DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0077; 92220–1113–0000; ABC Code: C3]

RIN 1018–AW63

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Sonoran Pronghorn in Southwestern Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reestablishing the Sonoran pronghorn, a federally listed endangered mammal, in its historical habitat in King Valley, Kofa National Wildlife Refuge, in Yuma County, and the Barry M. Goldwater Range—East, Maricopa County, in southwestern Arizona. We are reestablishing the Sonoran pronghorn under section 10(j) of the Endangered Species Act of 1973, as amended, and classify that reestablished population as a nonessential experimental population (NEP). The NEP is located in southwestern Arizona in an area north of Interstate 8 and south of Interstate 10, bounded by the Colorado River on the west and Interstate 10 on the east; and an area south of Interstate 8, bounded by Highway 85 on the west, Interstates 10 and 19 on the east, and the United States-Mexico border on the south.

This action is one of the recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the historical range of the species. This final rule establishes the NEP and provides for limited allowable legal taking of Sonoran pronghorn within the defined NEP area. An Environmental Assessment and Finding of No Significant Impact have been prepared for this action (see **ADDRESSES** section below).

DATES: The effective date of this rule is June 6, 2011.

ADDRESSES: This final rule, along with the public comments, Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/arizona/*. Supporting documentation is also available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Arizona Ecological Services Office at 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021 (telephone 602–242–0210, facsimile 602–242–2513). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to this final rule establishing a Sonoran pronghorn nonessential experimental population (NEP). For more information on the Sonoran pronghorn, refer to the February 4, 2010, proposed rule (75 FR 5732) and the 1998 Revised Sonoran Pronghorn Recovery Plan (Service 1998: *http://ecos.fws.gov/docs/recovery_plan/981203.pdf*) and its amendments (Service 2002: *http://ecos.fws.gov/docs/recovery_plan/031126.pdf*).

Regulatory Background

We listed the Sonoran pronghorn subspecies (*Antilocapra americana sonoriensis*) as endangered throughout its range on March 11, 1967 (32 FR 4001), under the Endangered Species Preservation Act of October 15, 1966, without critical habitat. This subspecies was included as an endangered species when the Endangered Species Act was signed into law in 1973 (Act; 16 U.S.C. 1531 *et seq.*). The Act provides that species listed as endangered 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 endangered wildlife. "Take" is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife. 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 will, 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 or other non-Federal land unless they are authorized, funded, or carried out by a Federal agency.

Under section 10(j) of the Act, the Secretary of the Department of the Interior can reestablish populations outside the species' current range and designate them as "experimental." With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Threatened designation allows us discretion in devising management programs and special regulations for such a population. Section 10(j) of the Act allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a NEP. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

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 unit of the National Park Service, and section 7(a)(1) and the 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. When NEPs are 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, and only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4).

In these instances, NEPs provide 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 NEP is, by definition, not essential to the continued existence of the species

(see below) then the effects of proposed actions on the NEP will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for Sonoran pronghorn established within the NEP area. Nonetheless, some agencies (e.g., Bureau of Land Management (BLM)) voluntarily confer with the Service on actions that may affect a proposed species. Section 10(j)(2)(c)(ii) precludes the designation of critical habitat for nonessential populations. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

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 experimental population is not essential to the continued existence of the species in the wild (see *Status of Reestablished Populations* section below). Therefore, the Service is designating a nonessential experimental population for the species in this area.

Sonoran pronghorn used to establish the experimental population will come from a captive-rearing pen on Cabeza Prieta National Wildlife Refuge (NWR), as long as appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to the animals' removal. The donor population is a captive-bred population derived primarily from wild stock at Cabeza Prieta NWR and from a wild Sonoran pronghorn population in northwestern Sonora, Mexico. The purpose of the captive population is to provide stock for augmenting existing U.S. and Mexican populations of Sonoran pronghorn, as well as supplying founder animals for establishment of an additional U.S. herd(s), in accordance with recovery actions 2.1–2.4 of the Sonoran Pronghorn Recovery Plan (Service 2002, pp. 47–48). The proposed population establishment will involve two phases: (1) Construction and operation of a captive-breeding pen at Kofa NWR, with subsequent releases to establish a new herd; and (2) relocation of excess Sonoran pronghorn from the existing breeding pen at Cabeza Prieta NWR to the eastern portion of the BMGR–E, east of Highway 85 and south of Interstate 8, with the intent of establishing another herd.

Biological Information

The Sonoran pronghorn was first described by Goldman (1945, pp. 3–4) and is small in terms of cranial measurements compared to the measurements of other subspecies of pronghorn (Nowak and Paradiso 1971, p. 857). Historically, the Sonoran pronghorn ranged in the United States from approximately the Santa Cruz River, Arizona, in the east, to the Gila Bend and Kofa Mountains, Arizona, to the north, and to Imperial Valley, California, to the west (Service 1998, pp. 4–6). In northwestern Sonora, Mexico, the subspecies is thought to have occurred historically as far south as Bahia Kino and east to Santa Ana and Nogales. In Baja California, Mexico, the subspecies occurred in the northeast from the United States border south to the vicinity of Punta Estrella (Phelps and Webb 1981, pp. 20–21; Service 2002, Fig. 2). Currently, three populations of the Sonoran pronghorn are extant: (1) A U.S. population in southwestern Arizona, south of Interstate 8, west of Highway 85, and east of the Copper and Cabeza Prieta mountains (80–90 wild pronghorn); (2) a population in the El Pinacate Region of northwestern Sonora (101 pronghorn); and (3) a population south and east of Mexico Highway 8 and west and north of Caborca, Sonora (381 pronghorn). The three populations are geographically isolated due to barriers such as roads and fences (Service 2002, pp. 4–10, Fig. 1). The current range of the Sonoran pronghorn in the United States is defined by the boundaries described in number (1) above. Section 10(j)(2)(A) of the Act states that, "The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species * * *" Consistent with years of survey data, we are confident that no Sonoran pronghorn population occurs outside of the current range (Phelps 1981, pp. 23–24; Service 2002, pp. 16 and 47).

Threats to the Sonoran pronghorn include:

(1) Highways, fences, railroads, developed areas, and irrigation canals that block access to essential forage or water resources;

(2) a variety of human activities that disturb pronghorn or degrade habitat, including livestock grazing in the United States and Mexico; military activities; recreation; poaching and hunting; clearing of desert scrub and planting of buffelgrass (*Pennisetum ciliare*), particularly in Sonora; gold mining southeast of Sonoyta, Sonora; dewatering and development along the Gila River and Río Sonoyta; and high levels of undocumented immigration and drug trafficking across the international border, and associated law enforcement response in the United States;

(3) wildfire, fueled by nonnative perennial and ephemeral plants that have increased fine fuels and allowed fire to become a much more frequent event in the Sonoran Desert;

(4) drought and associated limited food and water; and

(5) small population size and random changes in demographics.

Populations at low levels may experience random variations in sex ratios, age distributions, and birth and death rates among individuals, which can cause fluctuations in population size and possibly extinction (Service 2002, pp. 14–35; Primack 2002, pp. 196–197). In very sparse populations, males may have trouble finding females, causing an unequal sex-ratio, which may lead to a reduction in productivity (Primack 2002, pp. 310–311). In 2002, a severe drought was the primary cause of a major die off of Sonoran pronghorn. The U.S. population declined in 2002 by 83 percent, to 21 animals (Bright and Hervert 2005, p. 46). The Mexican populations declined at the same time, but not to the same degree. The population southeast of Highway 8 declined by 18 percent, while the El Pinacate population declined by 26 percent. The differences between the rates of decline north and south of the border may be due to high levels of human disturbance on the U.S. side, due primarily to heightened levels of illegal immigration, smuggling, and law enforcement response (Service 2008, p. 55).

Recovery Efforts

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of the endangered species program. Thus, in 1982 we published the Sonoran Pronghorn Recovery Plan (Plan) (Service 1982), which was produced by a Recovery Team comprised of representatives from the Arizona Game and Fish Department (AGFD), Cabeza Prieta NWR, BLM, and Organ Pipe Cactus National Monument (OPCNM). The Plan was subsequently revised in 1994, 1998, and 2002. Major recovery actions include:

(1) Enhance present populations of Sonoran pronghorn by providing supplemental forage and/or water;

(2) Determine habitat needs and protect present range;

(3) Investigate and address potential barriers to expansion of presently used range, and investigate, evaluate, and prioritize present and potential future reintroduction sites within the historical range;

(4) Establish and monitor a new, separate herd(s) to guard against catastrophes decimating the core population;

(5) Continue monitoring populations and maintain a protocol for a repeatable and comparable survey techniques; and

(6) Examine additional specimen evidence to assist in verification of taxonomic status (Service 1998, pp. iii–iv).

The 2002 Supplement did not include delisting criteria; however, eight short-term recovery actions were identified as necessary to downlist the species to threatened. The supplement goes on to say that accomplishing these actions would provide the information necessary to determine delisting criteria. One of the short-term recovery actions was "evaluating potential transplant locations, establishing methodology and protocols, developing interagency agreements (including with Mexico as required), acquiring funding, and initiating reestablishment projects" (Service 2002, p. 38).

After the catastrophic die off of Sonoran pronghorn in 2002, the Service and its partners embarked on a number of aggressive recovery actions to ensure the species' continued existence and to begin to rebuild populations. The cornerstone of these actions was a semi captive breeding facility, constructed in Childs Valley of Cabeza Prieta NWR in 2003, and stocked with wild Sonoran pronghorn in 2004. In 2009, as of May, 69 Sonoran pronghorn resided in the pen. To date, 44 Sonoran pronghorn have been released into the wild population. The goal of the facility is to produce at least 20 fawns each year for release to the current U.S. population, to newly established population(s) in the United States, and to augment Mexican populations.

A number of other projects are under way to increase availability of green forage and water during dry periods and seasons, offsetting to some extent the effects of drought and barriers that prevent Sonoran pronghorn from accessing greenbelts and water, such as the Gila River and Río Sonoyta. Nine emergency water sources (six on Cabeza Prieta NWR, one on OPCNM, and two on BMGR–West) have been constructed in recent years throughout the range of the U.S. population. Four forage enhancement plots, each consisting of a well, pump, pipelines, and irrigation lines, have been developed to irrigate the desert and produce forage for pronghorn. Another plot is nearing completion, and two additional plots will be installed over the next 5 years. These crucial projects, intended to pull the U.S. population back from the brink of extinction, have been cooperative efforts among the Service, AGFD, Marine Corps Air Station—Yuma, Luke Air Force Base, BLM, and OPCNM, with volunteer efforts from the Arizona Desert Bighorn Sheep Society, Arizona Antelope Foundation, and the Yuma Rod and Gun Club.

The U.S. wild population of Sonoran pronghorn has rebounded from 21 in 2002 to 80–90 in 2010; this increase has been facilitated by the collaborative recovery efforts for this species. However, at 80–90 animals currently, the U.S. population is far from being secure. We have begun to work with our Mexican partners on recovery of the Sonoran pronghorn in Sonora. Although the number of pronghorn in Sonora (482 animals) is significantly greater than in the United States, the safety net of water sources and forage plots is not in place there, and a severe drought could decimate those populations.

Reestablishment Areas

O'Brien *et al.* (2005) used landscape-level classification and modeling to assess potential Sonoran pronghorn habitat in southwestern Arizona, including current and historical range, as a means of beginning the process of identifying potential locations for establishing a second U.S. Sonoran pronghorn herd. Both models identified greater than 4,632 square miles (sq. mi) (greater than 12,000 square kilometers (sq. km)) of potential habitat (O'Brien *et al.* 2005, pp. 28–30). The largest blocks of potential habitat outside of the current range were the Ranegras and Harquahala plains, King Valley at Kofa NWR north of Interstate 8; Sentinel Plain and other areas to the west between Interstate 8 and the Gila River; and areas not currently occupied south of Interstate 8 and immediately west of Highway 85. The models also identified a large land area east of Highway 85 and south of Interstate 8 as potential habitat. The authors did not evaluate potential habitats in the far eastern portions of the historical range of the Sonoran pronghorn in Arizona (O'Brien *et al.* 2005, Figs. 3 and 4). O'Brien *et al.* (2005, p. 32) further explained that their models were an initial step toward identifying and evaluating potential translocation sites. They recommended soliciting public input, and reviewing predator presence and density, fencing, and the presence of preferred forage and water as additional steps in the evaluation process (O'Brien *et al.* 2005, p. 32).

