

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 14, 2018.

**Chris Hladick,**

*Regional Administrator, Region 10.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2018-0035; FXES1113090000C2-189-FF09E42000]

RIN 1018-BB98

#### Endangered and Threatened Wildlife and Plants; Proposed Replacement of the Regulations for the Nonessential Experimental Population of Red Wolves in Northeastern North Carolina

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; availability of a draft environmental assessment, opening of comment period, and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to replace the existing regulations governing the nonessential experimental population designation of the red wolf (*Canis rufus*) under section 10(j) of the Endangered Species Act, as amended. We request public comments, and announce a public information session and public hearing, on this proposed rule. In addition, we announce the availability of a draft environmental assessment on the proposed replacement of the existing nonessential experimental population regulations for the red wolf. In conjunction with this proposed action, we are initiating consultation pursuant to section 7 of the Endangered Species Act and completing a compatibility determination pursuant to the National Wildlife Refuge System Improvement Act of 1997.

We propose this action to ensure our regulations are based on the most recent science and lessons learned related to the management of red wolves. If adopted as proposed, this action would further conservation of red wolf recovery overall by allowing for the reallocation of resources to enhance support for the captive population, retention of a propagation population

for future new reintroduction efforts that is influenced by natural selection, and provision of a population for continued scientific research on wild red wolf behavior and population management. This action would also promote the viability of the nonessential experimental population by authorizing proven management techniques, such as the release of animals from the captive population into the nonessential experimental population, which is vital to maintaining a genetically healthy population.

#### DATES:

*Written comments:* We will consider comments we receive on or before July 30, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Requests for additional public hearings:* We must receive requests for additional public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 12, 2018.

*Public information session and public hearing:* On July 10, 2018, we will hold a public information session and public hearing on this proposed rule and draft environmental assessment. The public information session is scheduled from 5:30 p.m. to 6:30 p.m., and the public hearing from 7 p.m. to 9 p.m.

#### ADDRESSES:

*Availability of documents:* This proposed rule is available on <http://www.regulations.gov> at Docket No. FWS-R4-ES-2018-0035 and on our website at <http://www.fws.gov/Raleigh>. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, are also available for public inspection at <http://www.regulations.gov>. All comments, materials, and documentation that we considered in this document are available for public inspection, by appointment, during normal business hours, at the Raleigh Ecological Services Field Office, U.S. Fish and Wildlife Service, 551F Pylon Drive, Raleigh, NC 27606; telephone 919-856-4520; or facsimile 919-856-4556. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339.

*Comment submission:* You may submit written comments on this proposed rule and draft environmental assessment by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2018-0035, which is

the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rules box to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2018-0035, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

*Public information session and public hearing:* The public information session and public hearing will occur at Roanoke Festival Park, One Festival Park, Manteo, NC 27954.

**FOR FURTHER INFORMATION CONTACT:** Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Ecological Services Field Office, 551F Pylon Drive, Raleigh, NC 27606; telephone 919-856-4520; or facsimile 919-856-4556. Persons who use a TDD may call the Federal Relay Service at 1-800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

###### *This Proposal*

We are proposing to replace the regulations governing the northeast North Carolina nonessential experimental population (NC NEP) of the red wolf, codified in 1995 in title 50 of the Code of Federal Regulations (CFR) at § 17.84(c) (50 CFR 17.84(c)). The purpose of the proposed action is to incorporate the most recent science and lessons learned related to the management of red wolves to implement revised regulations that will better further the conservation of the red wolf. We propose to establish a more manageable wild propagation population that will allow for more resources to support the captive population component of the red wolf program (which is the genetic fail safe for the species); serve the future needs of new reintroduction efforts; retain the influences of natural selection on the species; eliminate the regulatory burden on private landowners; and provide a population for continued scientific research on wild red wolf behavior and population management.

##### *Why We Need To Publish a Rule*

Significant changes to the red wolf population and red wolf management in the NC NEP have occurred since 1995; since then, management of red wolf and coyote interactions has become a primary management consideration. The current regulations associated with the NC NEP are no longer effective in addressing the current and future management needs of the red wolf and preclude the development of sound management strategies for this species.

Replacing the existing regulations is necessary to respond to the changing landscape and better ensure the conservation and recovery of the red wolf. Success of the red wolf recovery program under the existing regulations has been limited, and the current regulations lack the necessary flexibility to respond to the red wolf's conservation needs. Most specifically, it is apparent that the current regulations are not effective in terms of fostering coexistence between people and red wolves, and that changes are needed to reduce conflict associated with red wolf conservation.

##### *The Basis for the Action*

The 1982 amendments to the Endangered Species Act of 1973, as amended (Act), included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as "experimental populations." Under section 10(j) of the Act and our regulations in 50 CFR part 17, subpart H (Experimental Populations), the Service may designate an experimental population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened regardless of the species' designation elsewhere in its range. Section 4(d) of the Act allows us to adopt any regulations that we deem necessary and advisable to provide for the conservation of a threatened species. Treating the experimental population as threatened allows us the discretion of devising special regulations and management to ensure the population supports conservation and recovery of the species.

We have prepared a draft environmental assessment (DEA)

pursuant to the National Environmental Policy Act (NEPA). On May 23, 2017, we published an advance notice of proposed rulemaking and notice of intent to prepare a NEPA document (82 FR 23518). This initiated a public scoping process that included a request for written comments and two public scoping meetings in June 2017. We have incorporated information collected since that scoping process began in the development of a DEA and this proposed rule. We will use information from this analysis to inform our final decision.

##### **Public Comment Procedures**

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

We particularly seek comments regarding:

- (a) Contribution of the NC NEP to recovery goals for the red wolf;
- (b) The relative effects that management of the NC NEP under the proposed rule would have on the conservation of the species;
- (c) The extent to which the NC NEP may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the proposed NC NEP management area;
- (d) Appropriate provisions for protections and "take" of red wolves;
- (e) Ideas and strategies for promoting tolerance of red wolves on private property outside the NC NEP management area; and
- (f) Appropriate means to evaluate the effectiveness of the proposed action, including relevant performance measures.

Additionally, we seek comments on the identification of direct, indirect, beneficial, and adverse effects that may result from this proposed 10(j) rule for red wolves. You may wish to consider the extent to which the proposed rule will affect the following when providing comments:

- (a) Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;
- (b) Impacts on Federal, State, local or Tribal park lands; refuges and natural areas; and cultural or historic resources;
- (c) Impacts on human health and safety;
- (d) Impacts on air, soil, and water;

(e) Impacts on prime agricultural lands;

(f) Impacts to other species of wildlife, including other endangered or threatened species;

(g) Disproportionately high and adverse impacts on minority and low income populations;

(h) Any socioeconomic or other potential effects; and

(i) Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

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

#### *Public Information Session and Public Hearing*

On July 10, 2018, we will hold a public information session and public hearing on this proposed rule and draft environmental assessment. The times and location of the public information session and public hearing are provided under **DATES** and **ADDRESSES**, above.

We are holding the public hearing to provide interested parties an opportunity to present verbal testimony (formal, oral comments) or written comments regarding this proposed rule and the associated DEA. A formal public hearing is not, however, an opportunity for dialogue with the Service; it is only a forum for accepting formal verbal testimony.

In contrast to the public hearing, the information session will allow the public the opportunity to interact with Service staff, who will be available to provide information and address questions on this proposed rule and the DEA. We cannot accept verbal testimony at the information session; verbal testimony can only be accepted at the public hearing.

Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on

the length of written comments submitted to us.

Persons needing reasonable accommodations to participate in the information session or public hearing should contact the person listed above under **FOR FURTHER INFORMATION CONTACT**. Reasonable accommodation requests should be received no later than July 5, 2018, to help ensure availability; American Sign Language or English as a second language interpreter needs should be received no later than June 29, 2018.

