
This content is from the eCFR and is authoritative but unofficial.

Title 50 —Wildlife and Fisheries

Chapter I —United States Fish and Wildlife Service, Department of the Interior

Subchapter B —Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants

Part 17 —Endangered and Threatened Wildlife and Plants

Subpart H —Experimental Populations

Source: 49 FR 33893, Aug. 27, 1984, unless otherwise noted.

Authority: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

Source: 40 FR 44415, Sept. 26, 1975, unless otherwise noted. 40 FR 44415, Sept. 26, 1975, unless otherwise noted.

Redesignated at 85 FR 82388, Dec. 18, 2020. 40 FR 44415, Sept. 26, 1975. Redesignated at 85 FR 82388, Dec. 18, 2020, and further redesignated at 87 FR 43447, July 21, 2022.

§ 17.84 Species-specific rules—vertebrates.

(a) Guam kingfisher, sihek (*Todiramphus cinnamominus*).

(1) *Where is the occurrence of sihek designated as a nonessential experimental population (NEP)?* The nonessential experimental population (NEP) area for the sihek is Palmyra Atoll. Palmyra Atoll is located in the Northern Line Islands, approximately 1,000 miles (1,609 km) south of Honolulu, Hawaii (5° 53'N latitude, 162° 05'W longitude). The extent of the NEP area for sihek is the 250 ha (618 ac) of emergent land distributed among 25 islands, inclusive of the lagoons surrounding those islands.

(2) *What take of sihek is allowed in the NEP area?*

(i) Throughout the sihek NEP area, you will not be in violation of the Act if you take a sihek, provided such take is nonnegligent and incidental to a lawful activity, such as habitat management, invasive species management, or scientific research and monitoring, and you report the take as soon as possible as provided under paragraph (a)(2)(iii) of this section.

(ii) Any person with a valid permit issued by the Service under § 17.32 may take sihek in the NEP area, pursuant to the terms of the permit. Additionally, any employee or authorized agent of the Service, Guam Division of Aquatic and Wildlife Resources, The Nature Conservancy, Zoological Society of London, or Association of Zoos and Aquariums, who is designated and trained to capture, handle, band, attach transmitters, and collect biological samples, when acting in the course of official duties, may take a sihek within the NEP area if such action is necessary to:

- (A) Handle birds for scientific purposes such as banding, measuring, and sample collection;
- (B) Relocate individuals or bring individuals into captivity for the purposes of increasing sihek survival or fecundity;
- (C) Aid a sick, injured, or orphaned sihek;
- (D) Salvage a dead specimen that may be useful for scientific study;
- (E) Dispose of a dead specimen;
- (F) Aid in law enforcement investigations involving the sihek; or
- (G) Take sihek into captivity in accordance with the exit strategy of the program (see paragraph (a)(5) of this section).

- (iii) Any take pursuant to paragraph (a)(2)(i) or (a)(2)(ii)(C) through (E) of this section must be reported as soon as possible to the Permits Coordinator, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, Hawaii 96850 (808/792-9400), who will determine the disposition of any live or dead specimens.

(3) ***What take of sihek is not allowed in the NEP area?***

- (i) Except as expressly allowed in paragraph (a)(2) of this section, all of the provisions of § 17.31(a) and (b) apply to the sihek in areas identified in paragraph (a)(1) of this section, and any manner of take of a member of the NEP not described under paragraph (a)(2) of this section is prohibited.
- (ii) You must not possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any sihek or part thereof from the experimental population taken in violation of the regulations in this paragraph (a) or in violation of applicable Territorial laws or regulations or the Act.
- (iii) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any take of sihek, except as expressly allowed in paragraph (a)(2) of this section.

(4) ***How will the effectiveness of this introduction be monitored?*** The Service will evaluate the introduction on an annual basis. This evaluation will include, but will not be limited to, a review and assessment of management issues, sihek movements, and post-release behavior; food resources and dependence of sihek on supplemental food; fecundity of the population; causes and rates of mortality; program costs; impacts to the ex situ population; and information gathered to inform releases on Guam or other sites.

(5) ***When will this introduction end?*** Depending on the circumstances, the Service may either terminate the release program or temporarily pause the release program to address identified issues before resuming. When the Service terminates the program, the Service will address the disposition of any remaining individuals in the NEP, *i.e.*, whether they will be relocated to captivity or to other suitable habitat or whether they would remain on Palmyra, based on the circumstances at the time of termination.

- (i) The Service will terminate the release program on Palmyra Atoll if monitoring indicates that:
 - (A) The benefits from the Palmyra population (including developing and refining release and support strategies for eventual releases on Guam) no longer outweigh the risks to the species or the welfare of the NEP or ex situ population; or
 - (B) Unacceptable impacts on the ecosystem can be clearly causally linked to the introduction of sihek.
- (ii) The Service may also terminate the release program when one or more of the objectives of the program have been achieved (e.g., we have developed successful release and monitoring methodologies to apply to future release efforts or we have demonstrated that sihek can survive and reproduce in the wild without human intervention).

(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)

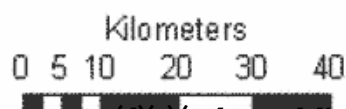
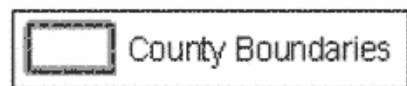
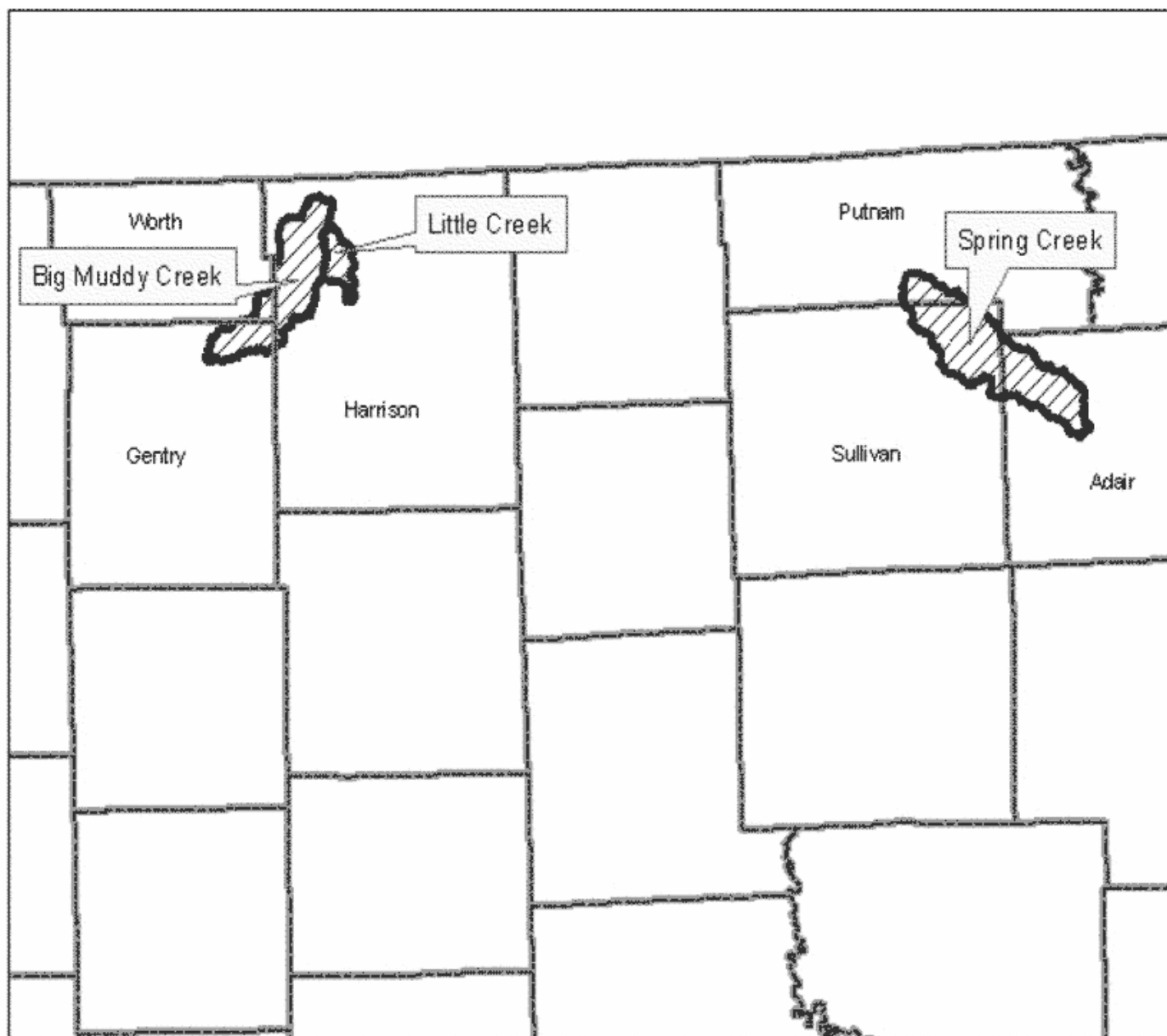
- (i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrrell, and Washington Counties; because of its proximity and potential conservation value, Beaufort County is also included in the experimental population designation.
 - (ii)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

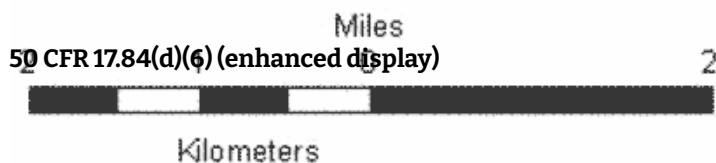
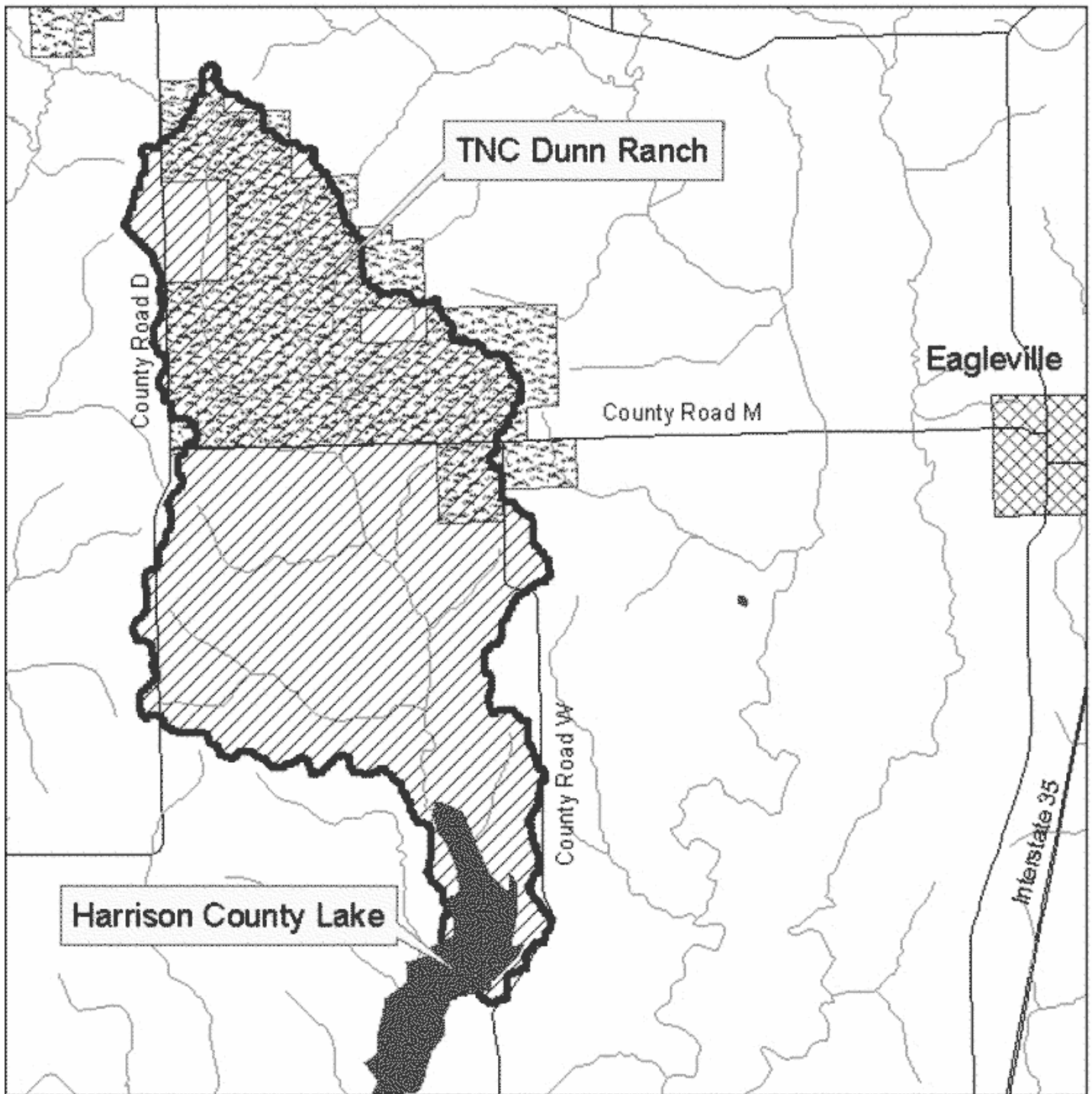
(1) *Where is the Topeka shiner designated as a nonessential experimental population (NEP)?*

- (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 (d)(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.

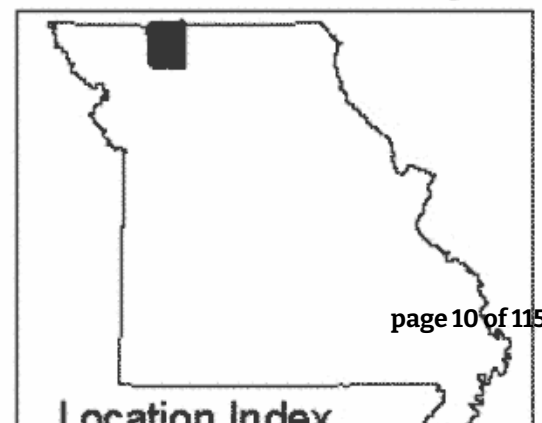
- (iii) We will not change the NEP designations to “essential experimental,” “threatened,” or “endangered” within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).
- (2) ***What activities are not allowed in the NEP area?***
 - (i) Except as expressly allowed in paragraph (d)(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 (d)(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 (d)(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 (d)(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:



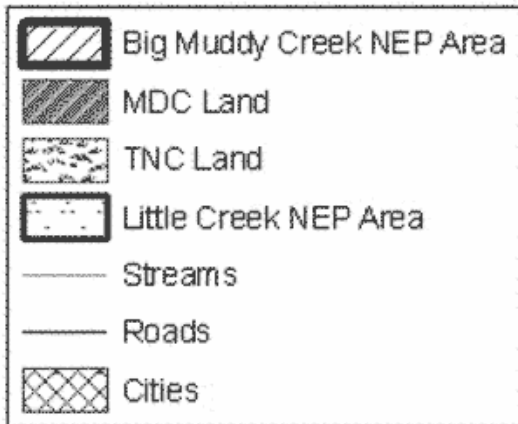
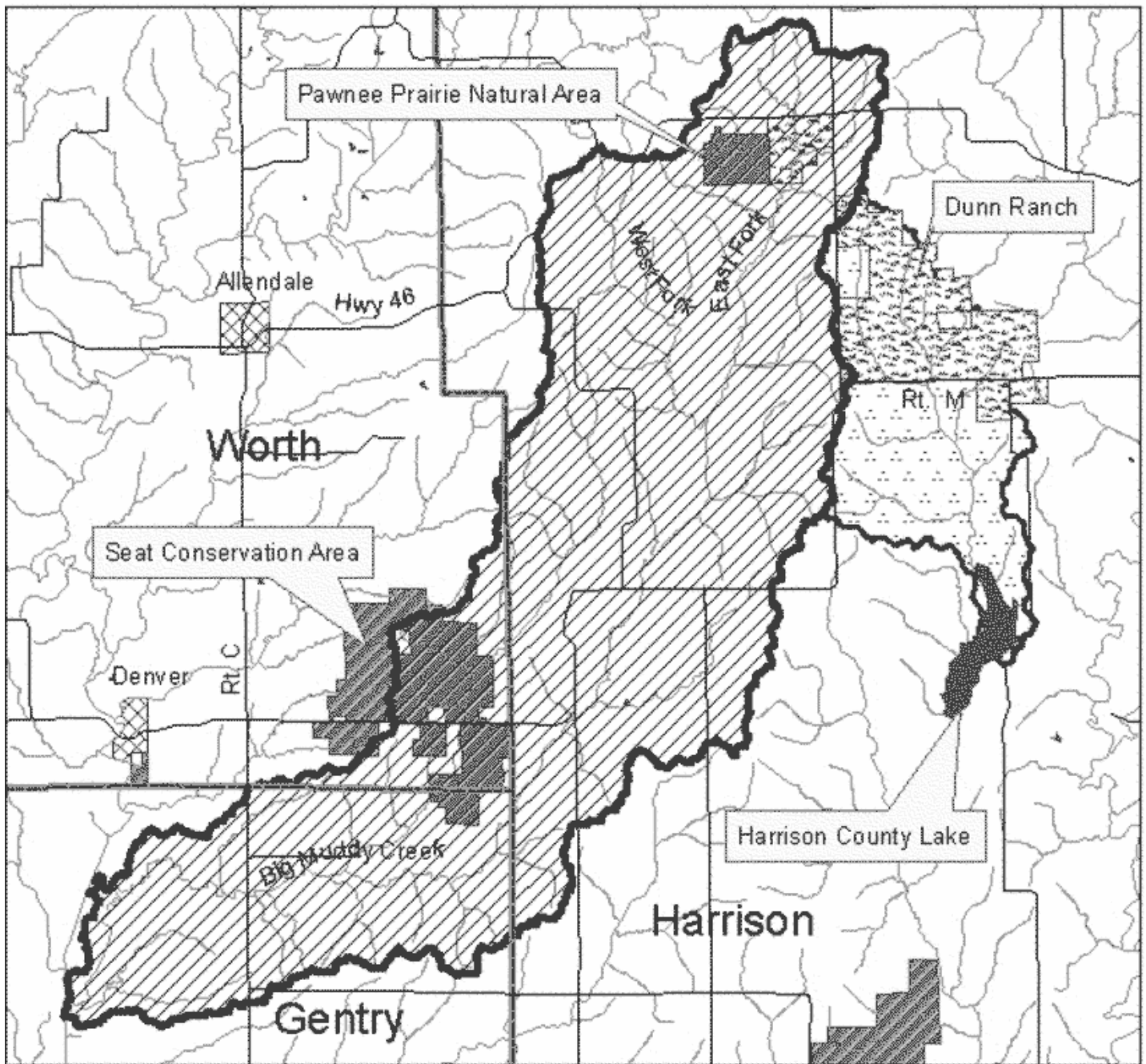
(6) **Note:** Map of the NEP area for the Topeka shiner in Little Creek watershed, Harrison County, follows:



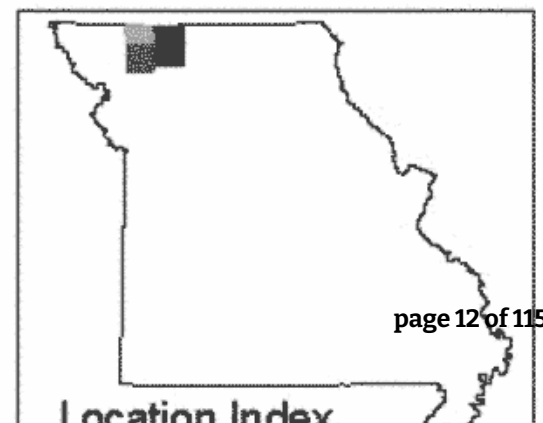
Harrison County



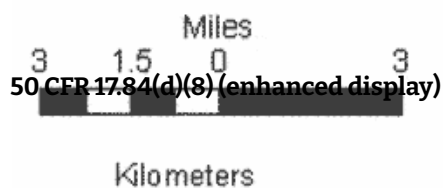
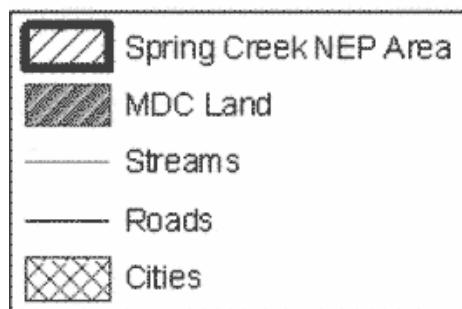
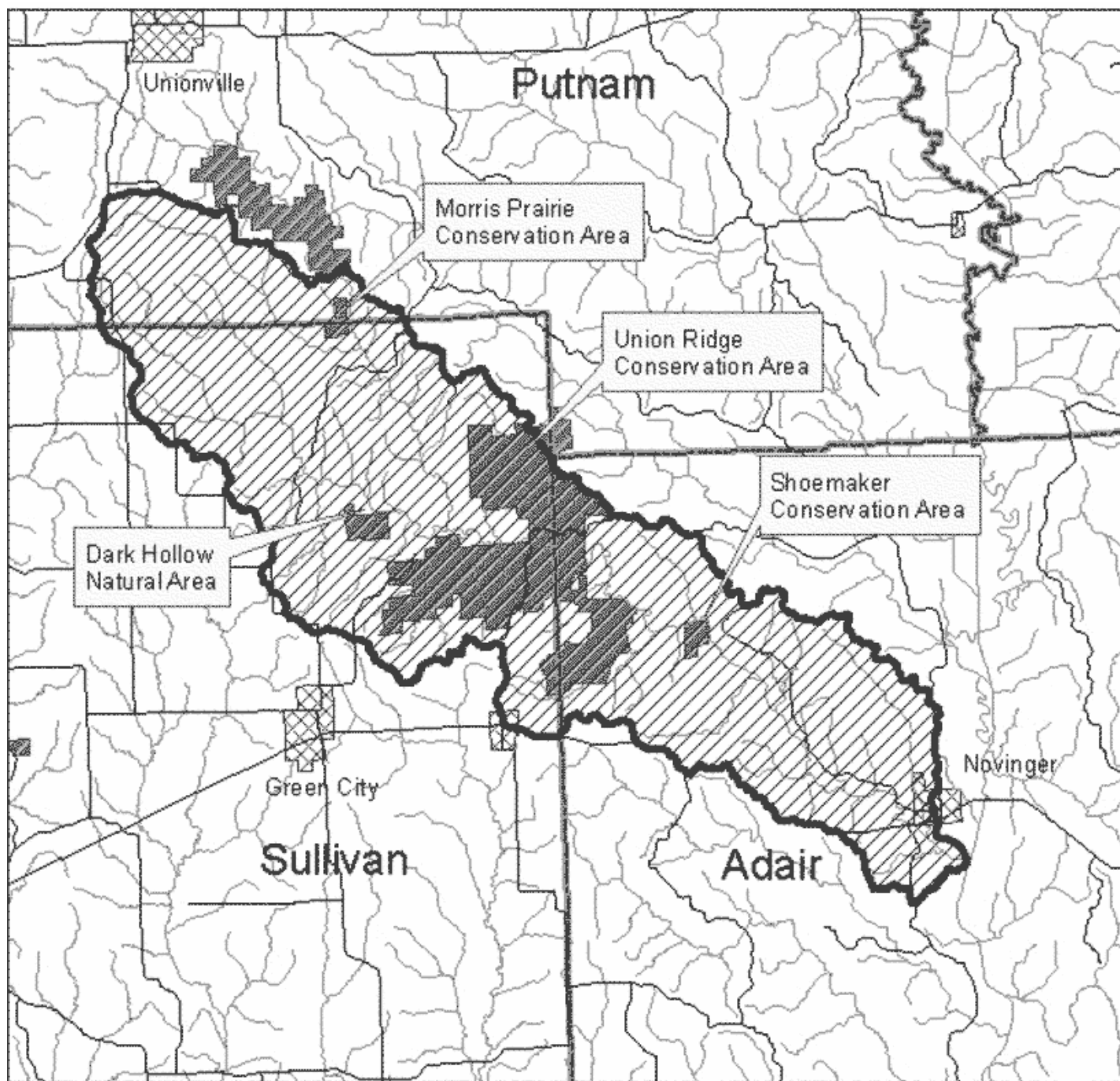
- (7) **Note:** Map of the NEP area for the Topeka shiner in Big Muddy Creek watershed, Gentry, Harrison, and Worth Counties, follows:



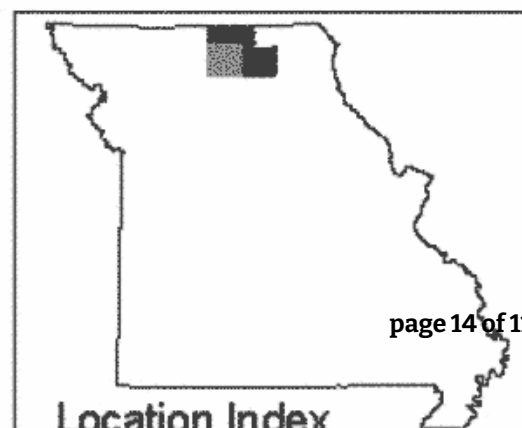
Gentry, Harrison, Worth Counties



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



Adair, Putnam Sullivan Counties



(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 (*Gallirallus*).

