By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams,

Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD07

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reintroduce the endangered Mexican gray wolf (*Canis lupus baileyi*) into two designated recovery areas within the subspecies' probable historic range. The Blue Range Wolf Recovery Area consists of the entire Apache and Gila National Forests in east-central Arizona and west-central New Mexico. The White Sands Wolf Recovery Area consists of all land within the boundary of the White Sands Missile Range in south-central New Mexico together with designated land immediately to the west. The wolves reintroduced into these areas are classified as one nonessential experimental population under section 10(j) of the Endangered Species Act (Act) of 1973, as amended. The proposed rule sets forth management directions and provides for limited allowable legal take of wolves within a defined Mexican Wolf Experimental Population Area.

DATES: Comments from all interested parties must be received by July 1, 1996.

ADDRESSES: Send comments and materials concerning this proposal to the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. Copies of the draft Environmental Impact Statement or its summary can be obtained at this address.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Parsons (see **ADDRESSES** section) at telephone 505/248–6920; or facsimile 505/248–6922.

SUPPLEMENTARY INFORMATION:

Background

Legislative: The Endangered Species Act Amendments of 1982, Pub. L. 97–304, made significant changes to the Act, including the creation of section 10(j), which provides for the designation of specific populations of listed species as ''experimental populations.'' Under previous authorities of the Act, the Service was permitted to reestablish (reintroduce) populations of a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts, stemming from concerns by some about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a management tool.

Under section 10(j), a population of a listed species reestablished outside its current range but within its probable historic range may be designated as ''experimental,'' at the discretion of the Secretary of Interior (Secretary), if reintroduction of the experimental population furthers the conservation of the listed species. An experimental population must be separate geographically from nonexperimental populations of the same species. Designation of a population as experimental increases the Service's management flexibility.

Additional management flexibility exists if the Secretary finds the experimental population to be ''nonessential'' to the continued existence of the species. For purposes of section 7 (except section 7(a)(1), which requires Federal agencies to use their authorities to conserve listed species), nonessential experimental populations located outside national wildlife refuge or national park lands are treated as if they are proposed for listing. This means that Federal agencies are under an obligation to confer (as if the species were only proposed for listing) as opposed to consult (required for a listed species) on any actions authorized, funded, or carried out by them that are likely to jeopardize the continued existence of the species. Nonessential experimental populations located on national wildlife refuge or national park lands are treated as threatened, and formal consultation may be required. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

Individual animals used in establishing an experimental population can be removed from a source population if their removal is not likely to jeopardize the continued existence of the species (see Findings Regarding Reintroduction, below), and a permit has been issued in accordance with 50 CFR Part 17.22.

The Mexican wolf was listed as an endangered subspecies on April 28, 1976 (41 FR 17742). The gray wolf species in North America south of Canada was listed as endangered (except in Minnesota where it was listed as threatened) without reference to subspecies on March 9, 1978 (43 FR 9607). The Mexican Wolf Recovery Plan was adopted by the Directors of the Service and the Mexican Direccion General de la Fauna Silvestre in 1982. The plan guides recovery efforts for the subspecies, laying out a series of recommended actions. The recovery plan is currently being revised, and the revised document will more precisely define the points at which downlisting and delisting will occur.

Biological: This proposed experimental population rule addresses the Mexican wolf *(Canis lupus baileyi)*, an endangered subspecies of gray wolf that was extirpated from the southwestern United States by 1970. The gray wolf *(C. lupus)* is native to most of North America north of Mexico City. An exception is in the southeastern United States, which was occupied by the red wolf *(C. rufus)*. The gray wolf occupied areas that supported populations of hooved mammals (ungulates), its major food source.

The Mexican wolf historically occurred over much of New Mexico, Arizona, Texas, and northern Mexico, mostly in or near forested, mountainous terrain. Numbering in the thousands before European settlement, the Mexican wolf declined rapidly when its reputation as a livestock killer led to concerted eradication efforts. Other factors contributing to its decline were commercial and recreational hunting and trapping of wolves; killing of wolves by game managers on the theory that more game animals would be available for hunters; habitat alteration; and human safety concerns (although no documentation exists of Mexican wolf attacks on humans).

The subspecies is now considered extirpated from its historic range in the southwestern United States because no wild wolf has been confirmed since 1970. Occasional sightings of ''wolves'' continue to be reported from United States locations, but none have been confirmed through clear evidence. Recent field research has revealed no confirmed reports of wolves remaining in Mexico. Investigations are continuing.

When Mexican wolves were eradicated, their natural history was poorly understood. Appendix A to the draft Environmental Impact Statement provides life history and biological descriptions of Mexican wolves to the extent they are known or can be inferred from historical evidence, observations of captive Mexican wolves, and studies of gray wolves in other geographic regions. (The draft Environmental Impact Statement should be referred to for background and supporting information and literature references on all aspects of this proposed rule; see **ADDRESSES** section.)

Recovery efforts: The Mexican Wolf Recovery Plan's objective is to conserve and ensure survival of the subspecies by maintaining a captive breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in a 5,000 square mile area within the subspecies' historic range. (The recovery plan is currently under revision.)

A captive breeding program was established in the 1970's with two wild male Mexican wolves caught from 1977 to 1980 (from Durango and Chihuahua, Mexico) and one wild pregnant female wolf caught in 1978 (from Durango, Mexico). Two additional captive populations were determined in July 1995 to be pure Mexican wolves; each has two founders. The captive population has increased to 139 as of March 1996; 114 are held at 23 facilities in the United States and 25 at five facilities in Mexico. This population has been managed since 1990 for maximum reproduction to support the proposed reintroduction effort. The goal is to have at least 100 animals in the United States facilities prior to any releases into the wild.

On April 20, 1992, the Service issued a ''Notice of Intent to Prepare an Environmental Impact Statement on the Experimental Reintroduction of Mexican Wolves (*Canis lupus baileyi*) into Suitable Habitat within the Historic Range of the Subspecies'' (57 FR 14427). This notice also announced the time and place of public scoping meetings. The draft Environmental Impact Statement was released for public review and comment on June 27, 1995 (60 FR 33224). The location and times of 14 public meetings were also announced in this notice. In September of 1995, the Service announced that three public hearings would be held in October 1995 (60 FR 49628). All announced meetings and hearings were held. The public comment period closed on October 31, 1995. Approximately 18,000 people have commented or expressed an opinion on the draft Environmental Impact Statement. Following an analysis of the public comments, a final Environmental Impact Statement will be issued around July 1996.