#### **Background**

##### *Biological Information*

A species status assessment (SSA) report was prepared for the red wolf (USFWS 2018). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the red wolf. The SSA report underwent independent peer review by scientists with expertise in wolf biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA report can be found on the Southeast Region website at <https://www.fws.gov/southeast/> and at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0035.

##### *Why We Need To Replace the Regulations*

On April 13, 1995, we published a final rule (60 FR 18940) amending the regulations at 50 CFR 17.84(c) for the nonessential experimental populations of red wolves in North Carolina and Tennessee. We refer to that final rule as the “1995 final rule.”

Under the provisions of the 1995 final rule, the NC NEP is declining more rapidly than the worst-case scenarios described in the most recent population viability analysis (Faust et al. 2016). As described in the Red Wolf Recovery Team Report (2016), there is consensus that the current direction and management of the NC NEP is unacceptable to the Service and stakeholders. Based on the SSA review, there are significant threats to the NC NEP and conditions for recovery of the species are not favorable, indicating a self-sustainable population may not be possible. Significant changes to management actions in the NC NEP recovery area have occurred since the 1995 final rule, which was promulgated before management of red wolf and coyote interactions became a primary management consideration. The current

rule associated with the NC NEP is no longer effective in addressing the current and future management needs of the red wolf recovery program, and the regulations need to be revised to allow for the development of sound management strategies for this species.

The current regulations at 50 CFR 17.84(c) lack the needed flexibility to adapt to the arrival and proliferation of coyotes in eastern North Carolina. For example, the current regulations do not explicitly incorporate Red Wolf Adaptive Management Work Plan (RWAMWP) activities (discussed further below). Since issuance of the 1995 final rule, the coyote population has continued to expand in eastern North Carolina, thus significantly increasing the risk of hybridization between red wolves and coyotes. The risk of hybridization is exacerbated by the fact that there is a high degree of anthropogenic mortality (e.g., gunshot, poisoning) in the NC NEP that presents additional challenges. Human-caused mortality, particularly during red wolf breeding season, significantly increases breeding pair disbandment, facilitating hybridization with coyotes. Furthermore, red wolf habitat in the NC NEP recovery area is discontinuous, further increasing the risk for hybridization. Additionally, sea level rise will be additive year after year and will impact the long-term viability of the current NC NEP. Based on these conditions, the Service must adapt its management to better conserve the red wolf.

The red wolf remains a conservation reliant species (i.e., cannot be recovered without intense human management). Due to the spread of coyotes across the entire historical range of the red wolf, there are no coyote-free habitats where a reintroduction program could be successful without active coyote management. Furthermore, while the red wolf's genetic viability can be managed through the captive population, there is little chance of a naturally occurring wild population existing without active management for the foreseeable future, although the intensity of active management can vary with potential management scenarios and time. The RWAMWP proved successful in limiting coyote introgression and maintaining red wolf territories, but it was not designed to address other factors affecting the conservation of the species, such as anthropogenic mortality (Hinton et al. 2017). We anticipate the RWAMWP strategy will remain necessary for the NC NEP and any future NEPs.

We also believe it is apparent that the current regulations are not effective in

terms of fostering coexistence between people and red wolves, and that changes are needed to reduce conflict associated with red wolf conservation and allow for effective management of coyotes. As discussed by Henry and Lucash (2000), without private landowner support, we will not be able to recover the red wolf. Due to the importance of private landowners' support to red wolf conservation (over 90 percent of lands in the Southeast are privately owned), socio-political factors are as important, if not more important, than ecological factors. Fundamental change is needed in the way stakeholders are engaged in management of wild red wolf populations. State agencies, non-governmental organizations (NGO) and the Service will need to engage with the public and develop strategies for managing coyotes.

Recovery of the red wolf has conflicted with private landowners' ability to manage coyote populations. This has led to excessive losses of red wolves to anthropogenic mortality and disruption of established packs of red wolves and breeding pairs, allowing for the further expansion of coyote populations and increasing risk of red wolf/coyote hybridization. Coyote management was not a factor in 1986, when the NC NEP was first established, because coyotes were not present in the five-county NC NEP recovery area (Beaufort, Dare, Hyde, Tyrrell and Washington). Coyotes began to appear in the recovery area in the early 1990s, and they were well established in the area by 2000. This led to increased interest on the part of landowners to control coyotes and pursue them for recreational hunting and trapping. This brought regulation of coyotes by the North Carolina Wildlife Resources Commission (NCWRC) into increasing conflict with Service efforts to manage red wolves.

The Service and the NCWRC entered into an agreement in 2013, in order to improve coordination and collaboration regarding canid management and conservation on the Albemarle Peninsula. This agreement focused on improving collaboration between the agencies in areas of canid management, research, outreach, regulation, and enforcement. In 2013, a number of groups filed suit challenging the NCWRC's decision to authorize night hunting of coyotes in the red wolf recovery area, claiming that it would lead to unauthorized take of red wolves. The lawsuit was subsequently amended to include all coyote hunting in the red wolf recovery area. On May 14, 2014, the Court issued a preliminary injunction that prohibited all hunting of

coyote (day or night) in the five-county NC NEP recovery area. Under the terms of a subsequent settlement agreement among the plaintiffs and the NCWRC, the NCWRC was able to reinstitute coyote hunting in the recovery area; however, hunting is allowed by permit only, all harvest must be reported to the NCWRC, and night hunting is prohibited. In January 2015, the NCWRC approved a set of resolutions requesting that the Service declare the red wolf extinct in the wild, terminate red wolf recovery efforts in North Carolina, and remove all red wolves from the wild.

Current regulations are not effective in terms of fostering coexistence between people and red wolves, and changes are needed to reduce conflict associated with red wolf conservation. Additionally, the current regulations limit the number of red wolves that can be released on the landscape. The release of up to 12 wolves was explicitly authorized in the 1986 regulations (51 FR 41790; November 19, 1986). No additional releases were authorized during subsequent rule revisions in 1991 (56 FR 56325; November 4, 1991) and 1995 (60 FR 18940; April 13, 1995). Movement of wolves between the captive and wild populations is needed to maintain the genetic integrity of the NC NEP and the overall red wolf population.

In summary, the existing regulations lack the flexibility necessary to ensure the conservation and recovery of the red wolf. The Service is proposing replacement regulations that will allow active coyote management and better ensure active participation by landowners and the State and local officials in canid management, thereby increasing the probability of persistence of the wild population of red wolves. These wild red wolves would be the main source of animals for future establishment of new experimental populations elsewhere within the historical range of the species.

#### *Proposed Replacement Regulations for the NC NEP*

Our intent with this proposed rule is to establish a fundamentally different paradigm for red wolf conservation. The rule itself would ensure protection and effective management of red wolves within the Federal lands of the Alligator River National Wildlife Refuge (NWR) and the Dare County Bombing Range (NC NEP management area).

This rule proposes to establish a NC NEP management area to include the Alligator River NWR and the Dare County Bombing Range (NC NEP management area). A small group (*i.e.*, one or two packs likely consisting of

fewer than 15 animals) of red wolves would be maintained in the NC NEP management area. The wolves in this NC NEP management area would be actively managed under the RWAMWP.

The primary role of this population relative to the conservation of the species would be to provide a source of red wolves that are raised in, and adapted to, natural conditions for the purpose of facilitating future reintroductions.

It is anticipated that some red wolves would leave the NC NEP management area on a fairly regular basis. Although these red wolves would be considered part of the NC NEP, the proposed regulations would contain no take prohibitions of these animals on private lands and non-Federal public lands. As such, the Service has determined that no take prohibitions will apply outside the NC NEP management area. The proposed rule would require only that the Service be notified within 24 hours regarding the take of any collared animals and that the collars be returned to the Service.

