

3. The Service amends §17.40 by adding new paragraphs (m) and (n) to read as follows:

§ 17.40 Special rules—mammals.

\* \* \* \* \*

(m) Gray wolf (Canis lupus) in Washington, Oregon, California, Idaho, Nevada, Montana, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70, except where listed as an experimental population.

(1) Application of this special rule to the experimental populations located in Idaho, Montana, and Wyoming. Paragraphs (m) (2) through (6) of this section do not apply to gray wolves within the experimental populations areas in Idaho, Montana, and Wyoming established under section 10(j) of the Act and delineated in § 17.84(i).

(2) Definitions of terms used in paragraph (m) of this section.

(i) Active den site. A den or a specific aboveground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

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

(iii) Domestic animals. Animals that have been selectively bred over many generations

to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

(iv) Livestock. Cattle, sheep, horses, mules, and herding or guard animals (llamas, donkeys, and certain special-use breeds of dogs commonly used for guarding or herding livestock) or as otherwise defined in State and tribal wolf management plans as approved by the Service. This excludes dogs that are not being used for livestock guarding or herding.

(v) Noninjurious. Does not cause either temporary or permanent physical damage or death.

(vi) Opportunistic harassment. Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

(vii) Problem wolves. Wolves that attack livestock, or wolves that twice in a calendar year attack domestic animals other than livestock.

(viii) Public land. Federal land and any other public land designated in State and tribal wolf management plans as approved by the Service.

(ix) Remove. Place in captivity or kill or release in another location.

(x) Wounded. Exhibiting torn flesh and bleeding or other evidence of physical damage caused by a wolf bite.

(3) Allowable forms of take of gray wolves. The following activities, only in the specific circumstances described in paragraph (m) of this section, are allowed: opportunistic harassment; intentional harassment; taking on private land; taking on public land; taking in response to impacts on wild ungulates; taking in defense of human life;

taking to protect human safety; taking by government agents to remove problem wolves; incidental take; taking under permits; and taking per authorizations for agency employees. Other than as expressly provided in this rule, all the prohibitions of §17.31(a) and (b) apply, and all other take activities are considered a violation of section 9 of the Act. Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (m) of this section. Any taking of wolves must be reported to the Service as outlined in paragraph (m)(6) of this section.

(i) Opportunistic harassment. Landowners on their own land and livestock producers or permittees who are legally using public land under valid livestock grazing allotments may conduct opportunistic harassment of any gray wolf in a noninjurious manner at any time. Opportunistic harassment must be reported to the Service within 7 days as outlined in paragraph (m)(6) of this section.

(ii) Intentional harassment. After we or our designated agent have confirmed persistent wolf activity on privately owned land or on a public land grazing allotment, we may, pursuant to § 17.32, issue a 90-day permit, with appropriate conditions, to any landowner to harass wolves in a potentially injurious manner (such as by projectiles designed to be nonlethal to larger mammals). The harassment must occur as specifically identified in the Service permit.

(iii) Taking by landowners on private land. Landowners may take wolves on privately owned land in the following two additional circumstances:

(A) Any landowner may take a gray wolf that is in the act of biting, wounding, or killing livestock or dogs, provided that the landowner provides evidence of animal(s)

freshly (less than 24 hours) wounded or killed by wolves, and we or our designated agent are able to confirm that the animal(s) were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(B) A private landowner may be issued a limited duration permit pursuant to §17.32 to take a gray wolf on the landowner's private land if:

(1) This private property or an adjacent private property has had at least two depredations by wolves on livestock or dogs that have been confirmed by us or our designated agent; and

(2) We or our designated agent have determined that wolves are routinely present on that private property and present a significant risk to the health and safety of livestock or dogs. The landowner must conduct the take in compliance with the permit issued by the Service.

(iv) Take on public land. Under the authority of § 17.32, we may issue permits to take gray wolves under certain circumstances to livestock producers or permittees who are legally using public land under valid livestock grazing allotments. The permits, which may be valid for up to 45 days, can allow the take of a gray wolf that is in the act of killing, wounding, or biting livestock, after we or our designated agent have confirmed that wolves have previously wounded or killed livestock, and agency efforts to resolve the problem have been completed and were ineffective. We or our designated agent will investigate and determine if the previously wounded or killed livestock were wounded or killed by wolves. There must be evidence of livestock freshly wounded or killed by

wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(v) Take in response to wild ungulate impacts. If wolves are causing unacceptable impacts to wild ungulate populations, a State or tribe may capture and move wolves to other areas within the States identified in paragraph (m) of this section or experimental populations areas in Idaho, Montana, and Wyoming established under section 10(j) of the Act and delineated in § 17.84(i). In order for this provision to apply, the States or tribes must define in their wolf management plan such unacceptable impacts, describe how they will be measured, and identify possible mitigation measures. Before wolves can be captured and moved, we must approve these plans and determine that such actions will not inhibit wolf population growth toward recovery levels. In addition, if, after 10 breeding pairs are established in the State, we determine that wolves are causing unacceptable impacts to wild ungulate populations, we may, in cooperation with the appropriate State fish and game agencies or tribes, capture and move wolves to other areas within the States identified in paragraph (m) of this section or experimental populations areas in Idaho, Montana, and Wyoming.

