Jeff Copeland Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Docket No. FWS–R6–ES–2012–0106

RIN 1018–AZ22

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the North American Wolverine in Colorado, Wyoming, and New Mexico

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to establish a nonessential experimental population (NEP) area for the North American wolverine (*Gulo gulo luscus*) in the Southern Rocky Mountains of Colorado, northern New Mexico, and southern Wyoming. The distinct population segment (DPS) of the North American

wolverine occurring in the contiguous United States is proposed for Federal listing as a threatened species under the Endangered Species Act. We propose to establish the NEP area for the wolverine in the Southern Rockies portion of the DPS under section 10(j) of the Endangered Species Act, and to classify any wolverines introduced into the area as a nonessential experimental population within the Southern Rocky Mountains. This proposed rule provides a plan for establishing the NEP area and provides for allowable legal incidental taking of the wolverine within the defined NEP area. The proposed action would not result in reintroduction of the wolverine; rather, the NEP area designation would provide the regulatory assurances necessary to facilitate a State-led reintroduction effort, should the state of Colorado determine to reintroduce the wolverine. The best available data indicate that reintroduction of the wolverine into the Southern Rocky Mountains is biologically feasible and will promote conservation of the species.

DATES: Comment submission: We will accept comments received or postmarked on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is Eastern Standard Time on this date. Public meeting: We will hold a public hearing on March 19, 2013 at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228. A public informational session will be held at the same location from 2:00 p.m. to 5:00 p.m. followed by speaker registration at 6:00 p.m. and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. People needing reasonable accommodations in

order to attend and participate in the public hearing should contact Brent Esmoil, Montana Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R6–ES–2012–0106, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [FWS–R6–ES–2012–0106]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

Copies of Documents: The proposed rule is available on *http://www.regulations.gov*.

Public meeting: The March 19, 2013, public meeting will include a public informational session from 2:00 p.m. to 5:00 p.m., followed by public speaker registration at 6:00 p.m., and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. and will take place at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Brent Esmoil, Field Supervisor (Acting), Montana Ecological Services Field Office, Helena, Montana telephone 406–449–5225. Direct all questions or requests for additional information to: WOLVERINE QUESTIONS, U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act or ESA), an experimental population may be identified outside of the current range of the species for the purposes of reintroducing the species. Before an experimental population may be designated, the Service must first determine that the population is separate from other populations and whether the experimental population is essential to the continued existence of the endangered or threatened species. If an experimental population is designated as nonessential, critical habitat may not be designated for that population.

This rule consists of:

- A proposed rule to identify a nonessential experimental population (NEP) of the North American wolverine in the southern Rocky Mountains of the United States.

A proposed rule to add the Distinct Population Segment (DPS) of the North American wolverine to the list of threatened and endangered species under the Act is published concurrently in this issue of the **Federal Register**. Also, a draft Recovery Outline for the proposed North American wolverine DPS in the contiguous United States is available on our website at http://www.fws.gov/mountain-prairie/species/mammals/wolverine/ or on http://www.regulations.gov.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Whether the boundaries of the proposed nonessential population area are appropriate.

(2) Information on wolverine occurrences in Colorado, especially any occurrences for which physical evidence might exist, that would indicate that a population of wolverines exists within the proposed NEP area.

(3) Information on threats to wolverines in the NEP area that have not been considered in this proposed rule and that might affect a reintroduced population.

(4) Information on the effects of reintroducing wolverines to Colorado on public and private land management, economic activities such as agriculture, forestry, recreation, mining, oil and gas development, and residential development.

(5) Information about the feasibility of conducting reintroductions of wolverines into other areas within the historical range of wolverines that may be appropriate. Examples include the Sierra Nevada Range in California, Bighorn Range in Wyoming, Uinta Mountains in Utah, and southern Cascades Range in Oregon.

Before we issue a final rule to implement this proposed action if it is deemed appropriate, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in the

DATES section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours at the Montana Field Office. (see **FOR FUTHER INFORMATION CONTACT**).

Public Meeting

We will hold a public informational session from 2:00 p.m. to 5:00 p.m., followed by public speaker registration at 6:00 p.m., and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. and will take place at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228 (see **ADDRESSES**). Persons needing reasonable accommodations in order to attend and participate in a public meeting should contact the Montana Field Office, at the address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. In order to allow sufficient

time to process requests, please call no later than 1 week before the meeting. Information regarding this proposal is available in alternative formats upon request.

Peer Review

In accordance with our policy, "Notices of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework

The North American wolverine DPS in the contiguous United States was designated a candidate species on December 14, 2010 (75 FR 78030), under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). An NEP can only be designated for a species that is listed under the Act. Therefore, in addition to the proposed NEP, today's **Federal Register** includes a proposed rule to list this DPS as a threatened species. The Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements

of section 7. Section 9 of the Act, among other things, prohibits the take of any endangered wildlife and the Service typically extends this prohibition to wildlife species that are listed as threatened . "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 et seq.) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as "experimental populations." Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of an endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as a threatened

species for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. A threatened species designation allows us discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations and prohibitions are necessary and advisable to provide for the conservation of a threatened species, as we have proposed to do so for the wolverine DPS in the proposed listing rule that is also published in today's **Federal Register**. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species. This section 10(j) rule contains the prohibitions and exemptions necessary and advisable to conserve the proposed NEP.

The proposed NEP would not proceed to a final rule if the wolverine is not listed under the Act. The wolverine is proposed for listing in the proposed listing rule published concurrently with this proposed NEP designation. Should we subsequently determine that the wolverine is not warranted for listing, this proposed NEP designation will be withdrawn. Nothing in this proposed NEP designation should be construed to affect the listing decision itself.

Before authorizing the release as an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation in 50 CFR 17.81(b), that such release will further the conservation of the

species. In making such a finding, the Service uses the best scientific and commercial data available to consider:

- Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;
- the likelihood that any such experimental population will become established and survive in the foreseeable future;
- the relative effects that establishment of an experimental population will have on the recovery of the listed species; and
- the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

- Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s);
- a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild;
- management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to

isolate or contain the experimental population designated in the regulation from natural populations; and

- a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this proposed experimental population would not be essential to the continued existence of the species in the wild. This determination has been made because the potential future loss of North American wolverines from the Southern Rocky Mountains would not reduce the likelihood of the species' survival throughout its current range in the DPS—specifically, occupied habitat in the States of

Idaho, Montana, Washington, Oregon, and Wyoming. Additionally, donor animals for reintroduction into Colorado would likely be obtained from Alaska or western Canada. Wolverine populations in both of these areas are outside of the DPS, and their distribution, abundance, and trends have remained stable. No donor animals would be obtained from within the DPS. Therefore, the Service is proposing to designate an NEP area for this species in Colorado and adjoining portions of Wyoming and New Mexico. The state of Utah also borders Colorado and contains suitable wolverine habitat. Because wolverine habitat in Utah is not contiguous with habitat in Colorado, we believe that if a population were established in Colorado, it would not be expected to include habitat in Utah in its range. Therefore, we did not propose to include Utah in the NEP area. However, we would like public comment on whether it is appropriate to include this or any other area within the NEP area.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or a unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat.

When an NEP is located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing as a threatened species and only section 7(a)(1) and section 7(a)(4) apply. In these instances, an NEP provides additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the proposed NEP is found to not be essential to the continued existence of the species, the effects of proposed actions affecting the NEP will not generally jeopardize the continued existence of the species. As a result, a formal conference will likely never be required for activities affecting North American wolverines established within the proposed NEP area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Biological Information

Wolverines are the largest terrestrial member of the family Mustelidae, with adult males weighing 12 to 18 kilograms (kg) (26 to 40 pounds (lb)) and adult females weighing 8 to 12 kg (17 to 26 lb). The wolverine resembles a small bear with a bushy tail. The coat is typically dark brown, with two buff stripes extending from the neck, along the flanks, to the base of the tail. White patches are common on the chest or throat (Banci 1994, p. 99).