(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 paragraphs (g)(9)(i) through (viii) of this section are nonessential experimental populations. We will manage each of these populations, and each reintroduction site in the Southwest and Wyoming nonessential experimental 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 Wyoming, including 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 Southwest Experimental Population Area (SWEPA) to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Phoenix, Arizona (telephone: 602-242-0210).
 - (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:

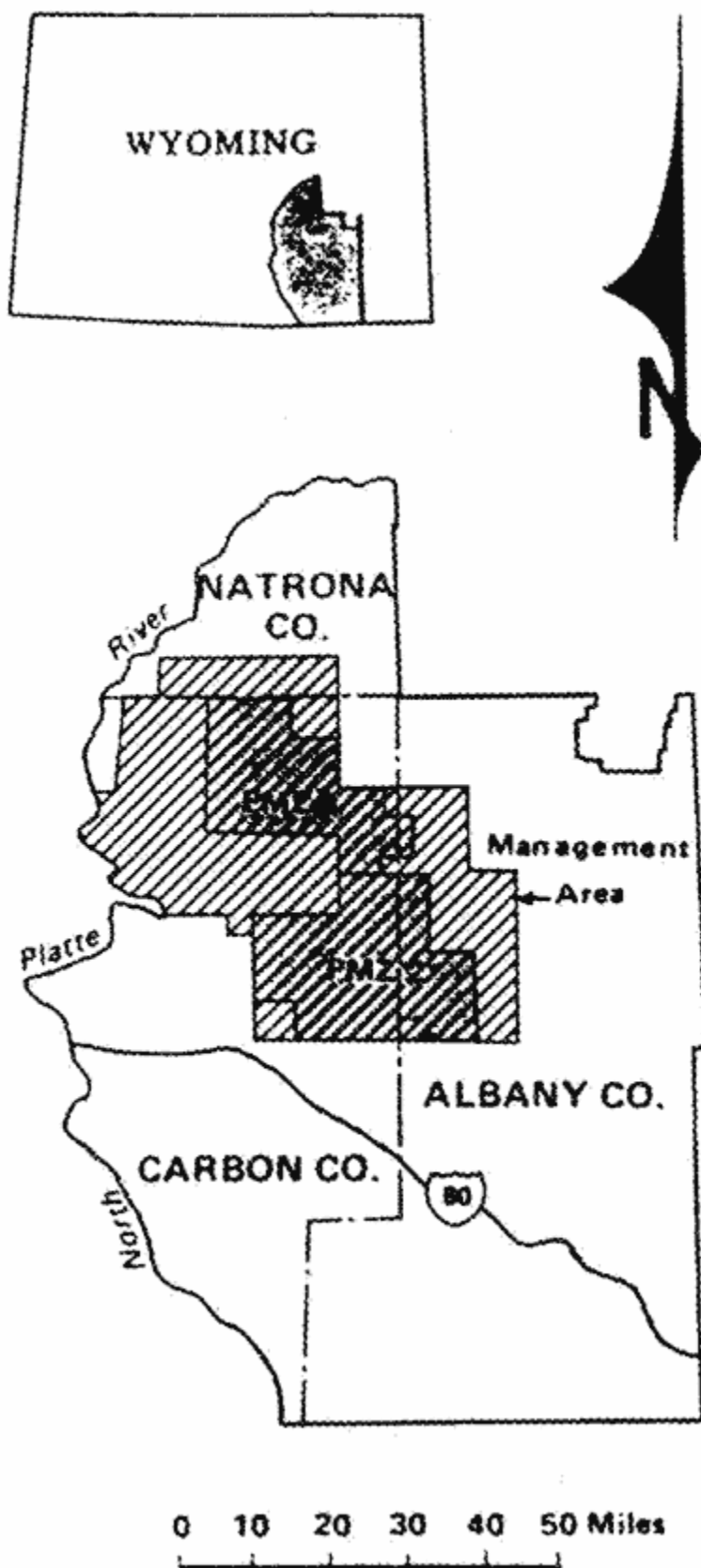
- (A) We may return an animal genetically related to the experimental population to the reintroduction area or to a captive facility.
 - (B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. 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 Southwest Experimental Population Area (SWEPA) to be the area shown on a map following paragraph (g)(12) of this section. The SWEPA includes the core recovery areas for this species in Arizona. The boundary of the northern section of the SWEPA is those parts of Apache, Coconino, Gila, Mohave, Navajo, and Yavapai Counties, Arizona, that include the northern area as delineated on the map, excluding Hopi District 6. The northern section also includes portions of Cibola, McKinley, Rio Arriba, Sandoval, and San Juan Counties, New Mexico, and San Juan County, Utah, that coincide with Navajo Nation lands. The boundary of the southern section of the SWEPA is those parts of Cochise, Pima, Pinal, Graham, and Santa Cruz Counties, Arizona, that include the southern area as delineated on the map. After the first breeding season following the first year of black-footed ferret release, we will consider any black-footed ferret found in the SWEPA as part of the nonessential experimental population. We would not consider a black-footed ferret occurring outside of the Arizona, New Mexico, and Utah portions of the SWEPA a member of the nonessential experimental population, and we may capture it for genetic testing. We may dispose of the captured animal 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.
- (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

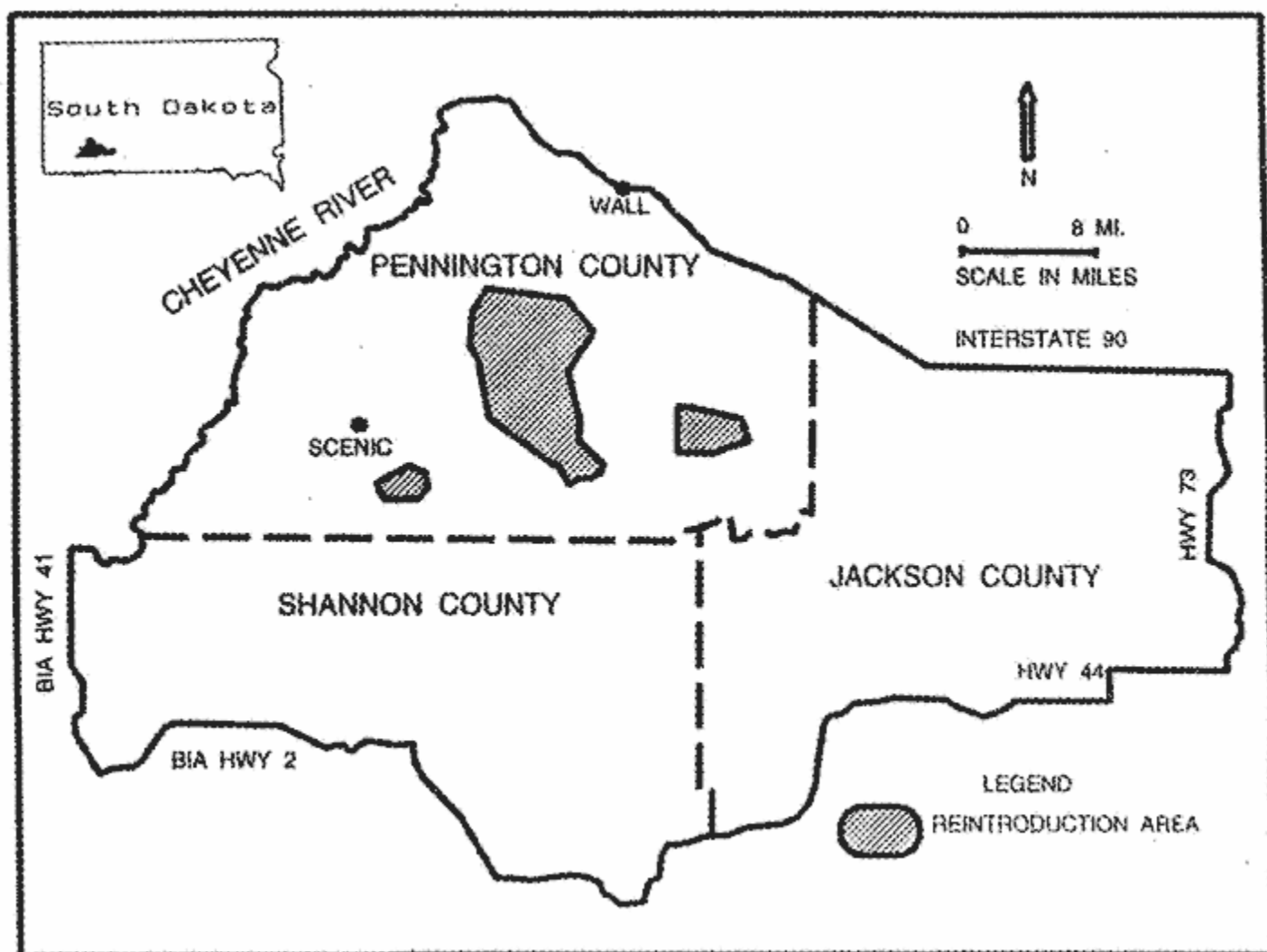
thereafter. A black-footed ferret occurring outside the Experimental Population Area is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

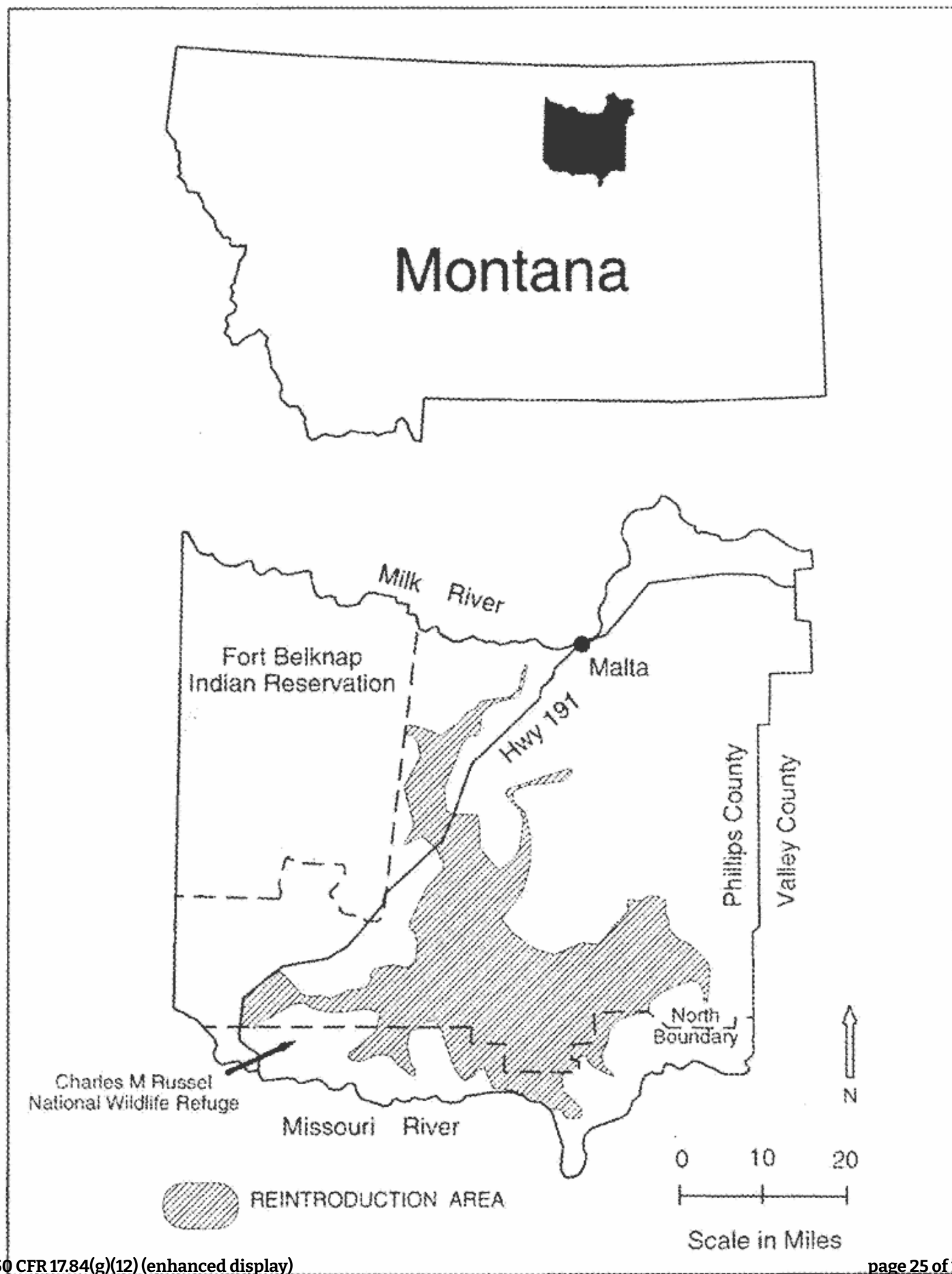
- (A) We may return an animal genetically related to the experimental population to the Reintroduction Area or to a captive facility.
 - (B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. 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.
- (viii) The Wyoming Experimental Population Area encompasses most of the State of Wyoming. The boundaries of the nonessential experimental population include all areas in the State of Wyoming outside of the Shirley Basin/Medicine Bow Management Area (see paragraph (g)(9)(i) of this section) and the small portion of Wyoming included as part of the Northwestern Colorado/Northeastern Utah Experimental Population Area (see paragraph (g)(9)(v) of this

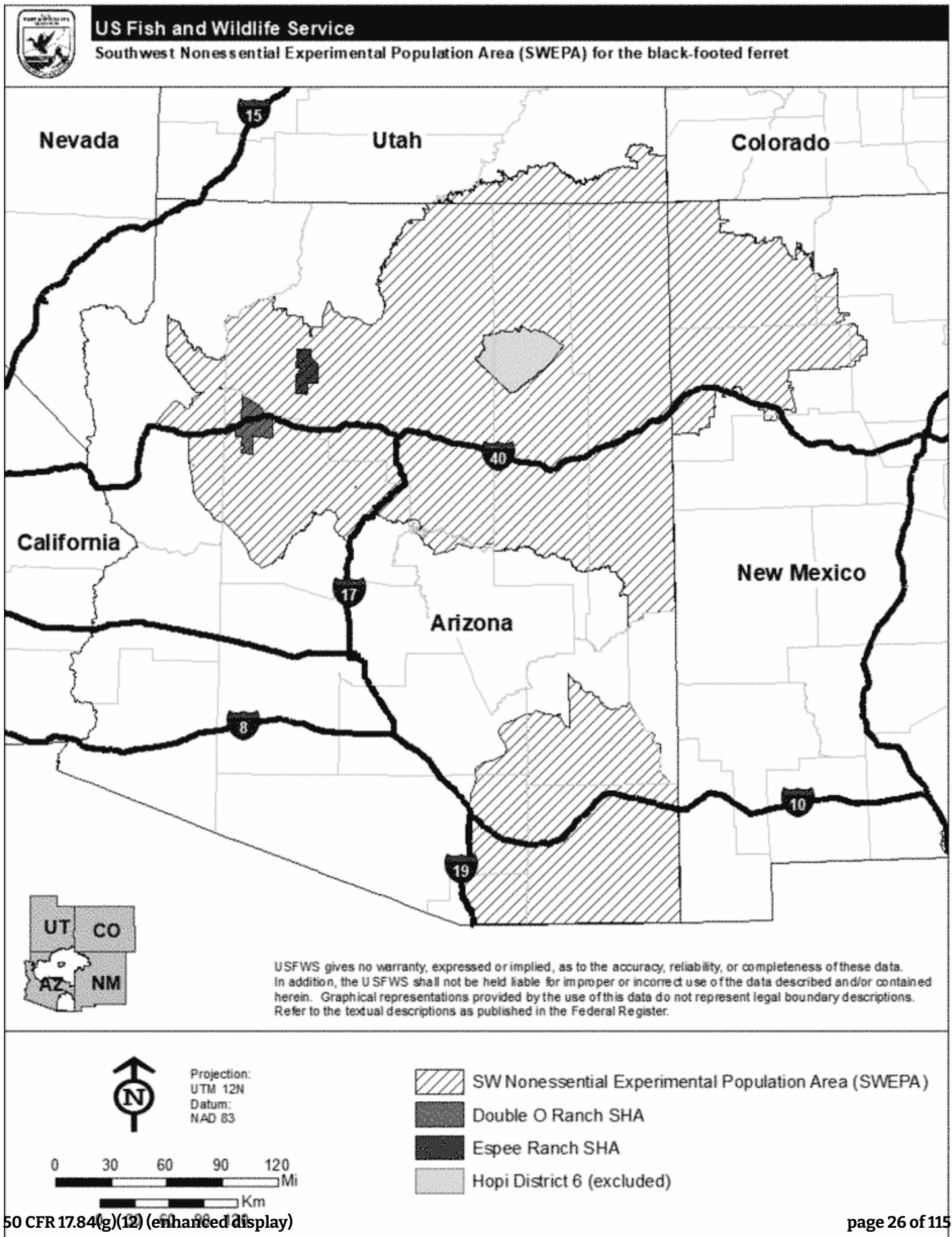
section). Collectively, however, these three 10(j) areas cover the entire State of Wyoming. Any black-footed ferret found within the Wyoming NEP Experimental Population Area will be considered part of a nonessential experimental population. A black-footed ferret that disperses beyond the boundaries of the nonessential experimental population area takes on the status of that area (endangered, unless within another nonessential experimental population area). Such animals may be captured for genetic testing and relocation. If necessary, disposition of the captured animal may occur in the following ways:

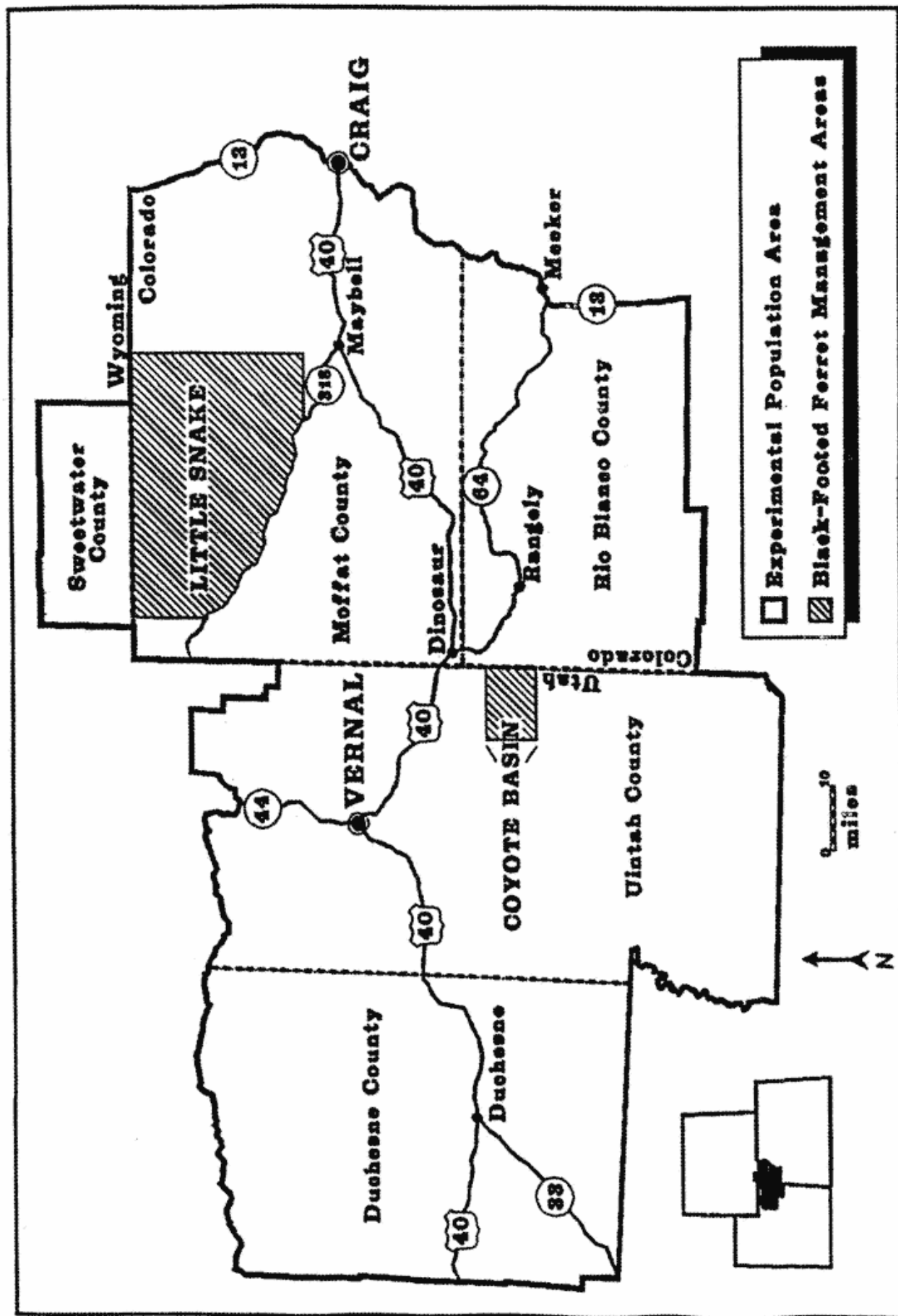
- (A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.
 - (B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan.
- (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.