An Interdisciplinary Team (IDT), comprising members of the Sonoran Pronghorn Recovery Team, the Tohono O'odham Nation, and representatives from land management agencies located in southwestern Arizona, was convened in 2008 to address these and other issues and considerations, and to recommend specific areas for establishing an additional U.S. herd or herds. Development of alternatives for population establishment entailed consideration of three key variables: (1) Geographical areas for establishing populations outside of the current range; (2) potential establishment techniques; and (3) legal status of established populations under the Act. Each of these three key variables had a range of options. The IDT evaluated the three key variables to arrive at the most effective combinations of geographical areas, establishment techniques, and legal status options.

The IDT conducted a mapping exercise to identify areas within the historical range of Sonoran pronghorn in the United States that were under Federal or State ownership and that contained suitable habitat for the species. The result of this exercise was identification of seven potential reestablishment areas, designated Areas A through G. The seven areas were then ranked by the IDT, using seven selection criteria, to determine the best areas for translocation. Area A (King Valley at Kofa NWR, and adjacent portions of primarily Yuma Proving Grounds and BLM lands) and Area D (primarily portions of the BMGR–E, BLM lands, and a portion of the Tohono O'odham Nation, all east of Highway 85) were ranked 1 and 2, respectively.

Public scoping for the Sonoran pronghorn population establishment project included three open houses held in November 2008 on successive evenings at Yuma, Tucson, and Phoenix, Arizona. After consideration of public input, two alternatives were carried forward in the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) process, including establishment of Sonoran pronghorn in Areas A and D, which we will implement as per this final rule. Specific population establishment techniques are described for both areas (see *Release Procedures,* below), and we are establishing Sonoran pronghorn as a NEP in these areas under section 10(j) of the Act.

The NEP encompasses Areas A and D in Arizona, as well as all areas into

which Sonoran pronghorn are likely to disperse. The NEP is defined as follows: An area north of Interstate 8 and south of Interstate 10, bounded by the Colorado River on the west and Interstate 10 on the east; and an area south of Interstate 8, bounded by Highway 85 on the west, Interstates 10 and 19 on the east, and the United States-Mexico border on the south.

Section 10(j) of the Act requires that an experimental population be wholly separate geographically from other wild populations of the same species. The Colorado River; Interstates 8, 10, and 19; and Highway 85, which form the boundaries of the NEP, are barriers to movement. Interstate 8 separates Area A from the current U.S. population, and Highway 85 forms a boundary between Area D and the current U.S. population. We do not expect Sonoran pronghorn to cross these barriers. Brown and Ockenfels (2007, p. 29) found that high-speed highways with right-of-way fences, such as these, were virtually Sonoran pronghorn-proof due to comprehensive fencing and high-volume traffic, and that interstate highways are effectively impassable for the species. Only once, in 1973, has a Sonoran pronghorn been known to cross Interstate 8 (Phelps 1981, p. 27). In 2008, a Sonoran pronghorn crossed Highway 85 and its associated right-of-way fences into BMGR–E (Howard 2008, pers. comm.); this is the only confirmed case of a Sonoran pronghorn crossing Highway 85 and its right-of-way fences. However, in July 2010, an unconfirmed sighting of a pronghorn doe was reported well east of Highway 85 in BMGR–E. This animal was not collared or ear-tagged, so its origins are uncertain, but it presumably crossed Highway 85 into BMGR–E from the wild population. No other documented cases of Sonoran pronghorn crossing Highway 85 and its right-of-way fences are known.

Nonetheless, in the unlikely event that a Sonoran pronghorn moves outside the NEP, the individual or individuals would not constitute a population. Our regulations define "population" as a "group of fish or wildlife * * * in common spatial arrangement that interbreed when mature" (50 CFR 17.3) and thus determine that a "geographic separation" is any area outside the area in which a particular *population* sustains itself. See *Wyo. Farm Bureau Fed'n* v. *Babbitt*, 199 F. 3d 1224, 1234 (10th Cir. 2000). These definitions preclude the possibility of population overlap as a result of the presence of individual dispersing Sonoran pronghorn—by definition lone dispersers do not constitute a population or even part of a population, since they are not in "common spatial arrangement" sufficient to interbreed with other members of a population. The evidence suggests that the likelihood of a lone pronghorn crossing the NEP boundary is very low, so it follows that the probability of that lone disperser encountering another Sonoran pronghorn of the opposite sex and reproducing is even more remote.

The status, as endangered or as a member of the NEP, of any dispersing Sonoran pronghorn that manages to cross Highway 85, Interstate 8, or other barriers between the NEP and the current range is defined geographically. Any Sonoran pronghorn within the NEP area is considered a member of the nonessential experimental population (including any dispersing animals from within the current range that cross into the NEP area), whereas any Sonoran pronghorn outside of the NEP is fully protected under the Act as an endangered species.

The geographical extent of the NEP designation includes areas unlikely to be used by Sonoran pronghorn, as only portions of this proposed NEP area contain suitable habitat. In the NEP area, Sonoran pronghorn habitat is limited to undeveloped areas within valleys. Mountainous areas, such as the Kofa, Castle Dome, Palomas, and Gila Bend mountains, do not provide habitat for this species; nor do developed areas within the valleys, such as agricultural areas and towns and cities. However, the NEP area represents what we believe to be the maximum geographical extent to which Sonoran pronghorn could move if released in Areas A and D. Once released into these areas, we expect the Sonoran pronghorn population(s) to grow and expand into adjacent suitable habitats, potentially moving to the boundaries of the NEP. In the unlikely event that any of the released Sonoran pronghorn, or their offspring, move across interstate highways or other barriers (e.g., rivers or mountainous areas, developed agriculture areas, or urban areas) to outside the designated NEP area (but not into the area occupied by the wild population), then the Service will evaluate the need, in the context of the 10(j) requirements, to amend the 10(j) rule to enlarge the boundaries of the NEP area to include the area of the expanded population. As discussed above, the likelihood of Sonoran pronghorn moving from the NEP area into the current range is very low.

Release Procedures

The IDT developed the methods of release of Sonoran pronghorn into Areas A and D with the objective of maximizing the likelihood of success in establishing herds, while minimizing the impact to the source population (the animals in the captive breeding pen at Cabeza Prieta NWR) and limiting mortality or injury to translocated Sonoran pronghorn to the maximum extent possible. In King Valley, Kofa NWR (Area A), a rectangular-shaped, 0.5-square-mile (sq.-mi) (1.29-square-kilometer (sq.-km)) captive-breeding pen will be constructed. The pen will include water sources and irrigated areas to enhance forage production, as well as two observation towers from which the animals will be monitored. In December 2011/January 2012, we anticipate moving 11 Sonoran pronghorn (10 females and 1 male) to the pen from the captive-rearing pen at Cabeza Prieta NWR. These animals will be captured, either by use of a boma (a circular trap used inside the pen) or tranquilizer dart gun and moved one or two at a time by helicopter.

Prior to movement to Kofa NWR, Sonoran pronghorn will be screened for epizootic hemorrhagic disease (EHD) and bluetongue (BTV). Both diseases can infect bighorn sheep and mule deer, as well as Sonoran pronghorn. To ensure these diseases are not inadvertently moved to Kofa NWR, only Sonoran pronghorn not exhibiting clinical signs (active lesions) of EHD and BTV will be transported to the new captive breeding pen at Kofa NWR. Biennial rotation of the breeding male and death of any Sonoran pronghorn in the breeding pen at Kofa NWR would require additional flights to bring new animals from Cabeza Prieta NWR. Methods perfected at Cabeza Prieta NWR will be employed in these activities, which have been used successfully with minimal mortality of pronghorn.

Assuming successful captive-breeding at the Kofa NWR pen, up to 20 Sonoran pronghorn will be released annually into suitable habitats outside of but adjacent to the pen site at Kofa NWR, beginning as early as the winter of 2012 or 2013 and recurring each winter until 2020. Sonoran pronghorn in the pen, as well as animals released, will be closely monitored to determine success or need for adaptive management. Success criteria will be developed by the recovery team prior to the release of any animals, but the objective will be to continue releases until the population can sustain itself without augmentation. Concurrently, but only if excess animals are available from the captive-breeding pen at Cabeza Prieta NWR (not needed to augment existing herds or for the pen at Kofa NWR), these animals will be

captured from the pen, transported to a holding pen in Area D, held temporarily, and then released as a group. The holding pen in Area D is located in the Midway Well area near Hat Mountain (an area locally known as BMGR–E "Area B") in Maricopa County, Arizona. Ideally, the Sonoran pronghorn will be captured together and moved quickly to a holding pen, allowed to recover for a brief period, and released together.

Released animals in Area D will be monitored via aircraft and on-the-ground personnel to determine survival, reproduction, and other measures of success. Details of the monitoring plan will be developed prior to release and will include collection of enough data to quantitatively determine if we are meeting success criteria and, if not, what needs to be corrected to ensure success. Through adaptive management, release techniques and other management will be revised as needed to ensure success. Additional description of the release procedures and monitoring protocols can be found in the final EA (for copies of this document, see **ADDRESSES** above).

Status of Reestablished Populations

We have determined that these reestablished populations are nonessential, based on the following:

(a) Wild populations of the Sonoran pronghorn, totaling about 562 to 572 animals, currently exist at: (1) Cabeza Prieta NWR, OPCNM, BMGR, and adjacent BLM lands; (2) in the El Pinacate region of Sonora; and (3) south and east of Highway 8 in Sonora.

(b) A captive-breeding pen at Cabeza Prieta NWR maintains a captive population and provides stock to augment the wild populations in Arizona and Sonora. The pen has been highly successful. It was first stocked with Sonoran pronghorn in 2004; the original group of 11 animals has grown to 69 (May 2010), and another 44 Sonoran pronghorn have been released from the pen into the wild.

(c) The first priority for use of animals in the captive-breeding pen at Cabeza Prieta NWR is to augment herds within the boundaries of the current range of the species. Relocation of Sonoran pronghorn from the captive breeding pen to Kofa NWR will not appreciably inhibit the augmentation efforts for the herds within the boundaries of the current range of the species. Sonoran pronghorn produced at the Cabeza Prieta NWR pen that are not needed to augment herds within the current range or to populate the Kofa NWR pen will be used to establish a population in Area D.

(d) The possible failure of this action will not appreciably reduce the likelihood of survival of the species in the wild, because (1) the first priority for use of Sonoran pronghorn from the captive-breeding pen at Cabeza Prieta NWR is to augment the wild herd, and (2) recovery actions have been, and continue to be, implemented in the United States to reduce the effects of drought on the species (Service 2009, pp. 9, 18–19).

(e) Through programs of work endorsed by the Canada/Mexico/U.S. Trilateral Committee for Wildlife and Ecosystem Conservation and Management, the Service and AGFD coordinate with our Mexican partners on recovery actions for Sonoran pronghorn in Mexico, enhancing the likelihood of their survival and recovery.

We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of Sonoran pronghorn from the donor population at Cabeza Prieta NWR for releases in Areas A or D is not likely to jeopardize the continued existence of the species in the wild. Establishment of additional Sonoran pronghorn populations within the species' historical range is a necessary step in recovery (Service 2002, p. 38).