The wolverine is a circumpolar species occurring from Scandinavia eastward across Eurasia and into North America (Copeland and Whitman 2003, p. 672). There are two subspecies of wolverine: *Gulo gulo gulo* in Eurasia and *G. g. luscus* in North America. In North America, historical records indicate the presence of wolverines broadly across Canada and the northernmost tier of the United States, with southern extensions into the Sierra Nevada Mountains of California and the Southern Rocky Mountains of Colorado (Copeland and Whitman 2003, p. 672). The North American wolverine is currently found in Alaska, Canada (Yukon, Northwest Territories, British Columbia, and Alberta), and in a reduced area of the contiguous United States (Idaho, western Montana, Washington, northwestern Wyoming, and eastern Oregon) (Copeland and Whitman 2003, p. 673; Aubry *et al.* 2007, p. 2150).

There are several areas within the historical distribution of wolverines that may be appropriate candidates for reintroductions. The largest of these areas in terms of wolverine suitable habitat is the southern Rocky Mountains and is included as the NEP in this proposed rule. The next largest area of habitat that may be appropriate for

reintroductions is the Sierra Nevada Mountains of California. Subsequent to a Colorado reintroduction, should it occur, we may consider proposing other experimental populations such as the Sierra Nevada Mountains, the Bighorn Mountains in Wyoming, the southern Cascades Mountains in Oregon, or the Uinta Mountains in Utah. The results of feasibility discussions with and coordination with appropriate state agencies and the public would determine whether any of these possibilities are pursued. Currently, the California Department of Fish and Wildlife has indicated that they are supportive of investigating the possibility of a future experimental population, and likely would be supportive of reintroductions if potential management issues could be resolved.

Within the proposed NEP, there are numerous historical records of North American wolverines from the Colorado Rocky Mountains; however, the species is believed to have been extirpated from the southern Rocky Mountains in Colorado, New Mexico, and Wyoming by the early 1900s (Aubry *et al.* 2007, pp. 2150 and 2155). The most notable factors leading to their disappearance were likely trapping and poisoning (Krebs *et al.* 2004, p. 493; Aubry *et al.* 2007, p. 2156). There are historical, recent, and current records from Wyoming (Aubry *et al.* 2007, pp. 2150 and 2155). Wolverines are currently present in northwestern Wyoming, primarily in the Greater Yellowstone Ecosystem (Aubry *et al.* 2007, p. 2155). We are not aware of any wolverine populations in the southern or eastern portions of Wyoming within the proposed NEP area. There is one historical record from New Mexico near Taos in 1860; however, the exact location for this record is unknown (Aubry *et al.* 2007, p. 2150). There are several historical records from Utah, but no recent or current records (Aubry *et al.* 2007, p. 2151).

Wolverine populations in the Southern Rocky Mountains appear to have been extirpated by human-caused mortality factors that no longer pose a threat such as intensive predator control using broadcast poison baits and widespread, unregulated trapping; therefore, reintroduction may be an appropriate management strategy (Aubry *et al.* 2007, pp. 2156).

Wolverines are opportunistic feeders that consume a variety of foods, depending on availability. They primarily scavenge carrion, but also prey on small or vulnerable animals and are omnivorous in summer (Hornocker and Hash 1981, p. 1290; Banci 1994, p. 111; Copeland and Whitman 2003, p. 678). Food availability is believed to be a limiting factor in reproduction, with most adult females breeding every year, but only a small portion producing kits (Banci 1994, p. 105; Persson 2005, p. 1454). However, in one study, four females were supplementally fed, and all produced kits in 3 consecutive years (Persson 2005, p. 1456) indicating that wolverines are capable of higher reproductive output with sufficient nutrition. Mountainous areas of Colorado contain abundant food for wolverines; in particular, yellow-bellied marmots (*Marmota flaviventris*), a staple food source for females rearing kits, are widely distributed throughout potential wolverine habitat (Hall 1981, p. 373). Large numbers of big game animals present in Colorado would provide ample opportunity for scavenging as well. This may increase food availability, and consequently improve kit production.

North American wolverines do not appear to select their habitat based upon specific vegetation or topography, but preferentially select areas that are cold and have

persistent snow cover into mid-May (Copeland *et al*. 2010, p. 233). Deep, persistent snow cover during the denning season provides a thermal buffer for the kits and a refuge from predators (Copeland *et al.* 2010, p. 234). Wolverines are well adapted to exploit a niche that is relatively unproductive for other carnivores ~~habitat where food is scarce but where~~thereby avoiding predation and interspecific competition~~ are reduced~~; as a result, they require a large home range and occur at low densities (Inman *et al.* 2011, p. 8). Home ranges of 100 to 1,582 square kilometers (km²) (39 to 611 square miles (mi²)) per adult wolverine have been reported in the contiguous United States (Hornocker and Hash 1981, p. 1291; Banci 1994, p. 117; Copeland 1996, p. iii). Adult male home ranges typically overlap that of two or three adult females (Banci 1994, p. 118). Reported densities in the contiguous United States range from one wolverine per 65 km² (25 mi²) to one wolverine per 286 km² (110 mi²) (Hornocker and Hash 1981, p. 1296; Copeland 1996, p. 32; Inman *et al.* 2011, p. 1). Approximately 18,500 km^2 (11,500 mi^2) and 40,000 km² (15,000 mi²) of mountainous, high-elevation terrain that could provide suitable wolverine habitat are estimated to occur in Colorado (Colorado Division of Wildlife 2010, p. 16; Inman *et al.* draft, p. 7; our calculations based on our composite habitat model). This amount of habitat could support more than 100 wolverines in Colorado under current conditions.

Comment [JC1]: I tried to reword this sentence. See Comment 3 from Proposed Listing Review Comments

Relationship of the Experimental Population to Recovery Efforts

Should the state of Colorado pursue reintroduction of North American wolverines, the effort would occur in the Colorado portion of the Southern Rocky

Mountains. Any reintroduction program by Colorado Parks and Wildlife (CPW) would first require approval of the Colorado Parks and Wildlife Commission, as well as the State Legislature of Colorado. The designation of an NEP area centered in Colorado is designed to facilitate approvals for a reintroduction within the State of Colorado, as well as create public support for such a reintroduction effort by ensuring that compatible activities will not be subject to the regulation of the Act, which some perceive as an undesirable side-effect of reintroductions of listed species. This would be the first effort to reintroduce the species in the contiguous United States. Colorado is an appropriate choice for several reasons:

- Historical records document the species' presence in the Colorado Rocky Mountains;
- The primary factors leading to the wolverine's extirpation from Colorado (trapping and poisoning) are now managed, and the species is protected by its designation as a State endangered species;
- Abundant suitable habitat remains in Colorado in the form of high-elevation areas with deep persistent spring snow;
- The high elevation of potential habitat in Colorado may provide some protection from warming trends caused by climate change (Regonda *et al.* 2005, p. 376; Ray *et al.* 2008, p. 2; McKelvey *et al.* 2011, pp. 2882 and 2894);
- In 2010, the Colorado Wildlife Commission went on record in support of evaluating a reintroduction and initiating a discussion about reintroduction with interested stakeholders. The Service and other potential partners are supportive of exploring a State-led reintroduction effort.

The primary goal of this recovery effort is to reestablish viable populations of North American wolverines in Colorado that would contribute to conservation of the species in the contiguous United States and also contribute to eventual delisting of the DPS, should listing be finalized. A secondary goal is to establish high-elevation refugia in the event climate change begins to impact wolverine populations using lower elevation habitat.

