

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Regulations Governing the Gray Wolf in Minnesota****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service amends its regulations governing the gray wolf in Minnesota. In certain areas of the State the amendment will allow a carefully controlled taking of wolves by the public and by designated State and Federal employees. The taking will be allowed primarily in areas of recurring wolf depredation on livestock, and will not be permitted in areas where it might affect wolf recolonization of Wisconsin. The wolf population in the affected zones of Minnesota will be maintained at or above the level recommended in the Eastern Timber Wolf Recovery Plan, drafted by the Eastern Timber Wolf Recovery Team. Sale in interstate and foreign commerce of wolf parts taken by the public will be authorized, but will be controlled by a tagging system; sale of lawfully tagged pelts in foreign commerce also will be permitted, provided that the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora are met. In addition, the amendment will modify the Service's present wolf depredation control program by authorizing the placement of traps within one-half mile of farms where depredation has occurred, and by authorizing the killing of any wolf, including pups of the year, caught in such traps.

On July 14, 1982, the Service proposed the amendment in the *Federal Register* (47 FR 30528). In that publication, the Service notified the public that comments would be accepted and considered if they were received by the Service on or before September 13, 1982. Public hearings were held on the proposal in Minneapolis, Minnesota on August 4, 1982, and in International Falls, Minnesota on August 11, 1982. The information and opinions that were received as a result of the comment period and the public hearings now have been reviewed and analyzed, and the Service has decided to modify the proposed regulation to make it clear that until northern Wisconsin has been recolonized by wolves, the State will not allow taking of wolves, other than in direct response to depredation, in the areas of Minnesota from which such

recolonization is taking place, unless depredation problems in those areas become chronic. The regulations also have been modified to make it clear that they do not authorize trade in living wolves.

**DATES:** This rule will become effective October 11, 1983. Prior to that date the Service will seek a modification of the order entered by the United States District Court for the District of Minnesota in *Fund for Animals v. Andrus*, Civil No. 5-78-86 (decided July 25, 1978; supplementary decision filed August 31, 1978).

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**SUPPLEMENTARY INFORMATION:****Background**

For many years, the gray wolf (*Canis lupus*) population of Minnesota has been the subject of debate among members of the public, private wildlife conservation organizations, and government agencies. The population also has been the subject of a vast range of regulations, from absolute protection to no protection whatever; and every system has had its advocates and detractors. By the present rule, the Fish and Wildlife Service further refines the system under which the Minnesota population of the Gray Wolf is regulated, to make that system conform more closely to the recommendations of the various experts on the Eastern Timber Wolf Recovery Team. The Service believes that the change constitutes a more appropriate system for conserving the species than that which has previously been in place.

At one time, the gray wolf was present in virtually all of the conterminous 48 states, as well as in Canada and Mexico; but by the early years of the twentieth century the extensive habitat destruction and human persecution that accompanied the settlement of the North American continent radically reduced the range and the numbers of the species, and today the gray wolf population in northern Minnesota is the last large surviving segment of the species south of Canada.

In Minnesota, the gray wolf at one time inhabited nearly all of the State. By 1918, however, the species had been eliminated from the southern two-thirds of the State. Since that time, however, the number of wolves in Minnesota has been relatively stable, and probably has increased somewhat in recent years. The most notable recent change that the Minnesota wolf population has

undergone has been connected with the areas where the population is concentrated. A decade ago, the number of wolves in the far northeastern part of the State was greater than it is at present. For reasons that are reviewed in more detail below—having to do with the designation of large areas of the northeastern part of the State as wilderness—wolf numbers have declined in that area, and have increased somewhat in areas to the south and west of Superior National Forest. In recent years the wolf also has appeared again in northern Wisconsin, where it previously was believed to have been eliminated.

It is this factual background with which the Eastern Timber Wolf Recovery Team was confronted. Under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531-1543, the United States Fish and Wildlife Service has appointed "Recovery Teams" for various species of wildlife which have been listed as "Endangered" or "Threatened" by the Service. Each Recovery Team is composed of experts on the biology of the wildlife species to which it is assigned, and each is given the task of recommending, on an ongoing basis, the best conservation measures that can be designed to bring the species to the point where it no longer requires any of the protections of the Endangered Species Act. For the gray wolf in Minnesota, the responsible Team is the Eastern Timber Wolf Recovery Team. The Team was so named because, before 1978, the Service used the designation Eastern Timber Wolf (*Canis lupus lycaon*) when dealing with certain populations of the species, including the Minnesota population. In 1978, the Service elected simply to use the species name—gray wolf—to describe those populations, but the Recovery Team name was never changed.

In 1977, the Eastern Timber Wolf Recovery Team described six steps which it believed were necessary to restore the gray wolf to the point where it no longer would be either Endangered or Threatened. In making its recommendations, it recognized that even within the State of Minnesota, where the wolf population was stable and healthy, the species encountered different problems in different areas. The Team therefore suggested that the State be divided into five zones and that the species be afforded a different degree of protection in some zones than in others. Specifically, the Team recommended:

. . . (1) protection where needed to help restore the Eastern Timber Wolf to areas of

its original range and to preserve a naturally functioning population that can serve as a living museum, as a scientific subject, and as a reservoir to repopulate adjacent areas; (2) depredation control where wolves are killing domestic animals; (3) maintenance of wolf population densities at prescribed levels in semiwilderness areas through a combination of protection and regulated taking, so as to minimize depredation on livestock, illegal killing of wolves, and vilification of the species; (4) restocking of wolves into suitable areas of their former range, when feasible; (5) continued research and monitoring of wolf populations; and (6) provision of adequate prey populations through adequate habitat improvement.

The Service reviewed these recommendations and accepted them in principle, but did not deem it advisable to adopt any regulated taking program for the species, other than a trapping program that operated in direct response to depredation complaints. The Service's decision in this regard was reflected by a rule in 1978, 43 FR 9607 (March 9, 1978), which employed the Endangered Species Act's two-tiered system to declare the Minnesota wolf population "Threatened" while retaining the "Endangered" classification for the other remnant wolf populations in the lower forty-eight states. In that rule, the Service forbade all taking of wolves in the more settled areas of Minnesota, except in direct response to confirmed wolf depredation on livestock, or to protect human life, or for research or humane purposes.

By the present rule, the Service somewhat modifies these taking prohibitions, more closely conforming them to the recommendations of the Recovery Team by permitting the State of Minnesota to authorize a closely controlled taking of wolves by members of the public and/or by designated State or Federal officers, primarily in areas where wolf depredations on livestock have been recurrent and have not been adequately dealt with by the Service's present depredation control program. One limit on this authorization is that it shall not cause the wolf density in any Minnesota Zone to fall below the level which the Recovery Team recommended as "optimum."

