

Final Rule

Thursday
April 13, 1995

Part IV

**Department of the
Interior**

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Red Wolves in North Carolina
and Tennessee; Revision of the Special
Rule for Nonessential Experimental
Populations; Final Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AC03

Endangered and Threatened Wildlife and Plants; Revision of the Special Rule for Nonessential Experimental Populations of Red Wolves in North Carolina and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service amends the special rule for the nonessential experimental populations of red wolves (*Canis rufus*) in North Carolina and Tennessee to; revise and clarify the incidental take provision; apply the incidental take provision to both reintroduced populations; revise the livestock owner take provision; apply the livestock owner take provisions to both reintroduced populations; 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.

EFFECTIVE DATE: April 13, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

Requests for the summary report on the 5-year experimental reintroduction at the Alligator River National Wildlife Refuge (Alligator River) should be sent to the Alligator River National Wildlife Refuge, P.O. Box 1969, Manteo, North Carolina 27954.

FOR FURTHER INFORMATION CONTACT: Mr. V. Gary Henry, Red Wolf Coordinator, at the above Asheville, North Carolina, address (Telephone 704/665-1195, Ext. 226).

SUPPLEMENTARY INFORMATION

Effective Date

The usual 30-day delay between date of publication of a final rule and its effective date may be waived for good cause, as provided by 50 CFR 424.18(b)(1) and the Administrative Procedure Act (5 U.S.C. 553(d)(3)). The Service finds that this period be waived for this rule as its immediate promulgation is necessary to avoid

potential conflict between Federal provisions for the taking of red wolves on private property and corresponding State of North Carolina provisions that become effective on January 1, 1995.

Background

A proposed rule to introduce red wolves into Alligator River National Wildlife Refuge (Alligator River), Dare County, North Carolina, was published in the Federal Register July 24, 1986 (51 FR 26564). A final rule making a determination to implement the proposed action with some modifications was published November 19, 1986 (51 FR 41790). The red wolf population in Dare County and adjacent Tyrrell, Hyde, and Washington Counties was determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). A revision published November 4, 1991, added Beaufort County to the list of counties where the experimental population designation would apply (56 FR 56325). The status of the population was to be reevaluated within 5 years, and the process was to include public meetings.

A proposed rule to introduce red wolves into the Great Smoky Mountains National Park (Park), Haywood and Swain Counties, North Carolina; and Blount, Cocke, and Sevier Counties, Tennessee, was published in the Federal Register August 7, 1991 (56 FR 37513). A final rule making a determination to implement the proposed action with some modifications was published November 4, 1991 (56 FR 56325). This population was also determined to be a nonessential experimental population according to section 10(j) of the Act. Graham, Jackson, and Madison Counties, North Carolina; and Monroe County, Tennessee, were also included in the experimental designation because of the close proximity of these counties to the Park boundary. The reintroduction potential of the Park was to be assessed after a 10- to 12-month experimental phase. A positive assessment would result in initiation of a permanent reintroduction attempt.

The red wolf is an endangered species that is currently found in the wild only as experimental populations on the Service's Alligator River and Pocosin Lakes National Wildlife Refuges and adjacent private lands in Dare, Hyde, Tyrrell, and Washington Counties, North Carolina; and in the Park in Swain County, North Carolina, and Blount and Sevier Counties, Tennessee; and as an endangered species in three small island propagation projects

located on Bulls Island, South Carolina; Horn Island, Mississippi; and St. Vincent Island, Florida. These five carefully managed wild populations contain a total of approximately 60 animals. The remaining red wolves are located in 31 captive-breeding facilities in the United States. The captive population presently numbers approximately 180 animals.

Following are summaries of the results from the two experimental reintroductions. A more detailed summary for Alligator River is available (see ADDRESSES section) as Progress Report No. 6, entitled "Reestablishment of Red Wolves in the Alligator River National Wildlife Refuge, North Carolina, 14 September 1987 to 30 September 1992."

Alligator River 5-Year Summary

The 5-year experiment to reestablish a population of red wolves in Alligator River in northeastern North Carolina ended October 1, 1992.