Two recent instances of long-distance movements by male North American wolverines have been documented (Inman *et al.* 2009, entire; Moriarty *et al.* 2009, entire). In 2008, a male wolverine was photographed in the Sierra Nevada Mountains near Truckee, California (Moriarty *et al.* 2009, entire). Genetic testing of the individual's hair and scat most closely matched animals from the western Rocky Mountains, which would indicate a distance traveled of at least 600 km (370 mi). The testing also definitively ruled out the possibility that this individual was descended from the historical Sierra Nevada population (Moriarty *et al.* 2009, p. 160), now thought to be extinct. In 2009, a young male traveled over 900 km (560 mi) from northwestern Wyoming to Rocky Mountain National Park in Colorado (Inman *et al.* 2009, entire). These two animals continue to reside in those habitats into which they moved. Both of these instances support the premise that the northern Rocky Mountain wolverine population is continuing to expand, to the point that some animals are making extraordinary exploratory movements. They also suggest that suitable habitat remains outside of the

wolverine's currently occupied range. However, female dispersal is documented only for shorter distances (Hornocker and Hash 1981, p. 1290; Copeland 1996, p. 91; Kyle and Strobeck 2001, p. 338; Tomasik and Cook 2005, p. 390; Cegelski *et al.* 2006, p. 206; Aubry *et al*. 2011, pp. 21-22; Inman *et al*. 2011, p. 7). Consequently, the likelihood of multiple females and males moving to the southern Rocky Mountains at the same time so that a genetically healthy population could be founded is very low. Therefore, the probability of a population naturally reestablishing in this disjunct habitat is extremely low.

Comment [JC2]: I don't believe it is low at all. I think it is highly likely to occur. What is at question is when. It is likely that it will take considerable time, but I believe it will occur. See NEP Comment 1.

Location of the Nonessential Experimental Population

The proposed NEP will include Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Dolores, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, La Plata, Lake, Larimer, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, and Teller Counties, in Colorado. We also propose to include adjacent counties in New Mexico (Colfax, Los Alamos, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, and Taos Counties), and Wyoming (Albany and Carbon Counties) that have suitable habitat contiguous or closely adjacent to wolverine habitat in Colorado. If a wolverine were located in one of these adjacent areas after translocations took place, it most likely would have originated from the reintroduced population because habitat in these areas is contiguous or closely associated with habitat in Colorado where

reintroductions would take place, and far removed from habitat with established wolverine populations, the closest being the Greater Yellowstone area of northwestern Wyoming. It is possible that one or more wolverines could move from the Greater Yellowstone area to the NEP. Wolverines that make such a move will be considered part of the NEP. Based on evidence of only a single wolverine moving into the southern Rockies since the early 20th century, movements such as this appear to be very rare. The Southern Rocky Mountain NEP is approximately bounded on the east by Interstate 25, on the south by Interstate 25 and Highway 550, on the west by the Green River, Interstate 70, and the Colorado-Utah State line, and on the north by Interstate 80. The map at the conclusion of this proposed rule illustrates the location of the NEP and its relationship with the rest of the North American wolverine DPS.

Any North American wolverines found within the aforementioned counties after the first wolverine releases will be considered part of the NEP. Wolverines occurring outside of the NEP will be treated differently, depending on their origin, if known, and their probable origin, if undetermined. Wolverines occurring outside of the NEP that are known to have originated from the reintroduced population (through affixed tags, radio collars, genetic testing, or other definitive means) may be captured and returned to the NEP at the discretion of CPW and the Service and after consulting with the State wildlife agency where the animal was found if outside of Colorado. Wolverines of unknown origin occurring outside of the NEP in Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming will be considered part of the threatened DPS of North American wolverine due to the likelihood that wolverines from the threatened population

may naturally disperse anywhere in these states. Wolverines of unknown origin occurring outside of the NEP in Colorado, Arizona, Kansas, Nebraska, New Mexico, or Oklahoma will be considered to have originated from the experimental population due to the lack of other plausible source populations in these states, and may be captured and returned to the reintroduction area, if needed for the reintroduction effort, at the discretion of CPW or the Service and after consulting with the State wildlife agency where the animal was found.

Section 10(j) of the Act requires that an experimental population be geographically separate from other nonexperimental populations of the same species. The nearest suitable habitat outside of the proposed NEP that supports a North American wolverine population is in the Wind River Mountain Range of Wyoming (Inman *et al*. 2011, p. 7). At its closest point, the southern Wind River Mountains are approximately 220 km (137 mi) from the proposed NEP. This distance is within the dispersal capabilities of male wolverines as demonstrated by the movement of wolverine M56 from the Wind River Range to the Southern Rocky Mountains in 2009 (Inman et al. 2009, Fig. 1), but is apparently fa~~u~~rther than females are able to travel through unsuitable habitat. The largest documented female movement occurred in 2010 in the North Cascades of Washington (Aubry *et al*. 2011, pp. 21-22). In that instance, a radio-collared female wolverine moved an air-line distance of approximately 233 km (145 mi) over a 44-day period. During this movement, her course generally stayed within suitable wolverine habitat (as defined by Copeland *et al*. (2010, p. 242)) and was never more than about 19 km (12 mi) from suitable wolverine habitat (as defined by the Copeland et al.

Comment [JC3]: Maybe farther than has been documented, but I am not sure we truly know how far a female is able to travel. Might reword this sentence.

(2010) model). In general, female wolverines tend to establish home ranges adjacent to their natal home range, and dispersal is documented only for lesser distances than males routinely travel (Hornocker and Hash 1981, p. 1290; Copeland 1996, p. 91; Kyle and Strobeck 2001, p. 338; Tomasik and Cook 2005, p. 390; Cegelski *et al.* 2006, p. 206, Inman *et al*. 2011, p. 7). It would require multiple females and males moving into an area at the same time for a wolverine population to establish naturally in the Southern Rocky Mountains. Based on the best information currently available to us regarding wolverine movements, we find this scenario unlikely to happen in the near future. Consequently, the likelihood of a population naturally reestablishing in the proposed NEP is minimal, and we consider the proposed NEP to be geographically separate from other nonexperimental populations of wolverines.

Colorado is within the historical range of the North American wolverine (Aubry *et al*. 2007, p. 2150). The species is believed to have been extirpated from the State and surrounding habitat in southern Wyoming and northern New Mexico by the early 1900s (Aubry *et al.* 2007, pp. 2150 and 2155). From 1979 through 1996, researchers conducted 12 studies in Colorado attempting to document the presence of wolverine or Canada lynx (*Lynx canadensis*) (Colorado Division of Wildlife 2010, p. 5). These studies used snow tracking, remote cameras, and snares. As a result of these and subsequent surveys, the Colorado Division of Wildlife concluded that if any wolverines remained in Colorado, they did not represent a viable population. The 2010 12-month finding concluded that Colorado was within the current range of the species (due to the documented presence of one male wolverine in the state), but reestablishment of a population has not occurred (75

FR 78035, December 14, 2010). Thus, we consider the NEP area to be unoccupied by a wolverine population, despite the documented presence of a lone adult male wolverine.

In Wyoming, North American wolverine populations currently occur in the Greater Yellowstone Ecosystem in the northwestern corner of the State (WGF 2010, p. IV–2–96). We are not aware of any wolverine populations in the southeastern portion of the State, which includes Albany and Carbon Counties within the proposed NEP reintroduction area. The only verifiable record of wolverines in New Mexico that we are aware of was a single individual reported near Taos in 1860 (Aubry *et al.* 2007, p. 2150). Although other unverified reports have occurred (e.g., Frey 2006, p. 21), we find that the lack of physical evidence associated with these records makes them unreliable evidence of wolverine distribution patterns (McKelvey *et al.* 2008, entire). The southern limit for the species in the Rocky Mountains may have been northern New Mexico (Frey 2006, p. 21; Aubry *et al.* 2007, p. 2150). However, it is not certain whether the southernmost historical records represented reproducing populations or dispersers (Banci 1994, p. 102).

