, and sampling in connection with FERC-approved studies; and

(8) Approved resource protection, mitigation, and enhancement measures.

(E) Consistent with the adaptive management process identified for this project including:

(1) The targeted relocation or possible removal of bull trout by the Service or our project partners, if bull trout are documented staging at the entrance to, within, or below, juvenile fish passage facilities within the Clackamas Hydroelectric Project; and

(2) Discontinuation of the reintroduction project and complete removal of bull trout from the Clackamas River if the Service determines, in consultation and coordination with the State of Oregon, NMFS, and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts cannot be carried out in a manner consistent with the recovery of threatened salmon and steelhead.

(ii) Any person with a valid permit issued by the Service under §17.32 and a valid State permit issued by ODFW may take bull trout for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(3) *What take of this species is not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (w)(2) of this section, all the provisions of §17.31(a) and (b) apply to the fish identified in paragraph (w)(1) of this section.

(ii) Any manner of take not described under paragraph (w)(2) of this section or Oregon Revised Statute (ORS) 498.002 and Oregon Angling Regulations pursuant to ORS 498.002 is prohibited in the NEP area. Should State statutes or regulations change, take prohibitions will change accordingly. Any changes to State recreational fishing regulations pertaining to the experimental population of bull trout in the Clackamas River subbasin will be made by the State in collaboration with the Service. We may refer unauthorized take of this species to ODFW law enforcement authorities or Service law enforcement authorities for prosecution.

(iii) A person may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (w)(2) of this section, or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) A person may not attempt to commit, solicit another to commit, or cause to be committed any offense except the take expressly allowed in paragraph (w)(2) of this section.

(4) *How will the effectiveness of the reestablishment be monitored?* (i) Effectiveness monitoring of the project will be conducted jointly by the Service and ODFW, with assistance from the U.S. Forest Service (USFS) and PGE.

(ii) We will monitor the effectiveness of the reintroduction during phase 1 of the project (2011-2017) by annually assessing: Distribution and movement, relative survival of translocated bull trout via presence and absence surveys, occurrence of spawning and reproduction, and genetic health, as measured against the donor population. These monitoring objectives will be accomplished by methodologies that include Passive Integrated Transponder (PIT) tagging of all fish translocated to the Clackamas River, radio tagging of the adult and subadult life stages, snorkel surveys, redd surveys, and minnow trapping.

(iii) If successful reproduction of reintroduced bull trout is detected, we will incorporate monitoring to assess the distribution, movement, growth, and survival of the initial cohorts of naturally produced bull trout.

(iv) Monitoring activities in phase 2 (2018-2024) and phase 3 (2025-2030) will be informed by phase 1 monitoring and evaluation.

(v) Annual reports that summarize the implementation and monitoring activities that occurred the previous year will be collaboratively developed by the Service, ODFW, and USFS.

(vi) We will evaluate the implementation strategy annually, and we will evaluate the reestablishment effort at the completion of phase 1 to determine whether to continue translocation of bull trout in phase 2.

(5) *What safeguards are in place to ensure the protection of Federally listed salmon and steelhead in the NEP area?* (i) In consultation and coordination with the National Marine Fisheries Service (NMFS) and other project partners, we have developed a plan to facilitate management decisions associated with potential impacts from the bull trout reintroduction on listed anadromous salmonids. If specific bull trout and/or anadromous salmonid thresholds are triggered, we will follow the planned management actions to minimize impacts to salmon and steelhead from the reintroduction of bull trout in the Clackamas River.

(ii) Our management actions implemented and the frequency of those actions, will be informed by:

(A) The reintroduction project's monitoring and evaluation program, jointly implemented by the

Service, ODFW, and USFS; and

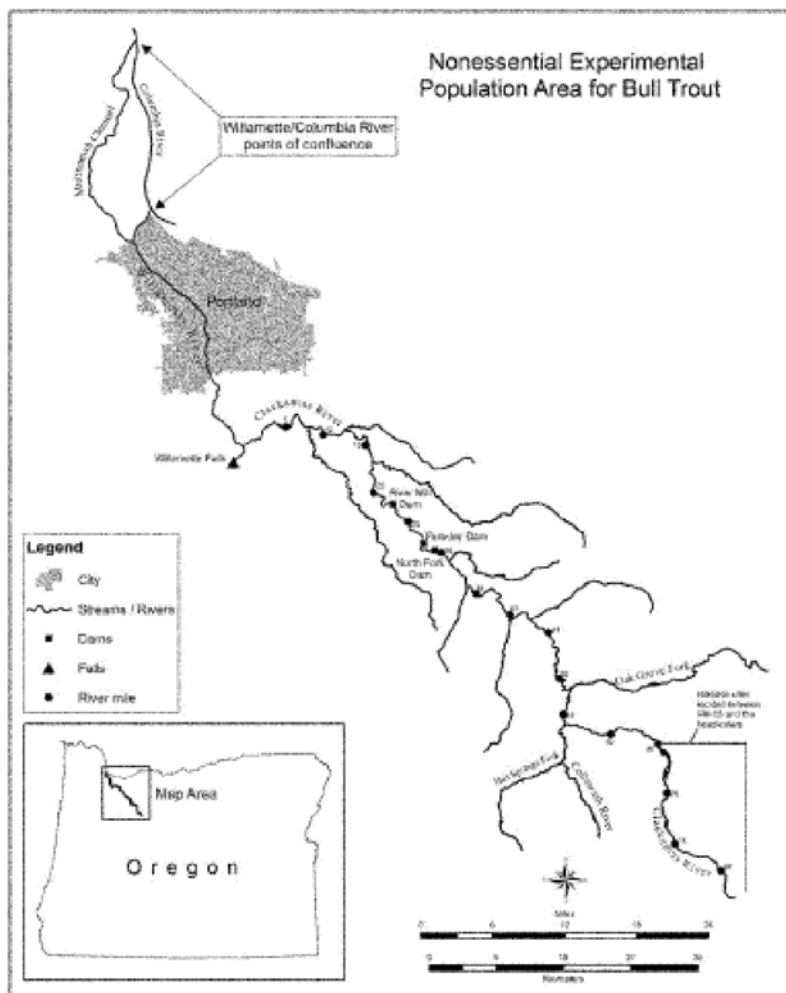
(B) The conservation status of the listed Clackamas River anadromous salmonid populations.

(iii) Because we cannot predict all likely impact scenarios and appropriate management responses, we will modify our plan as necessary, in consultation and coordination with NMFS, ODFW, and other project partners, consistent with the overall adaptive management of the project.

(iv) Although our analysis indicates a low likelihood for population-level impacts to Federally listed salmon and steelhead populations, if the Service determines, in consultation and coordination with the State of Oregon, NMFS, and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts are not consistent with the recovery of salmon or steelhead, the reintroduction program will be discontinued and bull trout will be removed from the experimental population area.

(v) Prior to releasing bull trout into the Clackamas River, the Service will complete any required interagency cooperation with NMFS pursuant to section 7(a)(2) of the Act.

(6) *Note:* Map of the NEP area for bull trout in Oregon follows:



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[49 FR 35954, Sept. 13, 1984; 50 FR 30194, July 24, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §17.84, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

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