The proposed Mexican wolf recovery actions and this proposed rule were developed by the Service after consultation with representatives of Federal, State, and other agencies, with potentially affected private parties, and with wolf experts nationally. Public comments received at and after scoping meetings for the draft Environmental Impact Statement were considered. (See draft Environmental Impact Statement, Chapter 1 section on Scoping and Chapter 5-Consultation and Coordination.)

Mexican wolf recovery areas: The Service has determined that the proposed reintroductions in the White Sands Wolf Recovery Area and the Blue Range Wolf Recovery Area have the greatest potential for successfully achieving the current recovery objective for Mexican wolves. (See paragraph (j)(6) of the proposed rule and Figures 1 and 2 for precise boundaries of these areas. Chapters 2 and 3 of the draft Environmental Impact Statement describe the selection of these two areas and provide detailed descriptions of them.)

The two wolf recovery areas are within the Mexican wolf's probable historic range. Both contain vast, relatively remote, and isolated expanses of federally-managed land. Suitable wolf habitat containing relatively abundant prey such as deer and elk is available. As the Mexican wolf is considered extinct in the wild in the United States, both areas are wholly separate geographically from any known, naturally-occurring nonexperimental populations of wild wolves. A larger Mexican Wolf Experimental Population Area, which also is wholly separate geographically from any known, naturally-occurring nonexperimental populations of wild wolves, is defined in the rule, paragraph (j)(6), (see Figure 3). Mexican wolf recovery is not proposed throughout this larger area. Its purpose is to establish that any wild wolf found in this larger area is a member of the nonessential experimental population, and therefore subject to the provisions of this rule, and not an ''endangered'' status wolf with full protection of the Act.

Reintroduction procedures: Male and female pairs from the captive population will be selected for release based on genetics, reproductive performance, behavioral compatibility, response to the adaptation process, and other factors. Selected pairs will be moved to the Service's captive wolf management facility on the Sevilleta National Wildlife Refuge in central New Mexico where measures will be taken to improve their adaptation to life in the wild.

Wolves will be reintroduced by a ''soft release'' approach designed to reduce the likelihood of quick dispersal away from the release areas. This involves holding the animals in pens on site for up to several months in order to acclimate them and to increase their affinity for the area. (The soft release approach is described in more detail in Chapter 2 of the draft Environmental Impact Statement.) The releases will begin in 1996 or as soon thereafter as feasible.

Approximately five family groups of captive raised Mexican wolves will be released over a period of 3 years into the White Sands Wolf Recovery Area, with the goal of reaching a long-term sustainable subpopulation of 20 wolves by 1998. In the Blue Range Wolf Recovery Area, approximately 14 family groups will be released over a period of 5 years, with the goal of reaching a long-term sustainable subpopulation of 100 wild wolves by 2004. The proposed action is flexible, using either the White Sands Wolf Recovery Area or the Blue Range Wolf Recovery Area, or both, and in the order of their use.

Management of the reintroduced population: The proposed nonessential experimental designation enables the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with ''endangered'' status. This includes limited allowance of both governmental and private take of individual wolves under narrowly defined circumstances. Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting, in the reintroduction area. It is also critical to obtaining needed State, tribal, local, and private cooperation. Thus, this flexibility will improve the likelihood of success.

Reintroduction will occur under management plans that allow dispersal by the new wolf subpopulations beyond the primary recovery zones where they will be released, into the secondary recovery zones of the two designated wolf recovery areas (see Figures 1 and 2). The Service and cooperating agencies will not allow the wolves to establish territories outside these wolf recovery area boundaries without landowner consent on private or tribal lands within the Mexican Wolf Experimental Population Area.

No measures are expected to be needed to isolate the experimental population from naturally occurring populations because no Mexican wolves are now known to occur in the wild. However, the Service will attempt to take every reasonable step to ensure that no naturally occurring wild population (see definition in Rule Glossary) that might exist within the recovery areas (which is considered highly unlikely) are affected by the reintroduction of captive-raised, nonessential experimental wolves. Surveys for wolf sign in these areas will be conducted prior to any reintroduction. If a naturally occurring wild population is found within one or both of the designated wolf recovery areas, the proposed reintroduction there would not go forward with such wild wolves present. Further, if a naturally occurring wild population is found within one or both of the designated wolf recovery areas within 90 days after members of the experimental population are initially released (which also is considered highly unlikely), all wolves in the reintroduced sub-population in such recovery area(s) would be removed and the reintroduction would not continue there. Such a wild population would have full endangered status under the Act.

Identification and monitoring: Prior to placement in release pens, the adult wolves will receive permanent identification marks and radio collars. Pups will receive surgically implanted transmitters prior to release and the pups will be recaptured and fitted with radio collars when they are large enough. Wild-born pups of the reintroduced population that are captured will be given a permanent identification mark and radio collar.

The Service and cooperating agencies will measure the success or failure of the reintroductions, and the effects of such success or failure on the conservation and recovery of Mexican wolves, by continuously monitoring, researching, and evaluating the status of released wolves in the wild. The agencies will prepare periodic progress reports, annual reports, and full evaluations after 3 and 5 years that will recommend continuation or termination of the reintroduction effort. The reports will also evaluate whether, and how, to use the second wolf recovery area, that is, the one not used initially.

Findings regarding reintroduction: The Service finds that the reintroduced experimental population is reasonably likely to become established and survive in the wild within the Mexican wolf's probable historic range. Under the proposed rule and based on available data, the Service projects that the Blue Range Wolf Recovery Area subpopulation will achieve the 1982 Mexican Wolf Recovery Plan goal of 100 wolves occupying 5,000 square miles by 2004.