A species status assessment (SSA) report was prepared for the red wolf (USFWS 2018) that contains additional information regarding the biology and status of the species. The SSA report can be found on the Southeast Region website at <https://www.fws.gov/southeast/> and at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0035.

Focusing management on Federal lands while removing the cumbersome procedural provisions for take of red wolves should reduce overall program costs and facilitate the State and other partners to take a more active leadership role in canid management and conservation on non-Federal lands. Limiting the designated NC NEP management area to Federal lands should also reduce conflicts between the State, the Service and any other stakeholders regarding authorized management of coyotes on private lands.

Despite the challenges and limitations facing the NC NEP, managing a smaller wild population is important to fostering the species in the wild. This management approach will allow more resources to support the captive population and ability to establish other wild populations. It will also help retain some of the influences of natural selection, serve as a small propagation population for future new reintroduction efforts, and could provide a population for continued scientific research on wild behavior. Research would be authorized and encouraged and could be targeted at

filling key knowledge gaps to inform future reintroduction efforts at other sites, specifically focused on better understanding the behavioral and ecological factors that reproductively separate red wolves and coyotes with a view toward developing more efficient and sustainable management techniques. This research would focus on predator-prey dynamics, maintenance of genetic integrity, and management of hybridization. Public education and outreach activities would continue.

#### *Statutory and Regulatory Framework*

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as “experimental populations.” Before section 10(j) created the “experimental” designation, “[l]ocal opposition to reintroduction efforts, . . . stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of [reintroductions] as a management tool” (51 FR 41790; November 19, 1986). The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties by giving the Secretary of the Interior greater regulatory flexibility and discretion in managing the reintroduction of listed species to encourage recovery in collaboration with partners, especially private landowners. Congress specifically contemplated that the release of experimental populations of predators, such as red wolves, could allow for the directed taking of these animals if the release were frustrated by public opposition. Also, Congress noted that permits for takings of experimental populations would not be necessary if such populations were treated as threatened, thus indicating take would not be prohibited. See H.R. Rep 97–567 (1982).

Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate an endangered or threatened species that has been or will be released into suitable natural habitat outside the species’ current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed) as an experimental population.

Before authorizing the release as an experimental population of any

population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. In short, experimental populations must further a species’ recovery. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State game and fish agencies, local governmental entities, affected Federal

agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population. Based on the best available information, 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.

Under this NEP designation, all members of the population are treated as if they were listed as a threatened species for the purposes of establishing protective regulations, regardless of the species’ designation elsewhere in its range. This approach allows us to develop tailored conservation measures that we deem necessary and advisable to provide for the conservation of the species. In these situations, the general regulations at 50 CFR 17.31 do not apply. The protective regulations adopted for an experimental population in a section 10(j) rule contain the applicable prohibitions and exceptions for that specific population. We find it necessary and advisable to apply section 9 prohibitions for endangered species and section 10 exceptions within the NC NEP management area.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an endangered or threatened species or adversely modify its critical habitat. For the purposes of section 7(a)(2), we treat an NEP as a threatened species only when the NEP is located within a National Wildlife Refuge or unit of the National Park Service. Under the proposed rule, this means intra-agency consultation would be required for activities on the Alligator River NWR.

When members of an NEP are located outside a National Wildlife Refuge or National Park Service unit (in this case, on Dare County Bombing Range), then, for the purposes of section 7, they are treated as species proposed for listing, not as threatened species. This means section 7(a)(2) of the Act does not apply. Instead, section 7(a)(4) applies. This provides the Service with additional flexibility because under section 7(a)(4), Federal agencies are only required 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. Section 7(a)(4) conference recommendations are non-binding and optional to the agencies carrying out, funding, or authorizing the action at issue. Therefore, section 7(a)(2) consultation would not be required for actions that occur outside of Alligator River NWR (*i.e.*, on Dare County Bombing Range).

#### *Previous Federal Actions*

The red wolf was originally listed as a species threatened with extinction under the Endangered Species Preservation Act of 1966 (32 FR 4001; March 11, 1967). This species is currently listed as an endangered species under the Act. The demise of the red wolf was directly related to human activities, such as predator control efforts at the private, State, and Federal levels and conversion of prime habitat to other purposes.

Historically, the red wolf range included Texas and Louisiana to the Ohio River Valley and up the Atlantic Coast into northern Pennsylvania or southern New York, and perhaps farther north (Wildlife Management Institute (WMI) 2014; for reference, see <http://www.regulations.gov>, Docket No. FWS–R4–ES–2017–0006). However, by the mid-1970s, the only remaining population occurred in southeastern Texas and southwestern Louisiana (WMI 2014). In 1975, it became apparent that the only way to save the red wolf from extinction was to capture as many wild animals as possible and place them in a secured captive-breeding program. This decision was based on the critically low numbers of animals left in the wild, poor physical condition of those animals due to disease and internal and external parasites, the threat posed by an expanding coyote (*Canis latrans*) population, and consequent hybridization.

The Service removed the remaining red wolves from the wild and used them to establish a breeding program with the objective of restoring the species to a portion of its former range. Ultimately, 14 animals formed the basis of the Red Wolf Captive Breeding Program with the Point Defiance Zoo and Aquarium in Tacoma, Washington. By 1986, the captive-breeding program held 80 red wolves in seven facilities and public and private zoos across the United States. With the red wolf having been extirpated from its entire historical range, the Service took action to reestablish a wild population.

In 1986, the Service published a final rule in the **Federal Register** (51 FR

41790; November 19, 1986) to reintroduce red wolves into Alligator River NWR, Dare County, North Carolina. Alligator River NWR was chosen due to the absence of coyotes, lack of major livestock operations, and availability of prey species. The red wolf population in Dare County (Alligator River NWR) and adjacent Tyrrell, Hyde, and Washington Counties was determined to be a nonessential experimental population (NEP) under section 10(j) of the Act (a “10(j) rule”).

In 1991, the Service published a final rule (56 FR 56325; November 4, 1991) that added Beaufort County to the counties where the 1986 NEP designation would apply and provided for introduction of a second NEP of red wolves in the Great Smoky Mountains National Park (Park), Haywood and Swain Counties, North Carolina, and Blount, Coker, and Sevier Counties in Tennessee. The second NEP’s efforts were discontinued in 1998 (63 FR 54151, October 8, 1998; USFWS 2007) due to lack of resources in the area, poor pup survival, and the dispersal patterns of red wolves released onsite. The surviving animals from the Park were placed in captivity or transferred to the NC NEP.

From 1987 through 1992, recovery officials released 42 red wolves to establish the NC NEP. In 1993, the experimental population was expanded with reintroductions at Pocosin Lakes NWR in North Carolina. The 10(j) rule was modified again in 1995 (60 FR 18940; April 13, 1995) to revise and clarify the incidental take provision; revise the livestock owner take provision; add harassment and take provisions for red wolves on private property; revise and clarify the vaccination and recapture provision; and apply the same taking (including harassment) provisions to red wolves outside the experimental population area, except for reporting requirements. Today, the only population of red wolves in the wild is the NC NEP established in the five counties of the Albemarle peninsula (see map in supporting documents at <http://www.regulations.gov>, Docket No. FWS–R4–ES–2018–0035). All other individuals of this species are found in captive facilities around the country. The NC NEP has been closely monitored and managed since the first introductions in 1986.