The special rule that accompanies this 10(j) rule is designed to broadly exempt take of Sonoran pronghorn from the section 9 prohibitions outside of National Wildlife Refuge and National Park Service lands, as long as the take is incidental to otherwise lawful activities. We provide this exemption because we believe that incidental take of members of the NEP associated with otherwise lawful activities will not pose a substantial threat to the recovery of Sonoran pronghorn, as activities that currently occur or are anticipated in the NEP area are generally compatible with Sonoran pronghorn recovery. For example, in Area A, there are vast expanses of open valleys without major barriers to Sonoran pronghorn movement that provide suitable habitat. These valleys include King Valley at Kofa NWR, Palomas Plain, the southern end of the Ranegras Plain, and portions of the Yuma Proving Grounds. The La Posa Plain and Castle Dome Plain also provide habitat. Highway 95 runs north-south through those plains, and although it may somewhat inhibit movement to the west side of those plains, it is not a substantial barrier because it lacks right-of-way fences. In Area D, there is considerable habitat in the valleys among the Sauceda, Sand Tank, Batamote, and other mountains in that region.

There are existing military activities at Yuma Proving Grounds in Area A and BMGR–E in Area D, but pronghorn have coexisted with military activities for many years at the BMGR (deVos 1990, pp. 49–50; Krausman *et al.* 2004, pp. 29–33; Krausman *et al.* 2005, pp. 20–22); as a result, we believe they will persist with the similar activities conducted at Yuma Proving Grounds and in Area D. Although some forms of military activities could potentially result in incidental death or injury of individual pronghorn, no incidental take has ever been documented due to military activities, even before precautions were set in place as a result of section 7 consultations to minimize the likelihood of such take at the BMGR.

There is some likelihood of Sonoran pronghorn drowning in canals in Area A. Canals are present in agricultural areas on the southern, eastern, and northeastern portions of Area A; Sonoran pronghorn are known to drown in such canals (Rautenstrauch and Krausman 1986, p. 9). The major canal in Area A most likely to be accessed by Sonoran pronghorn is the Wellton Canal, located north of the Gila River and on the northern edge of the agricultural lands in the Gila Valley. It is equipped with ramps and steps designed to prevent ungulate drownings. In addition, a series of wildlife water sources exists to the north of the canal as alternative water sources. Most of the canals elsewhere in Area A are too small to result in Sonoran pronghorn entrapment, or are surrounded by agriculture or other developments and are unlikely to be accessed by Sonoran pronghorn. Other activities such as recreational hunting and camping, vehicle use, livestock grazing, and small-scale rural or agricultural development, are anticipated to either have minimal effects on Sonoran pronghorn or will be limited in extent (e.g., rural and agricultural development).

Under section 7(a)(1) of the Act, all Federal agencies are mandated to use their authorities to conserve listed species. In addition, the BLM has a policy of conferring with the Service, under section 7(a)(4), on their actions that may affect proposed species (BLM 6840 Manual). Some activities do have greater potential to compromise the success of the Sonoran pronghorn reestablishment than those described above. For instance, construction of new highways, particularly those with rights-of-way fencing, or new canals in the NEP could create barriers to movement and bisect important pronghorn habitats. There is also the potential for BLM to permit large-scale solar power

plants, which would be constructed in the valleys and could eliminate up to tens of thousands of acres of habitat. Other BLM-authorized projects, such as agricultural leases, could also potentially remove large blocks of habitat and perhaps compromise the success of this project. The potential for these projects to impact the reestablishment is probably greatest on BLM lands in the valleys to the east of Kofa NWR. The Service will have the opportunity through the section 7(a)(4) conference process to work with the BLM to minimize the potential adverse effects of solar plants, agricultural leases, highways, or other projects that may compromise Sonoran pronghorn recovery.

Management

The lands within the NEP area are managed and listed in descending order of acreage within areas A and D as follows: Area A—the Service (Kofa NWR), Department of the Army (Yuma Proving Grounds), BLM, Arizona State Lands Department, private landowners, and Colorado River Indian Tribes; Area D: Tohono O'odham Nation, BLM, Department of the Air Force (BMGR–E), private owners, and Arizona State Land Department. Outside of Areas A and D, but within the NEP, land ownership is similar, but also includes lands within the Gila River Indian Reservation, Ak-Chin Indian Reservation, Pascua Yaqui Indian Reservation, San Xavier Reservation, Buenos Aires NWR, Saguaro National Park, OPCNM, Tucson Mountain Park, and Coronado National Forest. Due to the management flexibility provided by the NEP designation and the special rule, we do not anticipate that establishment of Sonoran pronghorn in Areas A or D and subsequent dispersal of Sonoran pronghorn from the release sites will affect management on Tribal, BLM, National Forest, Department of Defense, State, or private lands.

Through section 7 consultations on NWR lands and National Park Service lands, some changes in management may occur to reduce adverse effects to Sonoran pronghorn, including minimizing the likelihood of incidental take. However, we believe few changes will be needed, because management of these lands already is broadly compatible with Sonoran pronghorn recovery. Other Federal agencies that propose actions on Kofa NWR or National Park Service lands will also be required to consult with us under section 7 of the Act, if such activities may affect Sonoran pronghorn. For instance, some activities conducted by Yuma Proving Grounds (e.g., overflights of Kofa NWR) will be subject to the consultation requirements. Some Federal agencies, such as BLM, that propose actions outside of Kofa NWR or National Park Service lands may elect to work with the Service voluntarily through the section 7(a)(4) conferring process to ensure that adverse effects of their actions on Sonoran pronghorn in the NEP area are minimized.

The Service (Cabeza Prieta NWR, Kofa NWR, and the Ecological Services office in AZ), AGFD, OPCNM, Luke Air Force Base, BLM, and other partners, in close coordination with the Sonoran Pronghorn Recovery Team, will plan and manage the establishment of new populations of Sonoran pronghorn. This group will closely coordinate on releases, monitoring, and coordination with landowners and land managers, among other tasks necessary to ensure successful population establishment. Management issues related to the Sonoran pronghorn NEP that have been considered include:

(a) *Mortality:* "Incidental take," as defined by regulation at 50 CFR 17.3, is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, such as agricultural activities and other rural development, ranching, military training and testing, camping, hiking, hunting, vehicle use of roads and highways, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. With the finalization of this 10(j) rule, incidental take of Sonoran pronghorn within the NEP area outside of National Wildlife Refuge and National Park Service lands will not be prohibited, provided that the take is unintentional, not due to negligent conduct, and is in accordance with the special rule that is a part of this 10(j) rule. However, if there is evidence of intentional take, not authorized by the special rule or by a section 10 permit, of a Sonoran pronghorn within the NEP we will refer the matter to the appropriate law enforcement entities for investigation. We expect levels of incidental take to be low, because, as discussed in paragraph (d) under *Status of Reestablished Populations,* above, the establishment of new populations is compatible with most existing human use activities and practices for the area. In the current range of the Sonoran pronghorn in the United States, no incidental take has been documented from military activities, recreation, use of highways, and most other activities that occur both in the current range and in the NEP, the exception being canals, in which Sonoran pronghorn have drowned on several occasions. More specific information regarding take can be found in the Regulation Promulgation section of this final rule.

(b) *Special handling:* In accordance with 50 CFR 17.21(c)(3), "any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties", handle Sonoran pronghorn to aid sick or injured Sonoran pronghorn, or to salvage dead Sonoran pronghorn. However, other personnel and their agents, not specifically named in these regulations, will need to acquire permits from the Service for these activities.

(c) *Coordination with landowners and land managers:* During the NEPA scoping process, the Service and cooperators identified issues and concerns associated with the proposed Sonoran pronghorn population establishment. The population establishment was also discussed with potentially affected State agencies, tribes, and private landowners. All land owners and managers also had an opportunity to review and comment on the draft EA and proposed rule. State and Federal land management agencies either supported or did not oppose the reestablishment of a Sonoran pronghorn herd and designation as a NEP; however, at least two private landowners in the NEP expressed opposition to the proposal. U.S. Customs and Border Protection strongly encouraged limiting reestablishment to Area A. See the section Summary of Public and Peer Review Comments and Recommendations below for summaries of those comments and how we addressed any concerns.

(d) *Monitoring and Adaptive Management:* A monitoring and adaptive management plan for the population establishment program will be implemented by the Service, AGFD, and other partners to determine if the program is successful, and to adjust management as needed to ensure success. Success criteria have not yet been finalized, but they will include the concept that the objective of the program is to establish Sonoran pronghorn herds that are self-sustaining without augmentation via releases from captive pens or holding facilities, thereby contributing to recovery goals. The monitoring will assess all aspects of the population establishment program, from capture and movement of the animals to the captive breeding pen (Area A) or holding area (Area D), monitoring of the animals in these captive facilities, and monitoring and

tracking released Sonoran pronghorn in the release areas, including Sonoran pronghorn water sources and any forage enhancement vegetation plots developed to support the established herds. Monitoring of released Sonoran pronghorn will be conducted to determine the following:

(1) Mortality and recruitment rates,

(2) causes of mortality among adult and juvenile Sonoran pronghorn,

(3) reliance on freestanding water sources,

(4) movement corridors and barriers to movements, and

(5) habitat preferences.

Each released animal will be fitted with an ear tag and radio collar. A limited number of Sonoran pronghorn will be fitted with Geographic Positioning System (GPS) platform telemetry collars. It is expected the GPS transmitters will function for up to 3 years. Telemetry flights with a fixed-wing aircraft will be conducted twice a month. Each Sonoran pronghorn will be observed from an altitude of 1,000 feet (ft.) above ground level with the aid of binoculars. Group size and composition (sex and age), habitat type, and terrain will be recorded. Additional monitoring of individual Sonoran pronghorn and herd movements will be done from the ground, particularly from high points where valley habitats of the Sonoran pronghorn can be viewed. All monitoring flights and on-the-ground surveillance will be closely coordinated with and approved by the tribal, military, and other land managers and owners where such monitoring will occur. As Sonoran pronghorn become established and breed in the establishment areas, the percentage of animals tagged or radio-collared will decline over time, and additional animals may need to be captured and radio collared to adequately monitor the herds. We will attempt to maintain radio collars on at least 10 percent of a population.

Monitoring data will be assessed regularly by the Recovery Team, and methods will be revised as needed to increase the likelihood of successful population establishment and to increase efficiency. A comprehensive review, assessment, and report of the reestablishment program by the Recovery Team will occur at a frequency of no less than once every 5 years. If at any point the program is not meeting its stated objective, or is falling short of meeting the success criteria, techniques and methods will be reviewed and revised as needed to correct problems and increase the likelihood of success. If revisions fall outside the scope of the action evaluated in the EA and FONSI, all necessary environmental compliance will be completed before those revised techniques or methods are implemented. Additional details of the monitoring and adaptive management plan, including quantifiable and measurable success criteria, will be finalized and posted on our Web site at *http://www.fws.gov/southwest/es/arizona/* prior to release of Sonoran pronghorn into Areas A or D.

(e) *Public awareness and cooperation:* Public scoping for the Sonoran pronghorn population establishment project was conducted in the fall of 2008. Actions included an October 30, 2008, scoping letter sent to approximately 6,000 recipients, a news release to local media sources, and a series of 3 open houses held in the Arizona cities of Yuma, Tucson, and Phoenix, during November 18–20, 2008. We accepted written public scoping comments until December 12, 2008. We received 44 written responses about the project. In our EA, we discussed issues identified in the responses. The IDT and the Service used these issues to refine the proposed action and alternatives in the EA, and to identify mitigation measures to avoid or reduce potential project effects. The IDT and the Service also used the public concerns to determine which resources would be the greatest focus of the EA analysis. The comments received during the scoping process are listed in the EA, and were considered in the formulation of alternatives considered in the NEPA process. The following section describes the public outreach we conducted and the responses received during the public and peer review comment periods on the proposed rule and draft EA.

Section 7 Consultation

A special rule under section 4(d) of the Act is included in this establishment of an experimental population under section 10(j) of the Act. A population designated as experimental is treated for the purposes of section 9 of the Act as threatened, regardless of the species' designation elsewhere in its range. The development of protective regulations for a threatened species is an inherent part of the section 4 listing process. The Service must make this determination considering only the "best scientific and commercial data available." A necessary part of this listing decision is also determining what protective regulations are "necessary and advisable to provide for the conservation of [the] species." Determining what prohibitions and authorizations are necessary to conserve the species, like a listing determination of whether the species meets the definition of threatened or endangered, is not a decision that Congress intended to undergo section 7 consultation.