The White Sands Wolf Recovery Area will support an estimated 20 wolves occupying 1,000 square miles by 1998. This likely would not be an independently viable subpopulation. Nevertheless, a subpopulation in this size range could be maintained through supplemental releases (or, speculatively, by natural immigration of wolves from another nearby population if one existed, e.g., from a reintroduced subpopulation in the Blue Range Wolf Recovery Area). Even if the White Sands Wolf Recovery Area subpopulation is not viable, *per se*, the Service finds that, through monitoring and research, such a reintroduction would provide vital information about the ecology and behavior of wild Mexican wolves and about the ability of captive-raised gray wolves to survive in the wild. A reintroduction there would provide a valuable assessment of the soft release approach to reintroducing captive-raised wolves. Further, wolves successfully reintroduced into the White Sands Wolf Recovery Area could be used as release stock for future reintroductions elsewhere, which would increase the likelihood of success compared to using captive-raised wolves as release stock.

Some members of the experimental population are expected to die during the reintroduction efforts after removal from the captive population. The Service finds that even if the entire experimental population died, this would not appreciably reduce the prospects for future survival of the subspecies in the wild. That is, future reintroductions still would be feasible even if the reintroductions proposed here failed. The individual Mexican wolves selected for release will be as genetically redundant with other members of the captive population as possible, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Service has detailed lineage information on each captive Mexican wolf. The captive population is managed for the Service under the American Zoo and Aquarium Association's Species Survival Plan program. The Association maintains a Studbook and provides an expert advisor for small population management.

Management of the demographic and genetic makeup of the population is guided by the SPARKS computer program. Kinship values, which range from zero to one, are a measure of the relatedness of an individual to the rest of the population. Wolves with higher kinship values are genetically well-represented in the population. Only those individuals whose kinship values are above the mean for the captive population as a whole will be used for release. In addition, the PEDPAC computer program will be used to identify suitable release candidates by examining the influence of removing an individual animal on the survival of the founders' genes. This management approach will adequately protect the genetic integrity of the captive population and thus the continued existence of the subspecies. The United States captive population of Mexican wolves has approximately doubled in the last 3 years demonstrating the captive population's reproductive potential to replace reintroduced wolves that die. In view of all these safeguards the Service finds that the reintroduced population would not be ''essential'' under 50 CFR 17.81(c)(2).

The Service finds that release of the experimental population will further the conservation of the subspecies and of the gray wolf species as a whole. Currently, no viable populations of the Mexican wolf subspecies are known to exist in the wild. No wild populations of the gray wolf species are known to exist in the United States south of Montana, Minnesota, Wisconsin, and Michigan. (The Service is in the process of reintroducing wild gray wolves from Canada into central Idaho and Yellowstone National Park in Wyoming.) The Mexican wolf is the most southerly and the most genetically distinct of all North American gray wolf subspecies. The Mexican wolf is also considered the rarest of the surviving (nonextinct) subspecies and has been accorded the highest recovery priority by international wolf experts.

Releasing captive-raised Mexican wolves furthers the objective of the Mexican Wolf Recovery Plan. The Plan, if fully implemented, will result in the reestablishment of a wild population of at least 100 Mexican wolves. Also, release of wolves into the wild will reduce the potential negative effects of keeping them in captivity in perpetuity. If a reintroduction into the wild from the captive population does not occur within a reasonable period of time, genetic, physical, or behavioral changes resulting from prolonged captivity could render the captive animals unsuited for reintroduction and devastate their prospects for recovery.

Designation of the released wolves as nonessential experimental is considered necessary to obtain needed State, tribal,

local, and private cooperation. This designation also allows for management flexibility to mitigate negative impacts of Mexican wolf recovery, such as livestock depredation. Without such flexibility intentional illegal killing of wolves would likely harm the prospects for successful recovery.

Potential for conflict with Federal and other activities: As indicated, considerable management flexibility has been incorporated into the proposed experimental population rule to reduce potential conflicts between wolves and the activities of governmental agencies, livestock operators, hunters, and others. No major conflicts with current management of Federal, State, private, or tribal lands are anticipated. Mexican wolves are expected to be able to tolerate most of the current land uses in the designated wolf recovery areas. However, temporary restrictions on human activities may be imposed around release sites, active dens, and rendezvous sites. Limited backcountry National Forest road closures may be necessary if illegal killings of wolves occur; this would not affect the White Sands Wolf Recovery Area. Also, the USDA's Animal Damage Control Division will discontinue use of M–44's and choking-type snares in ''occupied Mexican wolf range'' (see definition in proposed Section 17.84(j)(10)). Other predator control activities may be restricted or modified pursuant to a cooperative management agreement or a conference between the United States Department of Agriculture's Animal Damage Control Division and the Service.

The Service and other authorized agencies may harass, take, remove, or translocate Mexican wolves under certain circumstances described in detail in the proposed rule. Private citizens also are given broad authority to harass Mexican wolves (for purposes of scaring them away from livestock) and they may take (including to kill or injure) them under narrow circumstances, that is, in cases of defense of human life or when wolves are in the act of attacking their livestock (if certain conditions are met). In addition, ranchers can seek compensation from a privately-funded depredation compensation fund if depredation on their livestock occurs.

The Service does not intend to change the proposed ''nonessential experimental'' designation to ''essential experimental,'' ''threatened'', or ''endangered'' and the Service does not intend to designate critical habitat for the Mexican wolf. Critical habitat can not be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii). The Service foresees no likely situation which would result in such changes in the future. Nevertheless, to ensure that such changes do not occur, the following condition exists in the proposed rule, paragraph (j)(9)—if legal actions or lawsuits compel a change in the population's legal status to essential experimental, threatened, or endangered, or compel the designation of critical habitat for wolves within the experimental population area, then all reintroduced Mexican wolves will be removed from the wild and the experimental population rule will be revoked.

Public Comments Solicited

The Service solicits comments or suggestions on the proposed experimental population rule from the public, States, tribes, other concerned governmental agencies, the scientific community, industry, potentially affected landowners, or any other interested party. Comments must be received within 60 days of publication of this proposed rule in the Federal Register.

The Service will hold public hearings to obtain additional verbal and written information. The location, dates, and times of these hearings will be announced in a forthcoming issue of the Federal Register, in newspapers, and in a mailing to those persons on the Mexican Wolf Recovery Program mailing list.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service. These may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Impact Statement on the Service's proposal to reintroduce the Mexican wolf in the southwestern United States has been prepared and is available to the public (see **ADDRESSES** section). The draft Environmental Impact Statement should be referred to for analysis of the Proposed Action and alternatives to it; also, the draft Environmental Impact Statement contains detailed references for the background information provided here.