Several factors have conjoined to convince the Service that its regulations should be changed in this way:

1. *The State of Minnesota Department of Natural Resources recently has changed its proposed Wolf Management Plan, both by adopting the Wolf Recovery Team's recommendations on the wolf density levels that should be maintained in the State's five zones, and by agreeing to adopt a wolf depredation control program that contains the*

*controls and safeguards of the Service's program.*

For several years, the State of Minnesota Department of Natural Resources and the Fish and Wildlife Service have been engaged in a dialogue over the best way to regulate the State's wolf population. The State has not, as is often asserted, favored wholesale killing of wolves; but it has expressed the view that the species would be better served if it were not as strictly protected as the Service has felt it should be. The State in 1980 drafted and submitted a "Management Plan" for the species, which in many ways resembled the approach recommended by the Service's Wolf Recovery Team.

One difference between the two approaches had to do with wolf density figures in the five zones which the Service has outlined for wolf conservation purposes within Minnesota. (See 50 CFR 17.40(d).) The Recovery Team established precise wolf density target figures for all five zones in the State. In contrast, the State established a range of population densities, rather than a single figure, for each of the zones. In 1982, however, the State of Minnesota agreed to adopt the Recovery Team's wolf density figures as its minimum acceptable level. In the Service's view, this change was significant and was an essential predicate to these regulations.

Equally significant and essential was the State's agreement to work under the limits and safeguards of the Service's depredation control program. This program was given its initial shape by the Service's rule of March 9, 1978 (43 FR 9607), which appears at 50 CFR 17.40(d). The terms of the rule were interpreted by the August 31, 1978 Order of the United States District Court for the District of Minnesota in *Fund For Animals v. Andrus*, Civil No. 5-78-66; and within the framework provided by the rulemaking and the Order, the program was given its final shape by administrative decisions of the Service. As the program now is constituted, when the Service receives a complaint that a wolf has been responsible for depredation of livestock, a trapper immediately is sent to the scene. The trapper is directed first to confirm whether a depredation has indeed occurred, as evidenced by observing a wounded animal or finding the remains of a carcass, and whether the culprit is, in fact, a wolf (as opposed to a coyote, or dog, or a bear); traps are set only upon that confirmation. In cases where the trapper confirms that a wolf is responsible for the depredation, traps are set on the affected farm and up to

one-quarter mile away from the farm's boundary (that being the distance limitation imposed upon the Service by the aforementioned Order in *Fund For Animals v. Andrus*). Once the traps are set, they are checked by the trapper at least daily. If the trapper succeeds in catching the animal or animals probably responsible for the depredation, or if no wolves are caught within ten days, the traps are removed if no additional losses occur during that period. If additional losses are confirmed at a given farm during the same year, trapping is conducted for a period of up to twenty-one days. If an immature wolf is caught, it is released—even if the trapper believes that the animal is from the pack responsible for the depredation—because the Service's present regulations forbid the "taking" of a wolf unless it is that very wolf which has committed the depredation, and immature wolves cannot kill large livestock animals.

The 1980 Management Plan submitted by the State of Minnesota did not incorporate a program of this sort, and the Service itself is now of the view that in two minor respects the restrictions in its present program hinder rather than help wolf conservation. Specifically, when the Service is restricted to a one-quarter mile distance from the boundaries of an affected farm, topography occasionally eliminates the possibility of effective trapping. Therefore, the Service in the present rule expands that distance limitation to one-half mile. The Service also now is of the view that there is no value in releasing immature pack members when they are part of a pack that has committed depredation. Although immature animals may themselves be unable to kill livestock, their existence and their need for food probably are major reasons for the occurrence of depredation, and they probably are learning to commit depredations. Also, farmers who have lost livestock to wolves and are unable legally to respond by setting traps understandably are outraged when a government trapper succeeds in catching a wolf only to release it again; and such outrage cannot serve the cause of wolf conservation. Therefore, the Service's amended regulations will authorize designated State and Federal employees to kill any wolf caught within the aforementioned one-half mile distance from a farm on which confirmed wolf depredations have taken place.

But the other features of the Service's present depredation control program will be retained, and will be used by the State. Thus, with respect both to wolf

depredation control and to wolf population management the State has expressed a willingness to implement the management program developed by the Service. These changes have been a key predicate to the Service's decision to adopt the present rule.

*2. The number of wolves in Minnesota has been remarkably stable for many years, despite quite radical changes in the way the law has treated the species. It therefore is impossible from a biological perspective to argue that complete protection of the species is necessary for the species' conservation, except in those areas of Minnesota where the wolf's population pressures are causing the species to recolonize areas of Wisconsin.*

In the preamble to the Service's July 14, 1982 proposed rule on the wolf, the history of the species in Minnesota was reviewed in some detail. The dominant fact emerging from that review was the stability of the wolf's numbers in the State, despite the variations in the treatment which the law has afforded the species over time. Twenty-five years ago the species was the subject of a bounty, could be killed by any person at any time, and could lawfully be hunted from airplanes. Then airborne hunting was forbidden and in the mid-1960's the wolf was removed from the bounty list, but the species still was subject to an aggressive predator control program. In 1967, because the species *Canis lupus* long has been nearly extirpated in all areas of the lower 48 States except Minnesota, it was included on a list of wildlife covered by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere ("the Pan American Convention"), 56 Stat. 1354; and in 1969, for the same reason, the species was included on the list of endangered species compiled under the Endangered Species Act of 1969, Pub. L. No. 91-135, 83 Stat. 275 ("The 1969 Act"). The 1969 Act, however, dealt only with commerce and did not in any way change the system under which the wolf was trapped in Minnesota.

Then, in 1973, by virtue of the "grandfather" provisions of the Endangered Species Act of 1973 ("the 1973 Act"), 16 U.S.C. 1533(c)(3) (1976), the entire species *Canis lupus* including, again, the Minnesota population, was carried onto the 1973 Act's list and a complete ban on taking was imposed by the statute. It was not until 1978, after it had received the Recovery Team's Report, that the Service adopted a rule reclassifying the Minnesota population of wolf as "Threatened." Meanwhile the wolf enjoyed complete protection

against taking; and, as has been noted above, even after the 1978 rulemaking the State's wolf population has been afforded almost the same protection.

