PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.683(d) is revised to read as follows:

§ 73.683 Field strength contours and presumptive determination of field strength at individual locations.

* * * * *

(d) For purposes of determining the eligibility of individual households for satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10)(A), field strength shall be determined by the Individual Location Longley-Rice (ILLR) propagation prediction model. Guidance for use of the ILLR model for these purposes in predicting the field strength of analog television signals is provided in OET Bulletin No. 72 (stations operating with analog signals include some Class A stations licensed under part 73 of this chapter and some low power TV and TV translator stations licensed that operate under Part 74 of this chapter). Guidance for use of the ILLR model for these purposes in predicting the field strength of digital television signals is provided in OET Bulletin No. 73 (stations operating with digital signals include all full service stations and some Class A stations that operate under part 73 of this chapter and some low power TV and TV translator stations that operate under part 73 or Part 74 of this chapter). OET Bulletin No. 72 and OET Bulletin No. 73 are available at the FCC's Headquarters Building, 445 12th St., SW., Reference Information Center, Room CY–A257, Washington, DC, or at the FCC's Office of Engineering and Technology (OET) Webs site: *http://www.fcc.gov/oet/info/documents/bulletins/*.

* * * * *

[FR Doc. 2010–19294 Filed 8–3–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2010-0045]
[MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status and critical habitat review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on two petitions to list the Mexican gray wolf (*Canis lupus baileyi*) (Mexican wolf) as an endangered subspecies and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Although not listed as a subspecies, the Mexican wolf is currently listed as endangered within the broader listing of gray wolves. Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the Mexican wolf subspecies may warrant listing such that reclassifying the Mexican wolf as a separate subspecies may be warranted. One of the petitions also requested listing of the Mexican wolf as an endangered Distinct Population Segment (DPS). While we have not addressed the DPS portion of the petition in this finding, we will further evaluate that information during the status review. Therefore, with the publication of this notice, we are initiating a review of the status of the Mexican wolf subspecies to determine if listing the Mexican wolf as a subspecies or DPS is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the Mexican wolf. Based on the status review, we will issue a 12–month finding on the petitions, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before October 4, 2010. After this date, you must submit information directly to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

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

• *Federal eRulemaking Portal: http://www.regulations.gov*. Search for docket FWS-R2-ES-2010-0045 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R2-ES-2010-0045; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113, by telephone (505-346-2525) or by facsimile (505-346-2542). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information indicating that listing an entity may be warranted, we are required to promptly review the status of that entity (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the status of the Mexican wolf. We request information from the public, other governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the Mexican wolf. We seek information on:

(1) The historical and current status and distribution of the Mexican wolf, its biology and ecology, taxonomy, and ongoing conservation measures for the subspecies and its habitat in the United States and Mexico; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting the species' continued existence and threats to it or its habitat.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your submission (such as full references and page numbers) to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12–month finding.

Petition History

On August 11, 2009, we received a petition from the Center for Biological Diversity requesting that the Mexican wolf be listed as an endangered subspecies or DPS and critical habitat be designated under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that the Mexican wolf be listed as an endangered subspecies and critical habitat be designated under the Act. The petitions clearly identified themselves as such and included the requisite identification information for the petitioner(s), as required by 50 CFR 424.14(a). On October 22, 2009, we responded with letters to the petitioner(s) indicating that the petitions were under review and that we would make a finding as to whether or not the petitions present substantial information indicating that the requested action may be warranted. In response to complaints from the petitioners, we have agreed, pursuant to a stipulated settlement agreement, to complete the 90–day finding in response to these petitions by July 31, 2010. This finding addresses both petitions.

Previous Federal Actions

The Mexican wolf was listed as an endangered subspecies on April 28, 1976 (41 FR 17742). The gray wolf species (*Canis lupus*) in North America south of Canada was listed as endangered on March 9, 1978, except in Minnesota where it was listed as threatened (43 FR 9607). This listing of the species as a whole subsumed the previous Mexican wolf subspecies listing, although it stated that the Service would continue to recognize valid biological subspecies for the purpose of research and conservation (43 FR 9607). We initiated recovery programs for the gray wolf in three broad geographical regions of the country: the Northern Rockies, the Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies. The 1982 Mexican Wolf Recovery Plan recommended a two-pronged approach to conservation that included establishment of a captive breeding program and reintroduction of wolves to the wild (Service 1982, p. 28).

In 1996, we published a Final Environmental Impact Statement, "Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States," after assessing potential locations for the reintroduction of the Mexican wolf. On April 3, 1997, the Department of the Interior issued its Record of Decision on the Final Environmental Impact Statement, and on January 12, 1998, a final rule, "Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico" (63 FR 1752), was published and established the Mexican Wolf Experimental Population Area in central Arizona and New Mexico, and designated the reintroduced population as a nonessential experimental population under section 10(j) of the Act. In March of that year, 11 Mexican wolves from the captive breeding program were released to the wild.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we established three DPS designations for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Mexican wolves in the Southwestern DPS retained their previous endangered or experimental population status. On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife* v. *Norton,* 1:03-1348-JO (D.Or. 2005) and *National Wildlife Federation* v. *Norton,* 1:03-CV-340, (D. Vt. 2005)). The Courts invalidated the revisions of the gray wolf listing, and also invalidated the three DPS designations in the April 1, 2003, rule and the associated special regulations. The status of the Mexican wolf was not changed by the listing rule or the Courts' invalidation of the rule, but the invalidation of the three DPS

designations suspended ongoing recovery planning efforts for the Southwestern DPS as the DPS was no longer considered valid.