North American wolverines require large blocks of suitable habitat due to their sizeable home range requirements and territoriality. Average home ranges of resident adult females in central Idaho were 384 km^2 (148 mi^2), and average home ranges of resident adult males were 1,522 km^2 (588 mi^2) (Copeland 1996, p. 50). Wolverines in Glacier National Park had average adult male home ranges of 496 km^2 (193 mi^2) and adult female home ranges of 141 km^2 (55 mi^2) (Copeland and Yates 2006, p. 25).

Wolverines in the Greater Yellowstone Ecosystem had average adult male home ranges of 797 km^2 (311 mi^2), and average adult female home ranges of 329 km^2 (128 mi^2) (Inman *et al*. 2007a, p. 4). There are numerous areas with the Colorado Rocky Mountains that could serve as suitable release sites (Copeland *et al* 2010, Fig. 2). These areas have persistent spring snow cover due to high elevation and have large blocks of contiguous habitat in public ownership (Colorado Division of Wildlife 2010, pp. 11–12 and 20). Persistent spring snow cover is considered an essential habitat requirement for successful reproduction (Copeland *et al.* 2010, p. 234). Large blocks of habitat under public ownership (primarily the U.S. Forest Service (USFS) and National Park Service (NPS)) promote uniform management of the species and improve the likelihood of broad public support. In addition, areas within the Southern Rockies are likely to persist as wolverine habitat in the face of climate change (McKelvey *et al*. 2011, Table 2).

Both of the Federal agencies that manage most of the potential habitat within the proposed NEP have experience managing North American wolverines and their habitat. The wolverine is found in several National Forests managed by the USFS. The USFS has designated the wolverine a "sensitive species," which means that the species and its habitat are given special consideration during management and planning (USFS 2006, p. 10). The NPS promotes the conservation of all federally listed and candidate species according to their National Park Service Management Policies of 2006 4. 4. 2. 3 which states "The Service will survey for, protect and strive to recover all species native to the national park system units that are listed under the ESA. The Service will fully meet its obligations under the NPS Organic Act and the ESA to both proactively conserve listed

587 species and prevent detrimental effects on these species." The wolverine is found in
588 several National Parks in Alaska, as well as Glacier, Grand Teton, North Cascades, and
589 Yellowstone National Parks in the contiguous United States. Consequently, the NPS is
590 also familiar with management of the species. As previously noted, an area
591 encompassing Rocky Mountain National Park, within the proposed NEP in Colorado, has
592 supported a single male wolverine for approximately 3 years (Inman *et al.* 2009, entire).

593

594 *Causes of Extirpation and Likelihood of Population Reestablishment and Survival*

595 Wolverine habitat in Colorado represents a sizeable area of formerly occupied
596 North American wolverine habitat. The factors that likely led to the species' extirpation
597 from this State nearly 100 years ago, specifically unregulated trapping and poisoning, are
598 no longer a threat. Since that time, management and legal protections for the wolverine
599 have improved for the following reasons (Colorado Division of Wildlife 2010, p. 15):

600 • Trapping and hunting of wolverines is no longer allowed in the State (Colorado
601 Revised Statutes (CRS 33-2-105);
602 • The wolverine is designated an Endangered species under the State's Endangered
603 Species statute (State of Colorado 2012, p. 16);
604 • Colorado restricts the use of poisons, leg-hold traps, kill-type trapping devices,
605 and snare trapping (State of Colorado 1996, p. 1);
606 • The Service has proposed listing the distinct population segment of the North
607 American wolverine as threatened in the contiguous United States, if the listing

and this NEP rule are finalized, intentional take of wolverines would be prohibited in the NEP area;

Wyoming classifies the wolverine as a Species of Greatest Conservation Need (WGFD 2010, p. IV-i-9). The wolverine does not receive protection under New Mexico State law; the species is informally listed as "apparently extirpated" (Frey 2006, p. 21). There are no legal trapping seasons for wolverines in Wyoming and New Mexico, which means that trapping of wolverines is not permitted in these states.

Release Procedures

North American wolverines would be released only after necessary approvals from the Parks and Wildlife Commission and State Legislature were received after which a suitable management framework would be developed by the State of Colorado, in cooperation with the Service and other partners. Adaptive management principles would be used during reintroduction efforts to assist in the collection, release, and management of wolverines, and are particularly important as this would be the first attempt to reintroduce wolverines in the contiguous United States. Lessons learned early would be applied to efforts in subsequent years and at future sites. Several partners from State and Federal agencies and private organizations have held two workshops discussing restoration of the species in the contiguous United States. A working draft methodology is being developed by these partners that presents guidelines for translocation of the species and post-release monitoring (Inman *et al.* draft, entire). The details presented in

Comment [JC4]: I could be wrong but I am not sure this section should be part of the 10j proposed rule. The methodology proposed in Inman et al provides a good start on the process but it seems a bit out of place for it to be included here. Shouldn't the 10j simply provide the justification and spatial definition for the translocation and leave it there, rather than include procedural recommendations for how it would be implemented?

this section come from that working draft, which represents the best available information on the subject.

Donor Site(s)

Donor Site(s) may include any North American population of wolverines in Alaska or Canada. Factors that will be considered when choosing the location(s) from which wolverines would be captured for release in Colorado would include:

- Sustainability of removals;
- familiarity of potential donor animals with food sources and mortality risks in the release area;
- genetic composition of potential donor animals;
- translocation logistics; and
- support of provincial or state government.

Sustainability of removals—Any North American wolverines released in Colorado would be captured from a wild population because there are no captive breeding facilities that provide animals for release. Removal of wolverines from a donor site must be sustainable; that is, removals must do no long-term harm to the donor population. This issue is discussed in detail in the following section.

Familiarity of potential donor animals with food sources and mortality risks in the release area—North American wolverines released in Colorado should have a familiarity with food sources and mortality risks in the release area. Successful reestablishment of a population depends on the survival, site fidelity, and reproduction of translocated individuals. It is presumed that the more familiarity a released animal has with available foods and potential mortality sources, the more likely it will survive, remain in the release area, and successfully reproduce. Potential causes of mortality in Colorado could include starvation, avalanche, and predation by black bears (*Ursus americanas*) or mountain lions (*Puma concolor*). For example, a wolverine captured from a donor site containing mountainous habitat would likely have more familiarity with risks posed by avalanches than an individual captured from flat tundra habitat. Similarly, if predation contributes a substantial portion to the donor wolverines' diet, a familiarity with prey common in Colorado, such as marmots, will likely improve survival, site fidelity, and reproductive success.

There is a possibility that not enough donor animals from mountainous habitat similar to habitat in the NEP areas would be found. In that circumstance, some donor animals might be collected from flatter, more open habitats of the Arctic tundra of Canada or Alaska. Wolverines are more numerous in these areas and more easily captured, and, due to their availability, may be used in addition to mountain animals to augment total numbers of donor animals. In addition to augmenting the numbers of donor animals available, this would also serve to

spread the impact of removals across more populations as well as provide an opportunity to experimentally test the appropriateness of conducting reintroductions with these individuals.

Genetic composition of potential donor animals—North American wolverine restoration in Colorado should consider whether to reintroduce animals from the closest available geographic population, the closest genetic population, or a mixture of both. The draft protocol developed for the southern Rocky Mountains eliminates the possibility of using donor sites within the proposed DPS area due to the small size and already-reduced genetic endowment in this area. Therefore, the nearest potential donor site is in the Canadian Rocky Mountains of British Columbia and Alberta. Using the closest (Canadian) geographic population assumes that some local adaption to conditions in the Rocky Mountains has occurred. However, little is known about genes that may influence local adaptations of wolverines, and there is no scientific information showing that wolverines have adapted genetically to local conditions in any way. Based upon what is currently known regarding wolverine genetics, choosing animals with a genetic profile that is most similar to historical populations in the Southern Rocky Mountains could potentially create a genetic bottleneck. We believe that the best strategy may be a combination of both considerations. This approach would mix individuals from multiple populations, thereby maximizing genetic diversity, which would in turn provide a broad range of characteristics from which local adaptations could eventually occur.