Actions associated with the establishment of the experimental population, such as construction of pens or the movement of wild animals, will undergo section 7(a)(2) consultation, as appropriate.

Summary of Public and Peer-Review Comments and Recommendations

On February 4, 2010, we published our proposed rule to establish a NEP of Sonoran pronghorn in southwestern Arizona (75 FR 5732), and requested written comments from the public on the proposed rule and draft EA. We also contacted the appropriate Federal, State, and local agencies; tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft EA. The initial comment period was open from February 4, 2010, to April 5, 2010. A second comment period was open from June 9, 2010, to July 9, 2010 (75 FR 32727). A public hearing was held in Gila Bend, Arizona, on February 23, 2010; however, no verbal or written comments were submitted at that hearing.

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited opinions from three expert biologists who are familiar with this species regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information for the proposed rule. Reviewers were asked to review the proposed rule for accuracy and validity of its biological information and assumptions. Two out of three peer reviewers provided comments. They were both supportive of the proposal to reestablish the Sonoran pronghorn in areas of southwestern Arizona, but suggested revisions or had some questions about the proposal. The remaining peer reviewer asked for additional information, but did not submit a final peer review. Their letter requesting additional information is counted as a response, with no position taken.

We reviewed all comments received from the peer reviewers, agencies, and the public for substantive issues and new information regarding the proposed NEP. Substantive comments received during the comment period have been addressed below and, where appropriate, incorporated directly into this final rule. The comments are grouped below as peer review and agency or public comments.

We received responses from 29 parties, comprising private individuals

(15), nongovernmental organizations (4), peer reviewers (3), state agencies (2), Federal agencies (3), university (1), and anonymous (1). Some commenters clearly supported (10), opposed (4), or took no position (7) on the proposal. In addition, two supported the reestablishment, but opposed the NEP. One supported population reestablishment, but conditioned their support of the NEP on continued strong commitment by the Department of Defense to Sonoran pronghorn conservation. One conditioned their support on implementation of predator control, acknowledgement of the importance of water sources, and no impacts to hunting. Two others opposed the proposal unless predator control was conducted. One supported the Kofa NWR reestablishment but not the BMGR–E reestablishment, and one supported the BMGR–E reestablishment, but opposed the NEP and establishment of a population at Kofa NWR.

The two peer reviewers who submitted comments agreed with the following determinations: (1) The proposed establishment of experimental, nonessential populations of Sonoran pronghorn is well considered and has great potential to enhance the status of Sonoran pronghorn in the United States, and (2) proposed survey, monitoring, and capture techniques, and operation of the captive breeding pen, are within accepted practices in wildlife management. However, one commenter asked that the details of the monitoring program and success criteria be more clearly stated.

Peer-Review Comments

(1) *Comment:* Continual improvement in capture methods should be pursued on non-endangered subspecies across the range of the pronghorn to increase efficiency in capturing and maintaining captive populations.

Our Response: Consistent with Adaptive Management in the EA and the recovery plan, we will continue to evaluate new information, including publications, reports, and personal communications with others working on Sonoran pronghorn throughout its range. We will also learn from our experiences with Sonoran pronghorn to fine tune and improve capture methodologies, with the goal of minimizing stress and the possibility of injury or mortality of captured animals, while increasing efficiency of capture operations.

(2) *Comment:* Although habitat modeling to identify habitat suitable for reestablished populations is adequate at the landscape scale, additional work is needed to pinpoint the adequacy of habitat prior to releases. Cholla is a key forage plant that is missing or scarce north of Interstate 8. Supplemental feeding may be necessary in that area during prolonged drought.

Our Response: As discussed under "*Reestablishment Areas*" above, an IDT was tasked with identifying and ranking possible reestablishment areas within the historical range of the Sonoran pronghorn. Areas A and D ranked first and second of seven areas identified. Potential locations for a captive pen at Kofa NWR are somewhat limited by extensive wilderness designation that precludes construction and operation of that facility. Hence a block of non-wilderness, large enough to accommodate the pen, was selected in northern King Valley. This is a good location, because the pen will be located off well-traveled roads, yet it is relatively close to Highway 95, the access route from Yuma, and its location in the northern part of the valley provides an opportunity for pronghorn released directly from the pen to spread out throughout King Valley before moving off-refuge to areas of Yuma Proving Grounds or BLM lands. The IDT considered the absence of chain fruit cholla on Kofa NWR in its rankings of the seven areas. One of the seven criteria used to rank the areas was forage quality. The absence of chain fruit cholla is a concern; however, the value of that plant in the diet of the Sonoran pronghorn is primarily as a source of preformed water; it provides little nutrition (Fox 1997, pp. 76, 79). As a result, if freestanding water is available or can be provided dependably, the importance of chain fruit cholla in the diet is much reduced. Five water sources outside of the pen at Kofa NWR will be built to provide dependable water for Sonoran pronghorn. Water sources and chain fruit cholla are available on BMGR–E in Area D near where the holding pen will be constructed, and, if needed, additional water sources will be constructed; hence, water for drinking is not anticipated to be a limiting factor at BMGR–E.

(3) *Comment:* The movement of released Sonoran pronghorn might be underestimated, particularly as the populations grow. In particular, there is a possibility of Sonoran pronghorn moving south in Area D into Organ Pipe Cactus NM east of Highway 85, and then west into the areas occupied by the wild population.

Our Response: Some of the young male Sonoran pronghorn released from the pen in Cabeza Prieta NWR have moved extraordinary distances, and across barriers including, on at least two occasions, the right-of-way fence along Highway 85, a vehicle barrier constructed on the U.S./Mexico border, and Highways 2 and 8 in Sonora, Mexico. Released Sonoran pronghorn that wander over large areas tend to continue these long-distance movements until they find and join an existing herd or another Sonoran pronghorn. Although such movements are expected to be unusual, we agree that as Sonoran pronghorn are released and as populations grow, individuals will periodically make long-distance movements and some animals could potentially move across Highway 85 from Area D into areas occupied by the wild herd. Similarly, Sonoran pronghorn released from the pen at Cabeza Prieta NWR may occasionally move across Highway 85 into Area D.

Although these movements could occur more frequently as populations on both sides of Highway 85 increase, we do not anticipate they will ever be more than rare events for the reasons discussed in "*Reestablishment Areas*" above, hence we do not anticipate overlap of the wild population and the NEP. Lone dispersers do not constitute a population or even part of a population, because they are not in "common spatial arrangement" sufficient to interbreed with other members of a population (see discussion under "*Reestablishment Areas*"). Furthermore, the likelihood of a Sonoran pronghorn moving from the release site on BMGR–E south to the area east of Highway 85 in OPCNM is remote, because a Sonoran pronghorn would have to traverse miles of rugged terrain from the holding pen at Midway Wash through the Batamote/Coffee Pot Mountain region to reach the Hickiwan Valley or Pozo Redondo Valley, and then move south and west from there across Highway 86 and through the Gunsight Hills, then down the western bajada of the Ajo Mountains. Years of surveys have shown that Sonoran Pronghorn do not use the rugged slopes and mountainous terrain characteristic of this area (Hervert *et al.* 2005, p. 12).

(4) *Comment:* One peer reviewer expressed concern that there is a remote possibility of a Sonoran pronghorn moving through Area D south and east to Buenos Aires NWR, where a population of Mexican pronghorn (*Antilocapra americana mexicana*) currently exists.

Our Response: Buenos Aires NWR is in the southeastern portion of the NEP area, and is within the historical range of the Sonoran pronghorn (Service 2002, p. 17). The NEP area includes all regions into which Sonoran pronghorn could

potentially move from release sites. Although over 90 miles southeast of the release site, we agree there is a small probability that Sonoran pronghorn could reach Buenos Aires NWR at some point in the future. The major barrier between the two areas is likely a complex of rugged terrain between the release site and Sonoran pronghorn habitat to the east and south, formed by the Batamote, Sauceda, Sand Tank, and other ranges. If a Sonoran pronghorn could get past that barrier, then potentially it could move through the valleys of the Tohono O'odham Nation, and then around the north end of the Quinlan Mountains, across Highway 86 and south through the Altar Valley to Buenos Aires NWR. Historically a more direct route probably existed south of the Baboquivari Mountains in Mexico, but a vehicle barrier and livestock fence on the United States/Mexico border now block that route.

In the unlikely event that a Sonoran pronghorn reached Buenos Aires NWR, the Service would be required to assess the effects of its actions at the refuge, including managing herds of Mexican pronghorn, and conduct intra-Service section 7 consultation if those activities may affect the Sonoran pronghorn. A decision on how to proceed would emerge from that process and would be based on the circumstances at the time.

(5) *Comment:* The proposed rule stated that success criteria would be developed by the recovery team prior to release of any Sonoran pronghorn into areas A or D. Success criteria drive the types of monitoring needed. Some parameter(s) of success need to be identified.

Our Response: Broadly defined, success will be measured by our ability to achieve the purpose of the program, which, as stated in the EA (p. 19) and our recovery plan (Service 2002, p. 38), is to contribute to recovery of the Sonoran pronghorn by establishing additional populations in suitable habitat within its historical range in Arizona. In accordance with 50 CFR 17.81(c)(4), a technical definition of what it means to establish a population of Sonoran pronghorn will, as the commenter notes, be forthcoming; however, it will almost certainly involve the presence of Sonoran pronghorn surviving and breeding in the wild to an extent that, at some point, release of additional animals to augment the population—either via the captive breeding pen at Kofa NWR or the holding pen in Area D— is no longer needed to sustain the population.

(6) *Comment:* If the reestablished populations cannot be sustained into the future without intensive management, this needs to be clearly stated.

Our Response: Some level of management will always be needed to maintain the reestablished herds. These management actions will be undertaken by the Service, in conjunction with our partners, including AGFD. The Sonoran pronghorn will need to be monitored to track their status, water sources will need to be maintained for them, and the lands they occupy must remain as habitat capable of supporting a viable herd. However, once a population is established to the degree that additional augmentation is no longer needed to sustain it, we anticipate that some intensive management actions, including the maintenance of a captive rearing pen, will no longer be necessary.

(7) *Comment:* Not enough information is presented to determine if the proposed monitoring will be adequate to determine whether the program is successful, and to better determine the role of water and forage enhancement plots in recovery, mortality, and recruitment rates; causes of mortality by age and sex, movements; and the role of habitat in the life history of the Sonoran pronghorn.

Our Response: The monitoring should not only allow us to determine whether the program is a success, but if it is failing to meet its objectives, the reason(s) why it is failing must emerge from the monitoring data. The latter is crucial for making appropriate changes in management to correct problems and ensure we achieve sustainable herds in Areas A and D. Although our monitoring plan is not yet complete, released animals in Area D will be monitored primarily via aircraft to determine survival, reproduction, and other measures of success. We acknowledge that all of the parameters noted by the commenter above are important in terms of tracking the status of Sonoran pronghorn populations. All of these factors will be carefully considered in the development of the monitoring program in Areas A and D.

Public Comments

(8) *Comment:* Establishment of additional herds of Sonoran pronghorn in the United States is not needed because the animals at Cabeza Prieta NWR are safe from extinction. Specifically, their continued existence is ensured because Sonoran pronghorn have been captively reared, resulting in a wild population of greater than 70 animals. An awareness of the population's precarious nature has been raised, their status will be closely watched, and animals from self-sustaining herds in Mexico can be brought to the United States if the current population crashes.