Required Determinations

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866. The rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The final rule will not significantly change costs to industry or governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Department Guidelines, and the Attorney General Supplemental Guidelines to determine the takings implications of the proposed rule, if it were promulgated as currently drafted. One issue of concern is the depredation of livestock by reintroduced wolves. However, such depredation by a wild animal would not be a ''taking'' under the 5th Amendment. One of the reasons for the experimental nonessential designation is to allow the agency and private entities flexibility in managing the wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

This proposed rule has been reviewed under Executive Order 12612 to determine Federalism considerations in policy formulation and implementation. Evidently, one or more counties in the vicinity of the wolf reintroduction area have enacted ordinances specifically prohibiting the introduction of the wolf (among other species) within county boundaries. However, the United States Congress has given the Secretary of the Interior explicit statutory authority, in section 10(j) of the Act, to promulgate this rule, and under the Supremacy Clause of the United States Constitution, this has the effect of preempting State regulation of wildlife to the extent in conflict with this proposed rule. Nevertheless, the Service has endeavored to cooperate with State wildlife agencies and county and tribal governments in the preparation of this proposed rule.

Author

The primary author of this document is Mr. David R. Parsons (see **ADDRESSES** section) at telephone 505/248–6920; or facsimile 505/248–6922.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), the table entry for ''Wolf, gray'' under MAMMALS is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Mammals							
*	*	*	*	*	*	*	
Wolf, gray	Canis lupus	Holarctic	U.S.A. (48 conterminous States. except MN and where listed as an experimental population)..	E	1. 6. 13. 35, 561, 562,_____.	17.95(a)	NA
Do	...do	...do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	...do	...do	U.S.A. (WY and portions of ID and MT—see 17.84(i))..	XN	561, 562	NA 17.84(i)	
Do	...do	...do	U.S.A. (specific portions of AZ NM. and TX—see 17.84(j))..	XN	NA	17.84(j).	
*	*	*	*	*	*	*	

3. Section 17.84 is amended by adding paragraph (j) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(j) Mexican gray wolf *(Canis lupus baileyi).*

(1) The Mexican gray wolf (Mexican wolf) subpopulations reestablished in the Blue Range Wolf Recovery Area and in the White Sands Wolf Recovery Area within the Mexican Wolf Experimental Population Area, identified in paragraph (j)(6) of this section, are one nonessential experimental population. This nonessential experimental population will be managed in accordance with these provisions.

(2) The Fish and Wildlife Service (Service) finds that reintroduction of an experimental population of Mexican wolves into the subspecies' probable historic range will further the conservation of the Mexican wolf subspecies and of the gray wolf species. The Service also finds that the experimental population is not ''essential,'' under 50 CFR 17.81(c)(2).

(3) You must not take any wolf in the wild within the Mexican Wolf Experimental Population Area except as provided in this rule. The Service may refer take of a wolf contrary to this rule to the appropriate authorities for prosecution.

(i) Throughout the entire Mexican Wolf Experimental Population Area, you will not be in violation of the Endangered Species Act (Act) for unavoidable and unintentional take (including killing or injuring) of a wolf, when such take is non-negligent and incidental to a legal activity, such as hunting, trapping, driving, or recreational activities, and you report the take promptly (within 24 hours) to the Service's Mexican Wolf Recovery Coordinator or to a Service appointed agency representative.

(ii) Also throughout the entire Mexican Wolf Experimental Population Area, excluding areas within the national park system and national wildlife refuge system, no Federal agency or their contractors will be in violation of the Act for take of a wolf resulting from any authorized agency action. This provision does not exempt agencies and their contractors from complying with section 7(a)(4) of the Act which requires a conference with the Service if they propose an action that is likely to jeopardize the continued existence of the Mexican wolf.

(iii) No land use restrictions will be imposed on private or tribal reservation lands for Mexican wolf recovery without the concurrence of the private owner or tribal government. On public lands, public and tribal agencies may temporarily restrict human access and disturbance-causing land use activities, such as timber harvesting and mining, within a 1-mile radius around release pens when wolves are in them, around active dens between March 1 and June 30, and around active wolf rendezvous sites between June 1 and September 30, as necessary. If documented illegal killing of a wolf occurs the United States Forest Service may, in consultation with the Service, close back-country roads on National Forest lands (except thoroughfares) for as long as necessary to protect the wolves.

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

(v) On public lands leased for grazing anywhere within the Mexican Wolf Experimental Population Area, including within the designated wolf recovery areas, when and where livestock are legally present, livestock owners or their agents:

(A) May harass wolves, for purposes of scaring them away, in the general vicinity (within 500 yards) of livestock (i.e., cattle, sheep, horses, mules, and burros or as defined in State and tribal wolf management plans as approved by us) in an opportunistic, noninjurious manner (no temporary or permanent physical damage may result) at any

time; provided that wolves cannot be purposely attracted, tracked, waited for, or searched out and then harassed; and provided that such harassment is reported to the Service's Mexican Wolf Recovery Coordinator or to a Service appointed agency representative within 7 days; and,

(B) May receive a written permit under the Act from the Service or an agency designated by the Service, valid for up to 45 days, to take (including kill or injure) a specific number of wolves actually engaged in the act of killing, wounding, or biting livestock; provided that, prior to the issuance of such a permit, six or more breeding Mexican wolf pairs occur in the Blue Range Wolf Recovery Area, or three or more breeding Mexican wolf pairs occur in the White Sands Wolf Recovery Area; and provided that an authorized agent of the Service, the United States Department of Agriculture's (USDA) Animal Damage Control Division, or the State has documented previous livestock loss or injury caused by wolves and agency efforts to resolve the problem are completed. Livestock owners or their agents must report take of wolves under such a permit to the Service's Mexican Wolf Recovery Coordinator or to a Service appointed agency representative within 24 hours. There must be evidence of freshly wounded or killed livestock by wolves.