Species Information

The Mexican wolf is a genetically distinct subspecies of the North American gray wolf; adults weigh 23–41 kilograms (kg) (50–90 pounds (lbs)) with a length of 1.5–1.8 meters (m) (5–6 feet (ft)) and height at shoulder of 63–81 centimeters (cm) (25–32 inches (in)) (Young and Goldman 1944; Brown 1983, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1983, p. 118); solid black or white Mexican wolves do not exist as seen in other North American gray wolves.

Integration of ecological, morphological, and genetic evidence supports several conclusions relevant to the southwestern United States regarding gray wolf taxonomy and range. First, there is agreement that the Mexican wolf is distinguishable from other gray wolves based on morphological and genetic evidence. Second, recent genetic evidence continues to support the observation that historic gray wolf populations existed in intergradations across the landscape as a result of their dispersal ability (Leonard *et al.* 2005, pp. 9–17). Third, evidence suggests that the southwestern United States (southern Colorado and Utah, Arizona and New Mexico) included multiple wolf populations distributed across a zone of intergradation and interbreeding, although only the Mexican wolf inhabited the southernmost extent (Leonard *et al.* 2005, pp. 9–17). Currently, Mexican wolves exist in the wild only where they have been reintroduced, and that population has oscillated between 40 and 60 wolves since 2003.

Historically, Mexican wolves were associated with montane woodlands and adjacent grasslands (Brown 1983, p. 19) in areas where ungulate prey were numerous. Wolf packs establish territories, or home ranges, in which they hunt for prey. Data from 2008 on the reintroduced Mexican wolf population shows an average home range size of 195 square miles (mi^2) (505 square kilometers (km^2)), with home ranges varying from approximately 60 to 503 mi^2 (155 to 1302 km^2) (Service 2010, p. 37). Recent studies have shown the preferred prey of Mexican wolves to be elk (Reed *et al.* 2006, pp. 1127–1133; Merkle *et al.* 2009, pp. 480–485).

Gray wolves die from a variety of causes including disease, malnutrition, debilitating injuries, interpack strife, and human exploitation and control (Service 1996, p. A-2). In the reintroduced Mexican wolf population, causes of mortality have been largely human-related (vehicular collision and illegal shooting). Additionally, reintroduced Mexican wolves have been removed from the wild for management purposes. To date, the Mexican wolf population has had a failure (mortality plus removal) rate too high for natural or unassisted population growth, and, as stated above, the population has oscillated between 40 and 60 wolves since 2003. The most recent end-of-year population survey in 2009 documented 42 Mexican wolves in the wild (Service 2010, pp. 26, 61).

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the subsequent status review, we attempt to determine how significant a threat it is. The threat is significant, if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the information in the petition and our files is substantial. The information must include evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

The petitioners assert that listing the Mexican gray wolf under the Act as a subspecies is both biologically warranted and legally required. It is important to mention that we already recognize the endangered status of the Mexican wolf under the current listing of the gray wolf species (43 FR 9607). However, this 90–day finding evaluates the information provided by the petitioners and other information readily available in our files, and determines whether it is substantial scientific or commercial information indicating that listing of the Mexican wolf as a subspecies may be warranted. Our evaluation of this information is presented below.

The petitioners assert that listing the Mexican wolf as a subspecies under the Act is appropriate on the basis of taxonomy. The petitioners cite Young and Goldman 1994, Hall 1981, Bogan and Melhop 1983, Hoffmeister 1986, Nowak 1995, Leonard *et al.* 2005, Wayne *et al.* 1992, Garcia-Moreno *et al.* 1996, and Hedrick *et al.* 1997 in asserting that the Mexican wolf is clearly identified as a taxonomically valid subspecies. Information in our files support this assertion and indicate that, in the past, the Service has recognized the Mexican wolf as a taxonomically valid subspecies (41 FR 17742; 43 FR 9607).

The petitioners assert the Mexican wolf is in danger of extinction due to four of the five factors set forth at 16 U.S.C. 1533(a)(1)(A)–(E), stating the only factor not considered a threat to the Mexican wolf is Factor B. Several analyses of the five listing factors have been conducted for the Mexican wolf. The initial proposal to list the Mexican wolf as endangered in 1975 (40 FR 17590), and the 1978 listing of the entire gray wolf species as endangered throughout the coterminous United States (except for Minnesota, where it was classified as threatened) (43 FR 9607), found that threats from habitat loss (Factor A), sport hunting (Factor B), and inadequate regulatory protection from human persecution (Factor D) were responsible for the subspecies' decline and near extinction.