Management of red wolves in the NC NEP has changed over the years in response to our expanding knowledge of red wolf behavior and ecology and changing conditions within the NC NEP recovery area. The 1986 10(j) rule anticipated that red wolves would stay

within the bounds of Alligator River NWR and the Dare County Bombing Range. Red wolves leaving this area were to be captured and returned to the NWR or placed in captivity. We quickly learned the shortcomings of this approach, as red wolves left the NWR within a few months of the initial releases. Some red wolves were captured and returned. In other cases, the Service entered into agreements with landowners to authorize the management of red wolves on private lands. In 1995, we amended the 10(j) rule to revise and clarify the incidental take provision, revise the livestock owner take provision, add harassment and take provisions for red wolves on private property, and apply the same taking (including harassment) provisions to red wolves outside the experimental population area (NC NEP recovery area) (60 FR 18940; April 13, 1995). In the early 1990s, expansion of coyotes into the NC NEP recovery area resulted in interbreeding and coyote gene introgression into the red wolf population. In 1999, to reduce interbreeding between red wolves and coyotes, the Service developed the RWAMWP, which utilized sterilized coyotes as territorial “placeholders.” Placeholders, which could not produce offspring should they mate, were expected to hold territory, thereby excluding other coyotes. Placeholders would eventually be replaced on the landscape either through competition with red wolves or through management actions. Throughout the history of the program, red wolves (and since 2000), placeholders have been monitored via telemetry, vaccinated against diseases prevalent in canids, and intensively studied in conjunction with a number of field research projects.

As provided in the current regulations at 50 CFR 17.84(c), our staff has implemented management actions involving direct take of red wolves. This has included recapture of red wolves to: Replace telemetry collars; provide routine veterinary care; move red wolves from place to place to establish breeding pairs or to address management issues; and to remove animals from the wild population that were a threat to human safety or property, or that were severely injured or diseased. Also, as provided for in the current regulations, animals have been captured when private landowners requested their removal, and lethal take authorizations have been issued pursuant to 50 CFR 17.84(c)(4)(v).

In 2013, the Service initiated a formal review of the NC NEP due to concerns regarding its effectiveness and high costs. The Service contracted with the

Wildlife Management Institute (WMI) to conduct a review. The WMI review (WMI 2014) found multiple areas of concern related to NC NEP management and regional oversight; interpretation of the 10(j) rule; program costs and efficacy; the relationship of the NEP to other aspects of red wolf recovery; and landowner, community, and State support. Based on the findings of the WMI review (WMI 2014), the Service decided to suspend those management activities not explicitly authorized in the 1995 final rule and related compliance documents (e.g., section 7 consultation under the Act, NEPA), including release of additional red wolves from the captive population into the NC NEP recovery area and deployment of placeholder coyotes. Additionally, a Department of the Interior Office of the Inspector General (OIG) Report found that the Red Wolf Recovery Program released more wolves than it originally proposed and acted contrary to its rules by releasing wolves on to private lands (OIG 2016).

### Findings

As discussed under *Statutory and Regulatory Framework*, several findings are required before establishing an experimental population. Below are our findings.

*Is the experimental population wholly separate geographically from non-experimental populations of the same species?*

Yes. The red wolf was considered extinct in the wild by 1980 (USFWS 1990). As such, red wolves of the NC NEP will be wholly separate from any non-experimental population and will have no effect on any extant wild population of red wolves.

Most red wolves in existence today are held in captivity as part of the Red Wolf Species Survival Plan (SSP). Currently, there are approximately 221 red wolves at over 43 facilities across the country that support the captive population. Among others, two of the main goals of the Red Wolf SSP are to maintain 80 to 85 percent of the genetic diversity found in the original founder stock diversity for a period of 150 plus years, and to achieve a captive population size of 330 animals (USFWS 1990). There are currently 24 known (e.g., radio-collared) red wolves in the wild within the five-county NC NEP with an estimated total population in the wild of approximately 30 to 35 individuals.

*Is the experimental population area in suitable natural habitat outside the species' current range, but within its probable historical range?*

Yes. In North Carolina, reintroduced wolves have used many habitats, including agricultural lands, pine forests, and pocosins (e.g., a wetland found in coastal areas with sandy peat soil and shrubs throughout; Kelly et al. 2004, Trani and Chapman 2007). The WMI (2016) conducted a review of all available information related to the historical range of the red wolf. It concluded that previous range maps developed and used by the Service for the Red Wolf Recovery Program were too restrictive. An accurate predictor of the historical red wolf range includes all or parts of several Level II ecoregions including the Mississippi Alluvial and Southeast United States Coastal Plains, Ozark/Ouachita Appalachian Forests, South Central Semi-Arid Prairies, Southeastern United States Plains, and the Texas-Louisiana Coastal Plains. This area encompasses the southeastern United States, from southern Texas northeastward through eastern Oklahoma, southern and central Missouri into Illinois and southern Iowa; then east across southern Indiana and Ohio, and across Pennsylvania and New Jersey to the New York Bight; then south to the tip of the Florida Peninsula. Therefore, the NC NEP is within the probable historical range.

The fact that red wolves have existed on the Albemarle Peninsula since 1986, and have successfully established packs and territories (especially within the Alligator River NWR), survived, and reproduced, indicates that the habitat is suitable. Despite anticipated future habitat changes related to sea level rise, we expect the habitat to remain suitable for the foreseeable future. Therefore, the NC NEP is within suitable habitat for the red wolf.

*Is the experimental population essential to the continued existence of the species?*

Before authorizing the release of any experimental population outside the current range of the species, the Act instructs us to determine whether an experimental population is essential to the continued existence of an endangered or threatened species. Our regulations define essential experimental populations as those “whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild” (50 CFR 17.80(b)). The Service defines “survival” as the condition in which a species continues to exist in the future

while retaining the potential for recovery (USFWS and National Marine Fisheries Service 1998). Inherent in our regulatory definition of essential is the impact the potential loss of the experimental population would have on the species as a whole (USFWS 1984). All experimental populations not meeting this bar are considered nonessential (50 CFR 17.80(b)).

The Service previously determined that this experimental population of red wolves was nonessential in the 1986 final rule because even if the entire experimental population was lost, it would not appreciably reduce the prospects for future survival of the species because red wolves are still maintained in the captive-breeding program and we have proven capacity to successfully start a wild population from captive stock. As these circumstances have not changed, the NC NEP remains a nonessential population as it was established in 1986, and remained through subsequent amendments to the regulations. It is instructive that Congress did not put requirements in section 10(j) of the Act to reevaluate the determination of essentiality after a species has been reestablished in the wild. While our regulations require a “periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species” (50 CFR 17.81(c)(4)), this has not been interpreted as requiring reevaluation and reconsideration of a population’s essentiality status (USFWS 1991; USFWS 1994; USFWS 1996). Recently a ruling in a case in the U.S. District Court for the District of Arizona (*Center for Biological Diversity v. Jewell*, 2018 WL 1586651 (D. Ariz. March 31, 2018)) found that the Service should have revisited the essentiality determination for the experimental population of the Mexican gray wolf (*Canis lupus baileyi*) when revising the 10(j) rules governing that population. An important difference between the revision of the Mexican gray wolf 10(j) rule revision and this proposed rule is that the revision of the Mexican gray wolf 10(j) rule expanded the area covered by the experimental population designation into areas not previously included; whereas this proposed rule for the red wolf does not. All of the considered alternatives either sustain, reduce, or terminate the existing NEP rather than expanding it into new areas outside the species’ current range.

*Does the establishment of the experimental population and release into the NC NEP further the conservation of the species?*

Yes.

(1) Are there any possible adverse effects on existing populations of the red wolf as a result of removal of individuals for introduction elsewhere?