(vi) On private or tribal land anywhere within the Mexican Wolf Experimental Population Area, property owners, livestock owners, tenants, or their designated agents:

(A) may harass wolves in the immediate vicinity (within 500 yards) of people, buildings, facilities, pets, livestock, or other domestic animals in an opportunistic, noninjurious manner (no temporary or permanent physical damage may result) at any time; provided that wolves cannot be purposely attracted, tracked, or searched out and then harassed; and provided that such harassment is reported to the Service's Mexican Wolf Recovery Coordinator or to a Service appointed agency representative within 7 days; and,

(B) may take (including kill or injure) any wolf actually engaged in the act of killing, wounding, or biting livestock; provided that livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves is present; and further provided that the take is reported to the Service's Mexican Wolf Recovery Coordinator or a Service appointed agency representative within 24 hours.

(vii) Authorized Service, USDA Animal Damage Control Division, tribe, and State employees may capture and/or translocate any Mexican wolf in the nonessential experimental population consistent with the Service's approved management plan or special management measure. Such plan or measure may include capture and/or translocation of wolves that prey on livestock, attack pets or domestic animals other than livestock on private land, impact game populations in ways which may inhibit further wolf recovery, prey on members of the desert bighorn sheep herd found on the White Sands Missile Range and San Andres National Wildlife Refuge, so long as the State of New Mexico lists it as a species to be protected, are considered problem wolves, are a nuisance, or are conflicting with a major land use, or are necessary for research. Authorized Federal, State, or tribal personnel may also carry out wolf capture and/or translocation for other purposes the Service has authorized, such as genetic management, and may use lethal methods of take when reasonable attempts to capture wolves alive fail and the Service determines that removal of a particular wolf or wolves from the wild is necessary. Authorized Federal, State, or tribal personnel may carry out any management measure that is a part of a Service approved management plan. Also, the USDA Animal Damage Control Division will discontinue use of M–44's and choking-type snares in ''occupied Mexican wolf range'' (see definition in proposed section 17.84(j)(10)). The Service may restrict or modify other predator control activities pursuant to a cooperative management agreement or a conference between us and the USDA's Animal Damage Control Division.

(viii) You may harass or take a Mexican wolf in self defense or defense of others, provided that you promptly report the harassment or take to the Service's Mexican Wolf Recovery Coordinator or to a Service appointed agency representative. If the Service or an agency authorized through a cooperative management plan determine that a wolf presents a threat to human life or safety, the Service or the authorized agency may place it in captivity or euthanize it.

(ix) Intentional taking of any wolf in the Mexican Wolf Experimental Population Area, except as described above, is prohibited. The Service encourages individuals authorized to take wolves to use nonlethal means. You must immediately (within 24 hours) deliver all wolves (live or dead), pelts, or parts taken to the Service's Mexican Wolf Recovery Coordinator or to a Service appointed agency representative.

(4) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the experimental population taken or possessed in violation of these regulations or in violation of applicable State or tribal fish and wildlife laws or regulations or the Act.

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

(6) The two designated recovery areas for Mexican wolves classified as nonessential experimental that lie within the subspecies' probable historic range are:

(i) The White Sands Wolf Recovery Area in south-central New Mexico, including all of the White Sands Missile Range, the White Sands National Monument, and the San Andres National Wildlife Refuge, and the area adjacent and to the west of the Missile Range bounded on the south by the southerly boundary of the USDA Jornada Experimental Range and the northern boundary of the New Mexico State University Animal Science Ranch; on the west by the New Mexico Principal Meridian; on the north by the Pedro Armendaris Grant boundary and the Sierra-Socorro County line; and on the east by the western boundary of the Missile Range (Figure 1). Actual releases of captive-raised wolves will take place, generally as described in our draft Environmental Impact Statement on Mexican wolf reintroduction, within the White Sands Wolf Recovery Area primary recovery zone. This is the area within the White Sands Missile Range bounded on the north by the road from the former Cain Ranch Headquarters to Range Road 16, Range Road 16 to its intersection with Range Road 13, Range Road 13 to its intersection with Range Road 7; on the east by Range Road 7; on the south by Highway 70; and on the west by the Missile Range boundary. The Service will allow the wolf subpopulation to expand into the White Sands Wolf Recovery Area secondary recovery zone, which is the remainder of the White Sands Wolf Recovery Area not in the primary recovery zone.

(ii) The Blue Range Wolf Recovery Area, including all of the Apache National Forest and all of the Gila National Forest in east-central Arizona and west-central New Mexico (Figure 2). Actual releases of captive-raised Mexican wolves will take place, generally as described in our draft Environmental Impact Statement on Mexican wolf reintroduction, within the Blue Range Wolf Recovery Area primary recovery zone. This is the area within

the Apache National Forest bounded on the north by the Apache-Greenlee County line; on the east by the Arizona-New Mexico State line; on the south by the San Francisco River (eastern half) and the southern boundary of the Apache National Forest (western half); and on the west by the Greenlee-Graham County line (San Carlos Apache Reservation boundary). The Service will allow the wolf subpopulation to expand into the Blue Range Wolf Recovery Area secondary recovery zone, which is the remainder of the Blue Range Wolf Recovery Area not in the primary recovery zone.

(iii) The boundaries of the Mexican Wolf Experimental Population Area are the portion of Arizona lying north of Interstate Highway 10 and south of Interstate Highway 40; the portion of New Mexico lying north of Interstate Highway 10 in the west, north of the New Mexico-Texas boundary in the east, and south of Interstate Highway 40; and the portion of Texas lying north of United States Highway 62/180 and south of the Texas-New Mexico boundary (Figure 3). The Service is not proposing wolf recovery throughout this area, only within the White Sands and Blue Range Wolf Recovery Areas described in paragraph (j)(6)(i) and (j)(6)(ii) of this subsection. The purpose of the larger experimental population area designation is to distinguish the legal status of any wolf found there. After the first captive wolf release, wolves found in the wild in the Mexican Wolf Experimental Population Area will be subject to management under this rule. If a wolf is captured inside the Mexican Wolf Experimental Population Area after the first release but outside the designated wolf recovery areas, it will be returned and re-released or put into the captive breeding program. If a wolf is found in the United States outside the boundaries of the Mexican Wolf Experimental Population Area (and not within any other wolf experimental population area) the Service will presume it to be of wild origin with full endangered status (or threatened in Minnesota) under the Act, unless evidence, such as a radio-collar or identification mark, establishes otherwise. If such evidence exists, the Service or an authorized agency will attempt to promptly capture the wolf and return and re-release it or put into the captive breeding program. Such a wolf is otherwise not subject to this rule outside the designated Mexican Wolf Experimental Population Area.