During all of these changes in Federal and State law, the species' numbers in the State have remained relatively constant. At present, biologists estimate that there are 1200 or more wolves in the State. These numbers are not substantially different from those of four years ago, when the Minnesota population was reclassified as Threatened, or nine years ago when the population suddenly received total protection by virtue of being grandfathered onto the new Endangered Species Act's list, or 20 years ago during the period when members of the public received a bounty for wolf pelts. In fact, the population has remained relatively stable since 1918.

This stability is due in part to the fact that the species' population size is to some extent self-regulating. In years when large numbers of wolves are removed from the population, research indicates that both litter sizes and the proportion of females in litters tend to increase. Similarly, when there are many wolves and consequently few ecological niches for pups to fill, litter sizes and the proportion of females in litters tend to decrease. Another major contributing factor to the species' stability—perhaps the principal factor—is the continued relatively undeveloped nature of the wolf's primary habitat in northern Minnesota.

Yet some changes have occurred. As was noted above, one important change has involved the areas in the State where wolves are found. During the years when lumber companies were permitted to harvest timber in Minnesota's Arrowhead region, the resulting cut-over areas provided excellent browse for deer, and the consequently large deer population supported a large number of wolves. In the 1970's, however, large areas of the Arrowhead region were designated as "wilderness" under the Wilderness Act, 16 U.S.C. 1131-1136 (1976), and timbering therefore ceased. Consequently, the region's forests have been maturing, browse has been decreasing, deer populations in the region have been declining, and some of the wolves that were in the area and that depended on the deer population have tended to disperse to the south and east.

One effect of that dispersal may have been to create a sufficiently large wolf population in Minnesota's eastern counties adjoining Wisconsin to cause further dispersal and recolonization into

northwestern Wisconsin. This possibility of recolonization is extremely important, because if a viable wolf population were established in an area outside of Minnesota, there no longer would be a possibility that the lower 48 States' entire wolf population could be eliminated by an environmental catastrophe occurring in one State.

To summarize the foregoing: the overall status of the wolf in Minnesota is good. It is necessary for the present to afford virtually complete protection to those populations that are recolonizing Wisconsin, and no purpose would be served by reducing the protections afforded the species in zone 1. But it is clear that conservation of the species in the relatively settled areas of the State does not require that it be afforded complete protection against taking. The questions then can be phrased in the converse: would any conservation purpose be served by authorizing a limited take of wolves outside of zone 1 and outside of the colonizing populations? For the reasons stated below, the Service is of the view that that question can be answered in the affirmative.

3. *While the Service's research indicates that wolf depredation on livestock in Minnesota is a smaller and more fluctuating problem than many assert it to be, nevertheless in localized areas of the State, particularly along the southern border of Zone 3, the depredation problem has proven to be chronic and not amenable to the solutions which the Service has employed in the past.*

As with many things about the wolf, the problem of wolf depredation on livestock is highly complex and only partly understood by professionals, but nonetheless is the subject of great emotion and a huge spectrum of opinion in the public at large. Plainly, wolf depredation on livestock—sheep, poultry, and cattle—does occur, but it is uncommon enough behavior in the species as a whole to be called aberrant. In recent years, the Service has conducted research on the patterns of depredation of livestock by wolves, and its findings are the subject of a paper by Dr. Steven H. Fritts.

Certain conclusions can be drawn from this research. First, while the cause of depredation is not clear, apparently more is required than simply the presence of livestock in the immediate vicinity of wolves, since cases are documented where packs' territories have for years immediately adjoined pastures and where no harm has befallen livestock. Second, when depredation does occur, the trapping and killing of the responsible wolf

usually solves the problem; if the territory thus made vacant is then immediately occupied by another animal or pack, the new occupants often will not harm the livestock, unless there exist other causative factors for the depredation, such as poor animal husbandry. But it is also clear that there are areas in Minnesota where the depredation problem has proved to be intractable—where year after year serious depredation continues, despite the best efforts of the Service's trappers. Statistical illustration of this phenomenon is provided by the facts that two farmers have received nearly 50 percent of the total payments which the State of Minnesota has made under its program for compensating farmers for livestock losses caused by wolves, and that a relatively small number of other farmers received most of the rest of the payments. Within the context of the zones into which the Wolf Recovery Team and the Service have divided the State of Minnesota for purposes of wolf conservation [See 50 CFR 17.42 (1981)], the areas principally affected by such chronic depredation lie within zone 4. Zone 4 is for the most part sparsely settled, with some farms and substantial areas of semi-wilderness, and within the zone localized areas have been heavily victimized. The most notable of these areas is near Northome, Minnesota, where zone 4 meets the southern border of the much less heavily settled zone 3.

Some areas of zone 5 also may be affected by such depredation. Zone 5 contains most of the State's human population, and is heavily farmed. In the view of the Service and the Recovery Team, the zone no longer contains any habitat that is suitable for wolves; and until recently only a few wolves were present in the zone. In 1981, however, areas of the zone experienced heavy livestock losses due to wolves; but that phenomenon was not repeated in 1982, perhaps because of the Service's responsive trapping efforts in 1981, perhaps because of illegal killing of wolves, and perhaps because of other incompletely understood factors.

In areas where recurrent depredation appears, the Service is of the view that it would be consistent with sound conservation of the wolf to authorize a limited public trapping season for wolves, provided that the wolf population density in the affected zones does not fall below the level recommended by the Wolf Recovery Team. The Service's experts on the wolf have opined that, as a supplement to the Service's present depredation control programs, such a trapping season may well have a salutary effect on the depredation problem. They also have

advised, however, that in a particular year neither the Service's present program nor a public trapping season may result in the removal of an area's more mature and wary wolves—the wolves most likely to be directly responsible for depredation. To address this contingency, the Service has decided to permit designated State and Federal employees to attempt such removal in such years, again provided that the Wolf Recovery Team's optimum population density figures are used as a "floor." It is not possible to foretell the exact extent to which such a program will succeed in eliminating recurrent depredation; but it is clear that when the Wolf Recovery Team's population density levels are used as a safeguard, the program will not be inconsistent with the conservation of the State's wolf population.

It is also necessary, however, to give special protection to the population of wolves that is recolonizing Wisconsin. The State of Minnesota indicated, before the Service promulgated its proposed rulemaking, that it had no intention of authorizing a trapping season in the areas of Minnesota (within portions of St. Louis, Pine and Carlton Counties) where those populations are; but the Service's proposed regulations did not explicitly deal with those recolonizing populations. The public comment received on the Service's proposal has convinced the Service that matters would be made clearer if it made explicit what previously was implicit: the present regulations have been changed to make it clear that no public trapping season will be permitted in areas where the wolf population is recolonizing Wisconsin, until that recolonization is complete or unless that area experiences chronic and recurrent depredation problems of the sort which have been experienced along the boundary between zones 3 and 4.