As stated above, the only other known red wolves in existence are held in captivity as part of the captive population. While one of the primary functions of the captive population is to provide animals for reintroduction to the wild, such reintroductions could adversely affect the captive population by reducing its size and genetic diversity. The Red Wolf Population Viability Analysis (Faust et al. 2016) indicates that the captive population at its current size can support the releases from the captive population into the NC NEP without adversely affecting the captive population, but this capacity is limited and releases above this level (such as those that may be needed to establish additional NEP sites) may adversely affect the captive population. The Service is currently working with our SSP partners and others to expand the captive population in order to better conserve genetic diversity and support additional reintroduction efforts.

(2) What is the likelihood that any such experimental population will become established and survive in the foreseeable future?

Between the initial designation of the nonessential experimental population in North Carolina in 1986 and 1995, the reintroduction experiment was successful and generated benefits that extended beyond the immediate conservation of red wolves (60 FR 18940; April 13, 1995). However, by approximately 2005, the red wolf population within the five-county NC NEP had leveled off and begun to decline. It was also during this time (the mid-1990s through early 2000s) that a change occurred that fundamentally altered the dynamics of the NC NEP and red wolf conservation generally: The arrival of coyotes on the Albemarle Peninsula and the impacts of that arrival on human tolerance of red wolves.

By the early to mid-1990s, coyotes had become established on the Albemarle Peninsula and had begun to breed with red wolves (Kelly et al. 1999; Phillips et al. 2003). As noted above, the fact that red wolves and coyotes can and do interbreed when mature was a key factor that threatened the red wolf with extinction in southeastern Texas and

southwestern Louisiana in the mid-1970s. One of the factors that led to the selection of the Alligator River NWR as the first reintroduction site in 1987 was that the range of the coyote had not yet expanded to include eastern North Carolina. The arrival of coyotes in the five-county NC NEP renewed the threat that the red wolf genome would be subsumed into the coyote genome through genetic introgression.

In 1999, a workshop was convened that brought together over 40 red wolf experts (Kelly et al. 1999). At this workshop, information was presented indicating that genetic introgression with coyotes could result in the loss of a unique red wolf genome within a few generations. Recognizing the urgency of the threat posed by coyotes, the workshop participants developed the RWAMWP (Kelly et al. 1999).

The RWAMWP divided the Albemarle Peninsula into management zones with different objectives for red wolf and coyote management within each. The zones were designed to prioritize management activities with the objective of maintaining a gradient from east to west across the Albemarle Peninsula; with the eastern end of the peninsula populated almost exclusively with red wolves (Zone 1), the western end populated with coyotes (Zone 3), and a zone in the middle (Zone 2) where coyote-red wolf interactions would be closely monitored and adaptively managed (USFWS 2013; for reference, see <http://www.regulations.gov>, Docket No. FWS-R4-ES-2018-0035).

One of the challenges in implementing the RWAMWP was the need for reliable methods to quickly distinguish between red wolves, hybrids, and coyotes, as adult hybrids can vary greatly in appearance from nearly wolf-like to nearly coyote-like, and puppies are essentially indistinguishable. Miller et al. (2003) were able to develop a reliable test based on blood samples. The RWAMWP also depended on the development of an effective means of managing intraspecific matings. The Service's experience in Texas and Louisiana had demonstrated that efforts focused on eradicating coyotes from the area were ineffective. The RWAMWP pioneered the use of sterile placeholders to manage space and red wolf-coyote interactions (Seidler and Gese 2012; Gese and Terletzky 2015). Implementation of these management practices also required the continued cooperation of private landowners to gain access to the animals and dens off Federal lands (Kelly et al. 1999).

By implementing the intense management described in the

RWAMWP and constant releases from captivity (e.g., pup fostering), genetic introgression from the growing coyote population into the red wolf population was reduced (Bohling et al. 2016). The RWAMWP appeared in 2015 to be effectively limiting genetic introgression (less than 4 percent coyote ancestry from introgression since the reintroduction began) into the red wolf population, although hybridization is seen as an ongoing challenge (Gese et al. 2015; USFWS 2018). With this intense management strategy and continued strategic releases of red wolves from the SSP, the red wolf population continued to increase and by 2005, reached a peak population of approximately 130 and 150 animals and over 20 breeding pairs (USFWS 2007; Hinton et al. 2016).

The RWAMWP effectively addressed the immediate threat to red wolves posed by the arrival of the coyote, namely genetic introgression (Bohling et al. 2016). It did not address the indirect threat posed by the arrival of the coyote (loss of red wolves associated with coyote control activities), and this threat would not begin to manifest itself until approximately 2005. As coyotes expanded their range and numbers throughout North Carolina and the eastern United States, citizens (including landowners and land managers on the Albemarle Peninsula) became increasingly concerned about the growing coyote population and interested in pursuing measures to control them (North Carolina Wildlife Resources Commission 2012).

Since approximately 2005, red wolf numbers within the five-county NC NEP have declined significantly. At present, in the five-county NC NEP, the birth rate is not sufficient to overcome the losses to mortality. This situation is further aggravated by introgression, which effectively reduces births of pure red wolves. There are now insufficient unrelated red wolves to replace lost breeders, and, therefore, the population cannot recover from their losses and overcome mortality. This has resulted in a steadily declining population (USFWS 2018). Without substantial intervention, complete loss of the NC NEP will likely occur within as few as 8 years (Faust et al. 2016). The NC NEP could avoid extirpation and be viable (less than 10 percent chance of extirpation in 125 years) as a population with intervention (Faust et al. 2016; see also USFWS 2018).

However, based on our experience over the past decade and the current status of the species, we conclude that our current regulations are not conducive to increases in red wolf reproduction and survival in the NC



NEP, and, in fact, the likelihood of the NC NEP persisting under the current regulations is very low. Indeed, the red wolf PVA indicates that under current management, the NC NEP is projected to be extirpated in as few as 8 years (Faust et al. 2016). The current conditions in the NC NEP are not favorable for red wolf self-sustainability and survival (Hinton et al. 2017a). Hinton et al. (2017a) concluded that “[a]lthough the RWAMWP was successful in limiting coyote introgression (Gese and Terletzky 2015, Gese et al. 2015), it was not successful in providing conditions favorable for red wolf survival.” Despite the considerable financial, personnel, and logistical investment, basic conditions conducive to wolf population self-sufficiency simply have not been achieved. The main reasons for the presence of these unfavorable conditions include lack of authorization to release additional animals from the captive population. The current regulations do not authorize the release of animals from the captive population beyond the 12 specified in the original 1986 10(j) rule (51 FR 41790; November 19, 1986). An additional issue creating unfavorable conditions is anthropogenic mortality and subsequent population decline and hybridization with coyotes, the combination of which the RWAMWP was not designed to address (Hinton et al. 2017). The proposed regulations seek to address these issues by authorizing the release of up to five animals per year from the captive population into the NC NEP management area and the implementation of the RWAMWP. By providing a new framework for managing red wolves on the Alligator River National Wildlife Refuge and the Dare County Bombing Range, we anticipate having at least two packs of red wolves in the NC NEP management area.

As noted above, the RWAMWP was implemented to establish a framework to limit hybridization between red wolves and coyotes, not to address factors affecting red wolf survival such as excessive anthropogenic mortality. Serenari et al. (2018) stated that red wolf recovery efforts will need to overcome political and logistical obstacles to human coexistence with red wolves. They analyzed data regarding human attitudes toward red wolf and coyote management in the context of Stone’s (2002) policy goals framework (equity, liberty, security, and efficiency). This proposed rule offers the opportunity to foster coexistence by increasing freedom of private landowners regarding management of canids on their lands.