(7) If Mexican wolves of the experimental population occur on public lands outside the designated wolf recovery areas, but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will attempt to recapture any radio-collared lone wolf and any lone wolf or member of an established pack causing livestock depredations. The agencies will not routinely recapture and return pack members that make occasional forays onto public land outside the designated wolf recovery areas and uncollared lone wolves on public land. However, the Service will capture and return to a recovery area or to captivity packs from the nonessential experimental population that establish territories on public land outside the designated wolf recovery areas. If any wolves move onto private or tribal lands outside the designated recovery areas, but within the Mexican Wolf Experimental Population Area, the Service or an authorized agency will develop management actions in cooperation with the land owner including recapture if requested by the land owner or tribal government.

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

(9) The Service does not intend to change the ''nonessential experimental'' designation to ''essential experimental,'' ''threatened,'' or ''endangered'' and does not intend to designate critical habitat for the Mexican wolf. Critical habitat cannot be designated under the nonessential experimental classification. 16 U.S.C. 1539(j)(2)(C)(ii). The Service foresees no likely situation which would result in such changes. The Service would remove from the wild all reintroduced Mexican wolves designated as nonessential experimental and revoke the experimental status and regulations if legal actions or lawsuits compel a change in the population's legal status to essential experimental, threatened, or endangered or compel the designation of critical habitat within the Mexican Wolf Experimental Population Area, or if within 90 days of the initial release date, the Service discovers a naturally occurring population of wild wolves, consisting of at least two breeding pairs that for 2 consecutive years have each successfully raised two offspring, existing within the White Sands Wolf Recovery Area or Blue Range Wolf Recovery Area boundaries. The Service would manage and protect any such naturally occurring wolves as endangered species under the Act.

(10) Definitions—Key terms used in the rule have the following definitions.

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

Depredation. The confirmed killing or maiming of lawfully present domestic livestock on Federal, State, tribal, or other public lands, or private lands by one or more wolves. The Service, USDA Animal Damage Control, or Service-authorized State or tribal agencies will confirm killing or maiming of domestic livestock.

Engaged in the act of killing, wounding, or biting livestock. To be engaged in the pursuit and grasping, biting, attacking, wounding, or feeding upon livestock that are alive. If wolves are observed feeding on livestock carcasses, you cannot assume that wolves killed the livestock until proper authorities investigate and confirm that wolves were responsible for that or other livestock losses in the immediate area (1-mile radius).

Harass. Harass is defined as ''intentional or negligent act or omission which creates the likelihood of injury to the wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding, or sheltering'' (50 CFR 17.3). For the purposes of this proposed experimental population rule the Service permits only ''opportunistic,'' noninjurious harassment (see definition below) and limits it to approaching wolves on foot, horseback, or nonmotorized or motorized vehicle (no closer than 20 feet); discharging firearms or other projectile launching devices in proximity to but not in the direction of wolves; throwing objects in the general direction of but not at wolves; or making any loud noise in proximity to wolves. The basic intent is to scare or chase wolves from the immediate area without causing physical injuries.

Impact on game populations in ways which may inhibit further wolf recovery. The Service encourages States and tribes to describe unacceptable impacts on game populations in their management plans subject to our approval. Until such time the term will mean the following: Two consecutive years with a cumulative 35 percent decrease in population or hunter harvest estimates for a particular species of ungulate in a game management unit or distinct herd segment compared to the prewolf 5-year average (unit or herd must contain average of greater than 100 animals). If wolf predation is shown to be a primary cause of ungulate population declines (greater than 50 percent of documented adult or young mortality), then wolves

may be moved to reduce ungulate mortality rates and assist in herd recovery, but only in conjunction with application of other common, professionally acceptable, wildlife management techniques.

Occupied Mexican wolf range. (1) Area of confirmed presence of resident breeding packs or pairs of wolves or area consistently used by at least one resident wolf over a period of at least one month. The Service must confirm or corroborate wolf presence. Exact delineation of the area will be described by:

(i) Five-mile radius around all locations of wolves and wolf sign confirmed as described above (nonradio-monitored);

(ii) 5-mile radius around radio locations of resident wolves when fewer than 20 radio locations are available (for radio-monitored wolves only); or

(iii) 3-mile radius around the convex polygon developed from more than 20 radio locations of a pack, pair, or single wolf taken over a period of at least 6 months (for radio-monitored wolves).

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

Opportunistic, noninjurious harassment (see ''harass''). This is the only type of harassment the Service permits under the experimental population rule. Opportunistic means as the wolf presents itself (i.e., the wolf travels onto and is observed on private land or near livestock). You cannot track a wolf and then harass it or harass it by aircraft. You cannot chase and harass a wolf for an extended period of time (over 15 minutes). Any harassment must not cause bodily injury, maiming, or death.

Population of naturally occurring wild wolves. At least two breeding pairs of wolves successfully raising at least two young each year (until December 31 of the year of their birth), for 2 consecutive years in the Mexican Wolf Experimental Population Area.

Primary recovery zone. An area where the Service proposes to release Mexican wolves, and where the Service may return and re-release them if necessary, and where managers will actively support recovery of the reintroduced population.

Problem wolves. Wolves that have depredated on lawfully present domestic livestock or wolves from a group or pack including adults, yearlings, and young-of-the-year that were directly involved in the depredations; or fed upon the livestock remains that were a result of the depredation; or were fed by or are dependent upon adults involved with the depredations (because before these young animals mature to where they can survive on their own, they will travel with the pack and learn the pack's depredation habits). Wolves that have depredated on domestic animals other than livestock, two times in an area within 1 year. Wolves that are habituated to humans, human residences, or other facilities.

Secondary recovery zone. An area adjacent to a primary recovery zone which the Service does not propose for Mexican wolf releases, but in which the Service allows released wolves to disperse, and where managers will actively support recovery of the reintroduced population.

Take. The Act defines ''take'' as—''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)). See above definition of Harass which includes definition of permitted harassment, and see definition of Unavoidable and unintentional take below.