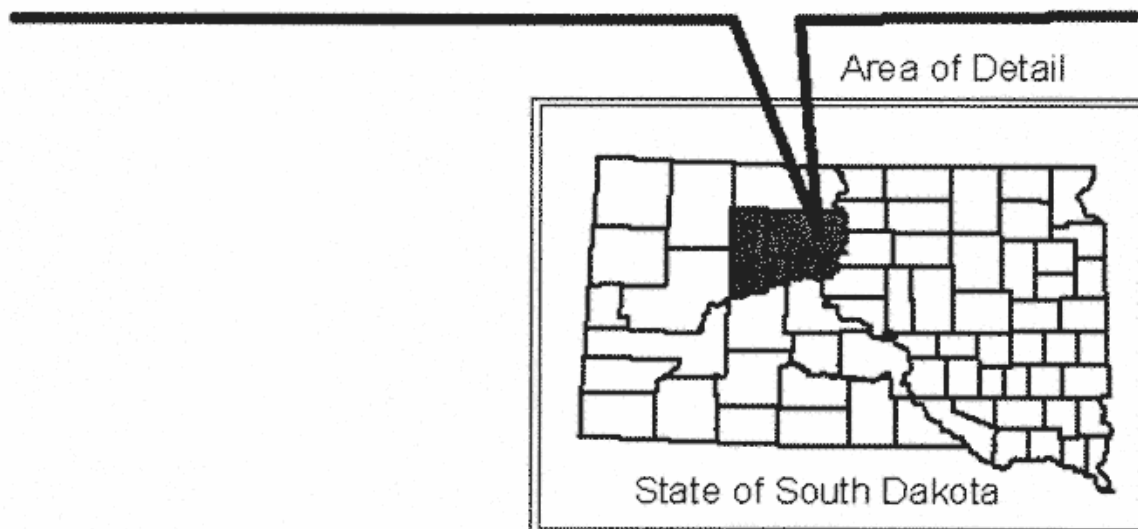
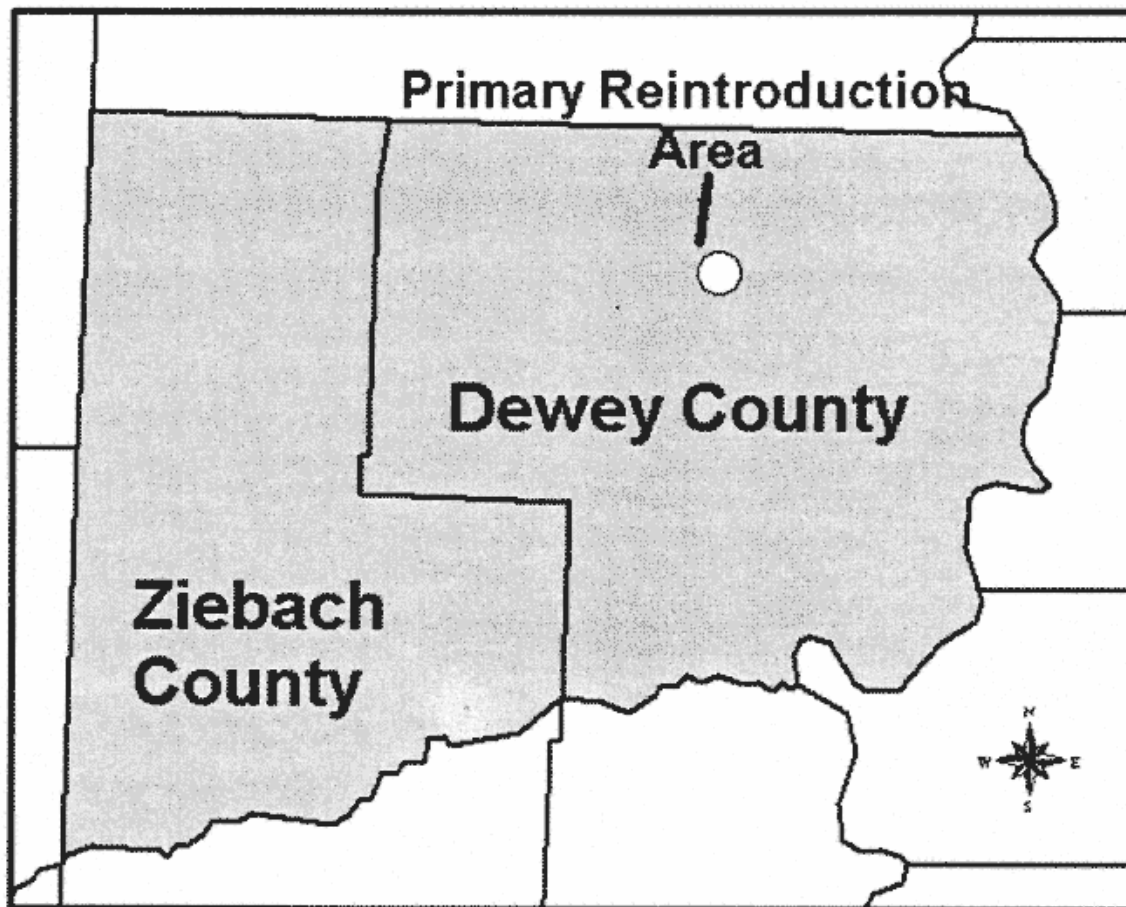


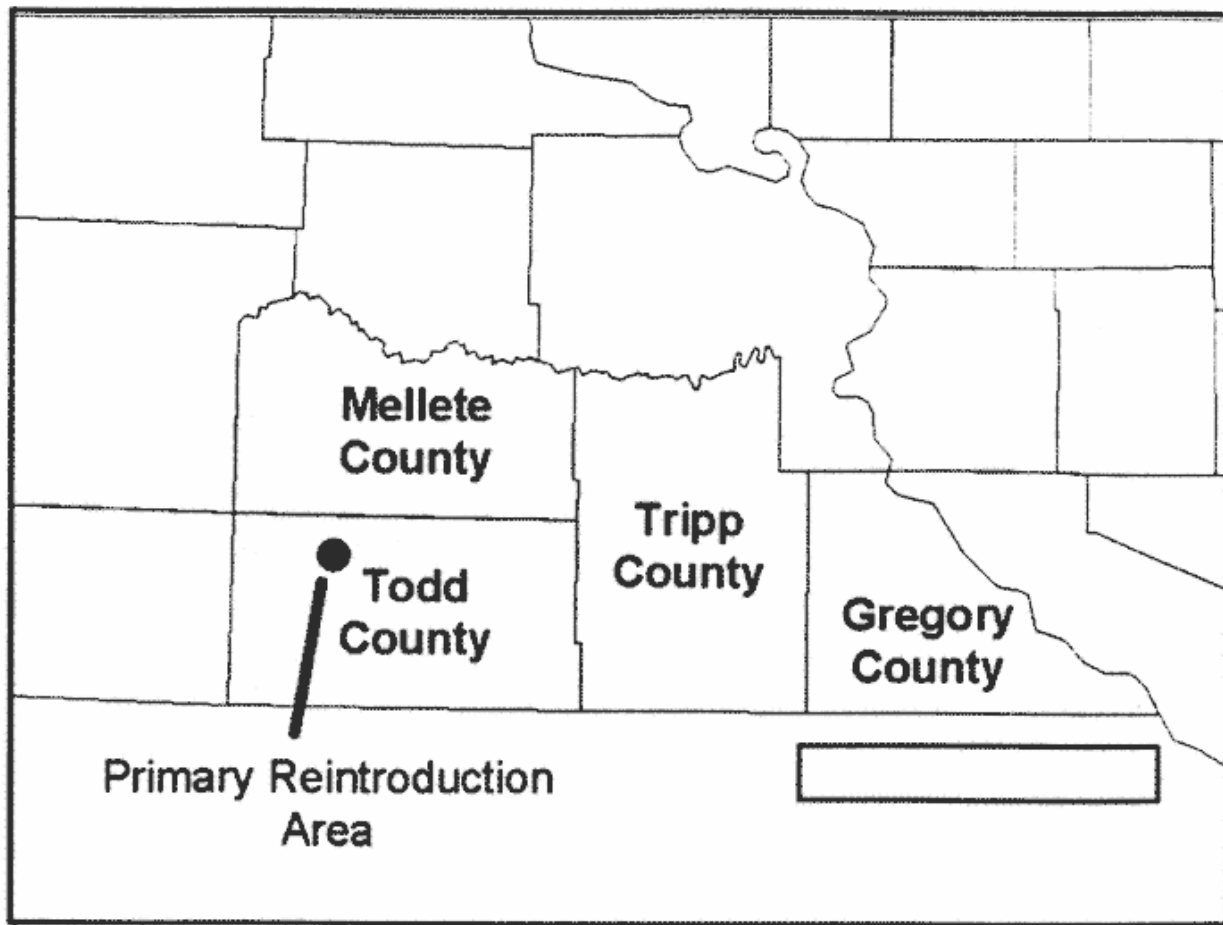




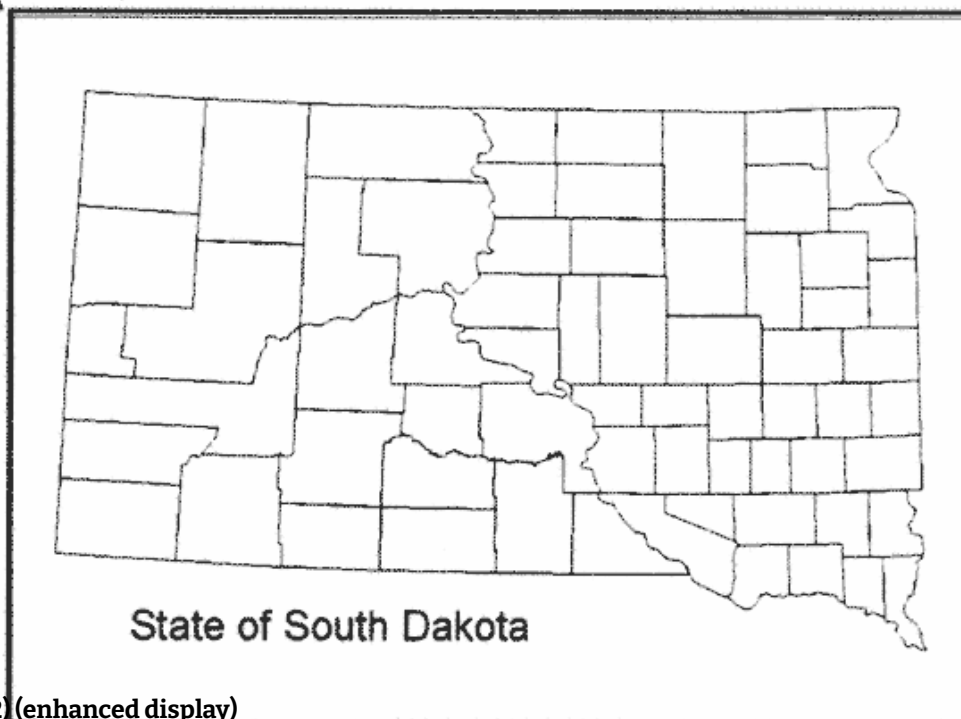
Map Showing the Boundaries of the Black-footed Ferret Experimental Population Area and the Management Area/PMZ for Northwestern Colorado/Northeastern Utah.

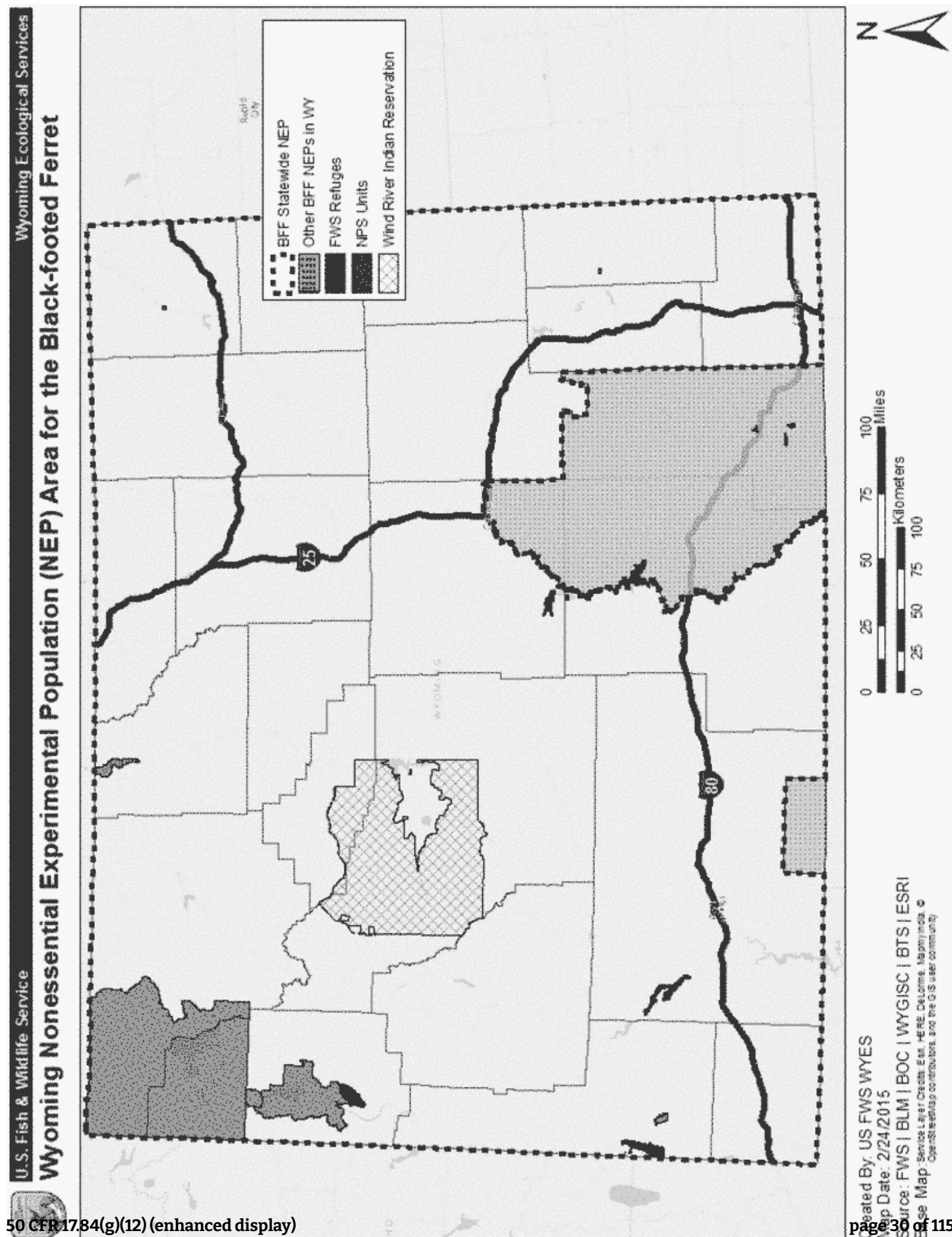
Cheyenne River Sioux Tribe Black-footed Ferret Experimental Population Area South Dakota





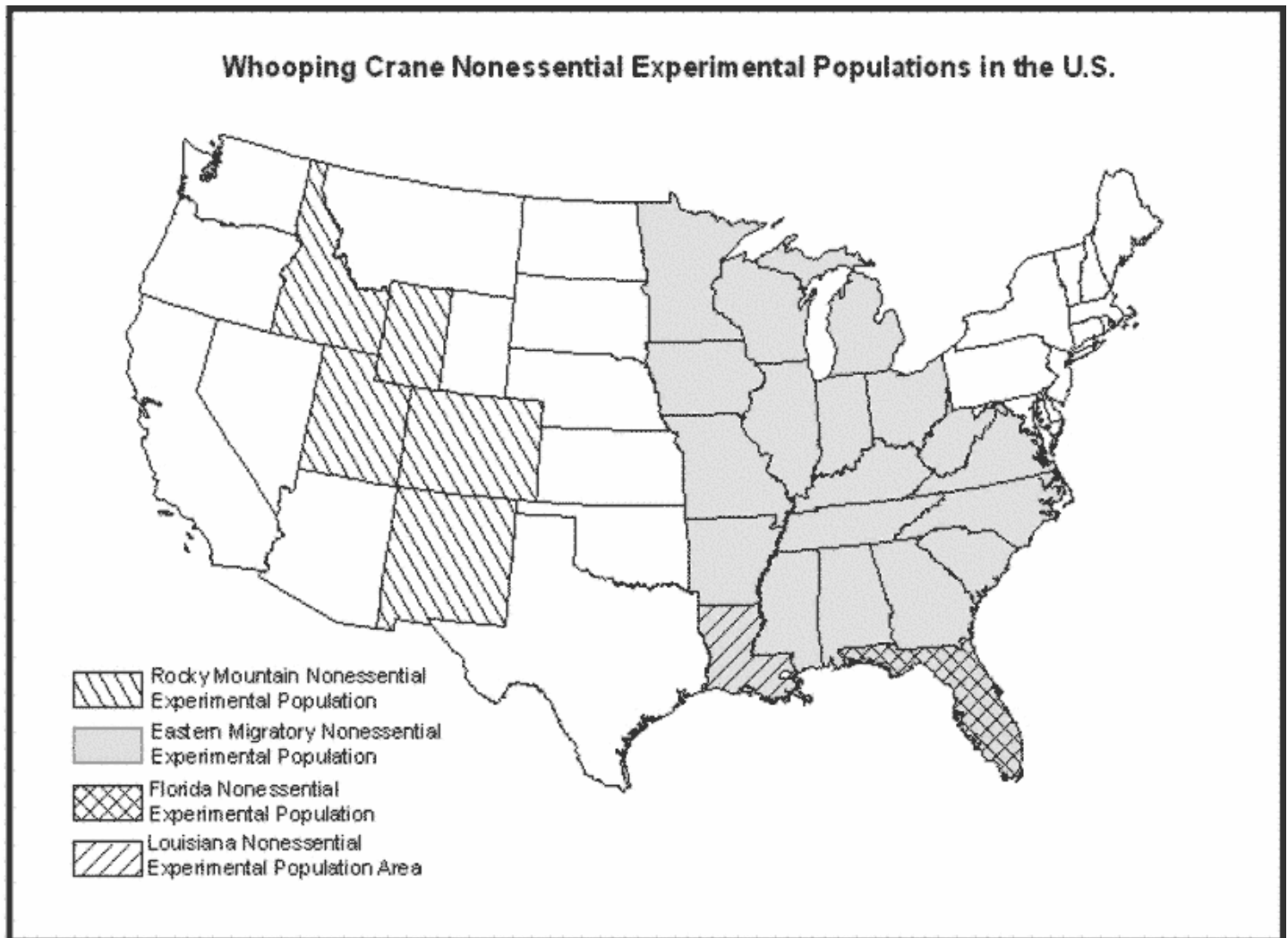
Area of Detail





- (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:



- (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) California condor (*Gymnogyps californianus*). (1) *Where is the California condor designated as a nonessential experimental population (NEP)?* The NEP area for the California condor is within the species' historical range in northern California, northwestern Nevada, and Oregon.
- (i) The western boundary of the NEP is the Submerged Lands Act boundary line along the Pacific coast. The southern boundary of the NEP is formed by: An east-west line from California's Submerged Lands Act boundary to Hare Creek; Hare Creek from the Pacific Ocean to its junction with California State Route 1; north to the junction of State Route 1 and State Route 20; east along California State Route 20 to where it meets Interstate 80; and Interstate 80 from its intersection with California State Route 20 to U.S. Route 95 in Nevada. The eastern boundary of

the NEP is U.S. Route 95 in Nevada to the State boundary of Oregon and then east and north along Oregon's southern and eastern boundaries, respectively. The northern boundary of the NEP is the State boundary between Oregon and Washington. All highway boundaries are inclusive of the entire highway right of way.

(ii) Map follows:

Nonessential Experimental Population for the California Condor in the Pacific Northwest



- (iii) We are designating the experimental population area to accommodate the potential future movements of a wild population of California condors. The released population is expected to remain in the experimental area for the foreseeable future (approximately 20 years) due to the geographic extent of the designation.
- (iv) We do not intend to change the status of this nonessential population unless:
 - (A) The California condor is recovered and subsequently removed from the list in § 17.11(h) in accordance with the Act; or
 - (B) The reintroduction is not successful and the regulations in this paragraph (i) are revoked.
- (v) 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 withdrawn, unless the participating parties in the reintroduction effort agree that the condors 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.
- (vi) We will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take of the California condor is allowed in the NEP area?* (i) Throughout the California condor NEP, you will not be in violation of the Act if you unavoidably and unintentionally take a California condor (except as noted in paragraph (i)(3)(ii) of this section), provided such take is non-negligent, incidental to a lawful activity (i.e., not done on purpose), and you report the take as soon as possible as provided under paragraph (i)(2)(iii) of this section. The phrase “unavoidably and unintentionally” means take that occurs despite the exertion of reasonable care to avoid take. Examples of activities that will not violate the take prohibitions of this section include, but are not limited to: Legal hunting of species other than condors; recreational shooting; ranching; farming; existing authorized uses of private and public lands; driving; recreational activities; and administrative and emergency functions carried out by local, State, or Federal government agencies.

(ii) Any person with a valid permit issued by the Service under § 17.32 may take California condors in the wild in the experimental population area, pursuant to the terms of the permit. Additionally, any employee or agent of the Service, National Park Service, Yurok Tribe Natural Resource Division, California Department of Parks and Recreation, California Department of Fish and Wildlife, Nevada Department of Wildlife, or Oregon Department of Fish and Wildlife who is designated and trained for such purposes, when acting in the course of official duties, may take a California condor within the NEP area if such action is necessary:

- (A) For scientific purposes;
- (B) To relocate or haze California condors within the experimental population area to improve California condor survival or recovery;
- (C) To relocate California condors that have moved outside the experimental population area;
- (D) To transport California condors to and from veterinary facilities or captive-breeding facilities;

- (E) To address conflicts with ongoing or proposed activities in an attempt to improve California condor survival;
- (F) To aid a sick, injured, or orphaned California condor;
- (G) To salvage a dead specimen that may be useful for scientific study;
- (H) To dispose of a dead specimen; or
- (I) To aid in law enforcement investigations involving the California condor.

(iii) Any take pursuant to paragraphs (i)(2)(i), (i)(2)(ii)(F), (i)(2)(ii)(G), or (i)(2)(ii)(H) of this section must be reported as soon as possible to the California Condor Field Coordinator, California Condor Recovery Office, 2493 Portola Road, Suite A, Ventura, California 93003, (805/644-5185), who will determine the disposition of any live or dead specimens.

(3) *What take of the California condor is not allowed in the NEP area?* For the purposes of this rule, an occupied California condor nest is defined as a nest that is attended by a breeding pair of condors, occupied by a condor egg, or occupied or attended by a condor less than 1 year of age.

- (i) Except as expressly allowed in paragraph (i)(2) of this section, all of the provisions of § 17.31(a) and (b) apply to the California condor in areas identified in paragraph (i)(1) of this section, and any manner of take not described under paragraph (i)(2) of this section is prohibited in the NEP.
- (ii) Habitat alteration (e.g., removing trees, erecting structures, altering the nest structure or perches near the nest) within 656 ft (200 m) of an occupied nest is prohibited, except for emergency fuels treatment activities by Federal, State, Tribal, or local government agencies to reduce the risk of catastrophic wildfire or during responses to wildfire or other emergencies.
- (iii) Significant visual or noise disturbance (e.g., tree felling, chainsaws, helicopter overflights, concrete cutters, fireworks, explosives) within 656 ft (200 m) of an occupied nest is prohibited, except for emergency fuels treatment activities by Federal, State, Tribal, or local government agencies to reduce the risk of catastrophic wildfire or during responses to wildfire or other emergencies. Activities such as ranching and use of existing roads and trails would not be considered a significant visual or noise disturbance.
- (iv) 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 (i) or in violation of applicable tribal or State laws or regulations or the Act.
- (v) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any take of the California condor, except as expressly allowed in paragraph (i)(2) of this section.

(4) *How will the effectiveness of this reintroduction be monitored?* The status of the reintroduction project will receive an informal review on an annual basis, and we will evaluate the reintroduction program to determine whether to continue or terminate reintroductions every 5 years as part of our 5-year status review for the species.