Our Response: The 1998 revision of the Sonoran Pronghorn Recovery Plan established downlisting criteria to reclassify the subspecies from endangered to threatened. Included in the downlisting criteria were stipulations that an estimated 300 adult Sonoran pronghorn occur in one U.S. population and a second separate population be established in the United States, or numbers are determined to be adequate to sustain the population through time (Service 1998, p. 37). At 80–90 wild Sonoran pronghorn, the current U.S. population is not safe from extinction. A 1996 population viability analysis concluded that at least 300 Sonoran pronghorn were needed in a population to achieve reasonable population persistence over time; however, to prevent loss of genetic diversity, 500 or more animals were needed (Defenders of Wildlife 1996, p. vii). The 2002 Supplement and Amendment to the Recovery Plan identified "evaluating potential transplant locations, establishing relocation methodology and protocols, developing interagency agreements (including with Mexico as required), acquiring funding, and initiating reestablishment projects" as one of eight priority, near-term actions needed to further recovery (Service 2002, p. 38.). In regard to bringing additional animals north from Sonora, Mexico, to augment the U.S. population, we cannot depend on the continued availability of Sonoran pronghorn from Sonora, both in terms of required international permits and the ability of Mexican populations to sustain additional harvest. In conclusion, establishing additional herds of Sonoran pronghorn in the United States is consistent with the recovery plan for the species and will further its recovery, consistent with Service mandates under section 4(f)(1) of the Act.

(9) *Comment:* Part of the funding for the population reestablishment is coming from the Department of Homeland Security (DHS) as mitigation for damage to Cabeza Prieta NWR, so the money should be spent at Cabeza Prieta NWR.

Our Response: Funding provided by DHS for the establishment of additional Sonoran pronghorn herds in the United States was closely negotiated, and the use of those funds was specifically defined for certain recovery actions. Mitigation funds for establishment of additional U.S. herds were secured to mitigate effects of vehicle barriers at Cabeza Prieta NWR and the BMGR, and the effects of the Ajo 1 SBInet Tower

Project. The purpose of this mitigation was to offset effects to Sonoran pronghorn from these projects, not to mitigate or repair damage to resources at Cabeza Prieta NWR. Consistent with the recovery plan, one of the greatest needs for recovering the Sonoran pronghorn is to establish additional herds, off of Cabeza Prieta NWR. The Service and DHS agreed that use of the mitigation funds to establish additional Sonoran pronghorn herds outside of the current range was an appropriate offsetting measure.

(10) *Comment:* The proposed reestablishment will fail unless predators of Sonoran pronghorn are controlled. Specifically, commenters mentioned the need to control mountain lions at Kofa NWR and coyotes.

Our Response: Coyote, mountain lion, and bobcats are known to prey on Sonoran pronghorn (Service 2002, p. 22). Predation generally has an insignificant effect except on small populations (Lee *et al.* 1998, p. 61). Coyotes are the most abundant large predator sympatric with Sonoran pronghorn. In 20 mortality investigations not related to capture operations, coyotes killed at least 5 Sonoran pronghorn and are suspected in the death of another. Of 23 Sonoran pronghorn released from the captive breeding pen at Cabeza Prieta NWR in December 2009, 4 were predated by coyotes within the first 3 weeks. Since that time, one other Sonoran pronghorn found dead from the original group of 23 was probably predated, although the type of predator is unknown (Atkinson 2010, pers. comm.). Coyotes are thought to prey heavily on Sonoran pronghorn fawns as well.

Steps will be taken to deter predators from entering the captive breeding pen at Kofa NWR, including a perimeter fence constructed of woven wire 5.5 ft. (1.7 m) tall and buried 1 ft. (0.3 m) into the ground. The interior of the fence will be lined with material that will create a visual blind for predators. In addition, two layers of electric fences will be installed just outside of the woven wire fence to deter predators. Monitors will check for presence of Sonoran pronghorn predators inside the pen and holding facility daily, and if any are found, they will be removed. The holding facility at BMGR–E will be equipped with 5.5-ft (1.7-m) tall woven wire, but it will not be buried and no electric fence will be installed. However, the potential for predation will be minimized because pronghorn will not be in the facility for more than a few days, and someone will be staying with them all the time until they are released.

No predator control is proposed outside the pen at Kofa NWR and the holding facility at BMGR–E, because predation types and levels are anticipated to be similar to those at Cabeza Prieta NWR, where up to this point, predator control has not been deemed necessary to recover the Sonoran pronghorn. We anticipate that predation of released animals in Area A and D is unlikely to affect the success of the reestablishments, and mortality of released animals due to predators is expected to be similar to that experienced at Cabeza Prieta NWR. We will monitor the success of the population reestablishments, and consistent with adaptive management and recovery actions 2.411 and 2.412 in the recovery plan, we will evaluate the monitoring data and propose additional actions, if deemed necessary. Those additional actions could include predator control outside of the captive breeding pen at Kofa NWR or the holding pen at BMGR–E. However, predator control outside the pens is not covered in the EA for establishing a NEP of Sonoran pronghorn at Kofa NWR or BMGR–E. Hence, if predator control were proposed, it would be closely coordinated with land managers and AGFD, and would only proceed after all required environmental compliance was completed.

(11) *Comment:* Development of additional water sources, such as wildlife drinkers or tanks, should be undertaken to support the population reestablishments. In addition, an "Adopt a Game Tank" program should be implemented for interested parties to monitor, maintain, and repair water tanks for wildlife and game species.

Our Response: At Kofa NWR, we propose to develop up to seven water sources for Sonoran pronghorn, including up to two inside of the pen and five outside of the pen, but none in the Kofa Wilderness. At BMGR–E and Area D, numerous developed wildlife water sources occur in paloverde-mixed cacti-mixed scrub vegetation on the bajadas that could potentially be used by Sonoran pronghorn. As a result, no new water sources are planned for Area D; however, the need for additional wildlife water sources will be evaluated and, if needed, new water sources will be installed to support the reestablished Sonoran pronghorn. Construction of any additional water sources in Area D would be preceded by cultural resource surveys and any necessary environmental compliance. The water sources at Kofa NWR were planned in anticipation of the needs of the Sonoran pronghorn. Additional water sources at Kofa NWR, beyond those mentioned above, are not anticipated; however, consistent with proposed adaptive management and recovery actions 2.411 and 2.412 in the recovery plan, we will evaluate the monitoring data and propose additional water sources if deemed necessary to support the reestablished populations. Any additional water sources proposed at Kofa NWR would be outside the current scope of the program and supporting environmental compliance; hence additional coordination with land managers and AGFD and all necessary environmental compliance would be completed prior to construction of any additional water sources.

(12) *Comment:* The five water sources outside of the captive pen at Kofa NWR should have their locations generally described and mapped. Some flexibility in locations is desirable, so precise locations are unnecessary. Cultural resource surveys should be conducted prior to construction, and water sources should be built with the minimum disturbance necessary and in the least visually obtrusive manner possible.

Our Response: The approximate locations of the five water sources outside the pen at Kofa NWR have been identified and mapped in the EA (p. 36). Cultural resource surveys shall be conducted prior to any ground-disturbance activities, and the water sources will be built with the minimum disturbance necessary and in the least visually obtrusive manner possible.

(13) *Comment:* The efficacy of additional water sources outside of the pens is questionable based on published studies. The effects of additional water sources on other species, as well as degradation of areas around water sources as a result of increased wildlife use, need to be fully evaluated.

Our Response: The benefits and costs of water developments for wildlife in the arid southwest have been debated for many years (see reviews in Rosenstock *et al.* 1999 and Krausman *et al.* 2006). Artificial water sources in the southwest are used by a variety of wildlife species, with nongame species far outnumbering game species (O'Brien *et al.* 2006, pp. 544–548). Some species will use freestanding water opportunistically, whereas others require it to occupy an area (Krausman *et al.* 2006, pp. 565–566). Water sources can affect the distribution of wildlife species and habitat use patterns of individuals, although in some cases the effect is small (Marshal *et al.* 2006a, pp. 616–617). There is no evidence that water catchments elevate predation rates on wildlife (O'Brien *et al.* 2006, p. 589), and plant communities and forage resources in washes with water sources

do not differ from washes without water, providing no evidence that water sources cause detrimental effects to Sonoran Desert plant communities via herbivory or trampling by animals attracted to the water (Marshal *et al.* 2006b, pp. 621–622). Construction of the five water sources outside the pen and up to two water sources inside the pen at Kofa NWR will have a disturbance footprint, but the acreage affected is small (about 0.5 acre in total), and most of the disturbance will be temporary. None of the water sources are proposed in wilderness.

Monson (1968, pp. 67–68) found there was no hard evidence that Sonoran pronghorn drink freestanding water; rather, he surmised they obtained all the water they need from the plants they consume. However, more recent work indicates they drink water, and that it is probably crucial for survival during seasonal and long-term drought periods (Fox *et al.* 2000; pp. 1–18; Morgart *et al.* 2005, pp. 57–58). Hervert *et al.* (2005, p. 14) found that placement of water sources in palo verde-mixed cacti associations, such as occur in King Valley of Kofa NWR, would likely functionally convert them to higher quality habitats, in some cases making them suitable for Sonoran pronghorn. This could be especially important at Kofa NWR, where chain fruit cholla is absent, but at Cabeza Prieta NWR, it is an important source of preformed or dietary water for Sonoran pronghorn (Fox *et al.* 2000, pp. 1–18). Currently existing developed and natural wildlife water sources within Area A are primarily located in habitats that are not likely to be used by Sonoran pronghorn or used only infrequently. For example, there are no developed wildlife water sources in potential Sonoran pronghorn habitat in King Valley. Creating new water sources for the reestablished Sonoran pronghorn herd in Area A is important to the success of the project. Sonoran pronghorn will benefit, with minimal impacts to plant communities, other wildlife, and wilderness values.

(14) *Comment:* One commenter suggested that if Sonoran pronghorn once inhabited the Chuckwalla Bench or East Mojave of California, then the Mojave National Preserve should be considered as a reestablishment site.

Our Response: Although the historical distribution of the Sonoran pronghorn is not entirely known, none of the reports or publications we have reviewed indicate the Sonoran pronghorn ranged into what is known today as the Mojave National Preserve in California. Phelps and Webb (1981, p. 21) show the historical distribution in California lying entirely south of Interstate 10. The 1982 version of the recovery plan (Service 1982, p. 2) adopted the distribution as interpreted by Hall and Kelson (1959, p. 1023), which did not show the subspecies occurring in California. However, Mearns (1907, p. 231) mentions observing pronghorn tracks near "Gardner's and Laguna stations" in 1894 in the Colorado Desert west of the Colorado River. Figure 2 in the 1998 recovery plan (Service 1998, p. 6) and in the 2002 revision (Service 2002, p. 17) show the historical distribution extending into California north to the vicinity of Blythe and westward into an area that includes the Chuckwalla Bench. Figure 1 of the 1998 plan extended the range north to the vicinity of Parker Dam. The southern boundary of the Mojave National Preserve is Interstate 40, which is no closer than 70 miles to Parker Dam.

We find no other reference suggesting Sonoran pronghorn occurred historically any closer to the Mojave National Preserve than Parker Dam. As a result, establishment of Sonoran pronghorn at the Preserve will be outside of its historical distribution as we understand it. Although section 10(j) of the Act does not limit experimental populations to a species' historical range, the suitability of habitats that are clearly outside of the historical range is questionable. Moreover, our analysis of potential reestablishment sites was limited to portions of the historical range in Arizona (O'Brien *et al.* 2005, p. 25); the suitability of the Mojave National Preserve as a potential establishment site has not been evaluated. As a result, pursuing an additional herd of Sonoran pronghorn at the Mojave National Preserve is not a desired action at this time.

(15) *Comment:* One commenter supported the reestablishment proposal, but believed it was inappropriate to allow hunting of Sonoran pronghorn.

Our Response: Hunting of Sonoran pronghorn is currently prohibited by section 9 of the Act. This designation of a NEP with a special rule will not change that prohibition.

(16) *Comment:* Designation as a NEP implies that the proposed release and subsequent establishment of an additional wild population can fail completely without adverse consequence to the continued existence of the species. This conclusion lacks scientific support; thus the population should be given full protection under the Act or designated as an experimental, essential population. Commenters also note that agency authorized take under 10(j) rules can be abused to the point of precluding recovery; a commenter cited the Mexican gray wolf NEP designation as a case in point. Another commenter offered the example of the NEP population of California condor in Arizona, which they asserted is being used as an excuse not to limit lead ammunition in the California condor recovery area.