Unavoidable and unintentional take. Accidental, non-negligent take (see above definition of ''Take'') which occurs despite reasonable care, is incidental to an otherwise lawful activity and without the purpose to do so. Examples would include striking a wolf with an automobile or capturing a wolf in a trap set obviously for another species. Note—Shooting a wolf when the individual states he or she believed it to be an animal other than a wolf does not qualify as unavoidable or unintentional take. Shooters have the responsibility to be sure of their targets.

Wolf recovery area. A designated area where managers will actively support reestablishment of Mexican wolf populations.

Figures to § 17.84(j)

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Fig. 1: White Sands Wolf Recovery Area

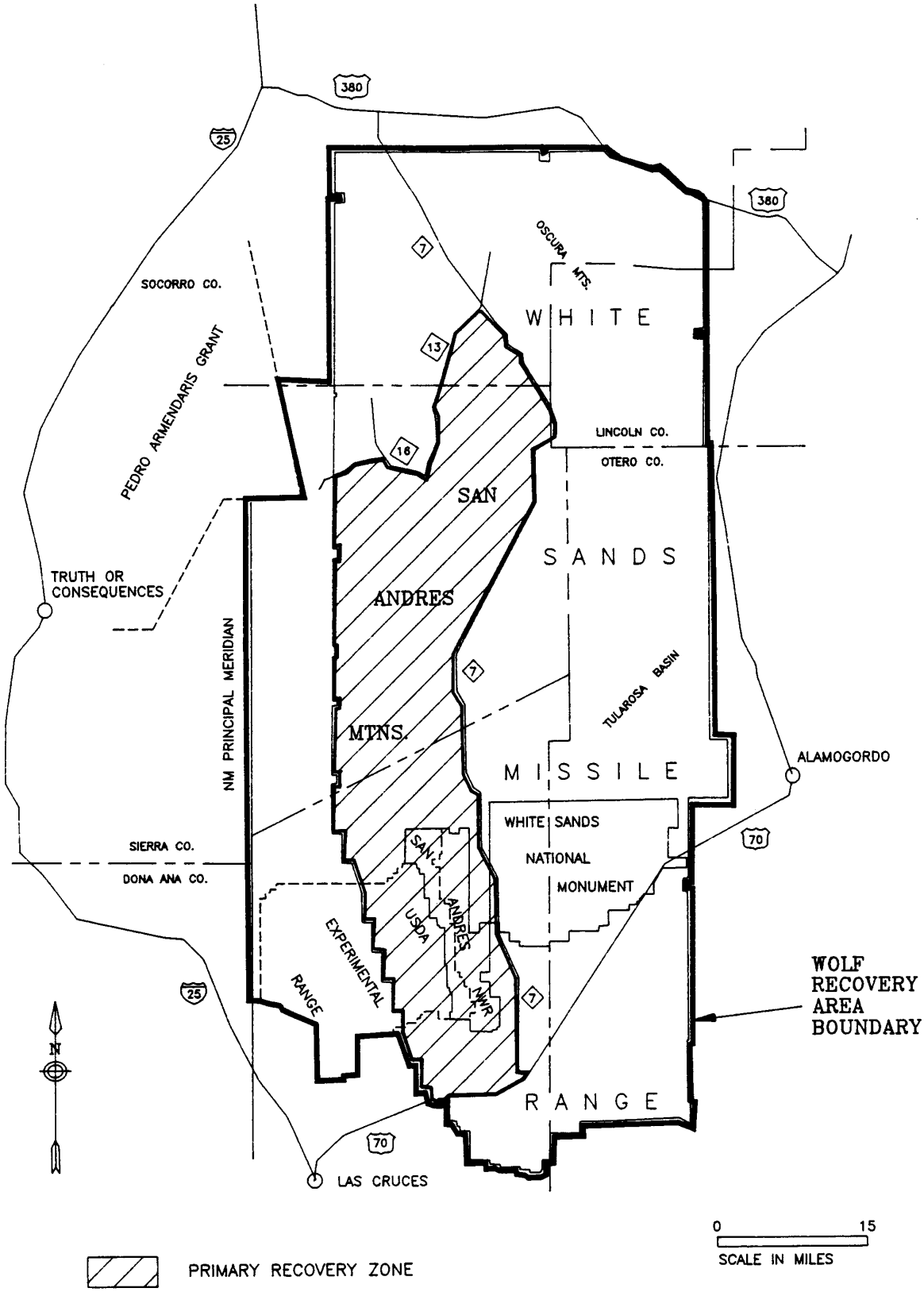
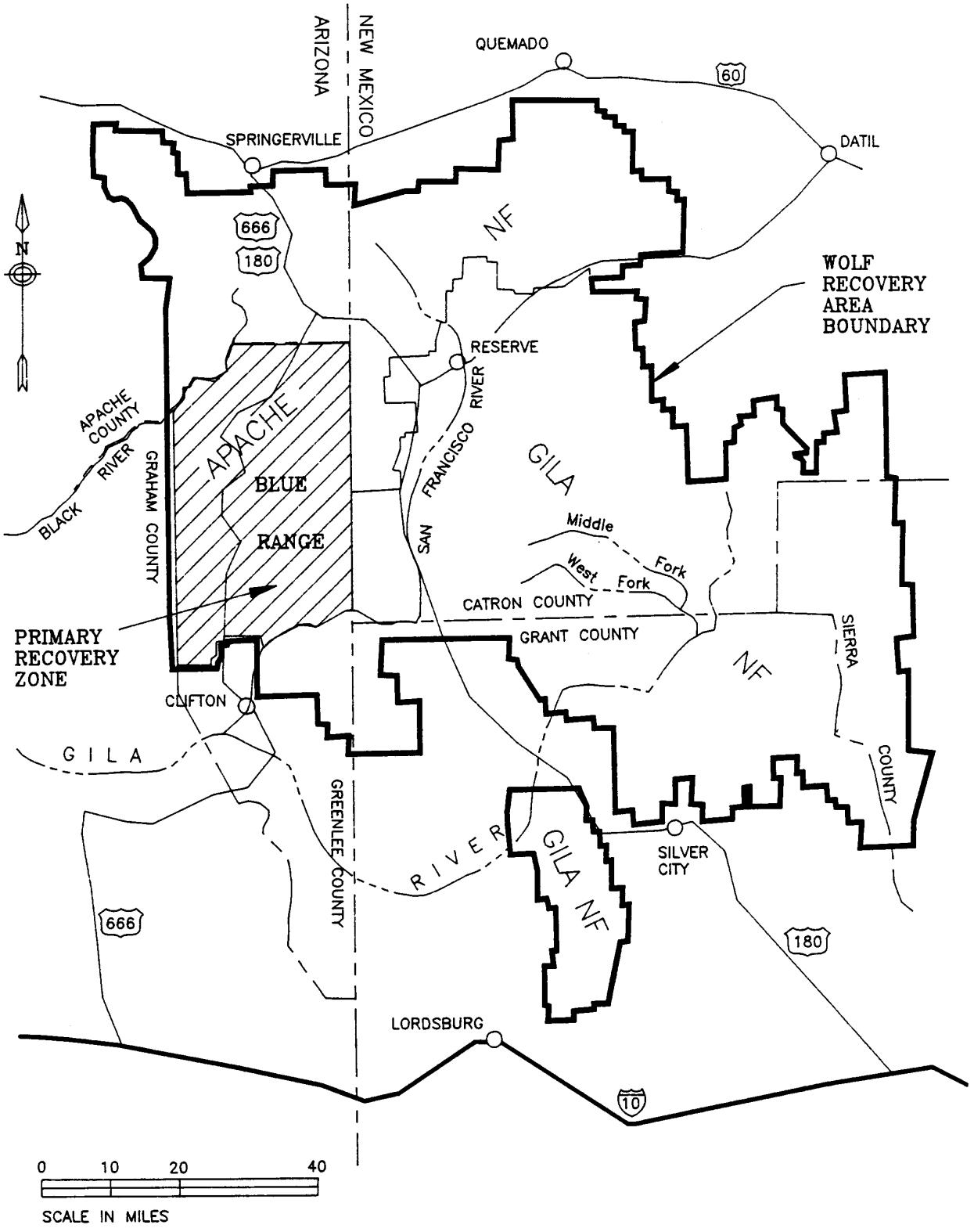