Translocation logistics—Translocation logistics are an important consideration in conducting a reintroduction program that makes efficient use of limited resources and minimizes stress to translocated animals. Logistics planning would be completed prior to collecting animals for translocation. Details would vary depending on origin of donor population(s), but will include:

- Protecting the health and safety of both wolverines and associated human personnel;
- securing all necessary permits for animal transport;
- developing a protocol and schedule for veterinary inspections;
- determining necessary air and/or ground transportation of animals;
- meeting requirements for shipping containers; and
- readying a holding facility for animals prior to their release.

Support of provincial or state government—Local, state, and provincial governments should support goals of the reintroduction effort. Specific provincial or state regulations would be followed. If a provincial or state government opposed removal of wolverines from their jurisdiction for translocation to Colorado, that donor population would no longer be considered. Active participation by all affected agencies would be encouraged.

Number of Release Animals

We would consider the likely home range size, ideal sex ratio, and desired population density in determining the number of North American wolverines to be released (see *Biological Information* section). A typical adult sex ratio is approximately two males for every five females (2M:5F). These seven animals would likely require a maximum of 2,000 km² (770 mi²) of suitable habitat. The actual number of animals released and the time required to reach 20 percent occupation would depend on rates of survival and reproduction.

An initial release of a small number of North American wolverines would maximize opportunities to implement adaptive management with a minimum potential loss of animals. However it would also diminish the opportunity for early success and minimize genetic diversity. Although the exact reintroduction protocol that may be used will not be known until and unless a program is approved by the State of Colorado, principles of adaptive management would be employed when determining composition of released animals.

Season of Capture and Method of Release

There are two potential timeframes for capture of North American wolverines: (1) A spring capture (April–May) of males and non-lactating females, which would eliminate the need to deal with pregnant females and potential loss of litters; or (2) an early-winter capture (November–December) of males and pregnant females, which would require

addressing pregnant females and potential litter loss, but could also improve the chances of reintroduction success. No firm decision has been made between the use of a spring or early winter capture protocol. This and other protocol questions will be addressed if CPW decides to pursue a reintroduction program.

There are also different release strategies: (1) A soft release, which would require holding animals in a pen at the release site for a period of time prior to release to habituate animals and increase site fidelity; (2) a semi-hard release, which would release animals directly into the wild at a location that has previously been provisioned with carcasses to increase survival; or (3) a hard release, which would release animals directly into the wild with no provisioning. The ultimate choice of release option will depend on the sites selected for releases and available infrastructure to support captive maintenance.

An early-winter capture with a semi-hard release has several advantages. It may improve both survival (through provisioning) and site fidelity (if females have newborn young present). Reduced movements due to the presence of a litter could result in females remaining in high-elevation habitat on public lands and spending less time at lower elevations where contact with roads and humans is more likely. Early reproduction reduces the time needed to achieve desired reoccupation of potential habitat and could also increase genetic diversity at the reintroduction site, particularly if paternity includes males that were not translocated. Provisioning would improve food availability during a

759 time of limited resource availability. Food availability is believed to be a limiting factor
760 in reproduction; therefore, provisioning may improve litter survival.

761

762 If post-release survival is satisfactory under an early-winter capture/semi-hard
763 release scenario, this strategy would continue for subsequent releases. If not, partners
764 would reassess both the season of capture and method of release to determine what
765 changes are appropriate.

766

767 Capture Techniques

768 In most instances, the cooperating agency at the donor site would lead the capture
769 effort. Specific state or provincial regulations would be followed. The method of capture
770 may vary depending on the donor site. Darting from a helicopter works well in more
771 open habitat; however, trapping is preferred in forested habitat. Box traps have been used
772 successfully. Trap transmitters may be used to determine if trap doors are shut. Use of
773 prebaiting and remote cameras at the trap site would also be considered. Standard
774 biomedical protocols would be followed for any immobilization with anesthesia
775 (Fahlman *et al.* 2008; Arnemo *et al.* 2011). A field assessment following darting or
776 trapping would be conducted to determine the animal's suitability for translocation. The
777 assessment would determine weight, sex, general health, reproductive status, and
778 estimated age of the individual. Only animals that meet the necessary criteria would be
779 retained for translocation. Retained animals would: (1) Be treated for parasites, (2) have

blood and hair samples taken for genetic analysis, and (3) be vaccinated for rabies, canine distemper, and plague. They would then be placed in a suitable transport crate and taken to a transport site by responsible personnel. All efforts would be made to minimize the time an animal spends in a crate. As soon as possible, animals would be transported to a holding facility near the release site.

Holding Facility

Immediately prior to departure and again upon arrival at the holding facility, North American wolverines would be inspected by personnel trained to evaluate the animals' condition. Wolverines would then be transferred to larger holding pens. A veterinarian would be on call while animals are at the holding facility. While at this facility, wolverines should be fed a variety of foods similar to what they likely would encounter in the release area. Each animal would be fitted with a satellite collar and surgically implanted with a radio-transmitter prior to release. At this time, ultrasounds also would be conducted on all females to determine pregnancy status (assuming early-winter capture). Time at the holding facility should be minimized.

Release into the Wild

For a semi-hard release, a site with large boulders would be provisioned with ample frozen ungulate carcasses and covered with snow, except for a tunnel entrance leading under the boulders. The crate would be placed at the tunnel entrance and a

female released into the tunnel. This would provide the animal with a secure environment and a known food source. Remote cameras placed in the vicinity of the release could document use at the site. If the area were frequented by the wolverine, the site could be provisioned with additional carcasses. Location and timing of provisioning would be modified as needed depending on site use and weather.

Post-release Monitoring

Throughout the reintroduction project, there would be an ongoing assessment of release procedures. Modifications to the protocol would be made if necessary, to ensure the highest probability of survival for each North American wolverine released in Colorado. Additionally, post-release monitoring would assess the long-term success of this reintroduction project through determining survival, reproduction, recruitment, and habitat occupancy. Noninvasive techniques such as telemetry, remote camera surveillance, snow tracking, hair snares, and scat sampling would be used. Noninvasive techniques are preferred because they are less disruptive to the animal and are less expensive than trapping.

It is anticipated that this reintroduction project would require a minimum of 4 years of releases. Monitoring data would be evaluated annually to assess the current status of the reintroduced population and the need to augment with additional animals. If we determine that some factor precludes successful establishment of a viable population,

reintroduction efforts would be discontinued for the site. Any wolverines remaining within the NEP after reintroductions took place would remain under the NEP regulatory regime, even if further introductions were abandoned.

Any reintroduced North American wolverines that have dispersed into poor habitat, are injured, or are malnourished, may be captured and rehabilitated or euthanized. Rehabilitated animals could be re-released or sent to an accredited zoo. Decisions to capture, rehabilitate, and/or euthanize would be made on a case-by-case basis by permitting authorities and personnel trained to accurately determine the prognosis for the animal.

Donor Stock Assessment and Effects on Donor Populations

North American wolverines used to establish an experimental population would come from wild populations in western Canada or Alaska. Wolverines in western Canada and Alaska are not listed under the Act or under Canada's functional equivalent, the Species At Risk Act. Wolverine populations at donor sites would be monitored to ensure that no harm is done to the source population due to the removal of too many animals. Most North American wolverines are currently found in western Canada and Alaska, where they persist everywhere that suitable habitat is available (75 FR 78033). Range reductions have not been documented in Alaska, Yukon, Northwest Territories, or British Columbia (Copeland and Whitman 2003, p. 673). The wolverine population is

estimated at more than 13,000 adult animals in western Canada (COSEWIC 2003, p. 22). No population estimates are available for Alaska, but based upon the amount of available habitat, it is reasonable to assume that several thousand wolverines are present. Trapping occurs throughout western Canada and Alaska, with more than 1,000 animals harvested annually (Copeland and Whitman 2003, p. 680). An estimated 10 to 20 individuals would be taken annually for at least 4 years for translocation into Colorado. We do not anticipate that this level of removal of wolverines for translocation will impact donor populations.