The current five-county NC NEP is the only area in the State requiring a permit for coyote hunting and a prohibition on nighttime coyote hunting, due to the presence of red wolves and the increased risk of mistaken identity. This disparate treatment of landowners in the five-county NC NEP raises equity issues that foster resentment towards the presence of red wolves and has limited access to private lands for red wolf managers. This resentment is one of the most important factors hindering the conservation of the red wolf. Implementing this proposed rule is expected to minimize or even eliminate landowner resentment toward the red wolf, therefore furthering the conservation of the species.

Implementing this proposed rule will also increase local residents’ sense of security, as having private lands identified as part of a Federal endangered species recovery program has raised landowner concerns about potential land use restrictions, although no restrictions have ever been proposed by the Service.

Implementing this proposed rule will also increase the efficiency of red wolf conservation efforts by focusing Service resources within the smaller NC NEP management area. This could have the further benefit of allowing Service resources to be redirected to other species recovery efforts, increasing capacity of the captive population and exploring additional reintroduction opportunities.

Fostering coexistence between people and wolves is an essential element of all wolf conservation efforts, particularly so for the red wolf given that the vast majority of its historical range is comprised of private land. The extent to which this proposed rule fosters coexistence will depend on the ability of the Service and stakeholders to define policy goals related to red wolf recovery in terms of equity, liberty, security, and efficiency that balance the interests of those who support red wolf conservation and those with grave concerns regarding red wolf conservation. Red wolves in the NC NEP would continue to use private lands. Animals having genetic importance may be trapped and moved to either the NC NEP management area or captivity; however, most would remain on the landscape with their survival dependent on landowner tolerance and cooperation without regulation. It is unknown whether such a balance can be struck in eastern North Carolina or elsewhere, but this proposed rule seeks to find that balance. The Service is committed to investing locally in public education and outreach, with a goal towards local

red wolf appreciation and peaceful coexistence with landowners since landowners will have no take prohibitions of red wolves on private lands.

(3) What are the relative effects that establishment of an experimental population will have on the recovery of the red wolf?

This proposed rule would have several beneficial effects that further the conservation of the species. First and foremost, it would retain a wild population of red wolves to exercise natural behaviors and adaptations to wild conditions. At a minimum, these animals would be important for retaining these aspects of red wolf behavioral ecology and serve as a wild stock for future reintroduction efforts. Second, it would enable the Service to focus limited resources on broader recovery efforts such as working with partners to grow the captive population to the established recovery goal and exploring additional reintroduction sites. Third, this proposed rule has a goal of furthering red wolf appreciation and peaceful coexistence with local landowners since landowners will have no take prohibitions of red wolves on private lands. If successful, this would be invaluable tools for red wolf recovery range-wide.

The risk associated with the proposed action is that the very small number of red wolves that can be supported within the proposed NC NEP management area itself would face a continuing high risk of extirpation. We expect that there could still be some level of gunshot mortality, but we believe that, over time, if landowners adjacent to but outside the NC NEP management area are no longer regulated differently from the rest of the State, these circumstances would improve. Countering the risk of increased mortality outside the smaller NC NEP management area risk would require regular augmentation of the NC NEP with releases from the captive population. Absent careful management, such releases could have an adverse effect on the captive population. We believe this risk could be minimized or eliminated by carefully managing the captive population and increasing the capacity of the captive breeding facilities. Additionally, red wolves released from the captive population into the wild may engage in intraspecific strife with existing members of the NC NEP, which could upset group dynamics of established packs. We believe this risk can also be effectively managed through careful consideration of the number, timing,

location, and methods of adding new animals to the NC NEP.

There have been significant changes to the red wolf population and red wolf management in the NC NEP since the regulations were revised in 1995. As discussed earlier, the 1995 final rule was promulgated before management of red wolf and coyote interactions became a primary management consideration. As such, the current regulations do not explicitly incorporate RWAMWP activities. Additionally, the 1986 regulations explicitly authorized the release of only 12 red wolves into the NC NEP, whereas many more than 12 red wolves have been released outside the authorities under the current regulations, and evidence indicates that continuing additional releases are necessary to maintain the size and genetic health of the population (Faust et al. 2016). Further, we believe it is apparent that the current regulations are not effective in terms of fostering coexistence between people and red wolves, and that changes are needed to reconcile red wolf conservation with landowner needs and State efforts to manage coyotes. The current regulations are no longer effective in addressing the current and future management needs of the red wolf, and preclude the development of sound management strategies for this species. This proposed rule would explicitly authorize actions needed to carry out the RWAMWP, authorize additional releases from the captive population, and provide a new means of fostering coexistence between landowners and red wolves and cooperation among the Service, state, and landowners.

(4) What is the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area?

In terms of the Federal lands within the proposed NC NEP management area, we anticipate that ongoing actions to manage red wolves would continue and be accompanied with additional measures to further the conservation of red wolves and their habitat (as appropriate in consideration of budgetary and other management considerations), including implementation of the RWAMWP within the NC NEP management area. Beyond the proposed NC NEP management area the ability of our partners and stakeholders to foster coexistence between people and red wolves on private land will largely determine the potential effects on the population. Potential changes from the

State regarding lifting coyote hunting restrictions based on the proposed NC NEP management area is expected to decrease public dissent over red wolves, once landowners feel unencumbered to deal with coyote issues on their land.

#### Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and an August 22, 2016, memorandum clarifying the Service's interpretation and implementation of that policy, we will seek the expert opinion of at least three appropriate, independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

#### Supporting Documents

A draft environmental assessment (DEA) has been prepared for this action. The DEA and other materials relating to this proposal can be found on our website at <http://www.fws.gov/Raleigh> and at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2018-0035.

#### Required Determinations

*Regulatory Planning and Review*  
(Executive Orders 12866 and 13563)

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

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

this proposed rule in a manner consistent with these requirements.

*Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

This proposed rule is not an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) regulatory action because this proposed rule is not significant under E.O. 12866.

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

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 60 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that, if adopted as proposed, this rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected under this rule includes Federal lands (NWR and Department of Defense) in portions of Dare and Hyde Counties. We do not expect this proposed rule would have significant effects on any activities within Federal, State, or private lands because of the regulatory flexibility for Federal agency actions provided by the proposed rule. Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an endangered or threatened species or adversely modify its critical habitat. For the purposes of section 7(a)(2) of the Act, we treat an NEP as a threatened species only when the NEP is located within a National Wildlife Refuge or unit of the National Park Service. Under this proposed rule, this means intra-agency consultation would be required for activities on the Alligator River NWR.

When members of a NEP are located outside a National Wildlife Refuge or National Park Service unit (in this case, on Dare County Bombing Range), then, for the purposes of section 7, they are treated as species proposed for listing, not as threatened species. This means section 7(a)(2) does not apply. Instead, section 7(a)(4) applies. This provides the Service with additional flexibility because under section 7(a)(4), Federal agencies are only required 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. Additionally, section 7(a)(4) conference only results in nonbinding recommendations that are optional to the agencies carrying out, funding, or authorizing the action at issue. Applying this framework to the proposed rule, section 7(a)(2) consultation would not be required for actions that occur outside of Alligator River NWR (*i.e.*, on Dare County Bombing Range). Additionally, the experimental population of red wolves being proposed in this rule has been determined to be “nonessential”; that means the NEP is, by definition, not essential to the survival of the species. As a result, no action affecting the NEP could be likely to jeopardize the species under section 7(a)(4) of the Act. Therefore, some modifications to proposed Federal actions within Alligator River NWR and Dare County Bombing Range may occur to benefit the red wolf, but we do not expect projects to be substantially modified because these lands are already being administered in a manner that is compatible with the existing red wolf NC NEP.