Fig. 2: Blue Range Wolf Recovery Area



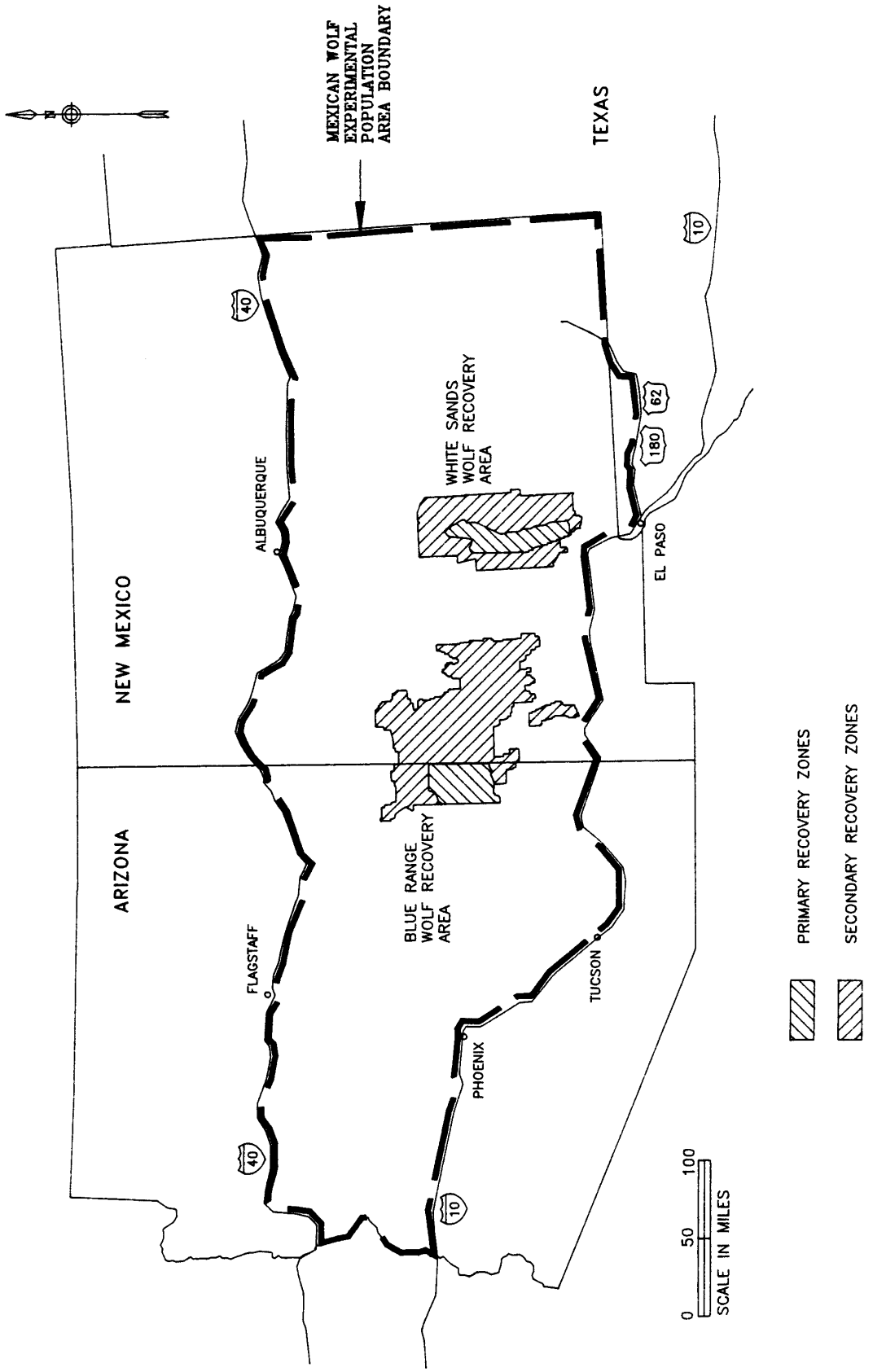


Fig. 3: Mexican Wolf Geographic Boundaries

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Dated: December 20, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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