- (i) This evaluation will include, but will not be limited to: A review of management issues; California condor movements and post-release behavior; assessment of food resources and dependence of California condors on supplemental food; fecundity of the population; causes and rates of mortality; project costs; public acceptance; and progress toward establishing a self-sustaining population.
- (ii) If a formal evaluation indicates the project is experiencing a 40 percent or greater mortality rate over multiple years or released California condors are not finding food on their own, serious consideration will be given to terminating the project.

(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;

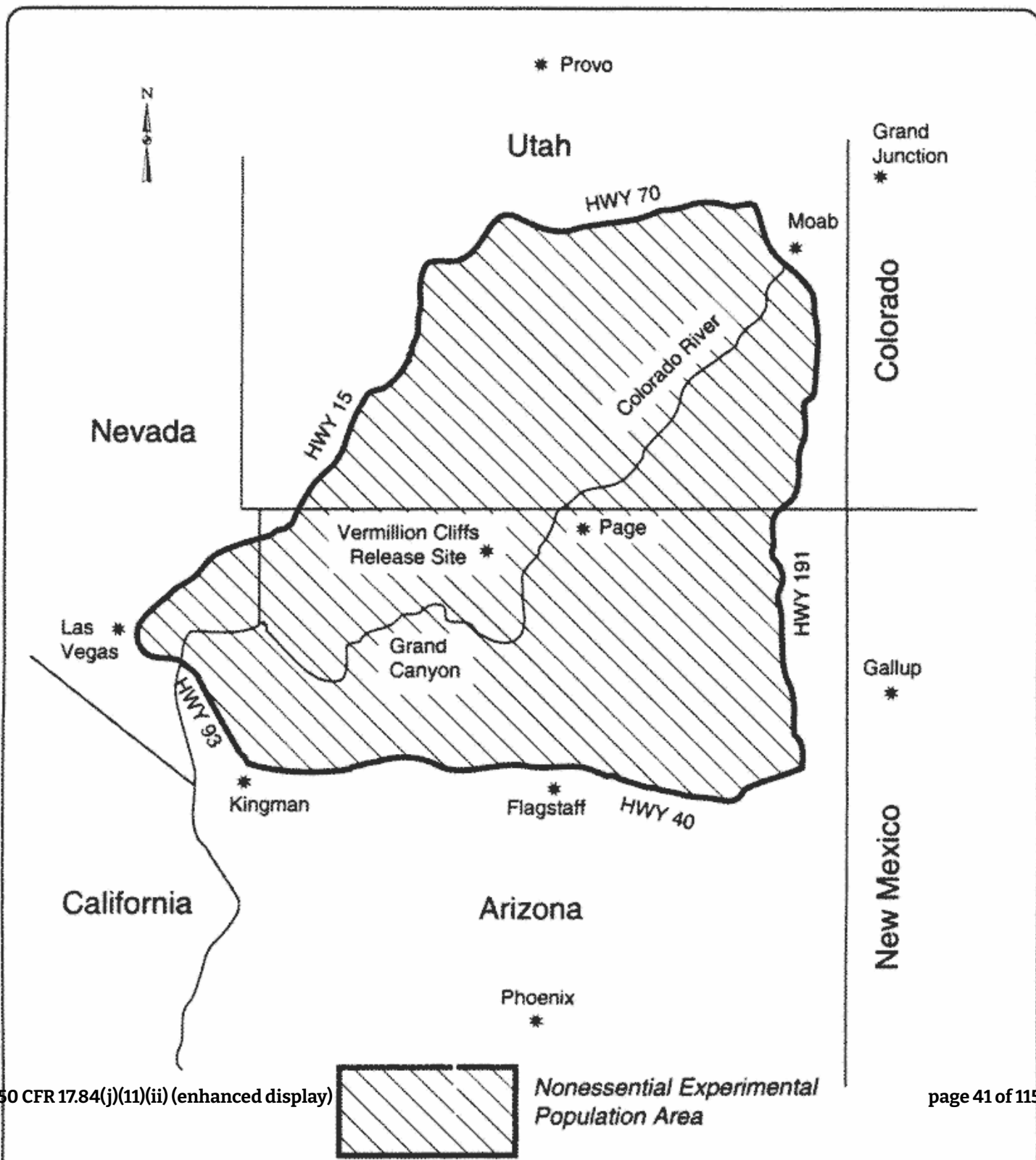
- (v) To salvage a dead specimen that may be useful for scientific study; or
 - (vi) To dispose of a dead specimen.
- (5) Any taking pursuant to paragraphs (j)(2), (j)(4)(iv), (j)(4)(v), and (j)(4)(vi), of this section must be reported as soon as possible to the Field Supervisor, U.S. Fish and Wildlife 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



(k) Mexican wolf (*Canis lupus baileyi*). This paragraph (k) sets forth the provisions of a rule to establish an experimental population of Mexican wolves.

(1) **Purpose of the rule.** The U.S. Fish and Wildlife Service (USFWS) finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation and recovery of the Mexican wolf subspecies. The USFWS also finds that the experimental population is not essential under § 17.81(c)(2).

(2) **Determinations.** The Mexican wolf population reestablished in the Mexican Wolf Experimental Population Area (MWEPA), identified in paragraph (k)(4) of this section, is one nonessential experimental population. This nonessential experimental population will be managed according to the provisions of this rule. The Service does not intend to change the nonessential experimental designation to essential experimental, threatened, or endangered. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

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

Active den means a den or a specific site above or below ground that is used by Mexican wolves on a daily basis to bear and raise pups, typically between approximately April 1 and July 31. More than one den site may be used in a single season.

Cross-foster means the removal of offspring from their biological parents and placement with surrogate parents.

Depredation means the confirmed killing or wounding of lawfully present domestic animals by one or more Mexican wolves. The Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals. Cattle trespassing on Federal lands are not considered lawfully present domestic animals.

Designated agency means a Federal, State, or tribal agency designated by the Service to assist in implementing this rule, all or in part, consistent with a Service-approved management plan, special management measure, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as described in § 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through § 17.32.

Disturbance-causing land-use activity means any activity on Federal lands within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between April 1 and July 31, and around active Mexican wolf rendezvous sites between June 1 and September 30, which the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves. Such activities may include, but are not limited to, timber or wood harvesting, prescribed fire, mining or mine development, camping outside designated campgrounds, livestock husbandry activities (e.g., livestock drives, roundups, branding, vaccinating, etc.), 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:

(A) Lawfully present livestock and use of water sources by livestock;

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

(C) Vehicle access over established roads to non-Federal land where legally permitted activities are ongoing if no reasonable alternative route exists;

- (D) Use of lands within the National Park or National Wildlife Refuge Systems as safety buffer zones for military activities and Department of Homeland Security border security activities;
- (E) Fire-fighting activities associated with wildfires; and
- (F) Any authorized, specific land use that was active and ongoing at the time Mexican wolves chose to locate a den or rendezvous site nearby.

Domestic animal means livestock as defined in this paragraph (k)(3) and non-feral dogs.

Federal land means land owned and under the administration of Federal agencies including, but not limited to, the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Department of Energy, or Department of Defense.

Feral dog means any dog (*Canis familiaris*) or wolf-dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leashed, or otherwise restrained (e.g., by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.

Harass means intentional or negligent actions or omissions that create the likelihood of injury to 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.

In the act of biting, killing, or wounding means grasping, biting, wounding, or feeding upon a live domestic animal on non-Federal land or live livestock on Federal land. The term does not include feeding on an animal carcass.

Initial release means the release of Mexican wolves to the wild within Zone 1, as defined in this paragraph (k)(3), or in accordance with tribal or private land agreements in Zone 2, as defined in this paragraph (k)(3), that have never been in the wild, or releasing pups that have never been in the wild and are less than 5 months old within Zones 1 or 2. The initial release of pups less than 5 months old into Zone 2 allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released in Zone 2 with pups born in captivity.

Intentional harassment means deliberate, preplanned harassment of Mexican wolves, including by less-than-lethal means (such as 12-gauge shotgun rubber-bullets and bean-bag shells) designed to cause physical discomfort and temporary physical injury, but not death. Intentional harassment includes situations where the Mexican wolf or wolves may have been unintentionally attracted—or intentionally tracked, waited for, chased, or searched out—and then harassed. Intentional harassment of Mexican wolves is only allowed under a permit issued by the Service or its designated agency.

Livestock means domestic alpacas, bison, burros (donkeys), cattle, goats, horses, llamas, mules, and sheep, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans. Poultry is not considered livestock under this rule.

Mexican Wolf Experimental Population Area (MWEPA) means an area in Arizona and New Mexico including Zones 1, 2, and 3, as defined in this paragraph (k)(3), that lies south of Interstate Highway 40 to the international border with Mexico.

Non-Federal land means any private, State-owned, or tribal trust land.

Occupied Mexican wolf range means an area of confirmed presence of Mexican wolves based on the most recent map of occupied range posted on the Service's Mexican Wolf Recovery Program Web site at <http://www.fws.gov/southwest/es/mexicanwolf/>. Specific to the prohibitions at paragraphs (k)(5)(iii) and (k)(5)(vii)(D) of this section, Zone 3, as defined in this paragraph (k)(3), and tribal trust lands are not considered occupied range.

Opportunistic harassment means scaring any Mexican wolf from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to, but not in the direction of, the wolf, throwing objects at it, or making loud noise in proximity to it. Such harassment might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Opportunistic harassment of Mexican wolves can occur without a permit issued by the Service or its designated agency.

Problem wolves mean Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are:

- (A) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals;
- (B) Habituated to humans, human residences, or other facilities regularly occupied by humans; or
- (C) Aggressive when unprovoked toward humans.

Rendezvous site means a gathering and activity area regularly used by Mexican wolf pups after they have emerged from the den. Typically, these sites are used for a period ranging from about 1 week to 1 month in the first summer after birth during the period from June 1 to September 30. Several rendezvous sites may be used in succession within a single season.

Service-approved management plan means management plans approved by the Regional Director or Director of the Service through which Federal, State, or tribal agencies may become a designated agency. The management plan must address how Mexican wolves will be managed to achieve conservation goals in compliance with the Act, this experimental population rule, and other Service policies. If a Federal, State, or tribal agency becomes a designated agency through a Service-approved management plan, the Service will help coordinate their activities while retaining authority for program direction, oversight, guidance, and authorization of Mexican wolf removals.

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)).

Translocate means the release of Mexican wolves into the wild that have previously been in the wild. In the MWEPA, translocations will occur only in Zones 1 and 2, as defined in this paragraph (k)(3).

Tribal trust land means any lands title to which is either: Held in trust by the United States for the benefit of any Indian tribe or individual; or held by any Indian tribe or individual subject to restrictions by the United States against alienation. For purposes of this rule, tribal trust land does not include land purchased in fee title by a tribe. We consider fee simple land purchased by tribes to be private land.

Unacceptable impact to a wild ungulate herd will be determined by a State game and fish agency based upon ungulate management goals, or a 15 percent decline in an ungulate herd as documented by a State game and fish agency, using their preferred methodology, based on the preponderance of evidence from bull to cow ratios, cow to calf ratios, hunter days, and/or elk population estimates.

Unintentional take means the take of a Mexican wolf by any person if the take is unintentional and occurs while engaging in an otherwise lawful activity, occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Taking a Mexican wolf by poisoning or shooting will not be considered unintentional take.

Wild ungulate herd means an assemblage of wild ungulates (bighorn sheep, bison, deer, elk, or pronghorn) living in a given area.

Wildlife Services means the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

Wounded means exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a Mexican wolf bite.

Zone 1 means an area within the MWEPA in Arizona and New Mexico into which Mexican wolves will be allowed to naturally disperse and occupy and where Mexican wolves may be initially released from captivity or translocated. Zone 1 includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest.

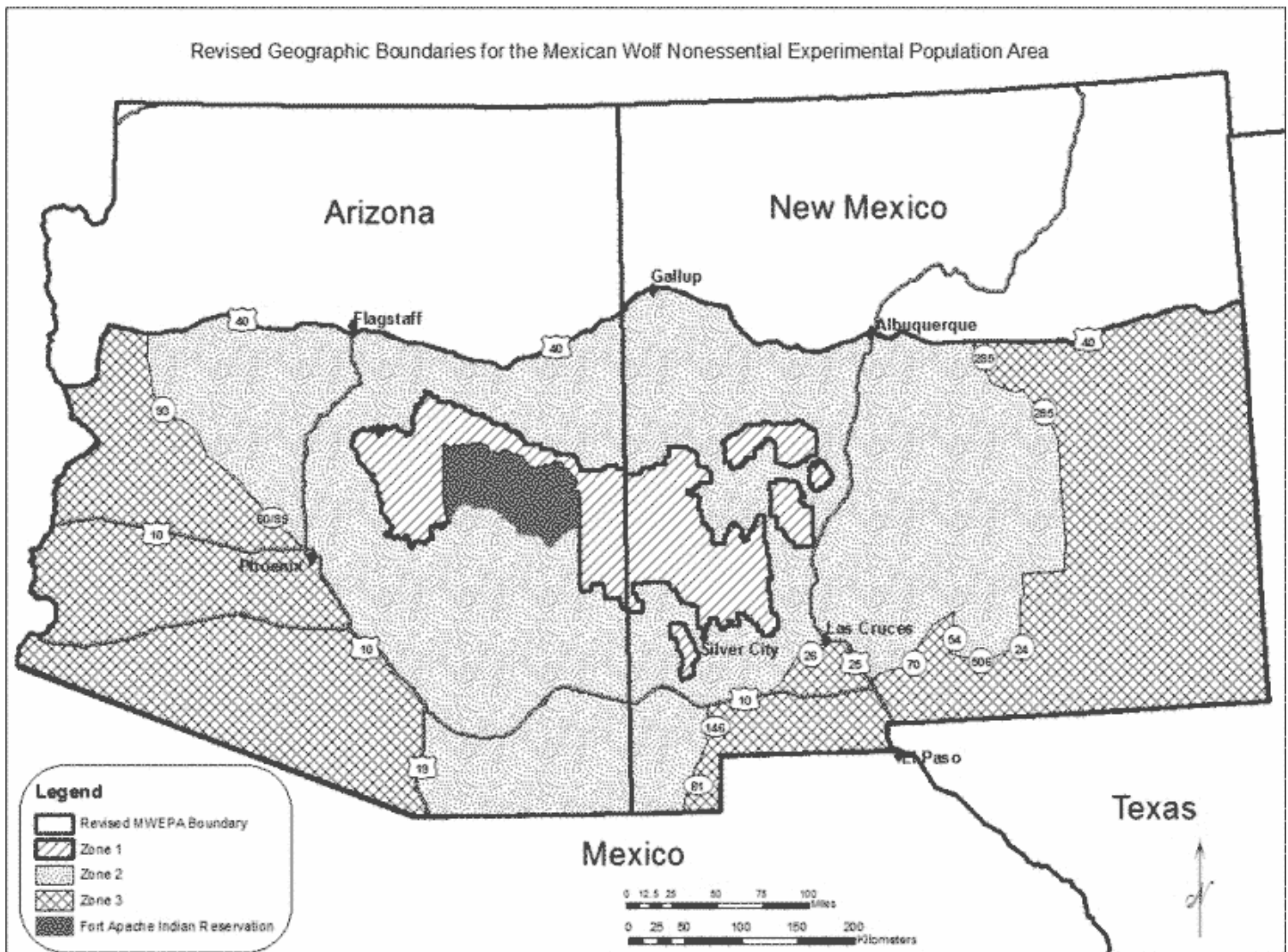
Zone 2 is an area within the MWEPA into which Mexican wolves will be allowed to naturally disperse and occupy, and where Mexican wolves may be translocated.

(A) On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies.

(B) The northern boundary of Zone 2 is Interstate Highway 40; the western boundary extends south from Interstate Highway 40 and follows Arizona State Highway 93, Arizona State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border heading east, then follows New Mexico State Highway 81/146 north to Interstate Highway 10, then along New Mexico State Highway 26 to Interstate Highway 25; the boundary continues along New Mexico State Highway 70/54/506/24; the eastern boundary follows the eastern edge of Otero County, New Mexico, to the north and then along the southern and then eastern edge of Lincoln County, New Mexico, until it intersects with New Mexico State Hwy 285 and follows New Mexico State Highway 285 north to the northern boundary of Interstate Highway 40. Zone 2 excludes the area in Zone 1, as defined in this paragraph (k)(3).

Zone 3 means an area within the MWEPA into which Mexican wolves will be allowed to disperse and occupy, but neither initial releases nor translocations will occur there.

- (A) Zone 3 is an area of less suitable Mexican wolf habitat where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock is low. If Mexican wolves move outside of areas of suitable habitat, they will be more actively managed.
 - (B) Zone 3 is two separate geographic areas on the eastern and western sides of the MWEPA. One area of Zone 3 is in western Arizona, and the other is in eastern New Mexico. In Arizona, the northern boundary of Zone 3 is Interstate Highway 40; the eastern boundary extends south from Interstate Highway 40 and follows State Highway 93, State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border; the western boundary is the Arizona-California State border. In New Mexico, the northern boundary of Zone 3 is Interstate Highway 40; the eastern boundary is the New Mexico-Texas State border; the southern boundary is the United States-Mexico international border heading west, then follows State Highway 81/146 north to Interstate Highway 10, then along State Highway 26 to Interstate Highway 25, the southern boundary continues along State Highway 70/54/506/24; the western boundary follows the eastern edge of Otero County to the north and then along the southern and then eastern edge of Lincoln County until it follows State Highway 285 north to the northern boundary of Interstate Highway 40.
- (4) **Designated area.** The designated experimental population area for Mexican wolves classified as a nonessential experimental population by this rule is within the subspecies' probable historical range and is wholly separate geographically from the current range of any known Mexican wolves. The boundaries of the MWEPA are the portions of Arizona and New Mexico that are south of Interstate Highway 40 to the international border with Mexico. A map of the MWEPA follows:



- (5) **Prohibitions.** Take of any Mexican wolf in the experimental population is prohibited, except as provided in paragraph (k)(7) of this section. Specifically, the following actions are prohibited by this rule:
- (i) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any Mexican 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 a person kills or injures a Mexican wolf or finds a dead or injured wolf or wolf parts, the person must not disturb them (unless instructed to do so by the Service or a designated agency), must minimize disturbance of the area around them, and must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours as described in paragraph (k)(6) of this section.
 - (ii) No person may attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule.
 - (iii) Taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(7)(iv) of this section) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a wolf. With regard to trapping activities, due care includes:

- (A) Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or tribal trust lands where the trapping takes place.
 - (B) Modifying or using appropriately sized traps, chains, drags, and stakes that provide a reasonable expectation that the wolf will be prevented from either breaking the chain or escaping with the trap on the wolf, or using sufficiently small traps (less than or equal to a Victor #2 trap) that allow a reasonable expectation that the wolf will either immediately pull free from the trap or span the jaw spread when stepping on the trap.
 - (C) Not taking a Mexican wolf using neck snares.
 - (D) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service as described in paragraph (k)(6) of this section.
 - (E) If a Mexican wolf is captured, trappers can call the Interagency Field Team (1-888-459-WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or Interagency Field Team.
- (6) **Reporting requirements.** Unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or a designated agency within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of Mexican wolves, including opportunistic harassment, to the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113; by telephone 505-761-4704; or by facsimile 505-346-2542. Additional contact information can also be found on the Mexican Wolf Recovery Program's Web site at <http://www.fws.gov/southwest/es/mexicanwolf/>. Unless otherwise specified in a permit, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.
- (7) **Allowable forms of take of Mexican wolves.** Take of Mexican wolves in the experimental population is allowed as follows:
- (i) **Take in defense of human life.** Under section 11(a)(3) of the Act and § 17.21(c)(2), any person may take (which includes killing as well as nonlethal actions such as harassing or harming) a Mexican wolf in self-defense or defense of the lives of others. This take must be reported as specified in accordance with paragraph (k)(6) of this section. If the Service or a designated agency determines that a Mexican wolf presents a threat to human life or safety, the Service or the designated agency may kill the wolf or place it in captivity.
 - (ii) **Opportunistic harassment.** Anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Such harassment of Mexican wolves might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Any form of opportunistic harassment must be reported as specified in accordance with paragraph (k)(6) of this section.
 - (iii) **Intentional harassment.** After the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow

intentional harassment of Mexican wolves. The harassment must occur in the area and under the conditions specifically identified in the permit. Permittees must report this take as specified in accordance with paragraph (k)(6) of this section.

(iv) **Take on non-Federal lands.**

- (A) On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in paragraph (k)(3) of this section. After the take of a Mexican wolf, the Service must be provided evidence that the wolf was in the act of biting, killing, or wounding a domestic animal at the time of take, such as evidence of freshly wounded or killed domestic animals. This take must be reported as specified in accordance with paragraph (k)(6) of this section. The take of any Mexican wolf without evidence of biting, killing, or wounding domestic animals may be referred to the appropriate authorities for investigation.
- (B) Take of Mexican wolves by livestock guarding dogs, when used to protect livestock on non-Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.
- (C) Based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.
- (1) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age in the MWEPA, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

(i) Annual release benchmarks (for the purposes of this paragraph, the term "benchmark" means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

TABLE 1 TO PARAGRAPH (k)(7)(iv)(C)(1)(i)

Year	Benchmark
2021	7

Year	Benchmark
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

(ii) Permitted take on non-Federal land, or on Federal land under paragraph (k)(7)(v) of this section, during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.

(2) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.

(v) *Take on Federal land.*

(A) Based on the Service's or a designated agency's discretion and in conjunction with a removal action authorized by the Service, the Service may issue permits to livestock owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit.

(1) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

- (i) Annual release benchmarks (for the purposes of this paragraph, the term “benchmark” means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

TABLE 2 TO PARAGRAPH (k)(7)(v)(A)(1)(i)

Year	Benchmark
2021	7
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

- (ii) Permitted take on Federal land, or on non-Federal land under paragraph (k)(7)(iv) of this section, during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.
- (2) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.
- (3) Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Livestock owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.
- (4) After the take of a Mexican wolf, the Service must be provided evidence that the wolf was in the act of biting, killing, or wounding livestock at the time of take, such as evidence of freshly wounded or killed livestock. The take of any Mexican wolf without evidence of biting, killing, or wounding domestic animals may be referred to the appropriate authorities for investigation.

- (B) Take of Mexican wolves by livestock guarding dogs, when used to protect livestock on Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.
- (C) This provision for take on Federal land does not exempt Federal 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. 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.
- (vi) **Take in response to unacceptable impacts to a wild ungulate herd.** If the Arizona or New Mexico game and fish agency determines that Mexican wolf predation is having an unacceptable impact to a wild ungulate herd, as defined in paragraph (k)(3) of this section, the respective State game and fish agency may request approval from the Service that Mexican wolves be removed from the area of the impacted wild ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with the following provisions:
 - (A) The Arizona or New Mexico game and fish agency must prepare a science-based document that:
 - (1) Describes what data indicate that the wild ungulate herd is below management objectives, what data indicate that the impact on the wild ungulate herd is influenced by Mexican wolf predation, why Mexican wolf removal is a warranted solution to help restore the wild ungulate herd to State game and fish agency management objectives, the type (level and duration) of Mexican wolf removal management action being proposed, and how wild ungulate herd response to wolf removal will be measured and control actions adjusted for effectiveness;
 - (2) Demonstrates that attempts were and are being made to identify other causes of wild ungulate herd declines and possible remedies or conservation measures in addition to wolf removal;
 - (3) If appropriate, identifies areas of suitable habitat for Mexican wolf translocation; and
 - (4) Has been subjected to peer review and public comment prior to its submittal to the Service for written concurrence. In order to comply with this requirement, the State game and fish agency must:
 - (i) Conduct the peer review process in conformance with the Office of Management and Budget's most recent Final Information and Quality Bulletin for Peer Review and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and
 - (ii) Obtain at least three independent peer reviews from individuals with relevant expertise other than staff employed by the State (Arizona or New Mexico) requesting approval from the Service that Mexican wolves be removed from the area of the affected wild ungulate herd.