This proposed rule would authorize all forms of take of red wolves outside of the NEP management area except on Federal Lands and prescribe the forms of incidental take within the NC NEP management area, as described below. The regulations implementing the Act define “incidental take” as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as, agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NC NEP management area that are in accordance with applicable laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be authorized. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the NC NEP management

area are timber production, agriculture, outdoor recreation, and activities associated with private residences. We believe the presence of the red wolf will not affect the use of lands for these purposes because there will be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or private landowners due to the presence of the red wolf, and Federal agencies would have to comply with section 7(a)(4) of the Act only in areas outside Alligator River NWR lands (*i.e.*, Dare County Bombing Range). Therefore, this proposed rule is not expected to have any significant adverse impacts to activities on private lands. In fact, the proposed rule would represent a substantial increase in regulatory flexibility on non-Federal lands due to the proposed changes in the regulation of take of red wolves outside the NC NEP management area.

#### *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.*):

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

(2) This rule would 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). The NEP area designation for the red wolves would not impose any additional management or protection requirements on the States or other entities.

#### *Takings (E.O. 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. This proposed rule would allow for the take of reintroduced red wolves when such take is incidental to an otherwise legal activity, in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that the NC NEP would conflict with existing or proposed human activities.

A takings implication assessment is not required because this rule (1) would

not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. If adopted as proposed, this rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

#### *Federalism (E.O. 13132)*

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a federalism summary impact statement is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in North Carolina. 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 would not change; and fiscal capacity would not be substantially directly affected. The proposed rule maintains the existing relationship between the State and the Federal Government, and is undertaken in coordination with the State of North Carolina. Therefore, this proposed rule does not have significant Federalism effects or implications to warrant the preparation of a federalism summary impact statement under the provisions of Executive Order 13132.

#### *Civil Justice Reform (E.O. 12988)*

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

#### *Paperwork Reduction Act*

This rule does not contain any new collection of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with endangered and threatened wildlife—experimental populations (50 CR 17.84) and assigned

OMB Control Number 1018–0095 (expires 12/31/2020). We estimate the annual burden associated with this information collection to be 52.5. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

To ensure that we consider the environmental impacts associated with this proposed rule, we have prepared a DEA pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). In May 2017, we published an advance notice of proposed rulemaking and notice of intent to prepare a NEPA document (82 FR 23518; May 23, 2017). This initiated a public scoping process that included a request for written comments and two public scoping meetings in June 2017. We have incorporated information collected since that scoping process began in the development of a DEA. We will use information from this analysis to inform our final decision.

*Government-to-Government Relationship With Tribes*

In accordance with the presidential memorandum of April 29, 1994,

“Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951; May 4, 1994), Executive Order 13175 (65 FR 67249; November 9, 2000), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no tribal lands affected by this proposed rule.

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

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

**References Cited**

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> at Docket No. FWS–R4–ES–2018–0035 or upon request from the Raleigh Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are staff members of the Service’s Southeast Region.

**List of Subjects in 50 CFR Part 17**

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

**Proposed Regulation Promulgation**

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

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

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

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

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Wolf, red .....	<i>Canis rufus</i> .....	Wherever found, except where listed as an experimental population.	E	32 FR 4001, 3/11/1967; 51 FR 41790, 11/19/1986; 56 FR 56325, 11/4/1991; 60 FR 18941, 4/13/1995.
Wolf, red .....	<i>Canis rufus</i> .....	U.S.A. (portions of NC—see § 17.84(c)(4)).	XN	51 FR 41790, 11/19/1986; 56 FR 56325, 11/4/1991; 60 FR 18941, 4/13/1995; [Federal Register citation of the final rule]; 50 CFR 17.84(c) <sup>10j</sup> .
*	*	*	*	*

■ 3. Amend § 17.84 by revising paragraph (c) to read as follows:

**§ 17.84 Special rules—vertebrates.**

\* \* \* \* \*

(c) Red wolf (*Canis rufus*).

(1) *Purpose.* The U.S. Fish and Wildlife Service (Service) finds it necessary to establish regulations governing management of the experimental population of red wolves to further the conservation of the red wolf.

(2) *Determinations.* (i) The red wolf population established in the designated area identified in paragraph (c)(4) of this section is a nonessential experimental population under § 17.81(c)(2) and is referred to as the North Carolina

nonessential experimental population (NC NEP). This nonessential experimental population will be managed according to the provisions of this paragraph. The Service does not intend to change the nonessential experimental designation to essential experimental. Critical habitat cannot be designated under the nonessential experimental classification (16 U.S.C. 1539(j)(2)(C)(ii)).

(ii) The designated experimental population area the NC NEP is within the species’ probable historical range. The red wolf is otherwise extirpated in the wild, and, therefore, this experimental population is wholly separate from any other known red wolves.

(3) *Definitions.* Key terms used in this paragraph have the following definitions:

(i) *Depredation* means the confirmed killing or wounding of lawfully present domestic animals by one or more red wolves. The Service or other Service-designated agencies will confirm cases of red wolf depredation.

(ii) *Designated agency* means a Federal, State, tribal or private agency or entity designated by the Service to assist in implementing this paragraph, all or in part, consistent with a Service-approved management measure, conference opinion pursuant to section 7(a)(4) of the Act, cooperative agreement pursuant to section 6(c) of the Act as described in § 17.31 for State

conservation agencies with authority to manage red wolves, or a valid permit issued by the Service through § 17.32.

(iii) *Domestic animal* means livestock, defined at paragraph (c)(3)(ix) of this section; pets; and non-feral dogs.

(iv) *Federal land* means public land under the administration of Federal agencies including, but not limited to, the Service, Department of Defense, National Park Service, or U.S. Forest Service.

(v) *Feral dog* means any dog (*Canis familiaris*) or wolf-dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leased, or otherwise restrained (e.g., by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.

(vi) *Harass* means intentional or negligent actions or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering.

(vii) *Intentional harassment* means deliberate, pre-planned harassment of red wolves, including by less-than-lethal means (such as 12-gauge shotgun rubber bullets and bean-bag shells) designed to cause physical discomfort and possible temporary physical injury, but not death. Intentional harassment includes situations where red wolves may have been unintentionally attracted—or intentionally tracked, waited for, chased, or searched out—and then harassed.

(viii) *Livestock* means cattle, goats, sheep, horses or other domestic animals defined as livestock in Service-approved State management plans. Poultry is not considered livestock under this paragraph.

(ix) *Non-Federal land* means any lands not owned by the Federal government.

(x) *Opportunistic harassment* means scaring any red wolf from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to, but not in the direction of, the wolf; throwing objects at the wolf; or making loud noise in proximity to the wolf. Such harassment might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death.

(xi) *Problem red wolves* means red wolves that, for purposes of management and control by the Service or its designated agency, are:

(A) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were involved in a depredation on lawfully present domestic animals;

(B) Habituated to humans, human residences, or other facilities largely occupied by humans; or

(C) Aggressive towards humans when unprovoked.

(xii) *Service-approved management plan* means a management plan approved by the Regional Director or Director of the Service through which Federal, State, or tribal agencies may become a designated agency. The management plan must address how red wolves will be managed to achieve conservation goals in compliance with the Act, these regulations, and other Service policies. If a Federal, State, tribal or private agency becomes a designated agency through a Service-approved management plan, the Service will help coordinate activities while retaining authority for program direction, oversight, guidance and authorization for red wolf removals.

(xiii) *Take* means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

(xiv) *Translocation* means the release of red wolves back into the wild that have previously been in the wild.

(xv) *Unintentional take* means the take of a red wolf by a person if the take is unintentional and occurs while engaging in an otherwise lawful activity, occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Taking of a red wolf by poisoning or shooting within the NC NEP management area will not be considered unintentional take.

(xvi) *Wounded* means exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a red wolf bite.