(vi) Take in defense of human life. Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) Take to protect human safety. We or a Federal land management agency or a State or tribal conservation agency may promptly remove any wolf that we or our

designated agent determines to be a demonstrable but nonimmediate threat to human life or safety.

(viii) Take of problem wolves by Service personnel or our designated agent. We or our designated agent may carry out aversive conditioning, nonlethal control, relocation, permanent placement in captivity, or lethal control of problem wolves. If nonlethal depredation control activities occurring on public lands result in the capture, prior to October 1, of a female wolf showing signs that she is still raising pups of the year (e.g., evidence of lactation, recent sightings with pups), whether or not she is captured with her pups, then she and her pups may be released at or near the site of capture. Female wolves with pups may be removed if continued depredation occurs. Problem wolves that depredate on domestic animals more than twice in a calendar year, including female wolves with pups regardless of whether on public or private lands, may be moved or removed from the wild. To determine the presence of problem wolves, we or our agents will consider all of the following:

(A) Evidence of wounded livestock or other domestic animals or remains of a carcass that shows that the injury or death was caused by wolves;

(B) The likelihood that additional losses may occur if no control action is taken;

(C) Any evidence of unusual attractants or artificial or intentional feeding of wolves;  
and

(D) Evidence that, on public lands, if animal husbandry practices were previously identified in existing approved allotment plans and annual operating plans for allotments, they were followed.

(ix) Incidental take. Take of a gray wolf is allowed if the take was accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such taking. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such taking; we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) Take under permits. Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild, pursuant to terms of the permit.

(xi) Additional taking authorizations for agency employees. When acting in the course of official duties, any employee of the Service or appropriate Federal, State, or tribal agency, who is designated as an agent in writing for such purposes by the Service, may take a wolf or wolf-like canid for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (m)(6) of this section and specimens may be retained or disposed of only in accordance with directions from the Service:

- (A) Scientific purposes;
- (B) Avoiding conflict with human activities;
- (C) Improving wolf survival and recovery prospects;
- (D) Aiding or euthanizing sick, injured, or orphaned wolves;
- (E) Disposing of a dead specimen;
- (F) Salvaging a dead specimen that may be used for scientific study;
- (G) Aiding in law enforcement investigations involving wolves; or

(H) Preventing wolves with abnormal physical or behavioral characteristics, as determined by the Service, from passing on those traits to other wolves.

(4) Prohibited take of gray wolves.

(i) Any manner of take not described under paragraph (m)(3) of this section.

(ii) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or wolf part from the State of origin taken in violation of the regulations in paragraph (m) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Act.

(iii) In addition to the offenses defined in paragraph (m) of this section, we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) Use of unlawfully taken wolves. No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully.

(5) Federal land use. Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, will be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) Reporting requirements. Except as otherwise specified in paragraph (m) of this section or in a permit issued under § 17.32, any taking of a gray wolf must be reported to

the Service within 24 hours. We will allow additional reasonable time if access to the site is limited. Report wolf takings, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator (100 N. Park, #320, Helena, MT 59601; 406-449-5225 extension 204; facsimile 406-449-5339), or a Service-designated representative of another Federal, State, or tribal agency. Unless otherwise specified in paragraph (m) of this section, any wolf or wolf part, taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(n) Gray wolf (Canis lupus) in North Dakota, South Dakota, Nebraska, Kansas, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

(1) Definitions of terms used in paragraph (n) of this section.

(i) Domestic animals. Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets.

(ii) Livestock. Cattle, sheep, horses, and mules or as otherwise defined in State and tribal wolf management plans.

(2) Allowable forms of take of gray wolves. The following activities, in certain circumstances as described below, are allowed: take in defense of human life; take to protect human safety; take to aid, salvage, or dispose; take for depredation control; take under cooperative agreements; and take under permit. As stated in § 17.31(c), the provisions of this paragraph (n) contain all the applicable take prohibitions and exceptions; all other take activities in these States are considered a violation of section 9 of the Act.