4. *There is some indication that during the nine years that the wolf has been afforded virtually complete protection from public taking in Minnesota, wolves have lost some of their fear of man, to the overall detriment of the species.*

The phenomenon whereby wolves tend to lose their fear of man when they are protected from taking is one which is documented in a variety of contexts, and there is evidence that the phenomenon is occurring in at least some areas of Minnesota. Particularly in zone 4, in the years since the passage of the 1973 Act there has been a number of confirmed incidents in which wolves have entered areas of human habitation and shown little or no fear of man. In

one respect, these incidents bear a relation to wolf depredation on livestock: neither phenomenon should be exaggerated, but also neither should be dismissed.

An argument exists to the effect that since the likelihood of an actual wolf attack on a human being is extremely unlikely, there is no reason to consider the animals' boldness as a problem. But that argument ignores the evidence that where wolves become increasingly unafraid of humans, human fear of wolves and consequent illegal killing of wolves tend to increase. Neither the species nor the public can be well served by a conservation program that inevitably promotes the illegal killing of wolves.

Instead, the wolf would be better conserved and the public would be better served if the Service's regulations provided a mechanism which served to limit the likelihood of wolves' encroachment into areas of human habitation—if again, the mechanism ensured both that the wolf population in the affected zone did not fall below the optimum density recommended by the Wolf Recovery Team, and that the wolf recolonization of Wisconsin was unaffected. For this reason, although the regulated trapping season authorized by the regulations will take place primarily in the areas where wolf depredation has been recurrent, it is not exclusively restricted to those areas but allows some leeway to deal with the sorts of problems that might otherwise be occasioned by complete protection of the species.

#### Public Comment

In the Service's proposed rule, the public and all interested parties were asked to submit views, comments, data, etc., either in support of, or in opposition to, the proposal. In response, the Service received and considered 1,437 letters, as of October 4, 1982. Of that number, 1,398 opposed the rule. Of these, 451 letters resulted from a news alert from the Defenders of Wildlife and 314 were copies of a form letter from an unidentified organization. The Service also received two petitions, one containing 3,873 signatures, collected by Friends of Animals and Their Environment, opposed to the proposal, and one containing 231 signatures, collected by the Isabella Sportman's Club, in favor of it. Approximately 70 persons attended the public hearing at Minneapolis, with 14 providing testimony; of the 14, most opposed the proposal. Approximately 225 persons attended the hearing held at International Falls, Minnesota, with 35

presenting testimony; of the 35, the large majority favored the proposal.

The most extensive and detailed comments were received from a Minneapolis lawyer and a law clerk on behalf of ten organizations opposed to the rule. Hereafter, these comments will be referred to as "the ten organizations' comments". The following constitutes a summary of the comments received and the Service's responses thereto.

*Comment.* The Fish and Wildlife Service is legally not authorized to permit the public take of wolves which the regulations contemplate. This comment was made in detailed form by the ten organizations and in less detail by several hundred individuals, as well. In its detailed form, it was composed of three separate arguments. Each of these will be addressed separately.

First, the ten organizations argued that it is the duty of the Secretary of the Interior to conserve threatened species under the 1973 Act, and that since "conserve" is a term which the Act defines to include regulated taking only "in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved" (16 U.S.C. 1532(3)(1976)), the Secretary of the Interior must be able to find that such extraordinary population pressures exist before he authorizes a regulated public taking of the sort contemplated for the wolf.

*Response.* This argument ignores completely the language which the 1973 Act employs with respect to "Threatened" species. It also ignores the plain intent of both Houses of Congress.

Under the 1973 Act, no prohibitions automatically apply to a species listed as "Threatened" (16 U.S.C. 1533(d)(1976)). This is in marked contrast to the Act's treatment of species listed as "Endangered", which automatically receive a panoply of protections merely by virtue of their status (compare 16 U.S.C. 1533(d) with 16 U.S.C. 1538(a)(1976)).

For threatened species, the Act simply provides:

Whenever any species is listed as a threatened species pursuant [to the 1973 Act], the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under [citation] \* \* \* with respect to endangered species. \* \* \*

16 U.S.C. 1533(d) (1976) [emphasis supplied].

The Fish and Wildlife Service has consistently been of the view that this provision means what it says: for Threatened species the Service may impose any restriction, including the

taking restriction, that the Act automatically applies to Endangered species, but the Service is not mandated to apply restrictions. In the Service's view, the language with respect to "taking" in the Act's definition of conservation is modified, with respect to Threatened species, by virtue of the fact that the section authorizes the Service to issue such regulations as are deemed "necessary and advisable to provide for the conservation" of threatened species.

It is clear that both Houses of Congress strongly believed that by creating two categories of protection—Threatened and Endangered—under the 1973 Act, they were giving the Service flexibility to approach the protection of species differently, based on the degree of jeopardy the species face. If the available regulatory tools were identical for both Endangered and Threatened species, then that flexibility would be lost, and the distinction that the Service could draw between programs governing threatened species and programs covering endangered species would be very small. As described above, Congress did provide the needed flexibility in 16 U.S.C. 1533(d).

Another objection from the ten organizations' concerned the definition of "conservation." The organizations asserted that the Service has an affirmative duty not only to avoid placing a Threatened species in further jeopardy, but to bring the species to a point where the protections of the Act are no longer required. In this connection, they assert that the rule will disrupt the social structure of wolf packs, will jeopardize recolonization of the wolves in Wisconsin, and will bring the Minnesota Department of Natural Resources into the wolf conservation program—all to the detriment of the wolf.

The Service recognizes that its duty under the 1973 Act is to regulate Threatened species in a manner that will facilitate the recovery of those species. However, the Service rejects the assertion that its new regulations will not accomplish that. Specifically, the Service rejects the suggestions that its program will damage recolonization in Wisconsin, that the State's wolf population will be jeopardized by changes in pack's social structure, and that the participation of the Minnesota Department of Natural Resources in the Service's wolf conservation program will damage the wolf's chances of recovery. As is noted above, the Service has amended its proposal to reflect the fact that no trapping will be permitted in certain areas of the St. Louis, Pine and Carlton Counties in Minnesota which

are the crucial areas for wolf dispersal into Wisconsin, until or unless recolonization is complete or chronic wolf depredation occurs in those areas. As to the social disruption comment, the wolf population in Minnesota has been subject to such disruption for virtually the entire history of its contact with humans, without notable consequence to the population's stability.