Status of Proposed Population

In our proposed rule to list the wolverine DPS in the contiguous United States published concurrently with this proposed NEP, we also published a proposed special rule under section 4(d) of the Act to refine which protections of the Act apply to the proposed DPS. The proposed special rule concludes that effects to wolverine habitat from climate change is the primary threat to the DPS and that trapping, both legal targeted trapping of wolverines and incidental trapping of wolverines while pursuing other species, are threats to the DPS in concert with climate change. Other human activities occurring in wolverine habitat either do not negatively affect the species, or they occur at such a small scale, as not to be threats.

We believe that a similar approach to prohibitions on take identified in the proposed section 4(d) rule is also appropriate in the proposed section 10(j) area, with one exception. In the larger DPS area covered by the proposed special rule (section 4(d)), incidental trapping of wolverine during trapping for other species is prohibited. In the proposed section 10(j) area, we do not think that it is necessary for the conservation of wolverine to prohibit incidental trapping of wolverine during lawful trapping for other species. This difference in approach is due to (1) Regulations in Colorado that prohibit the use of various manners of take (i.e., leg hold or body gripping traps, instant kill traps, and snares with small stops) in recreational trapping of furbearers and (2) trapping of predators in response to livestock conflicts is tightly regulated in Colorado to prevent widespread use of traps that may injure non-target species (Odell 2012, pers. comm.) These regulations reduce the chances that incidental trapping would occur to the point that this risk factor is not a threat to wolverines in most of the NEP area, and would not threaten a reestablished population.

In the small portions of the NEP in New Mexico and Wyoming, incidental trapping is more likely to occur. These areas represent small portions of the overall wolverine habitat in the NEP (approximately 10 percent of the NEP), so although incidental take is possible in these states, it is not likely to occur frequently, and is not likely to threaten the overall NEP if one is established. In the interest of minimizing regulation to what is necessary to achieve conservation, it is in the best interest of wolverine conservation not to prohibit incidental take from trapping in the NEP. Therefore, take of wolverines during otherwise lawful activities in the NEP is not

expected, except for the low probability of incidental take occurring due to trapping of other species in the small portion of the NEP in Wyoming and New Mexico.

The proposed special section 10(j) rule is designed to broadly exempt from the section 9 take prohibitions any take of North American wolverines that is accidental and incidental to otherwise lawful activities. As is fully described in the proposed special section 10(j) rule, we provide this exemption in this section 10(j) rule because we believe that such incidental take of members of the NEP associated with otherwise lawful activities, though not likely to occur, is necessary and advisable for the conservation of the species because it provides assurances to the public that their activities would not be adversely affected by a wolverine reintroduction.

This section 10(j) designation is justified because no adverse effects to extant wild or captive North American wolverine populations would result from release of animals into Colorado. As previously discussed, all donor animals would be taken from stable populations that are outside of the proposed threatened DPS. We expect that the reintroduction effort into Colorado would result in the successful establishment of a self-sustaining population that would contribute to conservation of the species. Due to the current management and legal standing for the species in Colorado, we anticipate minimal incidental take from the NEP. Additionally, wolverines would be released on remote tracts of public land that are removed from most potential public conflict.

Management

If this proposed rule is adopted and necessary approvals are gained from both the Colorado Parks and Wildlife Commission and State legislature, CPW in Colorado would serve as the lead agency in the reintroduction and subsequent management of North American wolverines in the state. However, the Service would continue to coordinate with CPW on these restoration efforts. If this proposed rule is adopted, the Service would partner with CPW, with CPW taking the lead role in the reintroduction and management of wolverines in the Colorado portion of the NEP. Management of populations in the NEP area would be guided by provisions in: (1) The associated special rule; (2) the environmental assessment for this action conducted under NEPA; and (3) the management plan developed by CPW, with involvement of the other partners (Service, WGFD, NMDGF, USFS, and NPS).

We conclude based on the proposed section 4(d) rule that accompanied the proposed wolverine DPS listing, and based on the lack of identified threats in the NEP beyond the overarching threat of climate change and incidental trapping, that the effects of Federal, State, or private actions and activities would not pose a substantial threat to North American wolverine establishment and persistence in Colorado, because most activities currently occurring in the NEP areas are compatible with wolverine conservation, and there is no information to suggest that future activities would be incompatible with conservation. Most of the area constituting wolverine habitat within

the NEP with high potential for wolverine establishment is managed by the USFS or NPS and is protected from major development activities through the following mechanisms:

- The Wilderness Act—The USFS and NPS both manage lands designated as wilderness areas under the Wilderness Act of 1964 (16 U.S.C. 1131–1136). There are several restrictions within these areas: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; (3) there can be no landing of aircraft; and (4) no structures or installations can be built. There are 41 wilderness areas in Colorado, totaling more than 13,000 km² (5,000 mi²) (Colorado Wilderness 2012, entire). Most of this wilderness is within suitable wolverine habitat, including portions of Rocky Mountain National Park. Wolverine habitat within wilderness areas is protected from direct loss or degradation by the aforementioned restrictions.
- National Forest Management Act—Under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600–1614), the USFS must strive to provide for a diversity of plant and animal communities on lands it manages. The USFS manages approximately 62,000 km² (24,000 mi²) of National Forest lands in Colorado (USFS 2011, table 4). Wolverines released in Colorado that use habitat outside of wilderness areas, but still on USFS lands, would likely occur mainly in alpine areas, which are sensitive to habitat alterations. Consequently, these areas are generally more protected from activities such as timber harvest and road building than lowland areas. The USFS permits land for ski areas in Colorado. Many of these ski areas occur in suitable wolverine habitat. However, ski areas

constitute only a small percentage of all lands managed by the USFS in the state. We anticipate no disproportionate impacts from these ski areas. Because of the relatively insignificant impact of developed recreation areas (ski areas), we do not expect projects to be halted or substantially modified as a result of regulatory actions. The USFS designated the North American wolverine as a sensitive species in 1993, which means the animal and its habitat are given special consideration during management planning efforts.

- National Park Service Organic Act—The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Any wolverines released in Colorado that reside on NPS lands (such as Rocky Mountain National Park) would be protected by this mandate to conserve wildlife and leave resources unimpaired.
- Colorado State Law—The wolverine is listed as a State endangered species in Colorado, and there is a closed season on trapping of wolverines (Colorado Division of Wildlife 2010, p. 15). Recreational fur trapping with injuring or killing traps, is not authorized in Colorado and predator trapping to reduce conflicts with livestock is strictly controlled (Odell 2012, pers. comm). These regulations largely protect the species from mortality due to trapping.

Management issues related to the wolverine NEP that have been considered include:

- *Incidental Take*—The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities, rural development, skiing, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP areas that are in accordance with Federal, State, tribal, and local laws and regulations. The special rule accompanying the proposed wolverine listing identifies the prohibitions of the Act that apply to the DPS. Threats to the DPS include habitat loss due to climate change and trapping (both intentional and incidental). Prohibitions of the Act in the special rule are limited to intentional trapping, hunting, shooting, collecting, capturing, pursuing, wounding, killing, and trade of wolverines or wolverine parts, and unintentional trapping, hunting, shooting, capturing, pursuing, or collecting wolverines incidental to otherwise lawful activities. For this reason, incidental take due to otherwise lawful activities other than trapping is not likely to occur. In addition, this proposed experimental population special rule contains specific exceptions regarding the taking of individual animals. If this section10(j) rule is finalized, incidental take of wolverines within the NEP area would not be prohibited, provided that the take is unintentional and is in accordance with the special rule that is a part of this section 10(j) rule. The significant difference between areas inside and outside of the NEP would be that outside of the NEP, incidental trapping, hunting, shooting, capturing, pursuing, or collecting of wolverines would be prohibited unless covered by a permit issued under section 10 of the

Act, whereas inside the NEP, no permit would be necessary. In addition, if in the future the best available information changes to suggest that the section 4(d) rule was not adequate to protect wolverines outside of the NEP, that rule could be changed through a public rulemaking process to provide additional prohibitions of the Act without changing the prohibitions inside the NEP area, where it is important to give stakeholders assurance that prohibitions would not change after reintroductions began. However, if there is evidence of intentional take of a North American wolverine within the NEP that is not authorized by the special rule, we would refer the matter to the U.S. Fish and Wildlife Service law enforcement for investigation.

