

allow the Service to deal with unusual circumstances which might otherwise work against the long-term welfare of the wolf.

DATE: Relevant comments on this proposal, received no later than August 31, 1978, will be considered by the Director.

ADDRESSES: Comments, preferably in triplicate, should be sent to Director (OES), Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Prior to April 10, 1978, the gray wolf in Minnesota was listed as an endangered species, pursuant to the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.). However, in a final rulemaking published in the March 9, 1978, *FEDERAL REGISTER* (43 FR 9607), the Service removed the gray wolf in Minnesota from the endangered species list and placed it on the threatened species list. Elsewhere in the United States, south of Canada, the gray wolf was placed on the endangered species list.

The prohibitions of 50 CFR 17.31 which apply to threatened species, are essentially the same as those for endangered species, except that "any employee or agent of the Service, the National Marine Fisheries Service, or of a State conservation agency which is operating under a cooperative agreement with the Service or with the National Marine Fisheries Service, in accordance with section 6(e) of the act, who is designated by his agency for such purposes may, when acting in the course of his official duties, take any threatened wildlife to carry out scientific research or conservation programs." In accordance with 50 CFR 17.32, permits for threatened wildlife are available for scientific purposes, enhancement of propagation or survival, economic hardship, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the act.

The Service's special regulations concerning depredation control provide that designated employees and agents of the Service and the Minnesota Department of Natural Resources are authorized to "take a gray wolf

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Regulations for the Eastern Timber Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes an elaboration of the special regulations concerning the taking of gray wolves in Minnesota which were contained in its earlier final rulemaking that provided for the reclassification of the gray wolf in the United States and Mexico. The proposal is deemed necessary to respond to situations where there have been unusually large numbers of depredations or other wolf/human conflicts. In such cases, if taking of wolves could be allowed without any adverse consequences to the overall wolf population in the area, the proposal would allow the legal taking of wolves without regard to whether the particular wolf or pack taken could be tied to a particular depredation or conflict. It therefore would

without a permit in Minnesota if such action is necessary to remove from zones 2, 3, 4, or 5 as delineated by 50 CFR 17.40(d)(1), a gray wolf committing significant depredations on lawfully present domestic animals, but only if the taking is done in a humane manner." (50 CFR § 17.40(d)(2)(i)(B)(4).)

This provision was adopted because, in the Service's view, sound conservation programs will be significantly hampered if in areas inhabited by wolves, large segments of the public believe that wolves pose a significant threat to human livelihood, and that the responsible authorities will do nothing to help. In saying this, the Service does not accept, or propose to act upon, unsubstantiated fears; and the Service would not, under any circumstances, take actions which would have adverse consequences to the wolf's numbers in any zone or zones within Minnesota. Rather, it believes that if the past and probable future actions of wolves in a particular area cause legitimate public fears, and if wolves in those areas can be managed—by translocation, by placement in zoos, or if no other alternative is available, by destruction—without thereby damaging the overall wolf population in the area, the cause of wolf conservation is well served.

At the time the Service adopted the above-quoted special regulations concerning depredating wolves, the Service believed that the regulations' provisions were broad enough to solve the problems in Minnesota involving conflicts between wolves and human beings. However, subsequent events have suggested that an elaboration of the regulations may be necessary. Specifically, the Service is confronted with a situation in a small area of zone 4 in northern Minnesota, where there has been a highly unusual history of wolf depredation on domestic livestock, where there have been and probably still are many more wolves than the habitat can or should carry, and where it is therefore clear that significant depredations will continue unless the wolves' numbers are reduced.

In such a situation, the Service believes that the sound course is not to wait for the inevitable, but to remove some wolves in an attempt to make their numbers more closely approximate the density which the habitat should support—provided that the overall wolf population in the area will not be thereby adversely affected. This is the philosophy adopted by the wolf recovery plan, which the Service recently approved.

Since the promulgation of its special regulations, the Service has taken the position in two legal actions—*Brzozowski v. Andrus*, Civil No. 5-77-19 (D. Minn., filed Feb. 16, 1977), and *Fund*

for Animals v. Andrus, Civil No. 5-78-66 (D. Minn., filed June 12, 1978), that its special regulations presently give it the authority to take such actions. However, doubts on this point have been expressed in a number of quarters, and the Service therefore believes that the public interest will be best served by clarifying the situation.

In the proposal, the Service is not committed to any single course of action with respect to the wolves it proposes to remove. If translocation of some wolves is possible, in a sound, planned program, the attractiveness of that alternative is obvious. However, translocation into other areas of northern Minnesota is clearly not a sound program, in light of the fact (discussed below) that the areas of the State which constitute the best wolf habitat, such as the Superior National Forest, presently contain as many wolves as they can carry.

The Service will pursue the possibility that wolves can be translocated to areas outside Minnesota, but there is little likelihood that it can soon translocate large numbers of wolves to such areas. The process of gaining necessary public acceptance of translocation or reintroduction efforts, and of making appropriate changes in the laws of the recipient States, is demonstrably a slow one, and even when such efforts are complete the numbers of wolves which probably can be moved, in such efforts, will be small.

Difficulties will also impede large scale movements of wolves to zoological institutions or research facilities: Wolves breed relatively well in captivity, so although zoos and researchers do occasionally need wolves, in the long run their demand will be small.