- (B) Before the Service will allow Mexican wolf removal in response to impacts to wild ungulates, the Service will evaluate the information provided by the requesting State (Arizona or New Mexico) and provide a written determination to the requesting State game and fish agency on whether such actions are scientifically based and warranted.
- (C) If all of the provisions above are met, the Service will, to the maximum extent allowable under the Act, make a determination providing for Mexican wolf removal. If the request is approved, the Service will include in the written determination which management action (capture and translocate in MWEPA, move to captivity, transfer to Mexico, lethally take, or no action) is most appropriate for the conservation of the Mexican wolf subspecies.
- (D) Because tribes are able to request the capture and removal of Mexican wolves from tribal trust lands at any time, take in response to impacts to wild ungulate herds is not applicable on tribal trust lands.
- (E) No requests for take in response to unacceptable impacts to a wild ungulate herd may be made by the State game and fish agency or accepted by the USFWS until the genetic objective at paragraph (k)(9)(v) of this section has been met.
- (vii) ***Take by Service personnel or a designated agency.*** The Service or a designated agency may take any Mexican wolf in the experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as described in § 17.31 for State game and fish agencies with authority to manage Mexican wolves, or a valid permit issued by the Service through § 17.32.
 - (A) The Service or designated agency may use leg-hold traps and any other effective device or method for capturing or killing Mexican wolves to carry out any measure that is a part of a Service-approved management plan, special management measure, or valid permit issued by the Service under § 17.32, regardless of State law. The disposition of all Mexican wolves (live or dead) or their parts taken as part of a Service-approved 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.
 - (B) The Service or designated agency may capture; kill; subject to genetic testing; place in captivity; or euthanize any feral wolf-like animal or feral wolf hybrid found within the MWEPA that shows physical or behavioral evidence of: Hybridization with other canids, such as domestic dogs or coyotes; being a wolf-like animal raised in captivity, other than as part of a Service-approved wolf recovery program; or being socialized or habituated to humans. If determined to be a pure Mexican wolf, the wolf may be returned to the wild.
 - (C) The Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, the Service will consider all of the following:
 - (1) Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by Mexican wolves;
 - (2) The likelihood that additional Mexican wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken;

- (3) Evidence of attractants or intentional feeding (baiting) of Mexican wolves; and
 - (4) Evidence that Mexican wolves are habituated to humans, human residences, or other facilities regularly occupied by humans, or evidence that Mexican wolves have exhibited unprovoked and aggressive behavior toward humans.
- (D) Wildlife Services will not use M-44's and choking-type snares in occupied Mexican wolf range. Wildlife Services may restrict or modify other predator control activities pursuant to a Service-approved management agreement or a conference opinion between Wildlife Services and the Service.

(viii) ***Unintentional take.***

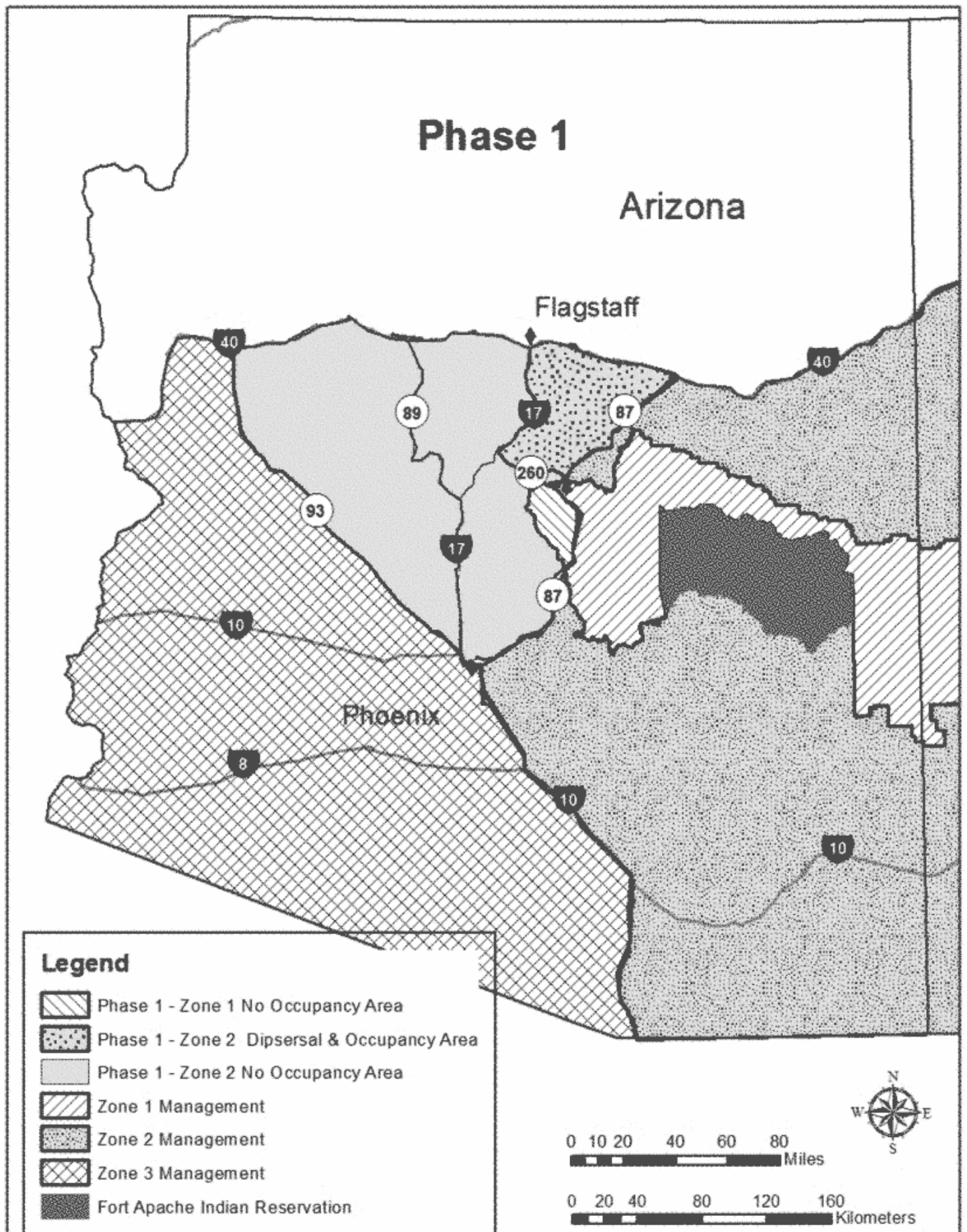
- (A) Take of a Mexican wolf by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity. Such take must be reported as specified in accordance with paragraph (k)(6) of this section. Hunters and other shooters have the responsibility to identify their quarry or target before shooting; therefore, shooting a Mexican wolf as a result of mistaking it for another species will not be considered unintentional take. Take by poisoning will not be considered unintentional take.
- (B) Federal, State, or tribal agency employees or their contractors may take a Mexican wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing and Department of Homeland Security border security activities. Take of Mexican wolves by Federal, State, or tribal agencies must be reported as specified in accordance with paragraph (k)(6) of this section.
- (C) Take of Mexican wolves by Wildlife Services employees while conducting official duties associated with predator damage management activities for species other than Mexican wolves may be considered unintentional if it is coincidental to a legal activity and the Wildlife Services employees have adhered to all applicable Wildlife Services' policies, Mexican wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in Wildlife Service's biological and conference opinions.

(ix) ***Take for research purposes.*** The Service may issue permits under § 17.32, and designated agencies may issue permits under State and Federal laws and regulations, for individuals to take Mexican wolves pursuant to scientific study proposals approved by the agency or agencies with jurisdiction for Mexican wolves and for the area in which the study will occur. Such take should lead to management recommendations for, and thus provide for the conservation of, the Mexican wolf.

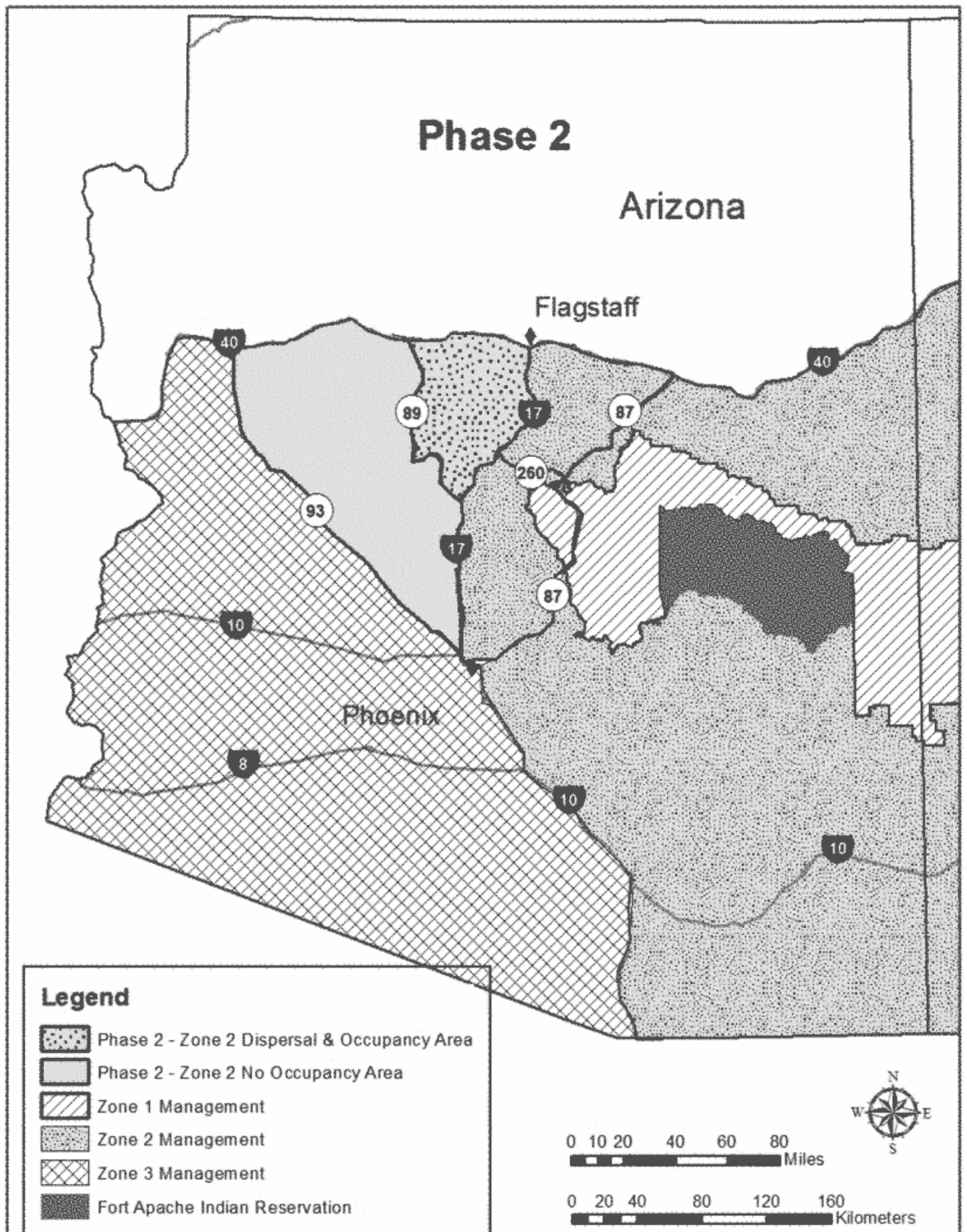
(8) ***Disturbance-causing land-use activities.*** For any activity on Federal lands that the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves, the Service will work with Federal agencies to use their authorities to temporarily restrict human access and disturbance-causing land-use activities within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between approximately April 1 and July 31, and around active Mexican wolf rendezvous sites between approximately June 1 and September 30, as necessary.

(9) ***Management.***

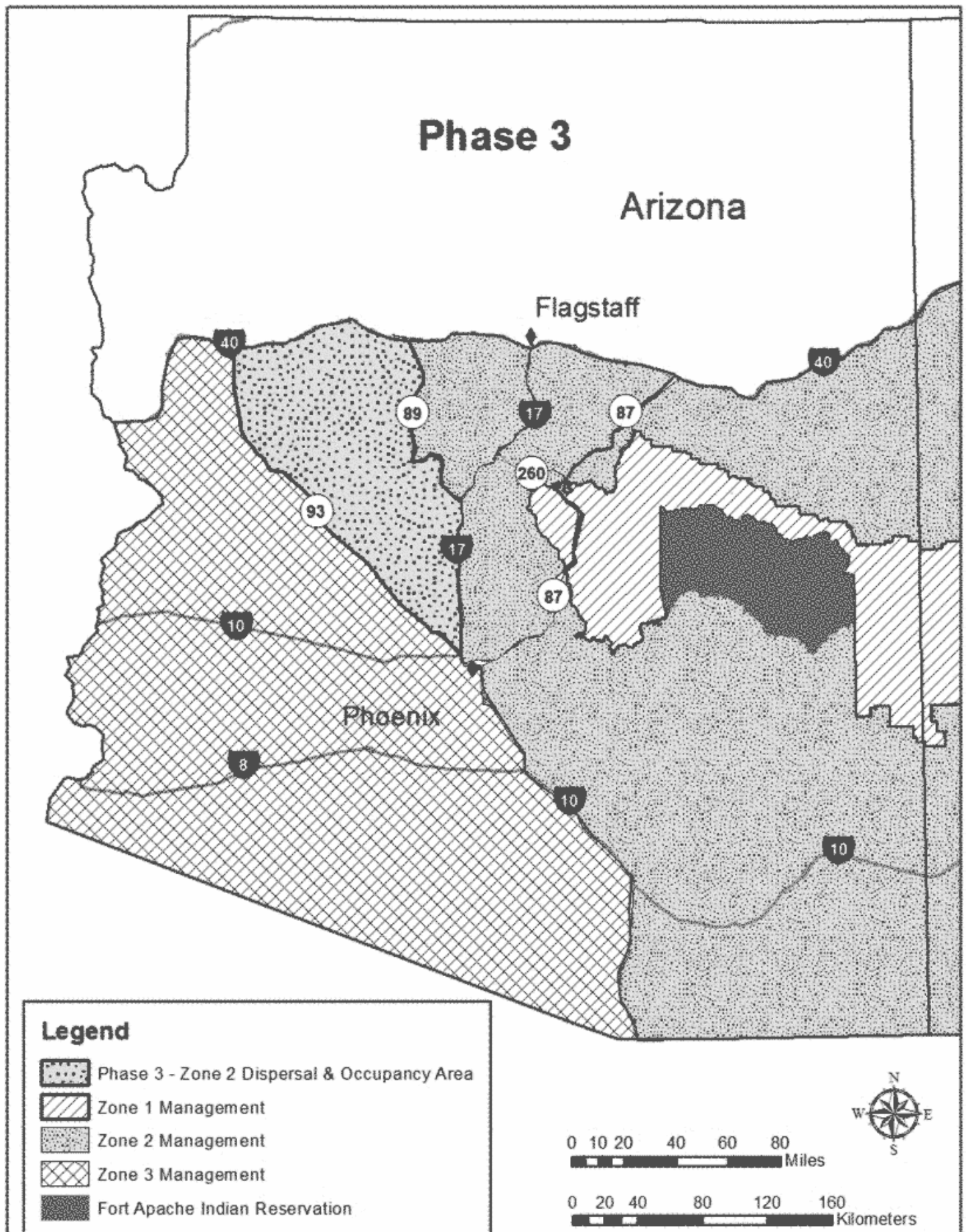
- (i) On private land within Zones 1 and 2, as defined in paragraph (k)(3) of this section, of the MWEPA, the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including initial release and translocation of Mexican wolves onto such lands in Zones 1 or 2 if requested by the landowner and with the concurrence of the State game and fish agency.
- (ii) On tribal trust land within Zones 1 and 2, as defined in paragraph (k)(3) of this section, of the MWEPA, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: occupancy by natural dispersal, initial release, and translocation of Mexican wolves onto such lands. No agreement between the Service and a Tribe is necessary for the capture and removal of Mexican wolves from tribal trust lands if requested by the tribal government.
- (iii) Based on end-of-year counts, we will manage to achieve and sustain a population average greater than or equal to 320 wolves in Arizona and New Mexico. This average must be achieved over an 8-year period, the population must exceed 320 Mexican wolves each of the last 3 years of the 8-year period, and the annual population growth rate averaged over the 8-year period must demonstrate a stable or increasing population, as calculated by a geometric mean.
- (iv) We are implementing a phased approach to Mexican wolf management within the MWEPA in western Arizona as follows:
 - (A) Phase 1 will be implemented for the first 5 years following February 17, 2015. During this phase, initial releases and translocation of Mexican wolves can occur throughout Zone 1 with the exception of the area west of State Highway 87 in Arizona. No translocations can be conducted west of State Highway 87 in Arizona in Zone 2. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). However, during Phase 1, dispersal and occupancy in Zone 2 west of State Highway 87 will be limited to the area north of State Highway 260 and west to Interstate 17. A map of Phase 1 follows:



- (B) In Phase 2, initial releases and translocation of Mexican wolves can occur throughout Zone 1 including the area west of State Highway 87 in Arizona. No translocations can be conducted west of Interstate Highway 17 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). However, during Phase 2, dispersal and occupancy west of Interstate Highway 17 will be limited to the area east of Highway 89 in Arizona. A map of Phase 2 follows:



- (C) In Phase 3, initial release and translocation of Mexican wolves can occur throughout Zone 1. No translocations can be conducted west of State Highway 89 in Arizona. Mexican wolves can disperse naturally from Zones 1 and 2 into, and occupy, the MWEPA (Zones 1, 2, and 3, as defined in paragraph (k)(3) of this section). A map of Phase 3 follows:



- (D) While implementing this phased approach, two evaluations will be conducted: The first evaluation will cover the first 5 years and the second evaluation will cover the first 8 years after February 17, 2015 in order to determine if we will move forward with the next phase.
 - (1) Each phase evaluation will consider adverse human interactions with Mexican wolves, impacts to wild ungulate herds, and whether or not the Mexican wolf population in the MWEPA is achieving a population number consistent with a 10 percent annual growth rate based on end-of-year counts, such that 5 years after February 17, 2015, the population of Mexican wolves in the wild is at least 150, and 8 years after February 17, 2015, the population of Mexican wolves in the wild is at least 200.
 - (2) If we have not achieved this population growth, we will move forward to the next phase. Regardless of the outcome of the two evaluations, by the beginning of year 12 from February 17, 2015, we will move to full implementation of this rule throughout the MWEPA, and the phased management approach will no longer apply.
- (E) The phasing may be expedited with the concurrence of participating State game and fish agencies.
- (v) The USFWS and designated agencies will conduct a sufficient number of releases into the MWEPA from captivity to result in at least 22 released Mexican wolves surviving to breeding age.
- (10) **Evaluation.** The USFWS will continue to evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, approximately 5 years after August 1, 2022, the USFWS will prepare a one-time overall evaluation of the experimental population program that focuses on modifications needed to improve the efficacy of this rule and the progress the experimental population is making to the recovery of the Mexican wolf.
- (l) Grizzly bear (*Ursus arctos horribilis*)—Bitterroot nonessential experimental population.
 - (1) **Where does this rule apply?**
 - (i) The 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 in paragraph (l)(1)(ii) of this section.
 - (ii) 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 (l) and through management plans and policies developed by the Citizen Management Committee (Committee; see paragraph (l)(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 (l)(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 (l) 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 (l) 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 (l). 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 (l) 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 (l).
- (5) ***What activities are allowed in the Experimental Population Area?***
- (i) For purposes of this paragraph (l), 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 (l)(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 (l)(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 (l). 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 (l)(5)(iv) and (l)(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 (l)(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 (l). 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 (l)(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 (l), 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 (l). The Secretary, who retains final responsibility and authority for implementation of the Act, will review the Committee's determination, as provided in paragraphs (l)(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 (l), 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 (l). 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 (l), 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 (l). 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 (l). 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 (l) 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 (l) until the recovery objectives under paragraph (l)(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 (l) 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 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.

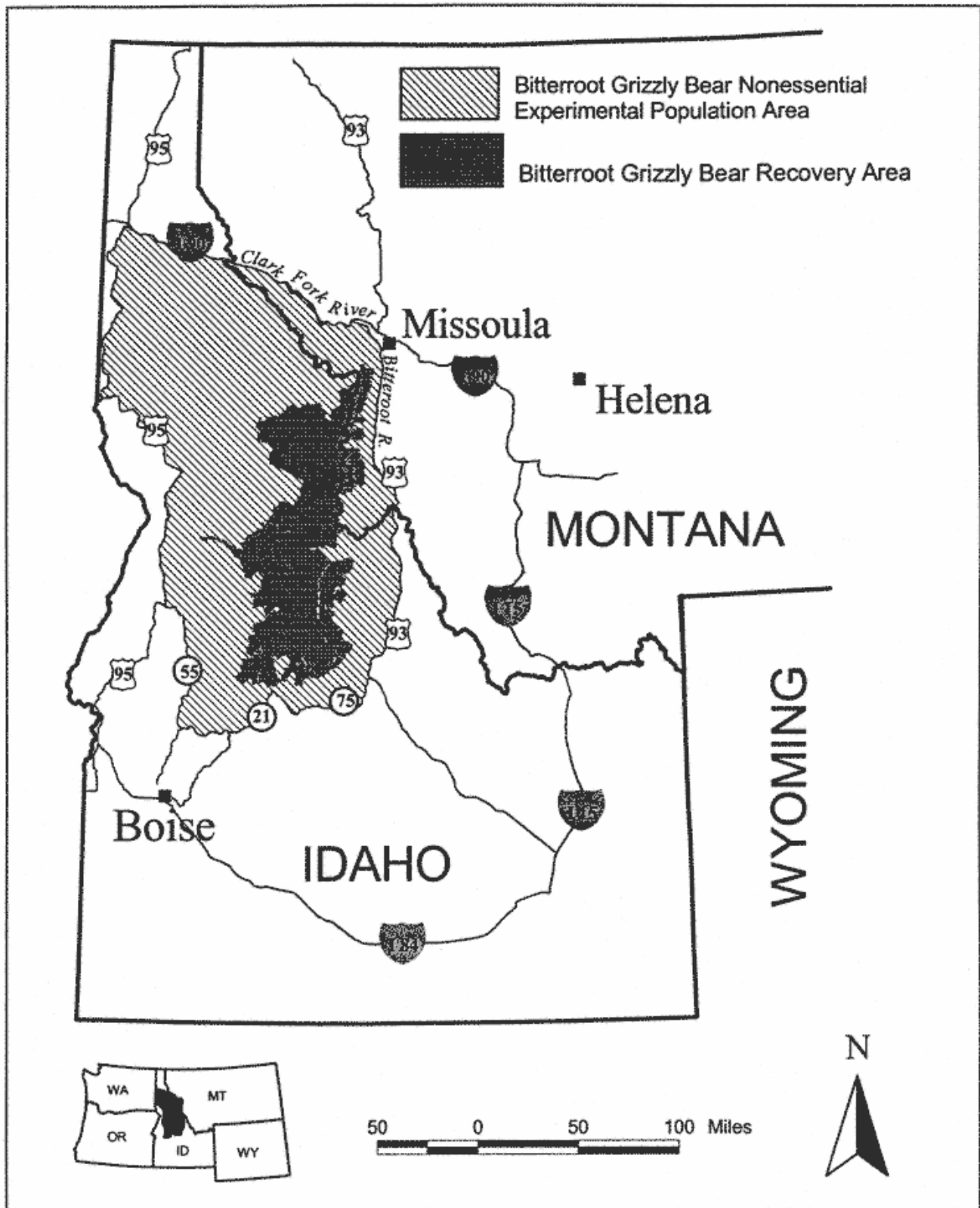
Grizzly bear population is defined by verified evidence within the previous 6 years which consists of photos within the area, verified tracks, or sightings by reputable scientists or agency personnel of at least two different female grizzly bears with young or one female with different litters in 2 different 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.