- Special handling—In accordance with 50 CFR 17.31(b), any employee or agent of the Service, any other Federal land management agency, or State personnel, designated for such purposes, may in the course of their official duties, handle wolverines to aid sick or injured individuals, or to salvage dead wolverines. However, non-Service personnel and their agents would need to acquire permits from the Service for these activities.
- *Coordination with landowners and land managers*—The Service and cooperators have identified issues and concerns associated with the potential wolverine population establishment in Colorado. Several affected parties have sought the highest degree of certainty possible that impacts to land use and recreation would not occur as a result of wolverine reintroduction. Establishment of the NEP would satisfy most reservations expressed by affected stakeholders. Nothing in

this rule requires any additional changes, protections, mitigation, or enhancement measures for wolverine.

- *Public awareness and cooperation*—We will inform the general public of the importance of this reintroduction project in the overall recovery of the wolverine in the contiguous United States. The designation of the NEP for portions of Colorado, New Mexico, and Wyoming would provide greater flexibility in the management of the reintroduced wolverine. The NEP designation is necessary to secure needed cooperation of the States, landowners, agencies, and other interests in the affected area.
- *Potential impacts to other federally listed species*—Within the proposed NEP for North American wolverine, there are two federally listed species with habitat requirements that likely overlap those of the wolverine: the gray wolf (*Canis lupus*) and Canada lynx (*Lynx canadensis*).

The gray wolf's listing status in Colorado and New Mexico is as an endangered species. In Wyoming, the wolf is delisted (77 FR 55530, September 10, 2012). The wolverine has been documented to scavenge prey killed by wolves (Banci 1994, p. 100; Van Dijk *et al.* 2008, p. 1184). Additionally, wolves have been documented to prey on wolverines (Copeland and Whitman 2003, p. 679). Wolves may occasionally disperse into the NEP; however, we are not aware of any resident wolves currently in the NEP areas. Therefore, we expect little or no impacts to wolves from wolverines or to wolverines from wolves within the NEP. Any impacts to wolves will be fully analyzed in a Section 7 consultation on this proposed rule.

The Canada lynx is listed as a threatened DPS within portions of the contiguous United States, including Colorado and Wyoming. It is a candidate species in New Mexico. It was likely extirpated from Colorado and Utah and may not have occurred in New Mexico historically. In 1999, the Colorado Division of Wildlife (now CPW) reintroduced lynx into Colorado, and they are now a reproducing population (CPW 2011, p. 1). The natural ranges of wolverines and lynx naturally overlap across most of Alaska, Canada, and much of the occupied range in the contiguous United States. Within the area of range overlap, lynx and wolverines appear to coexist without significant conflict. It is possible that wolverines and lynx may occasionally kill each other. There may also be some limited amount of competition between wolverines and lynx for prey. However, as previously noted, wolverines are opportunistic feeders that consume a variety of foods, depending on availability. They primarily scavenge carrion, but also prey on small or vulnerable animals and are omnivorous in summer (Hornocker and Hash 1981, p. 1290; Banci 1994, p. 111; Copeland and Whitman 2003, p. 678). Lynx, on the other hand, largely prey on snowshoe hare (*Lepus americanas*) (Fitzgerald *et al.* 1994, p. 369). Although we know that wolverines do eat snowshoe hares, we do not have any information regarding the extent to which wolverines may utilize them. However, occasional feeding on hares by wolverines is not likely to affect Canada lynx food availability. Any potential effects to Canada lynx from wolverine reintroduction will be fully analyzed in a Section 7 consultation on this proposed rule.

- *Monitoring and Evaluation*

Reintroduction Effectiveness Monitoring: Post-release monitoring would assess the long-term success of this experimental reintroduction project through determining survival, reproduction, recruitment, and habitat occupancy. Noninvasive techniques such as telemetry, remote camera surveillance, snow tracking, hair snares, and scat sampling would be used. Satellite collars would be the primary short-term method of measuring survival. Aerial monitoring for signals from radio-collared animals would also occur periodically. Any mortality signals would be investigated to confirm mortality and determine cause of death. Monitoring data would be evaluated annually, or as necessary, to assess the current status of the reintroduced population and the need to augment with additional animals or adjust translocation protocols. Long-term monitoring would be necessary to determine the viability of the NEP.

Donor Population Monitoring: Donor sites may include any North American population of wolverines in Alaska or western Canada, but would not include any wolverine population within the contiguous United States. Wolverine population abundance and trends at donor sites would be monitored during and following translocation to ensure that no harm is done to the source population due to the removal of too many animals. Noninvasive monitoring techniques similar to those used for reintroduced wolverines would be used at donor sites.

Monitoring Impacts to Other Listed Species: The federally threatened Canada lynx is the species most likely to experience some degree of competition with North American wolverines. Both species were found historically in Colorado, but were likely extirpated from the State in the 1900s. As noted previously, there

may be limited competition for prey, including the potential for either species to prey on the other, but their coexistence across most of the species' ranges in North America suggests that intense competition or predation is not likely. Lynx reintroductions into Colorado were initiated in 1999, and monitoring is ongoing (CPW 2011, pp. 1–2).

Findings

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing North American wolverines into Colorado will further the conservation of the species, but that this proposed population is not essential to the continued existence of the species in the wild.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant

economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The areas that would be affected if this proposed rule is adopted include the potential release area in Colorado and adjacent areas into which North American wolverines may disperse, which over time could include significant portions of the NEP areas. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the limited prohibitions of the Act provided for in the special rule; we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. In regard to section 7(a)(2), the population is treated as a threatened species within a National Wildlife Refuge or unit of the National Park Service and Federal agency consultation requirements apply. In areas outside of a National Wildlife Refuge or unit of the National Park Service, the population is treated as proposed for listing as a threatened species, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for wolverine populations within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on

any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the wolverine, but we do not expect projects to be halted or substantially modified as a result of these regulations.

If adopted, this proposal would not apply prohibitions on incidental take of the North American wolverines within the NEP area. The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as agricultural activities, rural development, skiing, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, State, tribal, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be permitted. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property within the NEP area, in or near wolverine habitat, are grazing, timber harvest, and mining. However, private property within areas of suitable habitat for North American wolverine is very limited. We believe that the presence of the wolverine would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the wolverine; and Federal agencies would only have to comply with sections 7(a)(1)

and 7(a)(4) of the Act throughout much of the NEP. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP areas.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), if adopted, this proposal will not "significantly or uniquely" affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designations will not place additional requirements on any city, county, or other local municipalities.

This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act). This proposed NEP designation for the North American wolverine would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This rule would allow for the take of reintroduced North American wolverines when such take is incidental to an otherwise legal activity, such as recreation, forestry, agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that establishment of this NEP would conflict with existing or proposed human activities or hinder use of the public lands within the NEP.

A takings implication assessment is not required because this rule: (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In

keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Colorado, New Mexico, and Wyoming. Achieving the recovery goals for this species would contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The special rule operates to maintain the existing relationship between State and Federal Government and is being undertaken in coordination with the States of Colorado, New Mexico, and Wyoming. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the

public. This proposed rule does not contain any new information collections that require approval. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095, which expires May 31, 2014. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of NEPA, we will analyze the impact of this proposed rule. We are preparing a Draft Environmental Assessment on this action and will fulfill our obligations under NEPA by the time of we publish our final rule.