From September 14, 1987, through September 30, 1992, 42 wolves (adults—10 males, 9 females; yearlings—1 female; pups—12 males, 10 females) were initially released on 15 occasions. Four releases were conducted in 1987, two in 1988, five in 1989, two in 1990, one in 1991, and one in 1992. As of September 30, 1992, there were at least 30 free-ranging wolves in northeastern North Carolina.

Animals were initially released as members of seven adult pairs, an adult and a yearling, an adult and a pup, five families, and one sibling pair. Adults are defined as animals 24 months or greater in age, yearlings are between 12 and 24 months of age, and pups are 12 months or less in age. Released adults ranged in age from 2.25 years to 7.33 years.

Wide-ranging movements that created management situations or led to the death of some animals soon after release were common. Of the 31 releases of adults and 22 releases of pups, 18 adults and 10 pups either had to be returned to captivity or died within 2 months. Length of acclimation, release area, location of resident wolves, and type of social group released all affected a wolf's probability of successfully establishing itself in the wild.

Of the 42 wolves released, 22 died; 7 were returned to captivity for management reasons; 11 were free-ranging through September 30, 1992; and the fates of 2 are unknown. Length of time in the wild varied from 16 days to 3.5 years.

Reintroduced wolves were killed by one of at least seven mortality factors. Vehicles (n = 8), intraspecific aggression

(n = 5), and drownings (n = 4) were the most significant sources of mortality. It is a measure of the program's success that all but two of the deaths were natural or accidental, not as a result of any irresponsible action by a private citizen.

A minimum of 22 wolves were born in the wild. These animals were members of eight litters produced by 11 adults (6 males, 5 females). Two litters were produced in 1988, at least one in 1990, four in 1991, and at least one in 1992. No pups were born in the wild during 1989 because there were no adult pairs together during the breeding season.

Only two wild-born wolves died, and the fate of one is unknown. As of September 30, 1992, wild-born wolves accounted for 63 percent of the known population (19 of 30).

Of the 11 adults that bred in the wild, 1 was wild-born and 10 were captive-born. Wild-born offspring are evidence that captive-born-and-reared adults can make the transition from captivity to life in the wild.

As expected, wild-born pups exhibited wide-ranging movements as they dispersed from natal home ranges. These animals, with the exception of one female, traveled up to 192 km before establishing new home ranges on private land south or west of Alligator River. One female was killed by a vehicle before she established a new home range. Dispersal age ranged between 7 and 22 months. The youngest dispersers were siblings that left their natal home range after their parents were returned to captivity. Likewise, another female dispersed at a young age after her mother was returned to captivity. It is likely that some or all of these pups would not have dispersed had their families remained intact.

Twenty-four of the released wolves were recaptured 63 times, and 17 of the wild-born wolves were recaptured 39 times. Most recaptures were necessary in order to meet program objectives (replace radio collars, place a specific wolf with a mate, translocate an animal to a suitable site, etc.). Every management problem was resolved without inflicting significant long-term damage to animals and with little or no inconvenience to residents of the area.

Captive breeding was an integral component of the reintroduction. Since 1986, 79 wolves have been held in captivity at Alligator River for varying periods of time. As of September 30, 1992, 10 wolves were in captivity. During the 5-year experiment, 20 captive adult pairs produced 34 pups. With access to 12 pens, Alligator River will continue to be an important

component of the red wolf captive-breeding program.

By almost every measure, the reintroduction experiment was successful and generated benefits that extended beyond the immediate preservation of red wolves to positively affect local citizens and communities, larger conservation efforts, and other imperiled species. During the last 5 years, four important points surfaced:

1. Since every management problem was resolved without inflicting long-term damage to animals and with little inconvenience to residents of the area, it is evident that red wolves can be restored in a controlled manner.

2. Significant land-use restrictions were not necessary in order for red wolves to survive. Indeed, hunting and trapping regulations for Alligator River remained unchanged or were further relaxed during the experiment. Additionally, no restrictions were needed in order for red wolves to survive on private land.

3. Red wolves and sportsmen can coexist. Many hunters and trappers expressed support, while others actively contributed to the success of the experiment by reporting sightings of red wolves.