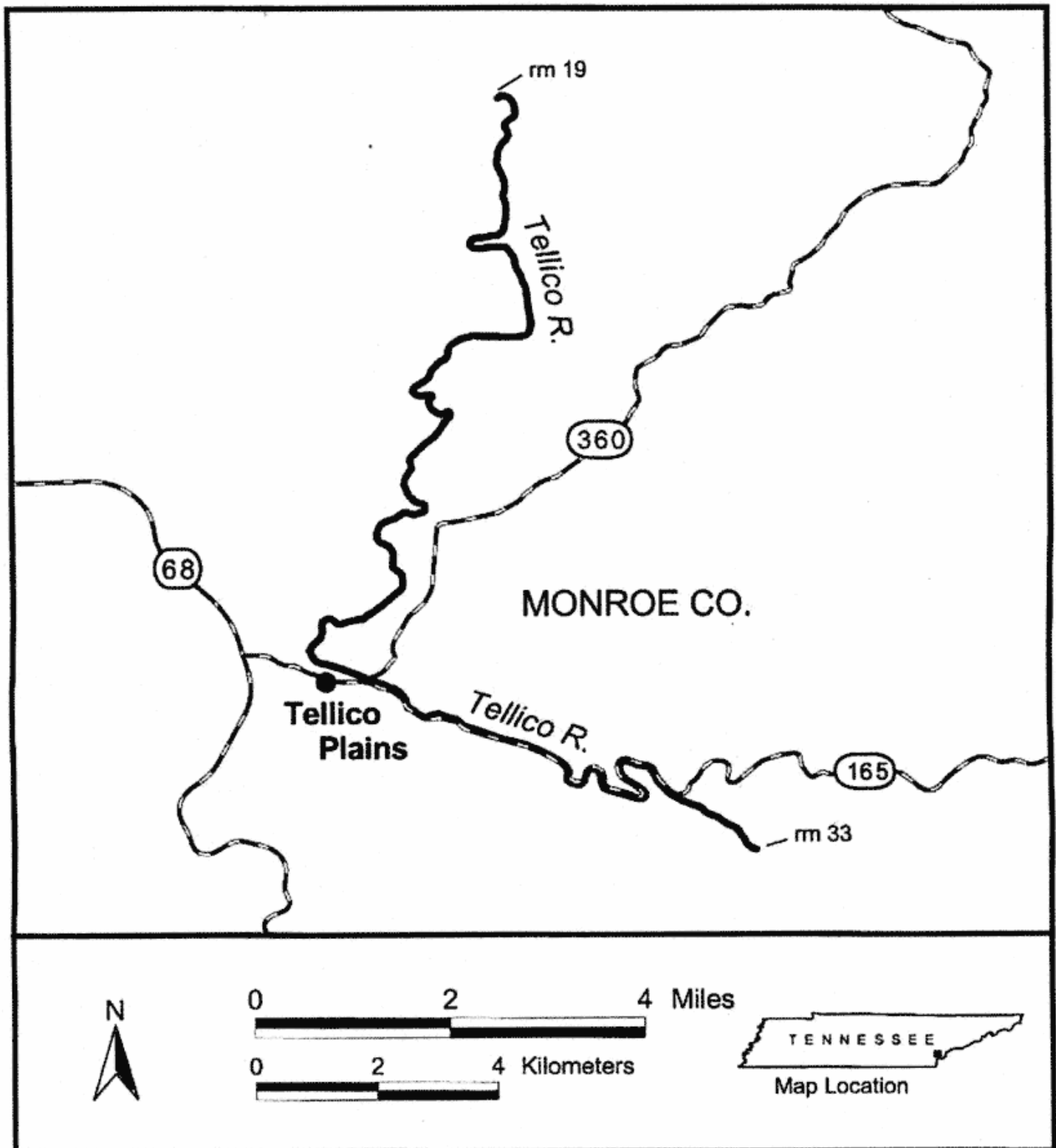


(m) Spotfin chub (=turquoise shiner) (*Erimonax monachus*)—

- (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.

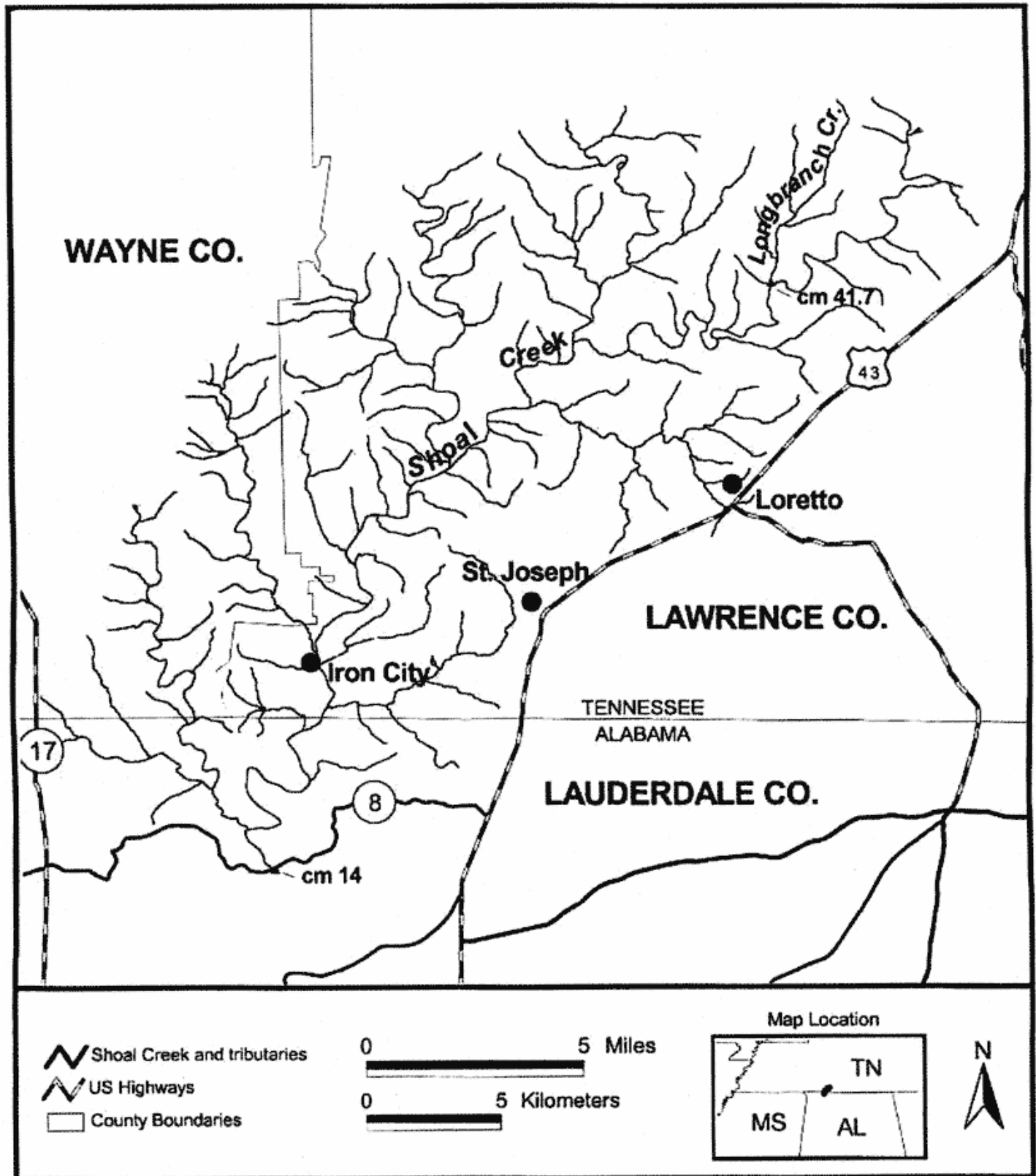
- (3) ***What take is allowed in the NEP area?*** Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State,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



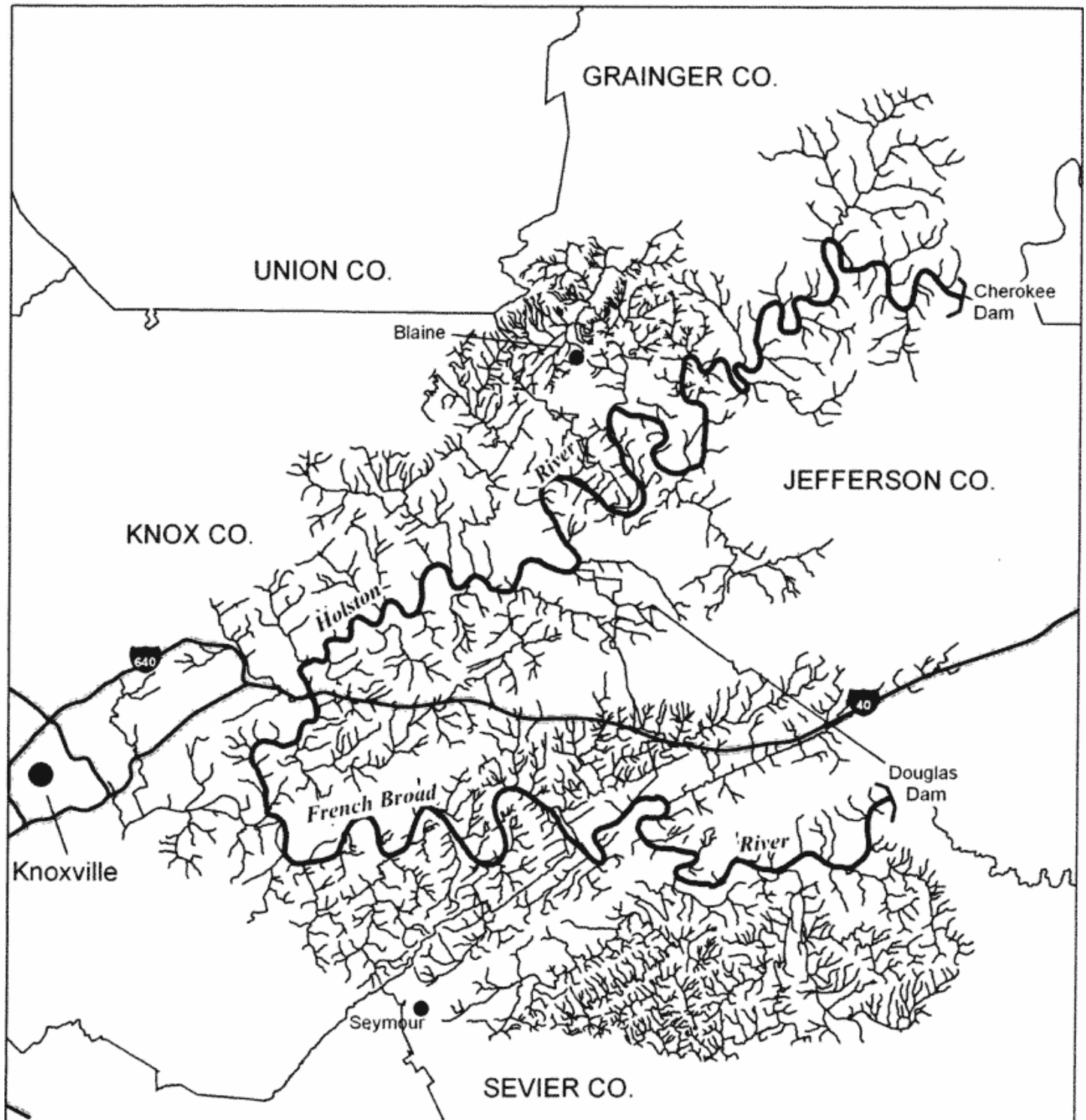
- (6) **Note:** Map of the Shoal Creek NEP area for spotfin chub and boulder darter in Tennessee and Alabama follows:

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



- (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.



French Broad/Holston Rivers and tributaries
County Boundaries

0 3 Miles
0 3 Kilometers

TENNESSEE
Map Location

(n) Wolf, gray (*Canis lupus*).

- (1) **Purpose.** The regulations in this paragraph (n) set forth the provisions of a rule to establish an experimental population of gray wolves. The Service finds that establishment of an experimental population of gray wolves as described in this paragraph (n) will further the conservation of the species.
- (2) **Determinations.** The gray wolves identified in paragraph (n)(3) of this section constitute a nonessential experimental population (NEP) under § 17.81(c)(2). These wolves will be managed in accordance with the provisions of this rule in the boundaries of the NEP area within the State of Colorado or any Tribal reservation found in the State that has a wolf management plan, as further provided in this rule. Furthermore, the State of Colorado or any Tribe within the State that has a wolf management plan consistent with this rule can request to assume the lead authority for wolf management under this rule within the borders of the NEP area in the State or reservation as set forth in paragraph (n)(10) of this section.
- (3) **Designated area.** The Colorado NEP area encompasses the entire State of Colorado. All gray wolves found in the wild within the boundary of the Colorado NEP area are considered nonessential experimental animals. Any gray wolf that is outside the Colorado NEP area, with the exception of wolves in the States of Idaho, Minnesota, Montana, Wyoming, and portions of the States of Oregon, Washington, and Utah, is considered endangered. Any wolf originating from the Colorado NEP area and dispersing beyond its borders may be managed by the wolf management regulations established for that area or may be returned to the Colorado NEP area.

- (4) **Definitions.** Key terms used in this rule have the following meanings:

Designated agent —An employee of a Federal, State, or Tribal agency that is authorized or directed by the Service to conduct gray wolf management consistent with this rule.

Intentional harassment —The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions that are designed to cause physical discomfort and temporary physical injury but not death.

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

Landowner —Any of the following entities:

- (A) An owner or lessee of private land, or their immediate family members, or the owner's employees, contractors, or volunteers who are currently employed to actively work on that private land.
- (B) The owners, or their employees or contractors, of livestock that are currently and legally grazed on private land and herding and guarding animals (such as alpacas, llamas, or donkeys) and other leaseholders on private land, such as outfitters or guides who lease hunting rights from private landowners.
- (C) Individuals legally using Tribal lands in the State of Colorado.

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

Livestock producer —A person who is actively engaged in farming/ranching and receives income from the production of livestock.

Non-injurious —Does not cause either temporary or permanent physical damage or death.

Opportunistic harassment —Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf. Opportunistic harassment includes scaring wolves with noise (e.g., yelling or shooting firearms into the air), movement (e.g., running or driving toward the wolf), or objects (e.g., throwing a rock at a wolf or releasing bear pepper spray).

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

Public land —Federal land such as that administered by the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, U.S. Department of Agriculture's Forest Service, Department of Defense, or other agencies within the Federal Government.

Public land permittee —A person or that person's employee who has an active, valid Federal land-use permit to use specific Federal lands to graze livestock or operate an outfitter or guiding business that uses livestock and Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights. This term does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, or Christmas trees, logging, mining, oil or gas development, or other uses that do not require livestock.

Relocation —Capture and movement to another location.

Remove —Place in captivity or kill.

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

Rule —The regulations in this paragraph (n).

Tribal land —Any lands where title is either held in trust by the United States for the benefit of an Indian Tribe or individual Indian or held by an Indian Tribe or individual Indian subject to restrictions by the United States against alienation (*i.e.*, sale or transfer).

Unacceptable impact —Tribally determined decline in a wild ungulate population or herd where wolf predation is a major cause of the population or herd not meeting established Tribal management goals on Tribal land. The Tribal determination must be peer-reviewed and reviewed and commented on by the public prior to a final, written determination by the Service that an unacceptable impact has occurred and that wolf removal will benefit the affected ungulate herd or population.

Working dogs —Guard or herding dogs typically used in livestock production.

Wounded —Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf.

(5) **Allowable forms of take of gray wolves.** Take of gray wolves in the experimental population is allowed without a permit only in these specific circumstances: opportunistic harassment; intentional harassment; take in defense of human life; take to protect human safety; take by designated agents to remove depredating wolves; incidental take; take under any previously authorized permits issued by the Service; take per authorizations for employees of designated agents; take for research purposes; and take to protect livestock animals and working dogs. Consistent with the requirements of the State or Tribe, take is allowed on private land. Take on public land is allowed as specified in paragraph (n)(5)(iv)(A) of this section. Other than as expressly provided by the regulations in this rule, all other forms of take are considered a violation of section 9 of the Act. Any wolf or wolf part taken legally must be turned over to the Service unless otherwise specified in this rule. Any take of wolves must be reported as set forth in paragraph (n)(6) of this section.

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

(ii) **Intentional harassment.** After we or a designated agent have confirmed wolf activity on private land or a public land grazing allotment, we or the designated agent may issue written take authorization, with appropriate conditions, valid for not longer than 1 year to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization. Intentional harassment must be reported to the Service or a designated agent(s) within 7 days as set forth in paragraph (n)(6) of this section. The provisions in this paragraph (n)(5)(ii) do not apply if there is evidence of unusual attractants or artificial or intentional feeding.

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

(A) Consistent with State or Tribal requirements, any landowner may take a gray wolf in the act of attacking livestock or working dogs on private land (owned or leased), provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. To preserve physical evidence that the livestock or working dogs were recently attacked by a wolf or wolves, the carcass of any wolf taken and surrounding area must not be disturbed. The Service or designated agent must be able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(B) The Service or designated agent may issue a “depredation” written take authorization of limited duration (45 days or fewer) to a landowner or their employees to take up to a specified (by the Service or our designated agent) number of wolves on their private land if:

(1) The landowner has had at least one depredation by wolves on livestock that has been confirmed by the Service or our designated agent within the last 30 days; and

(2) The Service or our designated agent has determined that depredating wolves routinely occur on the private land and present a significant risk to the health and safety of livestock; and

- (3) The Service or our designated agent has authorized lethal removal of wolves from those same private lands.
 - (4) The authorizations set forth by this paragraph (n)(5)(iii)(B) may be terminated at any time once threats have been resolved or minimized.
- (iv) **Take on public land.** Consistent with State or Tribal requirements, any livestock producer and public land permittee (see definitions in paragraph (n)(4) of this section) who is legally using public land under a valid Federal land-use permit may, without prior written authorization, take a gray wolf in the act of attacking livestock or working dogs on the person's allotment or other area authorized for the person's use.
 - (A) The Service or designated agent must be able to confirm that the livestock or working dog was wounded, harassed, molested, or killed by a wolf or wolves. To preserve physical evidence that the take was conducted according to this rule, the carcass of any wolf taken and the area surrounding it should not be disturbed. Any person legally present on public land may immediately take a wolf that is in the act of attacking the individual's livestock animal or working dog, provided conditions described in paragraph (n)(5)(iii)(A) of this section for private land (i.e., "in the act of attacking") are met. Any take or method of take on public land must be consistent with the laws and regulations on those public lands.
 - (B) The Service or our designated agent may issue a "depredation" written take authorization of limited duration (45 days or fewer) to a public land grazing permittee to take up to a specified (by the Service or our designated agent) number of wolves on that permittee's active livestock grazing allotment if all of the following situations occur:
 - (1) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by the Service or our designated agent within the last 30 days; and
 - (2) The Service or our designated agent has determined that depredating wolves routinely occur on that allotment and present a significant risk to the health and safety of livestock; and
 - (3) The Service or our designated agent has authorized lethal removal of wolves from that same allotment.
 - (4) The authorizations set forth by this paragraph (n)(5)(iv)(B) may be terminated at any time once threats have been resolved or minimized.
 - (5) Any take or method of take on public land must be consistent with the rules and regulations on those public lands.
- (v) **Agency take of wolves that depredate livestock.** The Service or our designated agent may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of depredating wolves. The Service or our designated agent will consider:
 - (A) Evidence of wounded livestock or working dogs or remains of livestock or working dogs that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock or working dogs;
 - (B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken;

- (C) Any evidence of unusual attractants or artificial or intentional feeding of wolves; and
- (D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.
- (vi) **Take in defense of human life.** Any person may take a gray wolf in defense of the individual's life or the life of another person. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.
- (vii) **Take to protect human safety.** The Service or our designated agent may promptly remove any wolf that we or our designated agent determines to be a threat to human life or safety.
- (viii) **Incidental take.** Take of a gray wolf is allowed if the take is accidental and/or incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take and such take is reported within 24 hours as set forth at paragraph (n)(6) of this section. We may refer incidental take that does not meet these provisions to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered incidental take and may be referred to the appropriate authorities for prosecution.
- (ix) **Take under permits.** Any person with a valid permit issued by the Service under 50 CFR 17.32, or our designated agent, may take wolves in the wild, pursuant to terms of the permit.
- (x) **Additional take authorization for agency employees.** When acting in the course of official duties, any employee of the Service or a designated agent may take a wolf, when necessary, in regard to the release, tracking, monitoring, recapture, and management of the NEP or to:
 - (A) Aid or euthanize a sick, injured, or orphaned wolf and transfer it to a licensed veterinarian for care;
 - (B) Dispose of a dead specimen;
 - (C) Salvage a dead specimen that may be used for scientific study;
 - (D) Aid in law enforcement investigations involving wolves (collection of specimens for necropsy, etc.); or
 - (E) Remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent, from passing on or teaching those traits to other wolves.
 - (F) Such take must be reported to the Service as set forth in paragraph (n)(6) of this section, and specimens are to be retained or disposed of only in accordance with directions from the Service.
- (xi) **Take of gray wolves that are contributing to unacceptable impacts to wild ungulate populations or herds on Tribal land.** This exception requires Tribes to develop a science-based proposal that must, at a minimum, include the following information:
 - (A) The basis of ungulate population or herd management objectives;
 - (B) Data indicating that the ungulate herd is below management objectives;
 - (C) Data indicating that wolves are a major cause of the ungulate population decline;
 - (D) Why wolf removal is a warranted solution to help restore the ungulate herd to management objectives;

- (E) The level and duration of wolf removal being proposed;
 - (F) How ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and
 - (G) Demonstration that attempts were and are being made to address other identified major causes of ungulate herd or population declines or of Tribal government commitment to implement possible remedies or conservation measures in addition to wolf removal.
 - (H) The proposal described in this paragraph (n)(5)(xi) must be subjected to both public and peer review prior to being finalized and submitted to the Service for review. Peer review must include at least three independent peer reviewers with relevant expertise in the subject matter who are not staff of the Tribe submitting the proposal. Before wolf removals can be authorized, the Service will evaluate the information in the proposal and provide a written determination to the requesting Tribal game and fish agency on whether such actions are scientifically based and warranted.
- (xii) **Take for research purposes.** Permits are available and required, except as otherwise allowed by this rule, for scientific purposes, enhancement of propagation or survival, educational purposes, or other purposes consistent with the Act (50 CFR 17.32). Scientific studies should be reasonably expected to result in data that will lead to development of sound management of the gray wolf and to enhancement of its survival as a species.
- (6) **Reporting requirements.** Except as otherwise specified in this rule or in an authorization, any take of a gray wolf must be reported to the Service or our designated agent as follows: Lethal take must be reported within 24 hours, and opportunistic or intentional harassment must be reported within 7 days. We will allow additional reasonable time if access to the site is limited.
- (i) Report any take of wolves, including opportunistic harassment or intentional harassment, to U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office Supervisor (134 Union Boulevard, Suite 670, Lakewood, Colorado 80225; ColoradoES@fws.gov), or a Service-designated agent of another Federal, State, or Tribal agency.
 - (ii) Unless otherwise specified in this paragraph (n), any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.
- (7) **Prohibitions.** Take of any gray wolf in the NEP is prohibited, except as provided in paragraphs (n)(5) and (8) of this section. Specifically, the following actions are prohibited by this rule:
- (i) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental population taken in violation of the regulations in this paragraph (n) or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.
 - (ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (n).
- (8) **Monitoring.** Gray wolves in the NEP area will be monitored by radio telemetry or other standard wolf population monitoring techniques as appropriate. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or our designated agent and given appropriate care. Such an animal will be released back into its respective area as

soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it. If a gray wolf is taken into captivity for care or is euthanized, it must be reported to the Service within 24 hours or as soon as reasonably appropriate.