Our Response: Because the establishment of a second Sonoran pronghorn herd is identified as a downlisting criterion in the recovery plan (Service 2002, p. 36), if such establishment failed, it would adversely affect recovery. However, we do not believe the loss of the experimental population would reduce appreciably the likelihood of the survival of the species in the wild, which is why we are designating the reestablished population as a nonessential experimental population. The Sonoran pronghorn occurs in three other populations, including two in Mexico and one in southern Arizona. Currently, the total in all three populations is approximately 562 to 572 animals in the wild. As described above under "Recovery Efforts," a variety of aggressive management actions have been to taken to avert catastrophic declines in the U.S. population in the event of a drought. The first priority for use of animals in the captive-breeding pen at Cabeza Prieta NWR is to augment herds within the boundaries of the current range of the species in the United States and Mexico; hence, any use of animals to establish herds in Areas A or D would only be carried out after the needs of the wild populations are met. For these reasons, and for further justification for why reestablished Sonoran pronghorn herds are not essential to the continued existence of the species, refer to the section "*Status of Reestablished Populations*."

In regard to authorized take precluding recovery, the Sonoran pronghorn population reestablishments are very different from that of the Mexican gray wolf or California condor. As detailed in the special rule, only take incidental to otherwise authorized activities plus intentional take as necessary for translocation, aiding sick Sonoran pronghorn, taking biological data, salvaging dead Sonoran pronghorn, or affixing, removing, or servicing radio transmitters will be allowed. As described in the sections "*Status of the Reestablished Populations*" and "Management," we anticipate very little mortality or injury associated with military, recreational, agricultural, and other uses in the NEP that could potentially result in incidental take.

(17) *Comment*: The survival and growth of the NEP hinges on the good faith and stewardship of the action agencies on whose land the NEP resides. If agency commitments to conservation are not fulfilled, the Service should reconsider the NEP designation and take whatever action is necessary to ensure the recovery of Sonoran pronghorn. Conferring under Section 7 is an opportunity to ensure the actions of Federal agencies are consistent with recovery of the Sonoran pronghorn.

Our Response: The Service is dedicated to achieving the recovery of the Sonoran pronghorn, which includes using all of our authorities to achieve success in regard to reestablished Sonoran pronghorn populations in Areas A and D. As we have discussed (see *Regulatory Background*), we will work with Federal action agencies through the section 7(a)(4) conference provisions of the Act in areas outside of National Park and Wildlife Refuge lands, and via the section 7(a)(2) consultation process where the NEP might be affected within Parks and Refuges. Luke Air Force Base, which manages BMGR–E lands in Area D, has been a consistent and strong partner in recovery of the Sonoran pronghorn and has contributed millions of dollars to recovery. We fully anticipate that they will continue to be a strong partner. Through the development of the NEP proposal, we were and continue to be in close contact with Yuma Proving Grounds, which manages lands in Area A and has agreed to cooperate with us on this project. The BLM has pledged its support, and furthermore has a policy of conferring with the Service on activities that may affect proposed species, including NEPs. Thus, their standard for conferring exceeds that in the regulations, which only require conferring if a Federal action is likely to jeopardize the continued existence of a proposed species or is likely to result in adverse modification or destruction of proposed critical habitat (50 CFR 402.10(a)).

Because of this support and cooperation, and as we anticipate Sonoran pronghorn recovery will be compatible with current and future activities within the NEP (see discussion under "*Management*"), we believe there will be no need to reconsider the NEP designation. However, if at any time in the future the status of the wild populations declines dramatically or other circumstances suggest that the loss of reestablished populations would be likely to appreciably reduce the likelihood of survival of the species in the wild, the Service will reevaluate the NEP designation in accordance with our policies and regulations. Furthermore, a comprehensive review, assessment, and report of the reestablishment program by the Recovery Team will occur at least every 5 years. If at any point the program is not meeting its stated objective, or is falling short of meeting the success criteria, all aspects of the program can be reevaluated and modified as needed to better meet the recovery needs of the species.

(18) *Comment*: Because the legal status of Sonoran pronghorn will be defined geographically (i.e., if they are in the NEP area they are part of the NEP population; if they are outside the NEP, they are fully protected under the Act), wild, endangered Sonoran pronghorn could lose the majority of their protections simply by natural movements. If it turns out that crossings by wild pronghorn into BMGR–E are occurring and/or increasing, the Service should assess and potentially reconsider the new populations' designation and requirements under section 10(j) of the Act.

Our Response: As we have earlier discussed (see discussion under "*Reestablishment Areas*"), we do not expect Sonoran pronghorn to cross over the substantial barriers that separate the NEP area from the wild herd. Only once or twice has a Sonoran pronghorn been known to cross Highway 85 and its associated right-of-way fences into BMGR–E. Released, pen-raised Sonoran pronghorn have a greater tendency to move than do wild Sonoran pronghorn. We have also seen Sonoran pronghorn make unusual movements in response to severe drought. However, the fact remains that such crossings are rare. As the wild population continues to recover and when a population becomes established in Area D, the likelihood of pronghorn crossing Highway 85, both into or out of the NEP, will probably increase. But because highways and their associated right-of-way fences are nearly impermeable barriers for Sonoran pronghorn (Brown and Ockenfels 2007, pg. 29), we do not anticipate more than occasional lone animals moving across the highway, and the occurrence of that will remain a rare event. However, if at any time in the future the wild population and the NEP begin to intermingle because of unexpected and common movement of Sonoran pronghorn across barriers between those populations, the Service will reevaluate the NEP designation in accordance with our policies and regulations.

(19) *Comment*: The wild and NEP populations should, at some point in the future, be allowed to intermingle in order to maximize genetic diversity and reduce possible effects from stochastic events. Linking these habits and populations may be crucial for long-term survival of the species.

Our Response: We acknowledge that allowing movement of Sonoran pronghorn among populations increases the viability of those populations and their likelihood of persistence over the long term. However, accomplishing that is problematic logistically and economically. The barriers that separate the NEP and wild populations are not temporary structures. Interstate 8, canals, and the agricultural and rural development that separate the current range from pronghorn habitat in Area A are probably insurmountable barriers. Overpasses or underpasses may be possible to allow movement of Sonoran pronghorn across Highway 85, which separates the wild population from the NEP in Area D; however, whether such a connection is feasible or likely to be sufficiently successful to affect our expectation of very infrequent intermingling is unknown at present.

(20) *Comment*: The assertion that U.S. Customs and Border Protection operations pose a threat to the survival and recovery of Sonoran pronghorn is inconsistent with the best scientific and commercial data.

Our Response: The proposed rule identified high levels of undocumented immigration and drug trafficking across the international border and associated law enforcement as a threat to the Sonoran pronghorn. The proposed rule went on to say that the "U.S. population declined in 2002 by 83 percent to 21 animals (Bright and Hervert 2005, p. 46). The Mexican populations declined at the same time, but not to the same degree. The population southeast of Highway 8 declined by 18 percent, while the El Pinacate population declined by 26 percent. The differences between the rates of decline north and south of the border may be due to high levels of human disturbance on the United States side primarily as a result of heightened levels of illegal immigration, smuggling, and law enforcement response (Service 2008, p. 55)" (75 FR 5735). Whether these activities pose a threat to the survival and recovery of the Sonoran pronghorn has not been thoroughly addressed. Recent analysis has shown there are about 8,000 miles of unauthorized routes on the approximately 1,000-sq.-mi refuge, mostly in designated wilderness. These are most likely attributable to both illegal cross-border traffic and associated law enforcement response by Border Patrol (McCasland 2010, pers. comm.). Furthermore, there is strong anecdotal evidence suggesting

Sonoran pronghorn are avoiding areas of high cross-border traffic and law enforcement response, including the Granite forage enhancement plot and the pass near Bates Well (Service 2009, pp. 47–48). Border Patrol presence deters illegal cross-border traffic, but that deterrence has a substantial impact on its own (Milstead and Barnes 2002, pp. 87–88; Neeley 2006, p. 9; Duncan *et al.* 2010, pp. 123–130). However, as Border Patrol achieves operational control of the border region, we anticipate that human disturbance will be reduced over time.

(21) *Comment*: Kofa NWR is much more likely to support a successful reintroduction of Sonoran pronghorn than the area east of Highway 85 (Area D), which is a high-traffic area for human and narcotics smuggling. Attempting a reestablishment in Area D is inconsistent with the recovery plan, which specifies that a second, but not a third, U.S. population is needed for downlisting.

Our Response: Although not ranked as high as Area A (which includes Kofa NWR), Area D (including the area east of Highway 85) was ranked second of the seven areas evaluated by the IDT as potential release sites. The IDT believes Area D has good potential to support Sonoran pronghorn, and the subspecies existed here historically, possibly into the late 1980s (Service 1998, p. 9). Degree of disturbance, including that caused by illegal cross-border traffic and Border Patrol, were taken into account in the rankings of each area. Further, as discussed in the above comment, we anticipate that both illegal immigration and Border Patrol operations will lessen over time. The recovery plan identifies establishment of a second U.S. herd as a criterion for downlisting (Service 2002, p. 36); however, it does not suggest population reestablishments should be limited to only one. Recovery action 2 in the 1998 recovery plan is to "establish and monitor new separate herd(s)" (Service 1998, p. 40). Replication of effort in regard to population reestablishment is prudent in the event that populations in Area A or Area D are not successful. The holding pen at Area D will also serve as an outlet for excess pronghorn produced at the captive rearing pen at Cabeza Prieta NWR. Production of animals for release is expected to be more than 20 Sonoran pronghorn per year from that pen (23 were released from the pen in December 2009). Once animals are established at the pen at Kofa NWR, and as the wild herds are bolstered by releases, fewer animals will be needed, allowing releases to Area D. In addition, conditions such as drought within the current range of the Sonoran pronghorn may make release of captively propagated Sonoran pronghorn into the wild herd undesirable in some years. Area D will provide another option for use of these excess animals. Also, the ultimate goal of the Act is to delist the species, so it no longer needs the protections of the Act. Additional populations beyond what is being proposed in this action may be needed to achieve full recovery.

(22) *Comment*: The full effects of the rulemaking are not evaluated, because the analysis in the EA is limited to Areas A and D, but the NEP area is much larger, encompassing 10 million acres. For example, U.S. Customs and Border Protection will be required to consult on its activities at OPCNM east of Highway 85. Because of the scope and cost of the effort, along with potential effects of a wide range of activities, the proposed action appears to be a major Federal action significantly affecting the human environment. The commenter encourages the Service to limit the NEP to areas west of Highway 85.

Our Response: NEPA implementing regulations at 40 CFR 1508.9 define an EA as: "a concise public document for which a Federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a FONSI, (2) aid an agency's compliance with the Act when no environmental impact statement is necessary, and (3) facilitate preparation of an environmental impact statement when one is necessary. The EA shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted" (40 CFR 1508.9(b)).

Sonoran pronghorn pens, holding facilities, water sources, and releases will all occur in Areas A and D, and are consistent with the regulations cited above. Those are the areas on which the effects of the alternatives were focused in the EA. Over time, and as populations grow, Sonoran pronghorn could move outside of Areas A and D and potentially to the boundaries of the NEP. In the event that Sonoran pronghorn move to the boundaries of the NEP but not outside of it, the effects of Sonoran pronghorn presence in these areas would be minimal because of the NEP designation and the special rule that together broadly allow Federal actions to go forward without section 7 consultations, and private actions that may result in incidental take of the species will not require incidental take permits from the Service. In National Parks and Wildlife Refuges, for the purposes of section 7 only, the Sonoran pronghorn will be listed as a threatened species, requiring consultations for actions that may affect the species. However, we expect few if any changes would be needed in those lands to comply with the Act (see "*Management*"). Thus, based on our EA we find that in no case do the effects of the action within Areas A or D or within the NEP generally, rise to the level of significantly affecting the human environment. A "major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility (40 CFR 1508.18). Due in part to the regulatory relief provided by the NEP designation and special rule, the effects of the action are not major as documented in our FONSI.