Thus, although the Service will continue to consider the foregoing options, it seems likely that some of the wolves which the Service would take, when dealing with highly unusual overpopulation problems, will be destroyed for want of a viable alternative.

SUMMARY OF FACTORS AFFECTING THE SPECIES

As defined in section 3 of the Endangered Species Act, the term "species" includes any subspecies of fish or wildlife or plants and any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature (16 U.S.C. § 1532(11)). As with the Service's March 9, 1978, final rulemaking, for the purposes of this proposal the gray wolf group in Minnesota is being considered as a "species" separate from the gray wolf group in the other 47 conterminous States and Mexico. The proposed rulemaking does not affect the latter group.

Section 4(a) of the act states that the Secretary of the Interior may de-

termine a "species" to be endangered or threatened because of any of five factors. The factors, and their application to the gray wolf in Minnesota, are discussed below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Service's analysis of the gray wolf's population and habitat, throughout the United States and Mexico, in its March 9, 1978, final rulemaking, and in its proposed rulemaking of June 9, 1977 (42 FR 29527), remains valid. In Minnesota, the gray wolf population, although small compared to the gray wolf's original numbers in the lower 48 States, has not itself undergone a significant decline since about 1900, and within the last decade has apparently increased both in overall numbers and in total range.

However, in the context of this rulemaking certain additional analysis is necessary. Within the various zones of northern Minnesota, as defined by the Service's final rulemaking of March 9, 1978, the trends in the wolf's numbers vary. In zone 1, which comprises the northeastern area of the State, and is one of the two identified areas of critical habitat for the species, the wolf's population has apparently been declining slightly in recent years, principally because of a decline in the available numbers of prey species. However, in areas of north-central and northwestern Minnesota, including areas which are peripheral wolf habitat because of their relatively heavy concentrations of human activity, wolf numbers have been increasing. In some areas, this increase has resulted in concentrations of wolves which may now exceed the carrying capacity of the habitat, unless the wolves can prey on domestic livestock. In the recent past, the principal case in point has been a small area of zone 4 where five or more wolf packs have occupied an area near one large cattle farm. In 1976, the farmer lost substantial numbers of cattle despite the fact that trappers employed by the Service repeatedly returned to the farm, ultimately trapping and removing a total of 31 wolves. In 1977, the farmer lost only one calf, but that result was clearly the product of the Service's trapping program: The Service trapped and removed a total of 34 wolves from the area. The Service believes that this history demonstrates that there will occasionally be a situation in Minnesota where unusual concentrations of wolves in a settled area will make large numbers of wolf/human conflicts inevitable, and that the Service's regulations should be flexible enough to deal with those unusual cases.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As the Service's earlier rule-

making documents state, direct killing by man has been the major factor in the decline of wolves in the United States, and wolves are still regularly shot, illegally, in Minnesota. The Service believes that one principal reason for the extent of this activity is the belief, among otherwise law-abiding persons, that their interests can be protected from wolves in no other way.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* As the Service has noted above, if its regulations are interpreted as not giving it sufficient latitude to deal with the occasional, highly unusual instances of overconcentrations of wolves, where there has been a great deal of depredation and where there is every indication that it will continue at the same rate, it lacks sufficient flexibility to properly conserve the wolf in northern Minnesota.

5. *Other natural and manmade factors affecting its continued existence.* None in addition to those discussed above.

EFFECTS OF THE RULEMAKING

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C. 20240, and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is 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 of 1969.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/OES), Fish and Wildlife Service, U.S. Department of

the Interior, Washington, D.C. 20240. All relevant comments received no later than August 22, 1978, will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973, 16 U.S.C. 1531-1543; 87 Stat. 884, and was prepared by Ronald E. Swan, Office of the Solicitor, and John E. Jacobson, Office of the Field Solicitor, Twin Cities.

NOTE.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: June 27, 1978.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, part 17, subpart D, title 50 of the Code of Federal Regulations are proposed to be amended as set forth below.

Section 17.40(d)(2)(i)(B) is proposed to be amended to read as follows:

§ 17.40 Special rules—Mammals.

- * * * * *
- (d) * * *
- (2) * * *
- (i) * * *

(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 agency for such pur-

poses, may, when acting in the course of his 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) Such designated employees or agents of the Service or the Minnesota Department of Natural Resources may also take a gray wolf without a permit in Minnesota if such action is necessary to remove from zone 2, 3, 4, or 5, as delineated in paragraph (d)(1) of this section, a gray wolf committing significant depredations on lawfully present domestic animals, but only if the taking is done in a humane manner;
- (5) Such designated employees or agents of the Service or the Minnesota Department of Natural Resources may also take gray wolves without a permit in zones 2, 3, 4, or 5 in Minnesota if the Director, in writing, makes all of the following findings: (i) In the recent past there have been unusually large numbers of wolf/human conflicts in a particular area, (ii) based on the numbers of wolves apparently present in the area, there is a substantial likelihood that the unusually large numbers of such conflicts will continue if some wolves are not removed, and (iii) wolves can be taken in the area without there being any adverse consequences to the wolf's numbers in the particular zone where the conflicts have existed. Taking authorized by this provision must be done in a humane manner, and will occur as close to the particular area affected by the conflicts as will afford the area a reasonable degree of protection; and the taking must cease immediately when the Director is no longer able to make all of the three above-listed findings.

[FR Doc. 78-18459 Filed 7-3-78; 8:45 am]