And the Service categorically rejects the argument that participation by the Minnesota Department of Natural Resources in the wolf conservation program will jeopardize the wolf. Congress repeatedly stressed the importance of a Federal-State partnership in the conservation of Endangered and Threatened species under the 1973 Act, recognizing that States have resources which the Federal Government simply cannot match. Before and during the rulemaking process, the Minnesota Department of Natural Resources has repeatedly committed itself to implementing a strong enforcement program to protect and enhance the wolf's status in the State, and the Service is of the view that, given the changes in the State's proposed program noted above, participation by the Department of Natural Resources clearly will result in the conservation of the wolf population.

*Comment:* The ten organizations and several hundred private citizens opposed the rulemaking because the proposed regulations would authorize interstate and international commerce in legally taken wolf pelts. Specifically, these comments expressed the view that legalizing the sale of Minnesota wolf pelts will create a market and an incentive for illegal taking of Minnesota wolves.

*Response:* The Service is very conscious of the need to prevent the trade in illegally taken wolf pelts. But this problem is not different than that posed by the potential for illegal trade in other protected species, and it can be dealt with in the same way. Wolves presently can be taken in Alaska and Canada; and if wolf pelts from those jurisdictions are properly tagged and are accompanied by proper documents they legally can be imported into and sold in the lower 48 states. The present rule requires that any wolf pelt traded in interstate or international commerce be tagged with a locking seal in accordance with the regulations of the Minnesota Department of Natural Resources. Such locking seals are serially numbered, and are issued only in a number equal to the number of animals that may in a given year lawfully be taken. Any tampering with the locked seal will, by the nature

of the mechanism, be evidence; and any pelt bearing a tampered seal cannot be traded under the Service's regulations. This is the system employed by virtually every fish and game agency in the world to protect species whose numbers permit a harvest, but not an unlimited harvest; in the Service's view, it is clear that the system will protect the Minnesota population of the wolf, as well.

*Comment:* The comments submitted on behalf of the ten organizations, and a number of individual comments, suggested that the problem of wolf depredation on livestock in Minnesota does not merit a change in the Service's regulations which would permit the limited trapping of wolves by the public and by State and Federal officers. The comments asserted that the present depredation control program of the Service was adequate and was appropriately "fine-tuned." They also asserted that the compensation program administered by the State of Minnesota, under which farmers who suffer livestock losses to wolves are compensated by the State, provides adequate recompense to those relatively few farmers who experience large numbers of losses. These comments did not directly oppose either the Service's decision to expand the one-quarter mile limit imposed by the *Fund for Animals v. Andrus* order or its decision to authorize the killing of immature wolves that are trapped in response to a specific depredation.

*Response:* As is noted in the "background" discussion above, the Service agrees that wolf depredation is not a massive problem, and that it can be dealt with by a carefully managed predator control program. But the fact remains that there are some areas of the State where depredation problems have not been solved by the Service's prior control program; and the Service does not believe it is responsible simply to say that since the State of Minnesota presently pays for livestock losses, the agencies regulating the taking of timber wolves need themselves do nothing. Such action tends to breed both contempt for government and the sort of illegal taking of which the ten organizations decry. The Service believes, in order words, that the public and/or government taking authorized by these regulations is a useful additional mechanism to supplement the depredation control program that is presently in place.

*Comment:* The ten organizations and several individuals objected to what they perceived to be a reinstatement of the State of Minnesota's "Directed

Predator Control," program under which in the late 1950's and 1960's trappers certified by the State would be employed to trap wolves under the supervision of State conservation officers.

*Response:* As should be clear both from the regulations and the discussion in the "Background" section, above, the State of Minnesota will not institute a "Directed Predator Control" program. Individual response to specific depredations will continue to be by a program structured along the lines of the Service's present program—changed only with respect to the one-quarter mile limit and the killing of immature wolves.

*Comment:* The ten organizations and a number of individuals asserted that the present regulations violate the Order of the Court in *Fund for Animals v. Andrus*, insofar as the regulations will authorize the taking of wolves that have not been directly tied to a specific depredation on livestock.

*Response:* The Court in *Fund for Animals v. Andrus* was dealing only with the requirements which the Service had imposed upon itself by its 1978 rulemaking. The Court clearly did not express the view that the Service's regulations could not be changed to authorize different forms of taking; to the contrary, in the opinion of the United States Magistrate whose recommendation was adopted by the Court, the Service's 1978 regulations were far too restrictive. The Magistrate observed that "the present regulation maximizes the chances of wolf/human conflict." (Opinion of United States Magistrate Patrick J. McNulty, filed July 14, 1978, in *Fund for Animals v. Andrus*, Civil No. 5-78-66 (D.Minn.) at 21.) He observed that—

[T]he consensus of the experts, including those on the Recovery Plan Team, is that ideal conservation of the wolf must include a managed harvesting or thinning of both the natural prey and the wolves in Zone IV to maintain the optimum wolf population. *Id.* at 23.

In addition he asserted that "[a]n amendment to this regulation, and one is clearly required must be adopted in conformance with the mandated procedure." The Service now has followed the "mandated procedure" of the Administrative Procedure Act and the Endangered Species Act of 1973, and it is of the view that its regulation entirely conforms with the law. But to be assured that no conflict with the Court exists, the Service will approach the Court and move to dissolve the injunction entered in the *Fund for Animals* litigation; and the Service has delayed the effective date of this

rulemaking 60 days to allow the Court an opportunity to rule on the Service's motion.

*Comment:* The ten organizations asserted that under the 1973 Act State participation in endangered species programs can take place only under Section 6 of the 1973 Act. That Section requires, as a prerequisite to the completion of a cooperative agreement between a State and the Fish and Wildlife Service, that the State has developed an adequate and active conservation program for those Endangered and Threatened species that are resident in the State and subject to the agreement. From this provision, the ten organizations argued that absent such an "adequate and active" conservation program in the State of Minnesota the Service could not promulgate its regulations, and that the regulations constitute an unlawful delegation of the Service's authority. The organizations and a number of individuals also asserted that the State of Minnesota Department of Natural Resources has repeatedly demonstrated an unwillingness to enforce any prohibitions against the taking of wolves and a reluctance to in any way participate in a program for the conservation of the species, and therefore that the Service could not under any circumstances find the State's program adequate and active.

*Response:* The Service rejects the assertion that it cannot, in its regulations concerning Threatened species, adopt provisions of State law or develop a conservation program which relies upon or incorporates a State regulatory mechanism. As has been noted above, the Act provides that with respect to Threatened species the obligation of the Service is to adopt such regulations as it deems necessary and advisable for the conservation of the species. The Service takes the position that if a given State regulatory mechanism can facilitate the conservation of a Threatened species, then the Service need not itself duplicate such a mechanism, but can incorporate the State's mechanism into its own regulations.