Any wolf, or wolf part, taken legally must be turned over to the Service unless otherwise specified in paragraph (n) of this section. Any taking of wolves must be reported to the Service as outlined in paragraph (n)(4) of this section.

(i) Take in defense of human life. Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(ii) Take to protect human safety. We or a Federal land management agency or a State or tribal conservation agency, or an agent of one of these agencies who is designated in writing for such purpose, may promptly remove any wolf that the agency determines to be a demonstrable but nonimmediate threat to human life or safety.

(iii) Allowable take for aiding, salvaging, or disposing of specimens. When acting in the course of official duties, any authorized employee or agent of the Service, any other Federal land management agency or the wildlife conservation agency of a State or of a federally recognized Native American tribe, who is designated by his/her agency for such purposes, may take a gray wolf in the person's area of jurisdiction without a Federal permit if such action is necessary for the following purposes; such take must be reported to the Service within 15 days as outlined in paragraph (n)(4) of this section, and specimens may be retained or disposed of only in accordance with directions from the Service:

- (A) Aiding a sick, injured, or orphaned specimen;
- (B) Disposing of a dead specimen; or
- (C) Salvaging a dead specimen that may be useful for scientific study or for traditional

cultural purposes by Native American tribes.

(iv) Allowable take for depredation control. When acting in the course of official duties, any authorized employee or agent of the Service, of the wildlife conservation agency of a State, or of a federally recognized Native American tribe, who is designated by his/her agency for such purposes, may take a gray wolf or wolves within the person's State or, in the case of a tribal employee, within that person's Reservation boundaries, in response to depredation by a gray wolf on lawfully present livestock or domestic animals. However, such taking must be preceded by a determination by one of the agencies listed in paragraph (n) of this section that the depredation was likely to have been caused by a gray wolf and depredation at the site is likely to continue in the absence of a taking. In addition, such taking must be performed in a humane manner and occur within 1 mile of the place where the depredation occurred if in Michigan or Wisconsin, and within 4 miles of the place where the depredation occurred if in the remaining area covered by paragraph (n) of this section. Any young of the year taken by trapping on or before August 1 of that year must be released. Any take for depredation control must be reported to the Service within 15 days as outlined in paragraph (n)(4) of this section. The specimen may be retained or disposed of only in accordance with directions from the Service.

(v) Take under section 6 cooperative agreements. When acting in the course of official duties, any authorized employee or agent of the State wildlife conservation agencies in the area covered by paragraph (n) of this section, who is designated by his/her agency for such purposes under a cooperative agreement under section 6 of the Act, may take a gray wolf in his/her respective State to carry out scientific research or conservation

programs. Such takings must be reported to the Service as specified in the reporting provisions of the cooperative agreement.

(vi) Take under permit. Any person who has a permit under § 17.32 may carry out activities as specified by the permit with regard to gray wolves in the area covered by paragraph (n) of this section.

(3) Prohibited take of gray wolves.

(i) Any form of taking not described in paragraph (n)(2) of this section is prohibited.

(ii) Export and commercial transactions. Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or, in the course of a commercial activity, transport or receive any gray wolves from the States, or portions thereof, covered by paragraph (n) of this section.

(iii) In addition to the offenses defined in paragraph (n) of this section, we consider any attempts to commit, solicitations of another to commit, or actions that cause to be committed any such offenses to be unlawful.

(iv) Use of unlawfully taken wolves. No person, except for an authorized person, may possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in the area covered by paragraph (n) of this section.

(4) Reporting requirements. Except as otherwise specified in paragraph (n) of this section or in a permit issued under § 17.32, any taking must be reported to the Service within 24 hours. Report wolf takings in North Dakota, South Dakota, Nebraska, and Kansas to 303-236-7540, and in Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, and Ohio to 612-713-5320, or a Service-designated representative of another Federal,

State, or tribal agency. (Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337.) Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part, taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(5) Take regulations for States in the Eastern Gray Wolf Distinct Population Segment (DPS) not covered by this paragraph (n). This special rule does not apply to the States of Minnesota, Pennsylvania, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, and Maine. While these States are included in the Eastern DPS, this special regulation does not apply to the entire DPS, and it specifically does not apply to these 10 States. Gray wolves in these States, other than Minnesota, are covered by the prohibitions of §17.31(a) and (b), which apply to all threatened species that are not subject to a special regulation. Gray wolves in Minnesota are covered by a separate special regulation in paragraph (d) of this section.

Dated: March 17, 2003

Steve Williams

Director, Fish and Wildlife Service

Billing Code 4310-55-P