(4) *Designated area*. The boundaries of the NC NEP management area correspond to all lands within the Alligator River National Wildlife Refuge and the Dare County Bombing Range. All red wolves in the wild are considered part of the NC NEP. Red wolves that disperse outside the Alligator River National Wildlife Refuge and the Dare County Bombing Range will be managed according to the measures set forth in this paragraph for red wolves outside the NC NEP management area.

(5) *Prohibitions*. Take of any red wolf in the NC NEP management area is prohibited, except as provided at paragraph (c)(7) of this section.

Additionally, the following actions are prohibited:

(i) This paragraph does not alter or supersede the rules governing the take of wildlife on units of the National Wildlife Refuge System. In accordance with 50 CFR 27.21, no person shall take any animal or plant on any national wildlife refuge, except as authorized under 50 CFR 27.51 and 50 CFR parts 31, 32, and 33.

(ii) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any red wolf or wolf part except as authorized in this paragraph or by a valid permit issued by the Service under § 17.32. If a person kills or injures a red wolf or finds a dead or injured red wolf or red wolf parts within the NC NEP management area, the person must not disturb them (unless instructed to do so by the Service or a designated agency), must minimize disturbance of the area around the carcass, and must report the incident to the Eastern North Carolina Ecological Services Field Sub-Office in accordance with paragraph (c)(6) of this section.

(iii) Purposely taking a red wolf with a trap, snare, or other type of capture device within the NC NEP management area is prohibited (except as authorized in paragraph (c)(7) of this section) and will not be considered unintentional take.

(6) *Reporting requirements*. Unless otherwise specified in this paragraph or in a permit, any take of a red wolf must be reported to the Service or a designated agency within 24 hours. Report any take of red wolves, including opportunistic harassment, to the Service either by U.S. mail at Eastern North Carolina Ecological Services Field Sub-Office, 100 Conservation Way, Manteo, NC 27954; or by telephone at (252) 473-1132. Additional contact information can also be found on the Red Wolf Recovery Program's website at <https://www.fws.gov/southeast/wildlife/mammal/red-wolf/>. Unless otherwise specified in a permit, any red wolf or red wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead red wolves.

(7) *Allowable forms of take of red wolves within the NC NEP Management Area*. Take of red wolves in the NC NEP management area is allowed as follows:

(i) *Take in defense of human life*. Under 16 U.S.C. 1540(a)(3) and § 17.21(c)(2), any person may take (which includes killing as well as

nonlethal actions such as harassing or harming) a red wolf in self-defense or defense of the lives of others. This take must be reported in accordance with paragraph (c)(6) of this section. If the Service or a designated agency determines that a red wolf presents a threat to human life or safety, the Service or the designated agency may kill the red wolf or place it in captivity.

(ii) *Take for research purposes.* The Service may issue permits under § 17.32, and designated agencies may issue permits under State and Federal laws and regulations, for individuals to take red wolves pursuant to scientific study proposals approved by the agency or agencies with jurisdiction for red wolves and for the area in which the study will occur. Such take should lead to management recommendations for, and thus provide for the conservation of, the red wolf.

(iii) *Unintentional take.* (A) Take of a red wolf within the NC NEP management area by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity such as while driving the speed limit. Such take must be reported in accordance with paragraph (c)(6) of this section. Permitted hunters hunting on the refuge have the responsibility to identify their quarry or target before shooting; therefore, shooting a red wolf as a result of mistaking it for another species will not be considered unintentional take.

(B) Federal or State agency employees or their contractors may take a red wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing. Take of red wolves by Federal or State agencies must be reported in accordance with paragraph (c)(6) of this section.

(C) Take of red wolves by U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (USDA-APHIS-WS) employees while conducting official duties associated with wildlife damage management activities for species other than red wolves may be considered unintentional if it is coincidental to a legal activity and the USDA-APHIS-WS employees have adhered to all applicable USDA-APHIS-WS policies, red wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in USDA-APHIS-WS biological and conference opinions.

(8) *Allowable forms of take of red wolves outside the NC NEP Management Area.* On non-Federal lands anywhere outside the NC NEP management area,

there are no prohibitions on the take of red wolves. Reporting take to the Service is encouraged. If the animal taken has a telemetry collar, said collar is the property of the Service or the NCWRC and must be returned. While there are no take prohibitions outside of the NC NEP management area, the prohibition on possessing, selling, delivering, carrying, transporting, shipping, importing, or exporting red wolves or red wolf parts set forth at paragraph (c)(5)(ii) of this section applies to red wolves taken outside the NC NEP management area.

(9) *Take by Service personnel or a designated agency.* The Service or a designated agency may take any red wolf in a manner consistent with a Service-approved management plan, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, cooperative agreement pursuant to section 6(c) of the Act as described at § 17.31 for North Carolina Wildlife Resources Commission, or a valid permit issued by the Service through § 17.32.

(A) The Service or designated agency may use leg-hold traps and any other effective device or method for capturing or killing red wolves to carry out any measure that is a part of a Service-approved management plan or valid permit issued by the Service under § 17.32. The disposition of all red wolves (live or dead) or their parts taken as part of a Service-approved management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(B) The Service or designated agency may capture, kill, subject to genetic testing, place in captivity, or euthanize any wolf hybrid found within the NC NEP that shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes; that was raised in captivity, other than as part of a Service-approved red wolf recovery program; or that has been socialized or habituated to humans. If determined to be a red wolf, the wolf may be returned to the wild on-site, released within the NC NEP management area or put in captivity.

(C) To manage any wolves determined to be problem red wolves, as defined at paragraph (c)(3)(xii) of this section, the Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, capture, sterilization, translocation, placement in captivity, or lethal control. To determine the presence of problem

red wolves, the Service will consider all of the following:

(1) Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by red wolves;

(2) The likelihood that additional red wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken;

(3) Evidence of attractants or intentional feeding (baiting) of red wolves; and

(4) Evidence that red wolves are habituated to humans, human residences, or other facilities regularly occupied by humans, or evidence that red wolves have exhibited unprovoked and aggressive behavior toward humans.

(10) *Management.* (i) Within the NC NEP management area, the Service or designated agencies or partners will develop and implement a plan for the adaptive management of red wolves. This plan will include all actions needed to implement the Red Wolf Adaptive Management Work Plan including, but not limited to: Release of up to five animals per year from the captive population or the St. Vincent NWR propagation site into the NC NEP; deployment of placeholder animals; movement of animals within the NC NEP; trapping, handling, and monitoring members of the NC NEP population; and moving animals from the NC NEP into captivity as needed. Any updates to the adaptive management plan will be made public.

(ii) The Service may develop and implement other management actions to benefit red wolf recovery in cooperation with the North Carolina Wildlife Resources Commission, willing private landowners, and other stakeholders. Such actions may include actions identified in biological opinions pursuant to section 7(a)(2) of the Act, conference opinions pursuant to section 7(a)(4) of the Act, cooperative agreements pursuant to section 6(c) of the Act as described in § 17.31 for North Carolina Wildlife Resources Commission, or a valid permit issued by the Service through § 17.32.

(11) *Evaluation.* The Service will evaluate the effectiveness of these regulations at furthering the conservation of the red wolf. At 5-year intervals concurrent with the species' 5 year reviews, the Service will evaluate the experimental population program, focusing on modifications needed to improve the efficacy of these regulations, and the contribution the experimental population is making to the conservation of the red wolf.

Evaluation will be based on explicit objective and measurable criteria that encompass relevant scientific,

management, human-dimension, and available resources considerations.

\* \* \* \* \*

Dated: June 15, 2018.

**James W. Kurth,**

*Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director for the U.S. Fish and Wildlife.*

[FR Doc. 2018-13906 Filed 6-27-18; 8:45 am]

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