The Service also rejects the assertion that its regulations concerning the Minnesota population of the wolf will constitute an unlawful delegation of authority to the State of Minnesota, and the claim that the wolf conservation efforts of the State's Department of Natural Resources in some way will be inadequate. On the first point, the Minnesota Department of Natural Resources will not have unfettered discretion in implementing its

management program. The Service's regulations have been carefully drawn in accordance with the recommendations of the Wolf Recovery Team; strict limitations are imposed both on the areas where the State can permit wolves to be taken and on the wolf population densities which must be present before taking can be permitted; and once the regulations are in effect, the Service will continue its wolf conservation activities in partnership with the State. For its part, since December, 1979, the Minnesota Department of Natural Resources has had a cooperative agreement with the Service, for the conservation of endangered and threatened vertebrate species in the State, including the wolf. Under that agreement, the State has been pursuing a wolf research program which is complementary to the Service's own effort; and as was noted above, under the present regulations the State has committed itself to a broadened effort in the area of wolf conservation. But the existence or non-existence of the agreement is in the Service's view simply immaterial to the validity of the Service's decision with respect to these regulations. That decision must be judged under section 4(d) of the 1973 Act; and under that section the Service believes its regulations are sound from both a biological and a legal perspective.

*Comment:* The ten organizations asserted that there was no rational basis for the provision in the amended regulations which would authorize designated employees or agents of the Service, other Federal land management agencies, and/or the Minnesota Department of Natural Resources, to take wolves if, during a particular year, public taking has not resulted in the removal of the number of wolves which the State has permitted to be taken, and if that additional take would not reduce the density in the zone below the levels specified by the Recovery Team.

*Response:* The reason the Service included this provision in its regulations has to do with the possibility that, in a particular year, the Service's depredation control program coupled with public taking may not be successful in removing, from an area of chronic wolf depredation, sufficient numbers of wolves to make it unlikely that such depredation will recur. In such a circumstance, it is the Service's view that the pertinent State and Federal agencies should have the authority to themselves to accomplish such removal. This is not to say that the agencies probably will find it necessary to take such action; rather, the Service simply

believes that it is prudent to have a mechanism available on the chance that it might be needed.

*Comment:* The ten organizations asserted that the Service's regulations require the preparation of an environmental impact statement. They argued that the regulation would have significant impacts on the social structure, actual numbers, and recolonization potential of Minnesota wolves; that there were many unknown risks inherent in the regulations; that the regulations were controversial; that "even a small adverse impact on the timber wolf will create major existence value concerns throughout the land"; and that the decision to permit a sport season on threatened species involves "a major reinterpretation" of the word "conservation" as it is used in the 1973 Act.

*Response:* The Service is of the view that its regulations do not require an environmental impact statement. The regulations do not reflect a reinterpretation of the Service's authority. Under the authority provided by section 4(d) of the 1973 Act, the Service has on several occasions adopted regulations which authorized the regulated taking of Threatened species where no finding was made that the taking was mandated by population pressures. The Service's 1978 rule concerning the wolf is a case in point. As to the consequences of the present regulations for the wolf, the environmental assessment which the Service has prepared to accompany the regulations indicates that the regulations clearly will not adversely affect the species. The impacts on the social structure of wolf packs will be no different than the impact which the species has experienced for decades. Wolf populations will be reduced only in localized areas, and in no zone will they be permitted to fall below the level recommended as optimum by the Wolf Recovery Team. The recolonization potential of the wolf will be protected by the State's commitment that during the period that recolonization of Wisconsin is taking place, public trapping will not take place within any area essential to that recolonization unless wolf depredation in such an area becomes chronic. That protection is now incorporated into the Service's regulations, as well. The "existence value concerns" of Americans with respect to the wolf do not constitute environmental effects cognizable by NEPA, and the Service's regulations should not in any event prompt such concerns since the regulations are consistent with the conservation of the

species. Nor does the controversy over the regulations mandate the preparation of an environmental impact statement. The regulations of the Council on Environmental Quality provide: "Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered [by an environmental impact statement] in all cases". 40 CFR 1500.8(a). But this provision contemplates a situation where the impacts of the major action are the subject of a factually supportable dispute. The Service's regulations do not present such a situation, although there clearly are members of the public who fear that the regulations will damage the wolf in Minnesota or Wisconsin, the biologists who are expert on the subject are of the view that such apprehension is unwarranted.

*Comment:* The ten organizations and several individuals allege that the Service proposed the regulations in response to political pressure.

*Response:* As was noted above, the Service and the State of Minnesota have long engaged in a dialogue with respect to the proper manner in which the wolf should be conserved. The present regulations are a highly structured, finely tuned response to what the Service perceives as imperfections in its present system of regulation. Before and during this rulemaking, elected representatives of the State of Minnesota did express interest in changing the regulations which the Service adopted in 1978. However, that interest was not uniformly in favor of the regulations which the Service ultimately proposed, nor was their response to the Service's proposal uniformly favorable. Certain elected representatives strongly asserted that the regulations did not go far enough in giving the State of Minnesota authority over the wolf; others expressed the view that they went too far and expressed concern for the regulations as they were proposed. The Service has considered all of their comments along with all others. However, the decision of the Service set forth in these regulations is premised upon the conservation needs of the species.

*Comment:* The ten organizations alleged that the Service's public hearings on these regulations were scheduled "in bad faith", because one public hearing, held in Minneapolis (called "pro-wolf territory" by the ten organizations) was scheduled during a work day, while the other public hearing, held in International Falls, Minnesota ("anti-wolf territory",

according to the ten organizations), was held during an evening.

*Response:* The scheduling of both public meetings was based on the times during which appropriate meeting facilities were available. The Service sought to provide appropriate hearing facilities at the least possible expense to the government. In Minneapolis, this dictated the use of government facilities which were available only during the work day. At International Falls, however, there was no suitable government facility and the Service was obliged to utilize an auditorium at Rainy River Community College, which was available during evening hours.

*Comment:* A large number of individuals opposed the proposed regulations because they authorized the use of steel traps—a method of taking which the commenters considered to be inhumane.

*Response:* The Service recognizes that a segment of the public opposes the use of steel leg hold traps for all purposes. However, the steel trap when properly used is an effective and humane method of taking wolves; and in the Service's view the taking of wolves on certain occasions is necessary. In those instances, the use of leg hold traps is more humane than other available methods of taking.

*Comment:* Several persons objected to the Service's proposal because in their view the regulations would lead to more persons keeping wolves as pets, to the detriment of the species and perhaps of pet owners as well.