The likelihood of Sonoran pronghorn moving into that portion of Area D east of Highway 85 on OPCNM is low. The few Sonoran pronghorn that have moved into that area have either died or not stayed there, likely because of poor habitat quality. In any case, it is probably more likely that wild Sonoran pronghorn would colonize that area from west of Highway 85 than from the release site in Area D (see our response to the third peer review comment). In that scenario, U.S. Customs and Border Protection would need to consult on their activities in that area affecting Sonoran pronghorn with or without the NEP designation.

(23) *Comment*: During pen construction at Kofa NWR, any desert tortoises or rosy boas found should be immediately translocated to a release site agreed upon by the AGFD, Service, and BMGR.

Our Response: In the event that State-sensitive species, such as rosy boas (*Lichanura trivirgata*) or desert tortoises (*Gopherus agassizii*) are found during any phase of construction at either the captive breeding pen at Kofa NWR or the holding pen at BMGR–E, they will be relocated no more than 0.5 mi (0.8 km) away in the direction of the most suitable and typical habitat for the species (rock outcrops or rocky hillsides, and in the case of the tortoise, dissected washes with caliche caves). If rosy boas are found during the day, they shall be held temporarily in a climate-controlled environment (e.g., a cooler) and released in the evening to prevent overheating.

(24) *Comment*: A commenter expressed concern that reestablishment at Kofa NWR would interfere with the

hunting opportunities for bighorn sheep (*Ovis canadensis*) or other species on the refuge. In particular, the commenter questions whether areas of the refuge would be closed to public use during the Sonoran pronghorn fawning season or whether areas currently open to bighorn sheep hunting would be closed on Kofa NWR to protect Sonoran pronghorn.

Our Response: An area extending 0.25 mi (0.40 km) out from the boundaries of the captive breeding pen at Kofa NWR will be closed to the public. The pen will be in King Valley, in an area not frequented by bighorn sheep, so it will have no impact on sheep hunting. No other closures are needed or will be implemented at Kofa NWR to support the Sonoran pronghorn reestablishment.

(25) *Comment:* A commenter inquired how a 10(j) designation could be established on the BMGR when there are still Sonoran pronghorn in that area.

Our Response: Areas west of Highway 85 and south of Interstate 8 on the BMGR are not within the NEP. The wild herd, with the full protections of the Act, occupies this area. Only those areas of BMGR–E east of Highway 85 are in the NEP. Those areas are not currently occupied by Sonoran pronghorn. Highway 85 and its right-of-way fence provide a physical barrier to Sonoran pronghorn movement between the wild population and the NEP (see discussion in "*Reestablishment Areas*").

(26) *Comment*: One commenter asked if the NEP area is clearly delineated from the area in which the wild, fully protected Sonoran pronghorn occur, and if there is a chance of confusion in areas that include both NEP and fully protected Sonoran pronghorn (e.g., BMGR). Furthermore, the commenter asked if a potential exists for incidental take of Sonoran pronghorn occurring in the current range due to its close proximity to the NEP.

Our Response: The boundaries of the NEP are clearly delineated by major highways, the Colorado River, and an international border. Where the NEP adjoins the area occupied by the wild population, the boundary between the two includes Interstate 8 (boundary with Area A) and Highway 85 (boundary with Area D). Because of those clear boundaries, the likelihood of confusing wild and NEP Sonoran pronghorn is low, because the status of each is determined geographically. Designation of the NEP adjacent to the current range alters neither the likelihood of incidental take, nor the activities that could result in incidental take of Sonoran pronghorn in the wild herd.

(27) *Comment*: No sufficient or verifiable evidence exists to show that Kofa NWR or any areas north of the Gila River are within the historical range of the Sonoran pronghorn. Hence, establishing a population of pronghorn at Kofa NWR is inappropriate.

Our Response: The commenter provides much supporting information that brings into question whether Sonoran pronghorn ever occupied King Valley or other portions of Kofa NWR. We acknowledge that delineating the historical range of the Sonoran pronghorn is problematic because of a lack of specimens in key areas; the anecdotal nature of sightings, of which some of the most relevant are very old; and taxonomic uncertainty—the Mexican pronghorn occurs elsewhere in southern Arizona. The uncertainty in defining historical range is reflected in the prior and current Sonoran pronghorn recovery plans. The 1982 plan, adopting the range as described by Hall and Kelson (1959, p. 1023), did not show the range of the Sonoran pronghorn north of Ajo, which is well south of the Gila River (Service 1982, p. 2). The 1998 and 2002 versions of the recovery plan adopted a more expansive view of historical range first exposed by Phelps and Webb (1981, p. 21); this later view included Kofa NWR. Phelps and Webb (1981, p. 22) provide evidence of Sonoran pronghorn on the Harquahala Plain in the 1850s, northeast of Kofa NWR, and along the Gila River in 1852, south of the Kofa NWR. As shown in the 2002 supplement and amendment to the recovery plan (Service 2002, p. 17), based on the best scientific and commercial information available, the Sonoran pronghorn recovery team and the Service believe Kofa NWR is within the historical range of the subspecies.

(28) *Comment*: Yuma Proving Grounds is not going to ignore their mission and cease firing if Sonoran pronghorn are in their artillery footprint. Yuma Proving Grounds could bomb herds of expensively reared Sonoran pronghorn, and military operations may alter behavior and physiology of the species. No protocols are in place at Yuma Proving Grounds to minimize death or injury of Sonoran pronghorn. This is a moral issue that must not be overlooked, as well as an additional financial loss of valuable animals.

Our Response: Specific capabilities at Yuma Proving Grounds include testing of artillery; mortars; mines; ground and aircraft weapons; target acquisition and fire control systems; wheeled and tracked vehicles; and air delivery material, equipment, and techniques. Primarily artillery and tank testing activities occur on the Kofa Range portion of Yuma Proving Grounds, which lies directly south of Kofa NWR and is the portion of Yuma Proving Grounds most likely to be colonized by Sonoran pronghorn. We acknowledge that military activities at Yuma Proving Grounds may result in some mortality and injury of Sonoran pronghorn (see discussion in "*Status of Proposed Population*"). However, similar to BMGR–E, the vast majority of the Kofa Range portion of Yuma Proving Grounds is relatively undisturbed. The likelihood of a Sonoran pronghorn being hit by an artillery shell or shrapnel, colliding with a vehicle, or encountering lethal or injurious hazards is very small. At BMGR–E, no Sonoran pronghorn have ever been documented to have been killed or injured by military activities. Luke Air Force Base implements protocols to ensure that Sonoran pronghorn are not harmed on the live fire Tactical Ranges, but even before those protocols were put in place in 1997, no Sonoran pronghorn were ever known to have been killed or injured on the BMGR as a result of military activities. There is no evidence to suggest, nor do we anticipate, that military activities at Yuma Proving Grounds will compromise the recovery efforts for the Sonoran pronghorn in Area A.

(29) *Comment*: One commenter questioned the timeline in the EA, which had the construction of the captive pen at Kofa NWR beginning in spring of 2010.

Our Response: Implementation of the action will not begin until after publication of this rule and the signing of the FONSI.

(30) *Comment*: Creating irrigated forage enhancement plots in King Valley at Kofa NWR will exacerbate nonnative, invasive plant problems. In particular, the nonnative Sahara mustard (*Brassica tournefourtii*) and Mediterranean grass (*Schismus* sp.) are likely to increase.

Our Response: We acknowledge that irrigating the desert will cause increased growth of plants, including nonnative species such as Sahara mustard and Mediterranean grass. We propose irrigated areas to enhance forage within the captive pen at Kofa NWR. No forage enhancement plots are proposed outside the captive pen. Although we have not surveyed the pen site for Sahara mustard or Mediterranean grass, both almost certainly occur there. Mediterranean grass is likely ubiquitous. Sahara mustard achieves its greatest densities in fine, sandy soils, but still occurs on bajadas and in gravelly soils such as occurs at the pen site. Both species thrive in disturbed

sites; hence, hoof action from Sonoran pronghorn may further enhance populations of these nonnatives. That said, these species have not increased noticeably in forage enhancement plots at Cabeza Prieta NWR, including inside the captive breeding pen. The plant communities and soils are similar between the forage plots at Cabeza Prieta and at the pen site in Kofa NWR, so we have no reason to believe these species will respond any differently at Kofa NWR. Furthermore, the fencing and visual screening on the perimeter of the pen at Kofa NWR will likely reduce spread of seed from Sahara mustard and Mediterranean grass to areas outside the pen. Consistent with our monitoring and adaptive management plan, if our actions create a nonnative invasive plant problem, we will evaluate that problem and take appropriate action to correct it.

(31) *Comment:* In comments provided on the Environmental Assessment, the U.S. Customs and Border Protection strongly encouraged limiting reestablishment to Area A (Kofa) due to concerns that the experimental population might impede border security operations.

Our Response: The Service and the Recovery Team believe that it is important to efforts to conserve the Sonoran pronghorn to have two population centers within the experimental area. Based on our evaluation of possible reintroduction sites, Kofa (Area A) and BMGR–East (Area D) have the best combination of size, forage availability, water availability, fragmentation, disturbance, logistics, and other factors and that is why we have chosen those two areas. Release of animals into BMGR–East would only occur after we have achieved strongly positive results from our efforts at Kofa and we have surplus animals from Cabeza Prieta and Kofa that could be placed in BMGR–East. We do not anticipate reaching that point for at least 5 years and probably longer. The Service is committed to coordinating closely with U.S. Customs and Border Protection and other partners before implementing release of Sonoran pronghorns into BMGR–East so as to limit any potentially adverse effects to operations and activities of U.S. Customs and Border Protection and our other partners. We have added language to the text of the regulation clarifying that incidental take caused by border security and enforcement carried out by Federal law enforcement officials (e.g., U.S. Customs and Border Protection) would not be prohibited.

Finding

We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. Therefore, we solicited public and peer-review comments on the proposed NEP designation. As required by law, we have considered all comments received on the proposed rule and draft EA before making this final determination. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that creating an NEP of Sonoran pronghorn and releasing them into the NEP area in Kofa NWR of Area A and BMGR–E of Area D will further the conservation of the species.

Administrative Change to 50 CFR 17.84

We are making a nonsubstantive change to correct a paragraph designation error in 50 CFR 18.74(u), the nonessential experimental population rule for Rio Grande silvery minnow. In that rule, there are four subparagraphs, numbered (1) through (4). Paragraph (u)(4) is further broken down into three subparagraphs. According to the correct format for the Code of Federal Regulations, these subparagraphs should be designated as paragraphs (i) through (iii). However, they are erroneously designated as paragraphs (a) through (c). We are making this correction as part of this final rule.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

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 (i.e., 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 area affected by this rule includes an area north of Interstate 8, east of the Colorado River, and west of Interstates 10 and 19; and an area south of Interstate 8, east of Highway 85, and west of Interstates 10 and 19. Because of the substantial regulatory relief provided by NEP designations, we do not expect this rule to have any significant effect on recreational, agricultural, ranching, military, or other activities within the NEP area. In addition, when NEPs are located outside a National Wildlife Refuge or unit of the National Park System, we treat the population as a species proposed for listing for the purposes of Section 7 and only two provisions apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species. 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.

The BLM has a policy (BLM 6840 Manual) of conferring on activities that may adversely affect proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. The section

7(a)(2) requirements will apply if Sonoran pronghorn may be affected by Federal activities within National Wildlife Refuges and National Park Service units in the NEP; however, we do not anticipate any significant changes to management because these areas are already managed in a way that will promote recovery of the Sonoran pronghorn. The principal activities on private property in the NEP are agriculture, ranching, rural living, and recreation. We believe the presence of the Sonoran pronghorn will not affect the use of private or tribal lands for these purposes because there will 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 Sonoran pronghorn.

