

special regulations or the nonessential experimental population designations for the reintroduced gray wolf populations in Idaho, Montana, Wyoming, Arizona, New Mexico, and Texas, nor does it make any changes to the threatened classification and existing section 4(d) special regulation for gray wolves in Minnesota. Similarly, the existing critical habitat designations for portions of Minnesota and Michigan will remain unchanged, and will continue to be considered during consultations with other Federal agencies under section 7 of the Act. This final rule does not affect the listing or protection of the red wolf (*Canis rufus*).

The protection required of Federal agencies and the prohibitions against taking and harm are discussed in the *Summary of Factors Affecting the Species* section, factor D, *The adequacy or inadequacy of existing regulatory mechanisms*, above.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

Federal agency actions that may require consultation or conferencing, as described in the preceding paragraph, include activities by the U.S. Forest Service, the National Park Service, the U.S. Geological Survey, USDA/APHIS-Wildlife Services, the Bureau of Land Management, the U.S. Department of Transportation, the U.S. Environmental Protection Agency, and activities that we may undertake.

However, under section 10(j)(2)(C) of the Act, for those three areas currently designated as nonessential experimental populations in Montana, Idaho, Wyoming, Arizona, New Mexico, and Texas, for the purpose of interagency consultation under section 7 of the Act the gray wolf will continue to be considered a species proposed for

listing under the Act, except where the species occurs on an area within the National Wildlife Refuge System or the National Park System. For all other purposes of the Act, gray wolves that are currently designated as experimental populations shall continue to be treated as a threatened species. Furthermore, the existing special regulations found in 50 CFR 17.84(i) and 17.84(k) regarding the taking of wolves depredating on livestock in these experimental population areas continue to apply.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened wildlife. The prohibitions codified at 50 CFR 17.21 and 17.31 in part make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. Additionally, as discussed above, special regulations promulgated under sections 4(d) and 10(j) of the Act provide additional exceptions to these general prohibitions for the gray wolf.

It is our policy (59 FR 34272; July 1, 1994) to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that we believe could potentially harm or kill the gray wolf in the area where it will remain listed as threatened or endangered and may result in a violation of section 9 include, but are not limited to:

(1) Taking of gray wolves by any means or manner not authorized under the provisions of the existing special regulation established for the designated nonessential experimental population in Arizona, New Mexico, and Texas as long as that designation and special regulation remain in effect;

(2) Taking captive Southwestern (Mexican) gray wolves unless such taking results from implementation of husbandry protocols approved under the Mexican Wolf Species Survival Plan or are otherwise approved or permitted by the Service;

(3) Taking of gray wolves within the Western DPS in a manner not authorized under the provisions of the 4(d) special regulations finalized by this document, or in a manner not authorized under the existing experimental population regulations which will continue to apply to gray wolves in Wyoming and in parts of Idaho and Montana;

(4) Taking of gray wolves within the Eastern DPS in a manner not authorized in the existing section 4(d) special regulation for Minnesota, in the section 4(d) special regulation finalized by this document for other States in this DPS that are west of Pennsylvania, or in 50 CFR 17.31 for the Eastern DPS States east of Ohio;

(5) Intentional killing of a live-trapped wild canid that is demonstrably too large to be a coyote (that is, greater than 27 kg (60 lb)) in the Northeastern States that are included in the Eastern DPS; or

(6) Killing or injuring of, or engaging in the interstate commerce of, captive gray wolves which originated from, or whose ancestors originated from, the areas included within the Western, Eastern, or Southwestern DPSs, unless authorized in a Service permit.

We believe, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Taking of a gray wolf in defense of human life, or a taking by designated agency personnel in response to a demonstrable, but nonimmediate threat to human safety;

(2) Taking of wild gray wolves in the 16-State area where we have delisted the gray wolf;

(3) Taking of gray wolves under the provisions of the existing special regulations established for the three designated nonessential experimental populations in Arizona, New Mexico, Texas, Wyoming, Idaho, and Montana as long as those designations and special regulations remain in effect;

(4) Taking of gray wolves under the provisions of the special regulations under section 4(d) of the Act, as finalized at this time for threatened gray wolves in the Western DPS or the Eastern Gray Wolf DPS States which are west of Pennsylvania and excluding Minnesota;

(5) Taking of gray wolves under the provisions of the existing special regulation at 50 CFR 17.40(d) for Minnesota wolves; or

(6) taking of captive Southwestern (Mexican) gray wolves in accordance with husbandry protocols approved under the Mexican Wolf Species Survival Plan or other approvals or permits issued by the Service.