4. The reintroduction area, which encompasses about 250,000 acres (111,750 hectares), probably cannot support 30 red wolves for an extended period of time. Dispersal outside the reintroduction area by wild-born red wolves has occurred and will continue. Efforts will be made to work with private landowners to allow wolves on private property. In addition to dispersal, the future of the red wolf population is threatened by its smallness; many events (e.g., disease outbreaks) can cause extinction of small populations.

Increasing the size of the wolf population minimizes threats to its survival. The primary factor limiting population size is the size of the reintroduction area. A larger reintroduction area would provide habitat for dispersing wolves and provide the Service with opportunities to release additional wolves. Fortunately, the reintroduction area can easily be enlarged by adding to the project the 112,000-acre (45,327-hectare) Pocosin Lakes National Wildlife Refuge (Pocosin Lakes). Purchased in 1990 and located in Washington, Tyrrell, and Hyde Counties, North Carolina, Pocosin Lakes is ideal for probably 15 to 25 wolves because of its large size, remoteness, abundant prey populations, and proximity to Alligator River.

Meetings with the public and local governments were held to present the

results of the first 5 years and to solicit input on a proposal to maintain the current population and expand the reintroduction westward to encompass Pocosin Lakes beginning in 1993. The seven public meetings were held in the communities of Engelhard, Manteo, Stumpy Point, East Lake, Columbia, Swanquarter, Washington, and Plymouth. Attendance at these meetings ranged from 7 to 90 people at each and totaled 146 at all locations. Meetings were also held with the county commissioners in Washington, Dare, Beaufort, Tyrrell, and Hyde Counties.

Reintroductions are generally supported by local, State, and Federal agencies; elected officials; and the general public, except for some private landowners and the county boards of commissioners in Hyde and Washington Counties, North Carolina. Most people who commented supported the restoration project, although some expressed concern about the effect of red wolves on activities on private land. The Service assured them that, because free-ranging wolves are legally classified as members of an experimental nonessential population, the wolves would not negatively impact legal activities on private or Federal land.

Some citizens used the meetings to express frustration about other matters involving the Service. No significant complaints were voiced specifically about the red wolf reintroduction experiment. However, Hyde and Washington Counties did pass resolutions opposing red wolf project expansion. These resolutions seemed to be based on anti-government sentiment and a fear of prohibitions on private land use.

After consideration of the results from the 5-year experimental reintroduction and public input received in public meetings and meetings with State and local governments and agencies, the Service determined that it would maintain the present populations at Alligator River and has expanded this population with reintroductions at Pocosin Lakes beginning in 1993. The reintroductions at Pocosin Lakes are within counties previously designated for the experimental population and require no changes in the existing rule.

Park 1-Year Summary

On November 12, 1991, the Service, in cooperation with the National Park Service (Park Service), experimentally released a single family group of red wolves into the Cades Cove area of the Park. This release was designed to assess the feasibility of eventually establishing a self-sustaining red wolf population on Park Service and

surrounding U.S. Forest Service property. The experimental period ended in late September 1992 with the capture of the remaining three members of the release group.

Specific technical objectives of the experimental release were to document and respond to movements and activities of the wolves in mountainous terrain and in the presence of high human activity, livestock interests, and an increasing coyote population. However, another objective was to establish an informative and cooperative relationship with the involved agencies and local citizens. Through continuous telemetric contact, direct and relayed sightings, and the dedicated efforts of project personnel, valuable information was gathered with respect to all of these categories; some problems were encountered as well.

Cades Cove is unique within the Park; it possesses a great diversity and abundance of prey species, making it highly attractive to a large predator. As a result, the average home range for the four released wolves was 15 km² (3,700 acres), scarcely larger than Cades Cove itself. As yet, an accurate prediction of red wolf home ranges for habitat typical of the other 99.3 percent of the Park cannot be made. Wolves made exploratory movements up to 16 km (10 miles) from the release site. Individuals strayed off Park property (less than 5 miles or less than 8 km) four times. Twice they were recaptured within several hours, and twice they returned of their own accord within 24 hours. The primary prey species taken by the wolves were deer, rabbit, ground-hog, and raccoon. Samples are currently being analyzed for percentages and seasonal variation.