This rule authorizes incidental take of Sonoran pronghorn within the NEP area outside of National Wildlife Refuges and National Park Service units. The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity such as military training, livestock grazing, recreation, and other activities that are in accordance with Federal, tribal, state, and local laws and regulations. Intentional take for purposes other than aiding sick, injured, or orphaned Sonoran pronghorn; collection of biological data; or other conservation purposes as described in the special rule at the end of this document are not authorized unless for research or educational purposes, which would require a recovery permit under section 10(a)(1)(a) of the Act.

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.*):

a. On the basis of information contained in the "Regulatory Flexibility Act" section above, this rule will not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this 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 will not be affected because the NEP designation will not place additional requirements on any city, county, or other local municipalities.

b. 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 NEP designation for the Sonoran pronghorn will 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 rule does not have significant takings implications. When reestablished populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reestablished listed species within the NEP are significantly reduced. Section 10(j) of the Act and the accompanying special rule can provide regulatory relief with regard to the taking of reestablished species within an NEP area. For example, with the exception of actions on National Wildlife Refuge or National Park Service lands within the NEP, this rule allows for the taking of reestablished Sonoran pronghorn when such take is incidental to an otherwise legal activity, such as military training and testing, agriculture, rural and urban development, livestock grazing, camping, hiking, hunting, recreational vehicle use, sightseeing, nature or scientific study, rockhounding, and geocaching; or other activities that are in accordance with applicable tribal, Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reestablishment of this species will conflict with existing or proposed human activities or hinder public use of 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 substantially advances a legitimate government interest (conservation and recovery of a listed species) and does 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 rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will 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 rule with the affected resource agencies in Arizona. The AGFD has been a key participant in the recovery program for the Sonoran pronghorn, including serving on the IDP that helped develop the reestablishment proposal. Achieving the recovery goals for this species will 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 will not change, and fiscal capacity will not be substantially or directly affected. The special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Arizona. 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 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act) (June 5, 1997); the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we have notified the Native American Tribes within and adjacent to the NEP area about the proposed and final rule. They have been advised through written contact, including informational mailings from the Service, and were provided an opportunity to comment on the draft EA and proposed rule. No comments were received from Tribes on these documents. If future activities resulting from this rule may affect Tribal resources, the Service will communicate and consult on a Government-to-Government basis with any affected Native American Tribes in order to find a mutually agreeable solution.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 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. The Office of Management and Budget has approved our collection of information associated with reporting the taking of experimental populations and assigned control number 1018–0095. 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

We have prepared an EA and FONSI, as defined under the authority of NEPA. It is available from the Arizona Ecological Services Field Office, 2321 West Palm Royal Road, Suite 103, Phoenix, AZ 85021, or from our Web site at *http://www.fws.gov/southwest/es/arizona/* or on *www.regulations.gov* under Docket No. FWS–R2–ES–2009–0077.

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

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are staff of the Arizona Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

Accordingly, we 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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for "Pronghorn, Sonoran" under "MAMMALS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Pronghorn, Sonoran	*Antilocapra americana sonoriensis.*	U.S.A. (AZ), Mexico	Entire, except where listed as an experimental population.	E	1, 3	NA	NA
Pronghorn, Sonoran	*Antilocapra americana sonoriensis.*	U.S.A. (AZ), Mexico	In Arizona, an area north of Interstate 8 and south of Interstate 10, bounded by the Colorado River on the west and Interstate 10 on the east; and an area south of Interstate 8, bounded by Highway 85 on the west, Interstates 10 and 19 on the east, and the U.S.-Mexico border on the south.	XN	782	NA	17.84(v)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by redesigning paragraphs (u)(4)(a) through (u)(4)(c) as paragraphs (u)(4)(i) through (iii) and by adding a new paragraph (v) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(v) Sonoran pronghorn (*Antilocapra americana sonoriensis*).

(1) The Sonoran pronghorn (*Antilocapra americana sonoriensis*) population identified in paragraph (v)(12) of this section is a nonessential experimental population (NEP).

(2) No person may take this species, except as provided in paragraphs (v)(3) through (v)(6) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service under § 17.32 may take pronghorn within the NEP area for scientific purposes, the enhancement of

propagation or survival of the species, and other conservation purposes consistent with the Endangered Species Act.

(4) A Sonoran pronghorn may be taken within the boundaries of Yuma Proving Grounds; Barry M. Goldwater Range; lands of the Arizona State Land Department; Bureau of Land Management lands; privately owned lands; and lands of the Tohono O'odham Nation, Colorado River Indian Tribes, Gila River Indian Reservation, Ak-Chin Indian Reservation, Pascua Yaqui Indian Reservation, and San Xavier Reservation within the NEP area, provided that such take is incidental to, and not the purpose of, carrying out any otherwise lawful activity; and provided that such taking is reported as soon as possible in accordance with paragraph (v)(6) of this section. Otherwise lawful activities are any activities in compliance with applicable land management regulations, hunting regulations, tribal law, and all other applicable law and regulations, and include, but are not limited to, military training and testing, border security and enforcement carried out by Federal law enforcement officials (e.g., U.S. Customs and Border Protection), agriculture, rural and urban development, livestock grazing, camping, hiking, hunting, recreational vehicle use, sightseeing, nature or scientific study, rockhounding, and geocaching, where such activities are permitted.

(5) Any employee or agent of the U.S. Fish and Wildlife Service, the Arizona Department of Game and Fish, and the tribes listed in paragraph (v)(4) of this section, who is designated for such purpose may, when acting in the course of official duties, take a Sonoran pronghorn if such action is necessary to:

(i) Aid a sick, injured, or orphaned Sonoran pronghorn, including rescuing such animals from canals;

(ii) Dispose of a dead Sonoran pronghorn specimen, or salvage a dead specimen that may be useful for scientific study;

(iii) Move a Sonoran pronghorn for genetic purposes or to improve the health of the population; or

(iv) Capture and release a Sonoran pronghorn for relocation, to collect biological data, or to attach, service, or detach radio-telemetry equipment.

(6) Any taking pursuant to paragraphs (v)(3) through (v)(5) of this section must be reported as soon as possible by calling the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 201 N Bonita Avenue, Suite 141, Tucson, AZ 85745 (520/670–6150), or the Cabeza Prieta National Wildlife Refuge, 1611 North Second Avenue, Ajo, AZ 85321 (520/387–6483). Upon contact, a determination will be made as to the disposition of any live or dead specimens.

(7) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any Sonoran pronghorn or Sonoran pronghorn parts taken in violation of these regulations.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v)(2) and (7) of this section.

(9) The boundaries of the designated NEP area are based on the maximum estimated range of pronghorn that are released in and become established within the NEP area. These boundaries are physical barriers to movements, including major freeways and highways, and the Colorado River. All release sites will be within the NEP area.

(i) All Sonoran pronghorn found in the wild within the boundaries of the NEP area will be considered members of the NEP. Any Sonoran pronghorn occurring outside of the NEP area are considered endangered under the Act.

(ii) The Service has designated the NEP area to accommodate the potential future movements of wild Sonoran pronghorn. All released Sonoran pronghorn and their progeny are expected to remain in the NEP area due to the geographical extent of the designation and substantial barriers to movement that form the boundaries of the NEP.

(10) The NEP will be monitored closely for the duration of the program. Any pronghorn that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State or Tribal wildlife personnel or their designated agent and given appropriate care. Such pronghorn will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility.

(11) The Service plans to evaluate the status of the NEP every 5 years to determine future management status and needs, with the first evaluation occurring not more than 5 years after the first release of pronghorn into the NEP area. All reviews will take into account the reproductive success and movement patterns of individuals released, food habits, and overall health of the population. This evaluation will include a progress report.

(12) The areas covered by this proposed nonessential experimental population designation are in Arizona. They include the area north of Interstate 8 and south of Interstate 10, bounded by the Colorado River on the west and Interstate 10 on the east, and an area south of Interstate 8, bounded by Highway 85 on the west, Interstates 10 and 19 on the east, and the U.S.-Mexico border on the south.

(13) **Note:** Map of the NEP area for the Sonoran pronghorn in southwestern Arizona follows:

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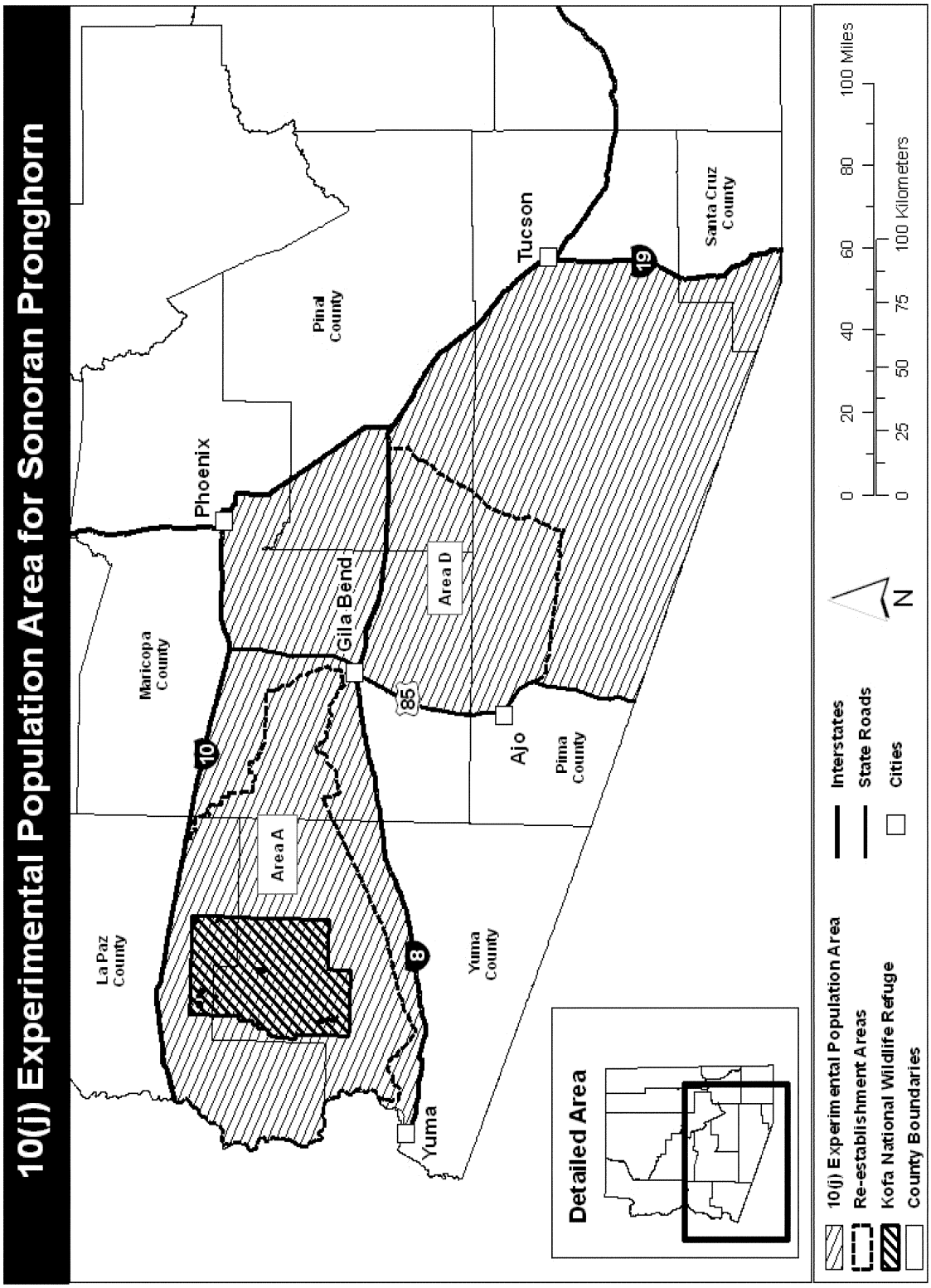

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Dated April 19, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–10467 Filed 5–4–11; 8:45 am]

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