- (9) **Review and evaluation of the success or failure of the NEP.** Radio transmitters, remote cameras, surveys of roads and trails to document wolf sign, and other monitoring techniques will be used to document wolf reproductive success, abundance, and distribution in Colorado post-release.
 - (i) To evaluate progress toward achieving State downlisting and delisting criteria, the State of Colorado will summarize monitoring information in an annual report. The report, due by June 30 of each year, will describe wolf conservation and management activities that occurred in Colorado for as long as the gray wolf is federally listed during any portion of a calendar or biological year. The annual report may include, but not be limited to: post-release wolf movements and behavior; wolf minimum counts or abundance estimates; reproductive success and recruitment; territory use and distribution; cause-specific wolf mortalities; and a summary of wolf conflicts and associated management activities to minimize wolf conflict risk.
 - (ii) To assess the reintroduction program, the Service will evaluate Colorado's wolf reintroduction and management program in a summary report each year that wolf reintroductions occur in the State and for a minimum of 5 years after reintroductions are complete. If the Service determines that modifications to reintroduction protocols and wolf monitoring and management activities are needed, the Service will coordinate closely with the State to ensure progress toward achieving their State recovery goals while concurrently minimizing wolf-related conflicts in Colorado.
- (10) **Memorandum of Agreement (MOA).** The State of Colorado or any Tribe within the State, subject to the terms of this rule, may request an MOA from the Service to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in the State or on a Tribal reservation, and implement all parts of their State or Tribal plan that are consistent with this rule, provided that the State or Tribe has a wolf management plan approved by the Service.
 - (i) The State or Tribal request for wolf management under an MOA must demonstrate:
 - (A) That authority and management capability reside in the State or Tribe to conserve the gray wolf throughout the geographical range of the experimental population within the State of Colorado or within the Tribal reservation;
 - (B) That the State or Tribe has an acceptable conservation program for the gray wolf, throughout the NEP area within the State or Tribal reservation, including the requisite authority and capacity to carry out that conservation program;
 - (C) Exactly what parts of the State or Tribal plan the State or Tribe intends to implement within the framework of this rule; and
 - (D) That the State or Tribal management progress will be reported to the Service on at least an annual basis so the Service can determine if State or Tribal management was conducted in full compliance with this rule.
 - (ii) The Service will approve such a request upon a finding that the applicable criteria are met and that approval is not likely to jeopardize the continued existence of the gray wolf.
 - (iii) If the Service approves the request, the Service will enter into an MOA with the State or Tribe.

- (iv) An MOA for State or Tribal management as provided in this rule may allow the State of Colorado or any Tribe within the State to become designated agents and lead management of the nonessential experimental gray wolf population within the borders of their jurisdictions in accordance with the State's or Tribe's wolf management plan, except that:
 - (A) The MOA may not provide for any form of management inconsistent with the protection provided to the species under this rule, without further opportunity for appropriate public comment and review and amendment of this rule.
 - (B) The MOA cannot vest the State of Colorado or any Tribe within the State with any authority over matters concerning section 4 of the Act (determining whether a species warrants listing).
 - (C) In the absence of a Tribal wolf management plan or cooperative agreement, the MOA cannot vest the State of Colorado with the authority to issue written authorizations for wolf take on reservations. The Service will retain the authority to issue these written authorizations until a Tribal wolf management plan is developed.
 - (D) The MOA for State or Tribal wolf management must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce the State or Tribal management program prohibitions on take.
 - (E) The MOA may not authorize wolf take beyond that stated in the rule but may be more restrictive.
- (v) The authority for the MOA will be the Act, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), and the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), and any applicable treaty.
- (vi) In order for the MOA to remain in effect, the Service must find, on an annual basis, that the management under the MOA is not jeopardizing the continued existence of the gray wolf in the NEP. The Service or State or Tribe may terminate the MOA upon 90 days' notice if:
 - (A) Management under the MOA is likely to jeopardize the continued existence of the gray wolf in the NEP;
 - (B) The State or Tribe has failed materially to comply with this rule, the MOA, or any relevant provision of the State or Tribal wolf management plan;
 - (C) The Service determines that biological circumstances within the range of the gray wolf indicate that delisting the species is warranted; or
 - (D) The States or Tribes determine that they no longer want the wolf management authority vested in them by the Service in the MOA.

(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.

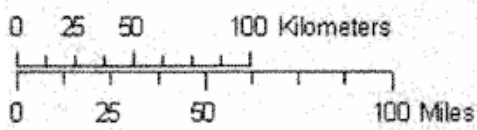
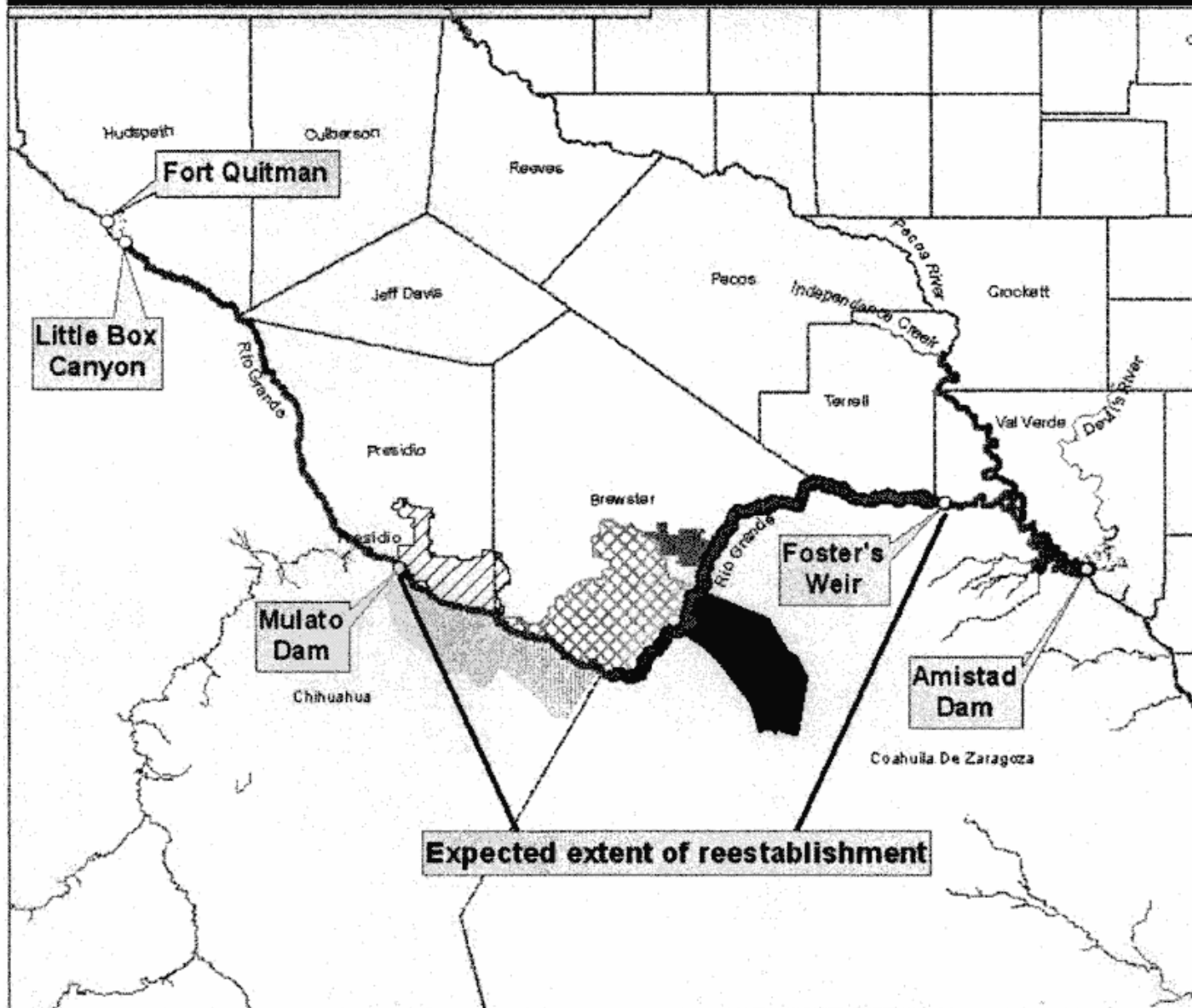
(3) *What take of this species is not allowed in the NEP area?*

- (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:

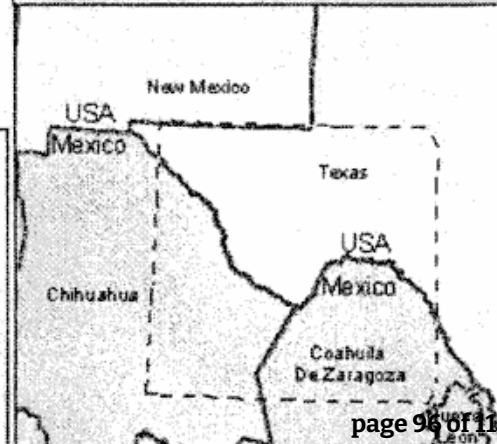
10(j) Nonessential Experimental Population area for Rio Grande silvery minnow



Description

- 10(j) Nonessential Experimental Population area for Rio Grande silvery minnow
- Rio Grande Wild & Scenic River (includes portion of 10(j) Nonessential Experimental Population area)
- Black Gap Wildlife Management Area
- Big Bend Ranch State Park
- Big Bend National Park
- Canon de Santa Elena
- Maderas del Carmen

Area Overview

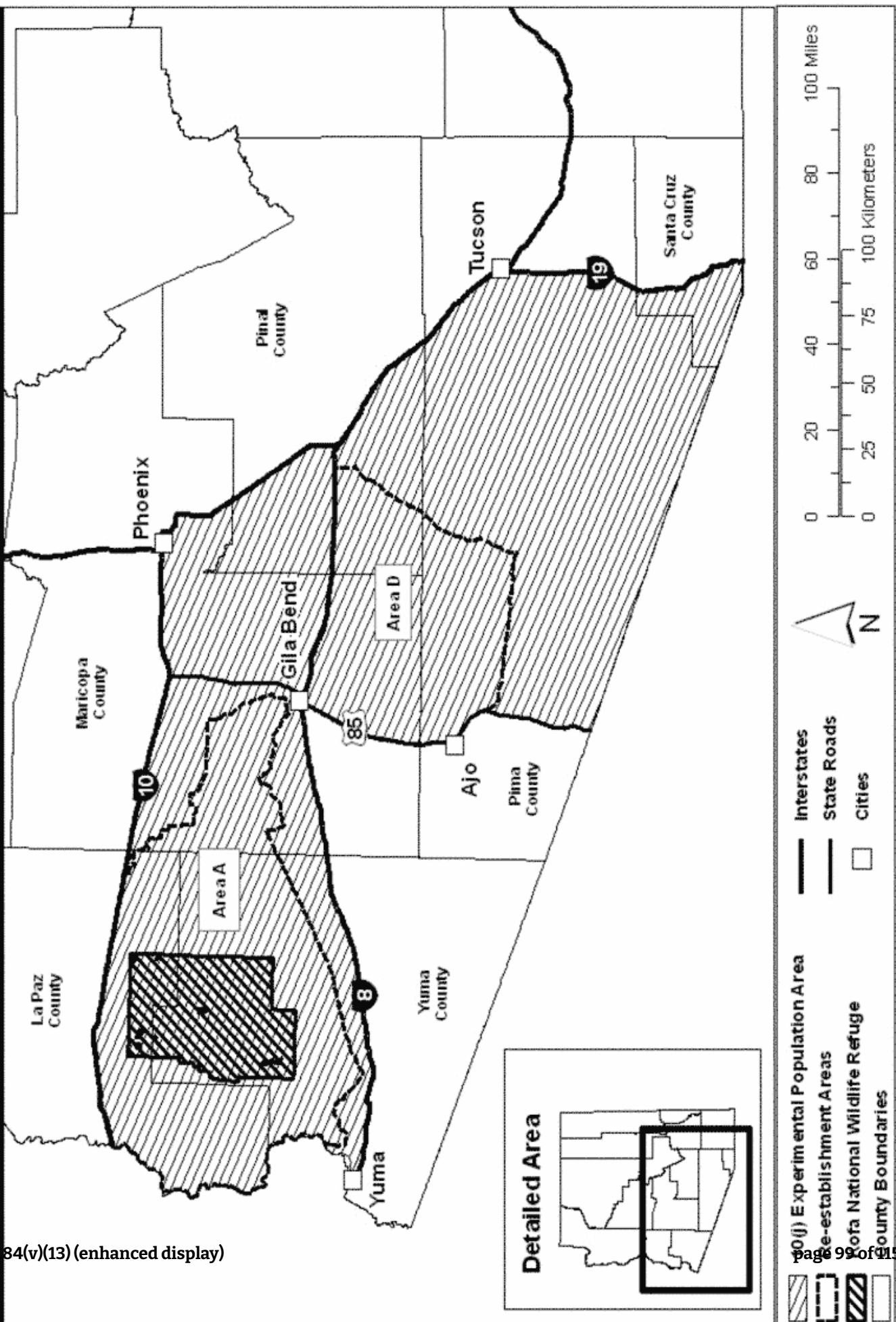


(v) Sonoran pronghorn (*Antilocapra americana sonoriensis*).

- (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:

10(j) Experimental Population Area for Sonoran Pronghorn



(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).

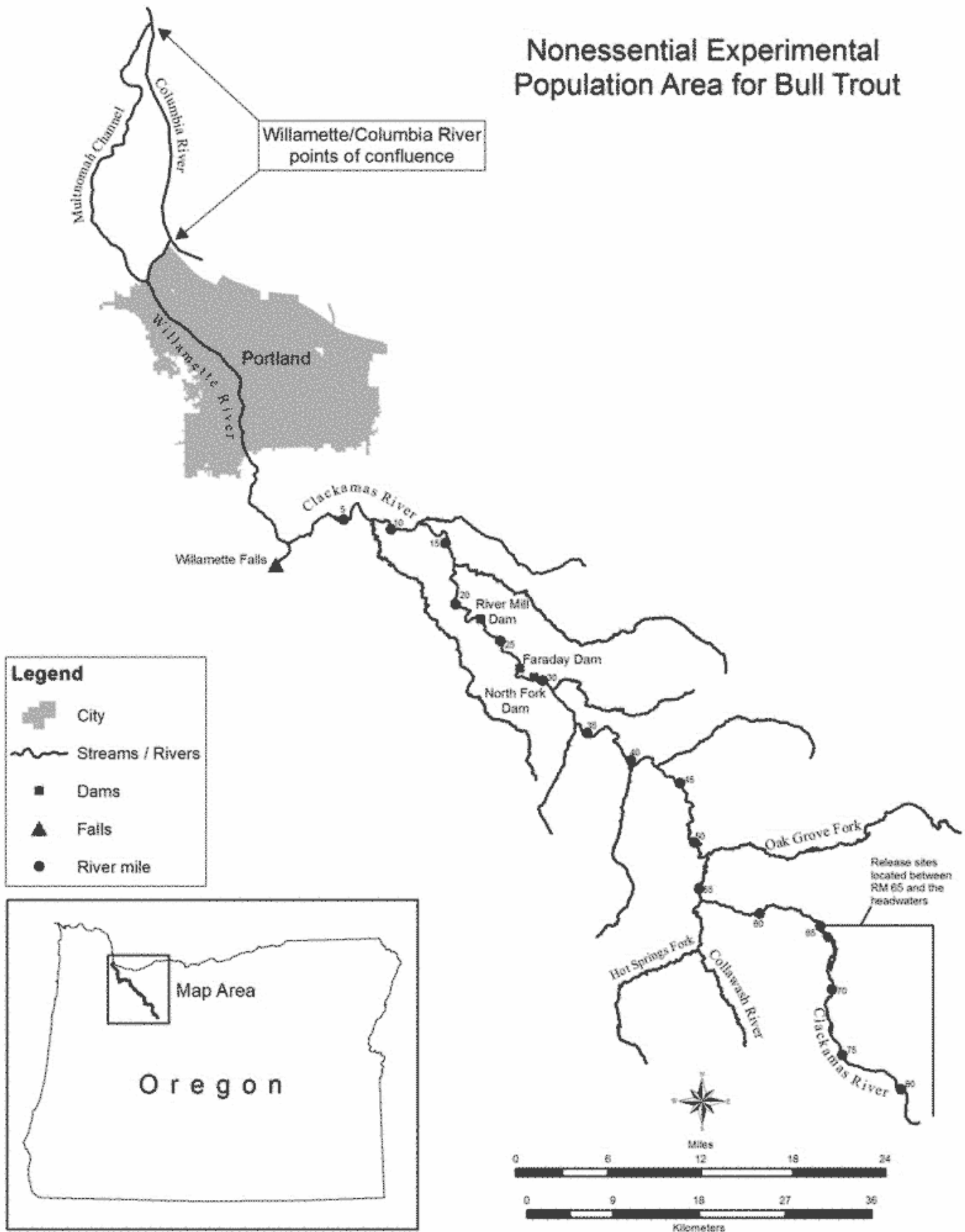
(2) **What take is allowed of this species in the NEP area?**

- (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:

Nonessential Experimental Population Area for Bull Trout



(x) Wood bison (*Bison bison athabasca*).

(1) Wood bison within the area identified in paragraph (x)(2)(i) of this section are members of a nonessential experimental population (NEP) and will be managed primarily by the State of Alaska (State), through its Department of Fish and Game (ADF&G), in cooperation with the Service, in accordance with this rule and the respective management plans.

(2) ***Where are wood bison in Alaska designated as an NEP?***

(i) The boundaries of the NEP area encompass the Yukon, Tanana, and Kuskokwim River drainages in Alaska (Figure 1). The NEP area includes much of the wood bison's historical range in Alaska, and the release sites are within the species' historical range. The NEP area is defined as follows: the Yukon River drainage from the United States-Canada border downstream to its mouth; the Tanana River drainage from the United States-Canada border downstream to its confluence with the Yukon River; and the Kuskokwim River drainage from its headwaters downstream to its mouth at the Bering Sea.

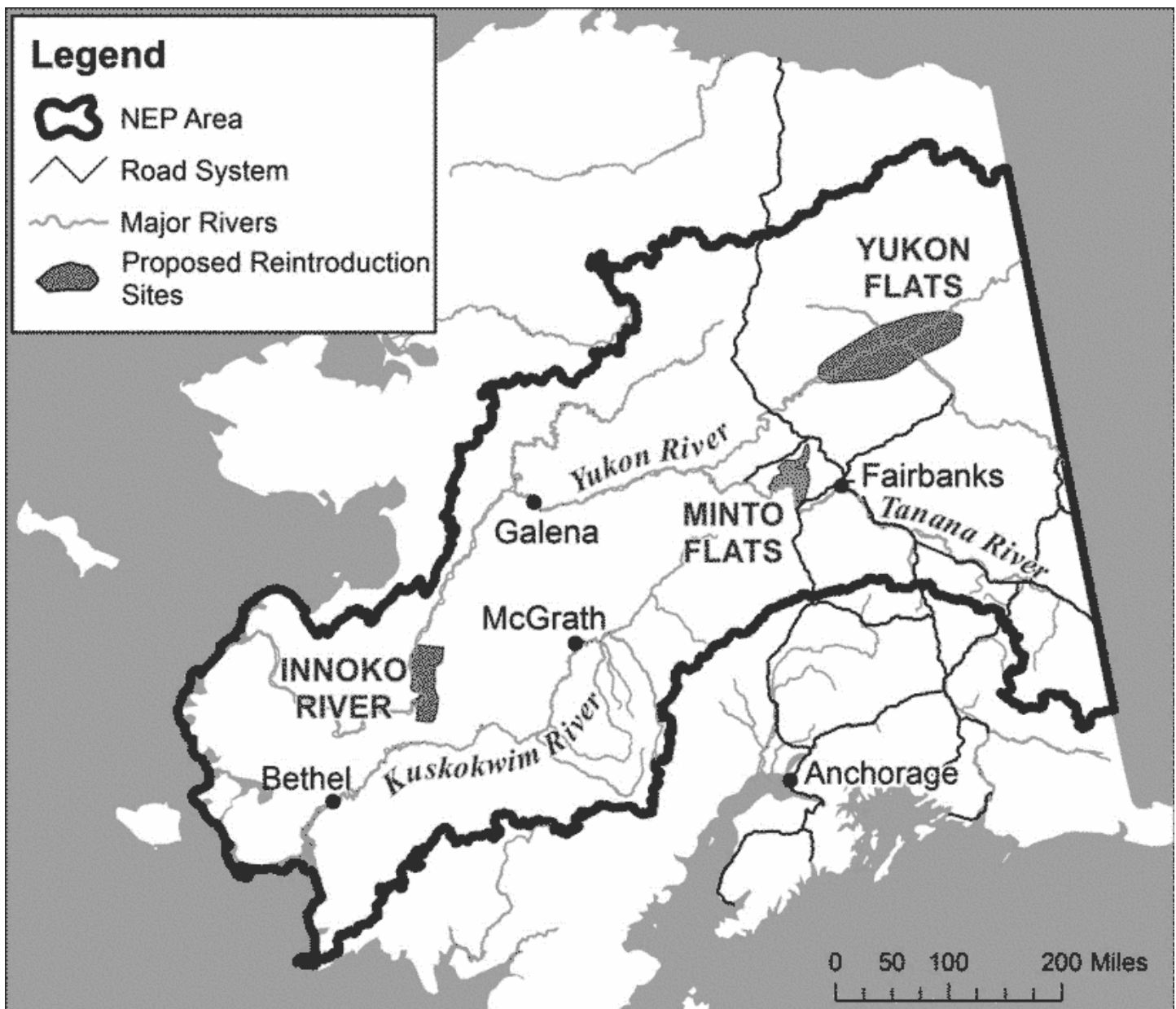


Figure 1. Boundaries of the wood bison NEP (black line) and location of the three sites for wood bison reintroduction in Alaska (gray areas).

- (ii) Any wood bison found within the Alaska wood bison NEP area will be considered part of the NEP. The bison will be managed by the State to prevent establishment of any population outside the NEP area.