Wolves were sighted on numerous occasions by visitors and project personnel throughout the experiment. This was somewhat expected in an area where prey species are extremely visible and comfortable with the intense attention of as many as 15,000 visitors daily. However, the two adult wolves, especially the male, repeatedly tolerated people at close distances. This was attributed to the amount of time (e.g., 6 years for the male) that the adults had spent in captivity. The male was eventually recaptured and removed from the experiment in late January 1992. The female tolerated human presence to a lesser degree, but she presented no problems and was allowed to roam free for the duration of the experimental period. The two female pups were often sighted crossing roads or, at a distance, hunting in pastures. They developed an increasing wariness to human activity as they spent more

time in the wild. The behaviors of these wolves support the theory that younger wolves, with minimal exposure to human contact, make better release candidates.

The private land surrounding the Park and throughout the Southern Appalachians supports a variety of livestock interests. The perceived potential economic threat of a large predator is perhaps the single greatest political barrier to establishing a self-sustaining red wolf population in the Southern Appalachians. The documentation and management of the wolves' interaction with domestic livestock is likely to be a major factor in deciding whether to expand the project. Thus, a \$25,000 depredation account was established to compensate livestock owners for losses.

Throughout the experiment, the adult male was responsible for taking one chicken and three domestic turkeys in two separate incidents. The remaining three wolves took one of five injured or missing newborn calves. One additional depredation attempt occurred but did not result in injury to the calf.

Reimbursements for the chicken and the calf totaled \$253. Offers to reimburse for the turkeys were declined by the owner.

Cades Cove supports a 300-head black angus cattle-breeding operation, leased to a private stock owner. During the 6-month calving season, the wolves and calving operation were intensely monitored. The wolves were located disjunct from five of six attempted depredations. Day and night (using night-vision equipment) visual observations revealed cooperative hunting by small groups of coyotes. Nightly spotlight observations by the stock owner revealed continuous coyote activity in calving pastures. Accurate records of lost calves prior to the experimental release of wolves were not kept. Estimates by the stock owner indicated approximately five to ten calves per year were lost to bears, coyotes, and other predators/scavengers.

Of significance is that all of the six depredation attempts during the experimental release involved calves less than 1 week old, and all the events occurred along wood lines away from the main herd of cattle. Project personnel began assisting the stock owner in moving newborn calves into the main herd, and no further depredations by coyotes or wolves occurred.

Prior to the red wolf release, the Service contracted the University of Tennessee to conduct a census of coyotes in the Park and to study interactions between resident coyotes and released wolves. Seven coyotes

were outfitted with telemetry collars and were monitored for 18 months, or until they permanently left the study area. Only one coyote remained "on the air" in Cades Cove by the time the wolves were released. This collar expired 3 months later. Interaction data was then gathered by direct observation.

Initial information indicated aggressive behavior between the adult wolves and resident coyotes, with the wolves apparently dominating. After the removal of the adult male wolf, greater numbers determined the dominating species.

In preparation for the experimental release, project and Park personnel met with area business, citizenry, and natural resource organizations for comment on the proposal. Modifications to the release plans included the addition of a "non-injurious harassment clause" to the experimental rule package, prevention of reproduction in the wild, immediate recapture of wolves straying off Park property, and recapture of all wolves at the end of the experiment.

To facilitate information exchange, an information committee (composed of representatives from Federal and State wildlife resource agencies, Farm Bureau Federations, and conservation organizations) was established. The Heartland Series, a local television environmental program, produced a documentary entitled "Front Runner," focusing on the reestablishment effort in the Southern Appalachians. The "Front Runner" video, a teacher's guide, and an activity poster were distributed free to all requesting educational institutions. The project gained national television exposure on "Zoo Life with Jack Hanna," a weekly public education broadcast. Presentations and workshops were given at wildlife exhibitions and to a variety of groups from elementary to college students and to senior citizens. Other media contact included interviews with local and regional newspapers, popular magazines, freelance writers, and television news teams.

During the final weeks of the experimental period, the Service reviewed and presented their findings to the Park Service and members of the information committee. The decision was made to proceed with a full reintroduction effort at a very conservative pace, with two releases in the fall of 1992.