Government-to-Government Relationship with Tribes

In accordance with the presidential memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 229511), Executive Order 13175 (65 FR 67249), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that Tribes—Southern Ute in Colorado, Ute Mountain in Colorado and New Mexico, and Jicarilla Apache in New Mexico—have Reservation lands within the NEP areas, but these lands appear to include little or no suitable habitat for North American wolverines. The Service will fully consider information received

during the public comment period by tribal entities on the proposed NEP designations and wolverine reintroduction.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As described above, this rule is not expected to significantly affect energy supplies, distribution, or use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- Be logically organized;
- use the active voice to address readers directly;
- use clear language rather than jargon;
- be divided into short sections and sentences; and
- use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comment should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0106, or upon request from the Montana Field Office (see **ADDRESSES**).

Authors

The primary authors of this proposed rule are staff members of the Service's Montana Field Office and Regional Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

Part 17–[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. In § 17.11(h) add entries for "Wolverine, North American" to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals to read as set forth below:

§17.11 Endangered and threatened wildlife.

*****

(h) ***

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals * * * * * * *							
Wolverine, North American	*Gulo gulo luscus*	U.S.A. (Alaska and northern contiguous States); Canada	Where found within contiguous U.S.A., except where listed as an experimental population	T		NA	17.40(a)
Wolverine, North American	*Gulo gulo luscus*	U.S.A. (Alaska and northern contiguous States); Canada	U.S.A. (specified portions of CO, NM, and WY; see 17.84(d))	XN		NA	17.84(d)
* * * * * * *							

3. Amend § 17.84 by adding paragraph (d) to read as follows:

§ 17.84 Special rules—vertebrates.

*** * * * ***

(d) North American wolverine (*Gulo gulo luscus*).

(1) *Where is the North American wolverine designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the North American wolverine is within the species' historical range and is defined as follows: the Colorado counties of Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Dolores, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, La Plata, Lake, Larimer, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, and Teller; the New Mexico counties of Colfax, Los Alamos, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, and Taos; and the Wyoming counties of Albany and Carbon.

(ii) A population of the North American wolverine is not known to reside in these counties. Based on habitat requirements, we do not expect this species to become established outside of this NEP area. However, if individuals of this population move outside the designated NEP area, they would be treated in the following way: Wolverines occurring in Wyoming

outside of the NEP area will be considered part of the threatened Distinct Population Segment of North American wolverine unless they are known to have originated from the NEP. Wolverines occurring outside of the NEP areas in Colorado and New Mexico will be considered to have originated from the experimental populations, and may be captured and returned to the appropriate reintroduction area, if needed for the reintroduction effort, at the discretion of Colorado Parks and Wildlife (CPW), the affected State wildlife agency, or the Service. Wolverines that disperse to other states and are known to have originated from the reintroduced population in Colorado may also be returned to the reintroduction area, if needed for the reintroduction effort, at the discretion of CPW, the affected State wildlife agency, or the Service. Wolverines released within the NEP will be managed primarily by the State of Colorado, in cooperation with the Service, in accordance with this rule and the respective management plans.

(iii) We will not change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?*

(i) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, North American wolverines, or parts thereof, that are taken or possessed in violation of paragraph (d)(3) of this

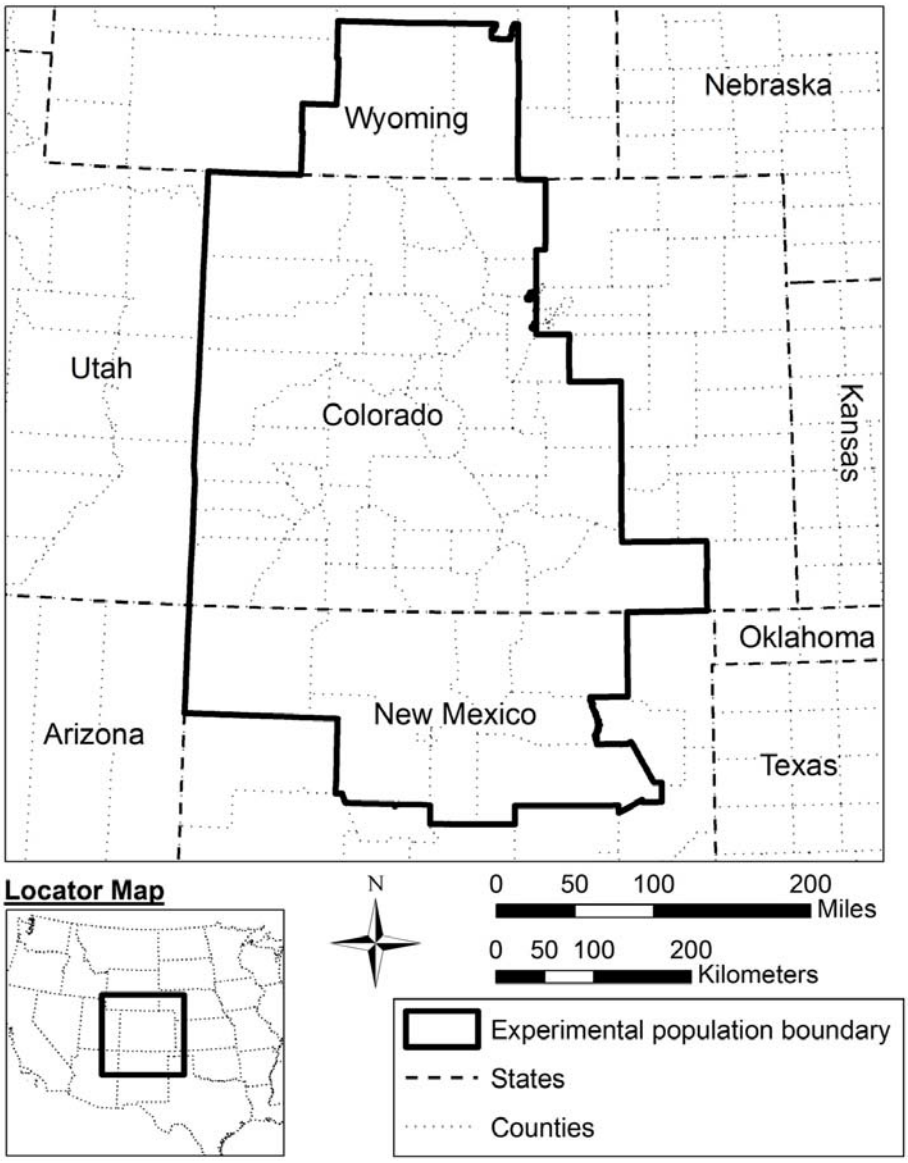
section or in violation of the applicable State fish and wildlife laws or regulations or the Act. In addition wolverines may not be intentionally trapped, hunted, shot, captured, killed, or collected in violation of paragraph (d)(3).

(ii) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (c)(2)(i) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as agriculture, forestry, wildlife management, recreation, land development, transportation, trapping, and other activities, is not prohibited. Additionally, take prohibitions do not apply to legally acquired wolverines held in captivity.

(4) *How will the effectiveness of these reintroductions be monitored?* We and partners will prepare periodic progress reports and fully evaluate this reintroduction effort after 5 years beginning at the time of the first wolverine release to determine whether to continue or terminate the reintroduction effort.

(5) **Note:** Map of the NEP area for the North American wolverine follows:


Wyoming
Nebraska
Utah
Colorado
Kansas
Oklahoma
New Mexico
Arizona
Texas
Locator Map
N
0 50 100 200
Miles
0 50 100 200
Kilometers
Experimental population boundary
States
Counties

Dated: 1/16/13

Signed: /s/ Michael J. Bean

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code: 4310–55–P