*Response:* The Service agrees that trade in Minnesota wolves as pets is inappropriate, and it is not the Service's intention by these regulations to permit such trade. Therefore, the proposed regulations have been modified to permit the sale in interstate and foreign commerce only of lawfully taken wolf pelts.

*Comment:* Several individuals suggested that a problem might develop under the new regulations by virtue of the fact that persons might mistake coyotes for wolves or wolves for coyotes.

*Response:* Persons do mistake coyotes for wolves, and wolves for coyotes, and it is likely that wolves occasionally are blamed for coyotes' actions. But the Service is unable to perceive how the present regulations will cause this phenomenon to operate in some more detrimental fashion than it does at present.

*Comment:* Several members of the public urged the Service to deal with wolf depredation problems and any other problems that wolves might pose.

using non-lethal methods. A number of these persons specifically urged the Service to experiment with the use of guard dogs or fences to protect livestock.

*Response:* For several years, the Service has been experimenting with nonlethal methods of deterring depredation. Specifically, during the four years that the Service has operated under the regulations which were adopted in 1978, its wolf depredation controllers have employed two forms of taste aversion. In one form, wolf pups trapped near the sites of confirmed depredation have been force-fed meat of the type involved in the depredation, which has been injected with a harmless but highly nauseating chemical. In the other form, baits consisting of the flesh and hide of cattle, and containing the same nauseating chemical, were placed on two farms that had experienced chronic losses of cattle to wolves. The Service's controllers also have placed flashing lights, of the type used to mark road construction, on or near farms that have experienced depredation. More recently, they have started a pilot project on the use of guarding dogs. The data from these experiments is yet incomplete, but it suggests that such tools can be effective under certain circumstances. Nonetheless, the Service has been unable to prevent the sort of chronic depredation discussed in the "Background" section, above. The suggestion that the Service—or farmers affected by depredation—should experiment with fences simply misunderstands the problem associated with depredation. Wolves are not deterred by barbed wire fences or electric fences, and the species probably would have no difficulty dealing with solid fences of some height—although the price associated with the construction of such fences would be prohibitive in any case. Indeed, that is the difficulty with any elaborate fencing scheme: the price associated with it, when the size of even a single livestock pasture is taken into consideration, is prohibitive, and the likelihood of success is highly problematical.

*Comment:* A large number of individuals, and the ten organizations in their comments, expressed the view that the persons presently employed by the Service to control depredation do satisfactory work, and that therefore it is foolish to change a workable system.

*Response:* The Service agrees that in large measure its depredation control program has been a success; but it does not agree that the system needs no supplementation or refinement. As is noted above, there are areas where the

depredation control program has not succeeded in solving chronic depredation problems; and the limited nature of the present program will not affect the sorts of problems that are occasioned by wolves that have not developed a strong fear of humankind. Therefore, the Service is supplementing—not replacing—the depredation control program with the mechanisms in the present regulations.

*Comment.* Many members of the public asserted that wolves are too beautiful and intelligent to kill, that animals have the right to live unmolested, and that the wolf belongs to all Americans, not merely to citizens of northern Minnesota.

*Response.* These comments, while well-meant, do not reflect several realities: wolf depredation is a problem which in some measure the Service has not yet been able to solve; wolves are a stable healthy population in Minnesota; and the Endangered Species Act is not designed to protect all members of a threatened species, regardless of the consequences of such protection. Complete protection of species such as the wolf may be as harmful, or more harmful, to the species' long term chances for survival as the complete absence of protection. It is far better in the Service's view to seek a middle ground, protecting the species where necessary to encourage its recolonization in appropriate habitat, and maintaining an optimum population in other areas.

*Comment.* A number of individuals suggested that the Service's new regulations may cause the wolf to become extinct.

*Response.* As is discussed in some detail above, it is clear that the Service's changed regulations will in no way damage the viability of the Minnesota population of the wolf, nor will they damage the species' recolonization of Wisconsin.

*Comment.* A number of individuals question the ability of the State of Minnesota to properly perform its role in the conservation of the wolf. They alleged that the State lacks funds to carry out a program that is consistent with the wolves' needs, that State politics might force the Minnesota Department of Natural Resources to take actions detrimental to the wolves' welfare, and that the State might allow excessive killing of the wolves.

*Response.* The Service disagrees strongly that the Minnesota Department of Natural Resources will abandon its responsibility under these regulations; and the regulations themselves provide ample safeguards for the species. The wolf population levels determined by

the Wolf Recovery Team to be "optimum" will constitute the "floor" below which wolf populations in the various Minnesota zones will not be allowed to fall. No public taking will be permitted in zones 1 and 2; and in zone 3, such taking will be permitted only in a relatively small area along the southern boundary of the zone, in response to chronic depredation problems experienced in the adjoining areas of zone 4. Although the State of Minnesota, like many other governmental entities, presently is experiencing financial difficulties, the Minnesota Department of Natural Resources has repeatedly stated that it will have the ability to fund its wolf conservation program in an adequate fashion.

*Comment.* A number of individuals asserted that the Fish and Wildlife Service has no management philosophy for the wolf; that the wolf could be relocated to other areas, rather than simply killed; and that the regulations do not enhance the species' chance for recovery.

*Response.* The Service does have a very clear management philosophy for the wolf: it is the philosophy established by the Wolf Recovery Team. The Service has repeatedly attempted to interest the governments of other States in reintroducing wolf populations into appropriate areas of the species' former range. These attempts have to date proved unsuccessful, but the Service does not intend to forego them. It is clear, however, that if natural recolonization can occur, such recolonization is far easier for State governments to support than is human-sponsored introduction. The Service does not believe that relocation of depredating wolves, or shuffling of wolves from one area to another to achieve variations in would population densities within Minnesota, present viable conservation options. Wolf relocation was practiced by the Service between 1974 and 1978. Wolves that were trapped in response to depredation complaints were moved into wilderness areas in zone 1. The results were quite unsatisfactory: the wolves uniformly moved away from the areas to which they were translocated, and often moved out of the wilderness altogether. This effect is quite natural, since the wolf population density in the areas to which the wolves were moved was already at or near its wolf carrying capacity. In short, translocation of this sort did no benefit either to the translocated wolf or the species as a whole.

*Comment.* Several members of the public suggested that, rather than authorize the taking of wolves, the

Service and/or the State of Minnesota should limit the taking of deer, in order that wolves need not resort to livestock for a food source.