We again assessed threats to the Mexican wolf in 2003 as part of the Southwest DPS when we reclassified the gray wolf into three DPSs (68 FR 15804). The reclassification rule stated that habitat destruction or modification (Factor A) was not currently considered a threat or deterrent for restoration of southwestern (Mexican) gray wolves. "Take" for commercial or recreational purposes, Factor B, was not considered a threat, nor were diseases and parasites (Factor C). Illegal killing was considered

in Factor C in the 2003 rule, and was recognized as a factor that may slow, but not likely preclude, recovery in the Southwest. Regulatory protection for reintroduced Mexican wolves was deemed adequate (Factor D). Finally, public attitudes toward gray wolves were cited as a primary determinant in the long-term recovery status of wolves (Factor E), and the 2003 rule anticipated that the potential for human–wolf conflicts would increase as the number of wolves increased.

The most recent analysis of the five listing factors was performed in the Mexican Wolf Conservation Assessment (Service 2010, pp. 44–62). While Factor A was not considered a threat to the current wild population of Mexican wolves, the document states the degree to which habitat alteration may hinder future recovery must consider projections of future events and landscape trends in relation to updated recovery criteria. According to Carroll *et al.* (2003, pp. 536–548; 2006, pp. 25–37), there are a number of adequately sized, ecologically suitable blocks of habitat in the Southwest, southern Rockies, and Mexico for establishment of wolf populations; however, as the petitioners assert, these sites may be impacted in the future by human population growth and associated road development.

The petitioners assert that disease and predation (Factor C) are a current threat to the Mexican wolf. Disease and predation have not been recognized as a threat in any of our analyses. In the recent Conservation Assessment, disease is not considered a threat to the Mexican wolf based on known occurrences in the wild population and the active vaccination program (Service 2010, p. 51). Predation is also not considered a threat to the Mexican wolf because no wild predator regularly preys on wolves (Service 2010, p. 51).

The petitioners assert that regulatory protections for Mexican wolves are inadequate (Factor D). The petitioners refer to restrictions within the 1998 rule (63 FR 1752), recommendations in the program's Three-year review (Paquet *et al.* 2001) that have not been implemented, and an unpublished powerpoint by Parsons and Ossario (2007) to show that current regulatory mechanisms are a primary cause for the failure to reach reintroduction objectives. We will further evaluate the adequacy of existing regulatory mechanisms during our status review.

The petitioners assert that other natural or manmade factors (Factor E) affect the continued existence of the Mexican wolf. The petitioners reference studies of captive Mexican wolves by Hedrick *et al.* (1997) and Fredrickson *et al.* (2007) and assert the Mexican wolf contains reduced genetic diversity from their original population, and that signs of inbreeding depression have been observed such as smaller size, reduced fertility, and lower litter sizes. Information in our files generally supports this assertion. However, while inbreeding may have the potential to decrease fitness, growth rate, and genetic variation of the current wild population unless management actions to increase genetic representation are employed (Service 2010, pp. 58–60), the information presented by the petitioners and readily available in our files does not indicate that inbreeding may be a current threat to the captive population of Mexican wolves.

Finally, the petitioners assert that federal control of wolves, illegal shootings, and vehicular collisions affect the continued existence of the Mexican wolf (Factor E). Information in our files supports the assertion that two sources of human-caused mortality (vehicular collision and illegal shooting) are responsible for the majority of the deaths within the wild population of Mexican wolves, and that the cumulative effects from the combination of human-caused wolf mortality and removal of wolves for management purposes has resulted in a failure rate (combined removal and mortality) too high to allow recovery through unassisted population growth (Service 2010, p. 61).

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). We have reviewed the petitions and the literature cited in the petitions, and evaluated the information to determine whether the sources that were cited supported the petitioned actions. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petitions. Based on our evaluation of the information provided in the petitions, we find that the petitions present substantial scientific or commercial information indicating that listing the Mexican wolf as a subspecies may be warranted. One of the petitions received also included listing the Mexican wolf as a DPS. Since substantial scientific or commercial information was found at the subspecies level, in this finding we did not assess whether the petitions present substantial scientific or commercial information indicating listing the Mexican wolf as a DPS may be warranted. However, we will fully assess whether the species warrants listing as either a subspecies or a DPS in the 12–month finding.

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petitions present substantial scientific or commercial information indicating that reclassification of the gray wolf to list the Mexican wolf as a subspecies throughout its entire range may be warranted. Because we have found that the petitions present substantial information indicating that listing the Mexican wolf as a subspecies may be warranted, we are initiating a status review to determine whether listing the Mexican wolf as a subspecies under the Act is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

References Cited

A complete list of references cited in this finding is available upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary authors of this notice are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 12, 2010

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–19199 Filed 8–3–10; 8:45 am]

BILLING CODE 4310–55–S