(3) *Under what circumstances might an Alaska wood bison NEP be eliminated?*

- (i) We do not anticipate eliminating all individuals within an Alaska wood bison NEP unless:
 - (A) The State deems the reintroduction efforts a failure or most members of reintroduced populations have disappeared for any reason;

- (B) Monitoring of wood bison in Alaska indicates appreciable harm to other native wildlife, such as the introduction of disease or other unanticipated environmental consequences associated with their presence; or
 - (C) Legal or statutory changes reduce or eliminate the State's ability to complete the restoration effort as designed and intended in its management plans, with the management flexibility and protection of other land uses (including other resource development) provided in this NEP designation.
 - (ii) If any of the circumstances listed in paragraph (x)(3)(i) of this section occur, some or all wood bison may be removed from the wild in Alaska by any method deemed practicable by the State, including lethal removal. If the reintroduction of wood bison under this nonessential experimental designation is discontinued for any reason and no action is taken by the Service and the State to change the designation, all remaining wood bison in Alaska will retain their NEP status.
- (4) ***Which agency is the management lead for wood bison in Alaska?*** The Alaska Department of Fish and Game will have primary responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service, and will keep the Service apprised of the status of the effort on an ongoing basis. The Service will retain responsibility for ensuring compliance with all provisions of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), including compliance with section 7 for actions occurring on National Wildlife Refuge and National Park Service lands.
- (5) ***What take of wood bison is allowed in the NEP area?*** In the following instances, wood bison may be taken in accordance with applicable State fish and wildlife conservation laws and regulations:
 - (i) Hunting will be an allowed take based on sustained yield principles as established by ADF&G.
 - (ii) A wood bison 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, including but not limited to recreation (e.g., trapping, hiking, camping, or shooting activities); forestry; agriculture; oil and gas exploration and development and associated activities; construction and maintenance of roads or railroads, buildings, facilities, energy projects, pipelines, and transmission lines of any kind; mining; mineral exploration; travel by any means, including vehicles, watercraft, snow machines, or aircraft; tourism; and other activities that are in accordance with Federal, State, and local laws and regulations and specific authorizations. Such conduct is not considered intentional or “knowing take” for purposes of this regulation, and neither the Service nor the State will take legal action for such conduct. Any cases of “knowing take” will be referred to the appropriate authorities for prosecution.
 - (iii) Any person with a valid permit issued by the Service under 50 CFR 17.32 or by ADF&G may take wood bison for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the ESA. Additionally, any employee or agent of the Service or ADF&G designated for such purposes, acting in the course of official duties, may take a wood bison if such action is necessary:
 - (A) For scientific purposes;
 - (B) To relocate a wood bison to avoid conflict with human activities;

- (C) To relocate a wood bison if necessary to protect the wood bison;
 - (D) To relocate wood bison within the NEP area to improve wood bison survival and recovery prospects or for genetic purposes;
 - (E) To relocate wood bison from one population in the NEP area into another, or into captivity;
 - (F) To relocate wood bison that have moved outside the NEP area back into the NEP area or remove them;
 - (G) To aid or euthanize a sick, injured, or orphaned wood bison;
 - (H) To dispose of a dead wood bison, or salvage a dead wood bison for scientific purposes; or
 - (I) To aid in law enforcement investigations involving wood bison.
- (iv) Any person may take a wood bison in defense of the individual's life or the life of another person. The Service, the State, or our designated agent(s) may also promptly remove any wood bison that the Service, the State, or our designated agent(s) determine to be a threat to human life or safety. Any such taking must be reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.
- (v) In connection with otherwise lawful activities, including but not limited to the use and development of land, provided at paragraph (x)(5)(ii) of this section, the Federal Government, the State, municipalities of the State, other local governments, Native American Tribal Governments, and all landowners and their employees or authorized agents, tenants, or designees may harass wood bison in the areas defined in paragraph (x)(2)(i) of this section, provided that all such harassment is by methods that are not lethal or physically injurious to wood bison and is reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.
- (vi) Any taking pursuant to paragraph (x)(5)(ii) of this section must be reported within 14 days by contacting the Alaska Department of Fish and Game, 1300 College Road, Fairbanks, AK 99701; (907) 459-7206. ADF&G will determine the most appropriate course of action regarding any live or dead specimens.
- (6) *What take of wood bison is not allowed in the NEP area?***
- (i) Except as expressly allowed in paragraph (x)(5) of this section, all the provisions of 50 CFR 17.31(a) and (b) apply to the wood bison identified in paragraph (x)(1) of this section.
 - (ii) Any manner of take not described under paragraph (x)(5) of this section is prohibited in the NEP area.
 - (iii) A person may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified wood bison, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (x)(5) of this section or in violation of the applicable State or local fish and wildlife laws or regulations or the ESA.
 - (iv) A person may not attempt to commit, solicit another to commit, or cause to be committed any take of wood bison, except that take expressly allowed in paragraph (x)(5) of this section.
- (7) *How will the effectiveness of the wood bison reintroduction be monitored?*** ADF&G will monitor the population status of reintroduced bison herds at least annually and will document productivity, survival, and population size. The Service or other Federal agencies may also be involved in

population monitoring, particularly where National Wildlife Refuge System or Bureau of Land Management lands are involved. Tribal governments or other organizations may also participate in population monitoring and other management activities. Depending on available resources, monitoring may occur more frequently, especially during the first few years of reestablishment efforts. This monitoring will be conducted primarily through aerial surveys and will be accomplished by State or Service employees, through cooperative efforts with local governments, or by contracting with other appropriate species experts.

- (8) **What other provisions apply to this rule?** If any particular provision of this rule or the application of any particular provision to any entity or circumstance is held invalid, the remainder of this finding and rule and the application of such provisions to other entities or circumstances shall not be affected by such holding.

(y) Grizzly bear (*Ursus arctos horribilis*)—North Cascades nonessential experimental population.

- (1) **Purpose.** The regulations in this paragraph (y) set forth the provisions of a rule to establish an experimental population of grizzly bears. The Service finds that establishment of an experimental population of grizzly bears as described in this paragraph (y) will further the conservation of the species.

- (2) **Determinations.** The grizzly bears identified in this paragraph (y) constitute a nonessential experimental population (NEP) under § 17.81(c)(2). These grizzly bears will be managed in accordance with the provisions of this rule within the boundaries of the NEP area as identified in paragraph (y)(4) of this section. After our initial release of one or more grizzly bears into the NEP area, any grizzly bears found within the NEP area will be considered a member of the NEP.

- (3) **Definitions.** Key terms used in this paragraph (y) have the following definitions:

Authorized agency means a Federal, State, or Tribal agency designated by the Service in a memorandum of understanding (MOU) to assist in implementing all or part of the specified actions in this paragraph (y).

Demonstrable and ongoing threat refers to a grizzly bear actively chasing or attacking livestock or lingering in close proximity to livestock following a depredation.

Depredation means the confirmed killing or wounding of lawfully present livestock by one or more grizzly bears. The Service or an authorized agency must confirm grizzly bear depredation on lawfully present livestock. Livestock trespassing on Federal, State, or private lands are not considered lawfully present.

Deterrence means an intentional action to haze, disrupt, or annoy a grizzly bear to move out of close proximity to people or property to promote human safety, prevent conflict, or protect property and that does not cause death or lasting bodily injury to the grizzly bear.

Domestic animal means an individual of an animal species that has been selectively bred over many generations to enhance specific traits for their use by humans, including for use as a pet or livestock.

Federal, State, or Tribal authority means an employee of a State, Federal, or federally recognized Indian Tribal government who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears.

Grizzly bear involved in conflict means a grizzly bear that has caused substantial property damage, obtained anthropogenic foods (e.g., pet food, livestock feed, garbage), killed or injured lawfully present livestock, damaged beehives, breached an intact structure or electrified perimeter to obtain fruit or crops (e.g., greenhouse, garden, orchard, field, stackyard or grain bin), shown repeated and persistent signs of habituation in proximity to human-occupied areas (e.g., has been repeatedly hazed or previously relocated), exhibited aggressive behavior (i.e., not acting in defense of offspring or food or in response to a surprise encounter), or has been involved in a human-grizzly encounter resulting in substantial human injury or loss of human life.

Human-occupied areas means any structures or areas currently used or inhabited by humans (e.g., homes, residential areas, occupied campgrounds or trailheads, job sites).

In the act of attacking means the actual biting, wounding, grasping, or killing of livestock (including working dogs) by a grizzly bear.

Lasting bodily injury refers to any permanent damage or injury that limits a grizzly bear's ability to effectively move, obtain food, or defend itself for any length of time.

Livestock means cattle, sheep, pigs, horses, mules, goats, domestic bison, alpacas, llamas, donkeys, and working dogs but not poultry, feral dogs, or domestic dogs (working or otherwise) that are not in close proximity to human-occupied areas or to lawfully present livestock.

Threat to human safety means a grizzly bear that exhibits aggressive (i.e., nondefensive) behavior towards humans.

(A) Grizzly bear presence alone does not constitute a threat to human safety.

(B) Grizzly bears less than 2 years of age with no history of food-conditioning are not considered a threat to human safety.

Working dog means a herding or guard dog that is actively herding or guarding in close proximity to human-occupied areas or to lawfully present livestock.

(4) **Where is the grizzly bear North Cascades NEP?**

(i) The grizzly bear NEP area includes Washington State except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington-Idaho border. The area shown in figure 1 to paragraph (y)(4) of this section will remain designated as the experimental population area unless the Service determines in a future rulemaking that:

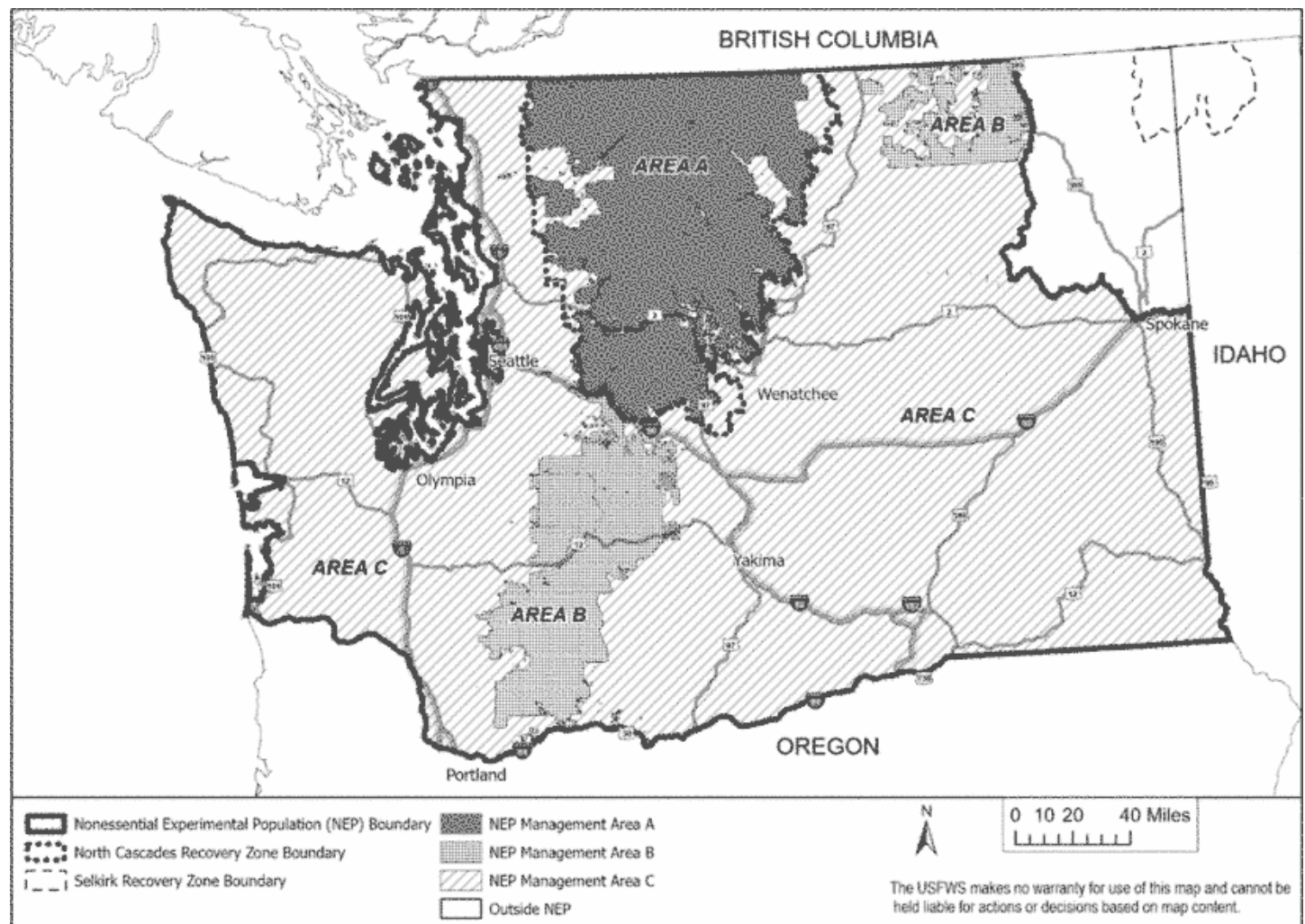
(A) The reintroduction has not been successful, in which case the NEP boundaries might be altered or the regulations in this paragraph (y) might be removed; or

(B) The grizzly bear is recovered and delisted in accordance with the Act.

(ii) Management Area A of the grizzly bear North Cascades NEP includes the Mount Baker Snoqualmie National Forest, Okanogan-Wenatchee National Forest, and Colville National Forest north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades National Park Service complex. Management Area A will be the primary area for restoration of grizzly bears and will serve as core habitat for survival, reproduction, and dispersal of the NEP.

- (iii) Management Area B of the grizzly bear North Cascades NEP includes the Mount Baker Snoqualmie National Forest and Okanogan-Wenatchee National Forest south of Interstate 90, Gifford Pinchot National Forest, and Mount Rainier National Park. Management Area B also includes the Colville National Forest and Okanogan-Wenatchee National Forest lands east of Washington State Route 97 within the experimental population boundary. Management Area B includes areas that may be used for natural movement and/or dispersal by grizzly bears and that have a lower potential for human-bear conflicts.
- (iv) Management Area C of the grizzly bear North Cascades NEP comprises all non-Federal lands within the North Cascades Ecosystem Recovery Zone and all other lands outside of or not otherwise included in Management Areas A and B within the NEP boundary. Management Area C contains large areas that may be incompatible with grizzly bear presence due to high levels of private land ownership and associated development and/or potential for bears to become involved in conflicts with resultant bear mortality, although some areas within this management area are capable of supporting grizzly bears and grizzly bears may occur there.
- (v) Map of the NEP area and associated management areas for the grizzly bear in the North Cascades Ecosystem follows:

Figure 1 to Paragraph (y)(4)



- (5) **What take of the grizzly bear is allowed in Management Area A of the North Cascades NEP area?** The exceptions to take prohibitions described in paragraphs (y)(5)(i) through (viii) of this section apply in Management Area A:
- (i) **Defense of life.** Any person may take a grizzly bear in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm. Such taking must be reported as described in paragraph (y)(8) of this section.
 - (ii) **Deterrence.** Any person may take a grizzly bear for the purpose of deterrence (see definition in paragraph (y)(3)) of this section, under the provisions set forth in this paragraph (y)(5)(ii):
 - (A) Once a grizzly bear has moved out of close proximity, deterrence is unlikely to be effective and must cease.
 - (B) Any deterrence action must not cause lasting bodily injury or death to the grizzly bear.
 - (C) Deterrence must be by acceptable techniques, which include non-projectile auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, and noise-making projectiles. Unacceptable deterrence methods include screamers/whistlers, rubber bullets/batons, and bean bag and aero sock rounds. For more information about appropriate nonlethal deterrents, contact the Service for the most current Service-approved guidelines.
 - (D) A person may not bait, stalk, or pursue a grizzly bear for the purposes of deterrence. Pursuit is defined as deterrence carried out beyond 200 yards (183 m) of a human-occupied area or lawfully present livestock.
 - (E) Any person who deters a grizzly bear must use discretion and act safely and responsibly.
 - (iii) **Incidental take.**
 - (A) Except as provided in paragraph (y)(5)(iii)(B) of this section, take of a grizzly bear is allowed if it is incidental to (i.e., unintentional and not the purpose of) an otherwise lawful activity and is not due to negligent conduct.
 - (B) Take of a grizzly bear resulting from U.S. Forest Service actions on National Forest System lands in Management Area A that is incidental to otherwise lawful activity is allowed if the U.S. Forest Service has maintained its 'no net loss' agreement and implemented food storage restrictions throughout National Forest System lands in Management Area A.
 - (iv) **Take under permits.** Any person with a valid permit issued under § 17.32 by the Service may take a grizzly bear pursuant to the terms of the permit.
 - (v) **Take under section 6 of the Act.** Any State conservation agency may take a grizzly bear under section 6(c) of the Act as described in § 17.31.
 - (vi) **Research and recovery actions.** With prior approval of the Service, an authorized agency as defined in paragraph (y)(3) of this section may take a grizzly bear if such action is necessary:
 - (A) For scientific purposes;
 - (B) To aid a sick or injured grizzly bear, including euthanasia if the grizzly bear is unlikely to survive or poses an immediate threat to human safety;
 - (C) To salvage a dead specimen that may be useful for scientific study;
 - (D) To dispose of a dead specimen; or

- (E) To aid in law enforcement investigations involving the grizzly bear.
- (vii) **Removal of grizzly bears involved in conflict.** With prior approval of the Service, a grizzly bear involved in conflict in the NEP area may be taken by an authorized agency, including by lethal removal, but only if:
 - (A) It is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed in a remote area agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land management agency; and
 - (B) The taking is done in a humane manner (with compassion and consideration for the bear and minimizing pain and distress) by a Federal, State, or Tribal authority of an authorized agency.
- (viii) **Relocation of a grizzly bear.** With prior approval from the Service, an authorized agency may live-capture one or more grizzly bears and transport and release them in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land managing agency:
 - (A) For a grizzly bear involved in conflict;
 - (B) To prevent unnatural use of food materials that have been reasonably secured from the bear or unnatural use of anthropogenic foods;
 - (C) After aggressive (*i.e.*, not defensive) behavior toward humans results in injury to a human or constitutes a demonstrable immediate or potential threat to human safety;
 - (D) As a preemptive action to prevent a conflict that appears imminent or in an attempt to prevent habituation of bears; or
 - (E) For any other conservation purpose for the grizzly bear as determined by the Service.
- (ix) **Reporting requirements.** Any take pursuant to this paragraph (y)(5) resulting in lasting injury or death of a grizzly bear must be reported as indicated in paragraph (y)(8) of this section.
- (6) **What take of the grizzly bear is allowed in Management Area B of the North Cascades NEP area?**

Grizzly bears in Management Area B will be accommodated through take exceptions described in paragraph (y)(6)(i) of this section, in addition to those take exceptions allowed in Management Area A as set forth in paragraph (y)(5) of this section. “Accommodated” means a grizzly bear in Management Area B will not be disturbed unless it demonstrates a threat to human safety or to protect property.

 - (i) **Conditioned lethal take.** The Service may issue prior written authorization allowing an individual to kill a depredating grizzly bear within 200 yards (183 m) of legally present livestock. Such authorizations will be valid for 5 days, but the Service may extend the authorization of lethal take an additional 5 days if additional grizzly bear depredations or injuries to livestock occur and circumstances indicate that the offending bear can be identified. Such authorizations will be issued only if:
 - (A) A depredation has been confirmed by the Service or authorized agency;

- (B) The Service or an authorized agency determines it is not reasonably possible to otherwise eliminate the threat by deterrence or live-capturing and releasing the grizzly bear unharmed;
 - (C) The taking is done in a humane manner (*i.e.*, showing compassion and consideration for the bear and minimizing pain and distress);
 - (D) The taking is reported as indicated in paragraph (y)(8) of this section; and
 - (E) The grizzly bear carcass and any associated collars or ear tags are surrendered to the Service.
- (7) **What take of the grizzly bear is allowed in Management Area C of the North Cascades NEP area?** In addition to the take exceptions described in paragraph (y)(7)(i) of this section, all take exceptions allowed in Management Areas A and B as set forth in paragraphs (y)(5) and (6) of this section are also allowed in Management Area C of the NEP.
- (i) **Conditioned lethal take.**
- (A) The Service may issue prior written authorization allowing an individual to kill a grizzly bear in Management Area C when deemed necessary for human safety or to protect property. Such authorizations will be valid for 5 days, may be reissued by the Service if deemed warranted, and will be issued only if:
 - (1) The Service or authorized agency determines that a grizzly bear presents a demonstrable and ongoing threat to human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property and that it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed;
 - (2) The individual requesting the written authorization is the landowner, livestock producer, or designee (*e.g.*, an employee or lessee);
 - (3) The taking is done in a humane manner;
 - (4) The taking is reported as indicated in paragraph (y)(8) of this section; and
 - (5) The carcass and any associated collars or ear tags are surrendered to the Service.
 - (B) Any individual may take (injure or kill) a grizzly bear in the act of attacking livestock on private lands (*i.e.*, nonpublic lands) under the provisions set forth in this paragraph (y)(7)(i)(B):
 - (1) The individual is the landowner or livestock producer or a designee (*e.g.*, an employee or lessee).
 - (2) Any grizzly bear taken is reported to the Service or authorized agency within 24 hours.
 - (3) The carcass of any grizzly bear and the surrounding area is not disturbed to preserve physical evidence of the attack.
 - (4) The Service or authorized agency is able to confirm that the livestock or working dog was injured or killed by a grizzly bear. The taking of any grizzly bear without such evidence may be referred to the appropriate authorities for prosecution.

- (5) There is no evidence of excessive unsecured attractants (e.g., carcass piles or bone yards) or of intentional feeding or baiting of grizzly bears or wildlife.

(8) ***What are the reporting requirements for take of grizzly bears in the North Cascades NEP?***

- (i) ***Lethal take.*** Any grizzly bear that is killed by an individual under the provisions of this paragraph (y) must be reported within 24 hours to the Service's Washington Fish and Wildlife Office special reporting hotline: (360) 800-7960. Any grizzly bear that is killed by a Federal, State, or Tribal authority of an authorized agency under the provisions of this paragraph (y) must be reported within 24 hours by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service.
- (ii) ***Nonlethal take resulting in injury.*** Any direct take of a grizzly bear by an individual under the provisions of this paragraph (y) that does not result in death of a grizzly bear but causes lasting bodily injury must be reported within 5 calendar days of occurrence to the Service's Washington Fish and Wildlife Office special reporting hotline: (360) 800-7960. Any direct take of a grizzly bear by a Federal, State, or Tribal authority of an authorized agency under the provisions of this paragraph (y) that does not result in death of a grizzly bear but causes lasting bodily injury must be reported within 5 calendar days of occurrence by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service. Indirect incidental take, such as harm to a grizzly bear resulting from habitat modification, does not need to be reported under this provision.

(9) ***What take of the grizzly bear is not allowed in the North Cascades NEP area?***

- (i) Other than expressly provided by the regulations in this paragraph (y), all take is prohibited and considered a violation of section 9 of the Act. Take of a grizzly bear within the NEP area must be reported as set forth in paragraph (y)(8) of this section.
- (ii) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any grizzly bear or part thereof from the NEP taken in violation of this paragraph (y) or in violation of applicable Tribal or State laws or regulations or the Act.
- (iii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in paragraphs (y)(5) through (7) of this section.
- (iv) To avoid illegally shooting a grizzly bear, persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting. The act of taking a grizzly bear that is wrongfully identified as another species is not considered incidental take and is not allowed under this rule and may be referred to appropriate authorities for prosecution.
- (v) Any grizzly bear or grizzly bear part taken legally in accordance with the regulations in this paragraph (y) must be turned over to the Service unless otherwise authorized by the Service in writing.

- (10) ***How will the effectiveness of the grizzly bear restoration effort be monitored?*** The Service will monitor grizzly bears in the North Cascades NEP annually and will evaluate the status of grizzly bears in the NEP in conjunction with the Service's species status assessments and status reviews of the grizzly bear. Evaluations in the Service's status reviews will include, but not be limited to, a review of management issues, grizzly bear movements, demographic rates, causes of mortality, project costs, and progress toward establishing a population.

[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.govinfo.gov.