*Response.* As is noted above, it is not clear that the absence of other available food is the only, or even the principal reason that wolves commit depredation on livestock. But the Minnesota Department of Natural Resources is of the view that Minnesota's deer herd should be the subject of intensive conservation efforts, and the Department is pursuing those efforts. Its annual deer season is adjusted to reflect the status, in any particular year, of the herd; and the Department is actively engaged in habitat management and research in order that future years will yield more and healthier deer.

*Comment.* A number of persons argued that wolf depredation often results from a failure, on the part of livestock owners, to comply with State livestock sanitation laws. These persons were of the view that such laws should be more rigorously enforced before any changes are made in the program by which the Service deals with depredation.

*Response.* The Service agrees that enforcement of the State's livestock sanitation laws is essential; and the Service may refuse to provide depredation control to livestock owners who have failed to take appropriate measures under those laws. However, in the Service's view, most livestock owners in Minnesota attempt to comply with those laws; and the amount of wolf depredation that results from a failure to comply with those laws is relatively small. In short, more rigorous enforcement of those laws would not, in the Service's view, work any very substantial change on the patterns of wolf depredation in the State.

*Comment.* Several persons suggested that wolves should be confined within a sanctuary area—thirty five thousand acres was one size mentioned—and that any wolves outside that area should be the subject of legal taking by any member of the public.

*Response.* The Service sees no justification for such a proposal. Although wolves do pose some problems in their interaction with human beings in some areas of Minnesota, the discussion in the "Background" section makes it clear that those conflicts, though real, are localized and capable of control by limited taking. A sanctuary of 35,000 acres, or even of a larger size, would be able to support fewer wolves than can now be supported in a manner consistent with both a stable wolf

population and an undisturbed human population.

*Comment:* A number of persons argued that there are too many wolves in Minnesota, that they should be "thinned out", and that the species is neither Endangered nor Threatened.

*Response:* The Service is of the view that the wolf population in Minnesota is healthy, but that a general across-the-board "thinning" of the entire population is not called for. Rather, in the Service's view, there may be reason to reduce wolf numbers in certain local areas, in response to certain specific phenomena. The Wolf Recovery Team has stated that until a viable wolf population is established elsewhere in the United States, the species in Minnesota should not be considered for removal from the list of Endangered and Threatened wildlife. The Service shares that view.

*Comment:* Several persons suggested that the increased taking authorized by these regulations, when combined with the taking occasioned by depredation control and by poachers might rise to the level where the Minnesota wolf population would be unable to sustain its numbers.

*Response:* The service has carefully considered these arguments, and it is of the view that they are not warranted. The Service's regulations provide that no public taking shall be authorized in any zone unless the wolf population in the zone after the take would be at or above the density levels suggested by the Wolf Recovery Team. As a further safeguard, the regulations provide that in zone 4 no more than 50 wolves will be taken by the public in the first year under the regulations, in order that the effect of the regulations can be monitored and observed. In short, the Service is of the view that its regulations constitute a careful and conservative approach to the authorization of public taking.

**National Environmental Policy Act**

An environmental assessment has been prepared in conjunction with this rule. Based on the record compiled in the decision making, and on the environmental assessment, the Fish and Wildlife Service has determined that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C) (1976) and the implementing regulations at 40 CFR Parts 1500-1508.

**Determinations Under Executive Order 12291 and the Regulatory Flexibility Act**

The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is because any possible effect that could occur would be beneficial in that Federal regulations and recordkeeping requirements would be reduced. These determinations are discussed in more detail in The Determination of Effects which has been prepared by the U.S. Fish and Wildlife Service.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

Accordingly, 50 CFR 17.40(d)(2) is revised to read as follows:

**§ 17.40 [Amended.]**

\* \* \* \* \*

(d) \* \* \*

(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

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

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen which may be useful for scientific study.

(4) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: *Provided*, that such taking must

occur within one-half mile of the place where such depredation occurred.

(C) The Minnesota Department of Natural Resources may permit persons to take a gray wolf in zones 3, 4, and 5, as delineated in paragraph (d)(1) of this section: *Provided* that

(1) Such taking shall be permitted not more than 5 miles inside the boundary of zone 3, in areas of recurring wolf depredation on lawfully present domestic animals; and the extent of such taking shall be adjusted periodically to maintain an average population density of not less than 1 wolf per 10 square miles (the Minnesota Department of Natural Resources shall determine population density on the basis of generally accepted wildlife census techniques);

(2) In zone 4, such taking shall be permitted primarily in areas of recurring depredation, and the extent of such taking shall be adjusted periodically to maintain an average population density in the zone of not less than 1 wolf per 50 square miles (the Minnesota Department of Natural Resources shall determine population density on the basis of generally accepted census techniques); and

(3) During the first year after the effective date of these regulations, not more than 50 gray wolves may be taken by the public in zone 4.

(D) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a gray wolf in Minnesota without a permit in any area of recurring depredation within which the Minnesota Department of Natural Resources has authorized taking under § 17.40(d)(2)(i)(C) of this section, if during the season immediately preceding the taking the persons participating in the season have not taken the number of wolves which the State has permitted to be taken, and such taking by an employee or agent of the Service, any other Federal land management agency or the Minnesota Department of Natural Resources would not reduce the density in the zone in which taking occurs below that specified in paragraph (d)(2)(i)(C) of this section.

(E) The taking authorized by §§ 17.40(d)(2)(i)(C) and (D) of this chapter shall not be permitted in those areas of Pine and Carlton Counties lying east of a line beginning where the east line of County Highway 23 meets the southern boundary of Pine County, then running north along the east line of

County Highway 23 to the point in Carlton County where it intersects the east line of County Highway 1, then running north along the east line of County Highway 1 until it crosses the St. Louis River, until the Service has determined that such dispersal has resulted in a stable wolf population in Wisconsin, or unless recurring depredation by wolves on lawfully present domestic animals in those areas is determined by the Service to be a chronic problem.

(F) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and Commercial Transactions.* (A) Except as provided in paragraph (d)(2)(ii)(B) of this section, or as provided in § 17.32 of this title, no person may sell or offer for sale in interstate commerce, or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(B) A pelt from a gray wolf taken in accordance with the provisions of paragraph (d)(2)(i)(C) of this section, and tagged with a locking seal in accordance with the regulations of the Minnesota Department of Natural Resources, may be exported if the requirements of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (see 50 CFR Part 23) are met; and a pelt from a gray wolf taken and tagged in such manner may be transported, shipped, carried, delivered, or received in interstate commerce in the course of a commercial or noncommercial activity, and may be sold or offered for sale in interstate commerce.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport or ship a gray wolf taken unlawfully in Minnesota.

Dated: June 22, 1983.

G. Ray Arnett,  
*Assistant Secretary for Fish and Wildlife and Parks.*

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