On October 9, 1992, a family of six red wolves (two adults, four pups) were released into Cades Cove. To date, these wolves have shown restricted movements and food habits very similar to the experimental group. Within

several weeks after release, the adult pair had taken a large European wild hog—an exotic species in the Park.

On December 9, 1992, a second group of six wolves (two adults, four pups) was released from a remote backcountry site several miles east of Cades Cove. It is expected that these animals will be more difficult to track. However, they will provide needed information about the home range requirements of red wolves in habitat that is typical of the vast majority of the Park and surrounding Federal lands.

All released wolves will wear transmitters and will be monitored as closely as the experimental group. There are no scheduled plans to recapture these animals, except to replace aging transmitters in approximately 2 to 3 years.

The possibility of expanding the Park reintroduction to include adjacent national forest lands within the Nantahala and Pisgah National Forests in North Carolina, the Cherokee National Forest in Tennessee, and the Chattahoochee National Forest in Georgia will be evaluated over the next few years. This evaluation will include meetings with congressional representatives, State wildlife and agriculture agencies, Farm Bureau Federations, local agriculture and hunting interests, conservation organizations, county commissioners, and a variety of local organizations. A final decision will be made after public meetings in the local areas where reintroductions are proposed.

Special Rule Changes for Both Reintroductions

In the period since publication of the special rules for the experimental population introduced on Alligator River and the Park, published in the Federal Register on November 19, 1986 (51 FR 41796) and November 4, 1991 (56 FR 56333), it has become apparent that changes are needed in the rule for these populations. These changes will also provide consistency by treating both reintroductions the same.

The provision for taking red wolves incidental to lawful recreational activities (50 CFR 17.84(c)(4)(ii)) is revised and clarified by this final rule. Current policy at Alligator River applies this provision to all lawful activities, not just to recreational activities. For example, 11 wolves (includes 8 within the 5-year experimental release) have been killed by vehicles not involved in recreational pursuits, but certainly otherwise lawful. No problems have been encountered at Alligator River in the application of a more liberalized provision. Therefore, the Service deletes

the word "recreational." In addition, incidental take was defined at Alligator River as "unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care." This definition is changed for clarification and is included in the incidental take provision of the special rule.

The Service revised the rule for the Park reintroduction, based on input by the North Carolina Farm Bureau Federation which stated that livestock owners should be allowed to take red wolves engaged in livestock depredation. The Tennessee Citizens for Wilderness Planning supported the revision. The final rule permitted private livestock owners to harass red wolves actually engaged in the pursuit or killing of livestock on private lands. Such conflicts must be reported to the superintendent of the Park. Service or State officials will respond to these conflicts within 48 hours and attempt to live-capture the offending animals. If an early response by the Service or State officials results in a failure to capture offending animals, the livestock owner will be permitted to take the offending animal.

These provisions worked well in all five depredation incidents recorded the first year. Offending animals were recaptured, when necessary, and in at least two of the instances, private landowners did harass the animals away but did not take offending animals. Including the experimental release in 1991, there have been 17 incidents of animals moving out of the Park onto private lands. In three incidents, they returned on their own; in the other 14 incidents, they were recaptured. No indication of abuse of these provisions were encountered in these incidents. However, experience with offending animals has indicated potential problems.

It is highly objectionable to owners of livestock and pets to be unable to kill a predator that is engaged in killing their livestock or pets. This, in turn, leads to the erosion of public support for predator reintroductions, which is essential if this effort is to be successful. Also, there may be a time lapse before offending animals settle into a predictable pattern whereby they can be recaptured. During this time period, private landowners will not be allowed to take the animals themselves. The Service will respond to reported incidents within 48 hours. However, the existing special rule (§ 17.84(c)(4)(iv)) does not establish a definitive time when Service or State attempts to recapture the animal are deemed unsuccessful and the private landowner

is then permitted to take the offending animals. This is a decision that must be made by the Service project leader or biologist in the field at the depredation location. Therefore, a rule revision provides that private landowners will be permitted to take offending animals upon written approval by the Service project leader or biologist on site of the depredation. This approval will be provided when the Service abandons attempts to capture the offending animal and will specify the authorized personnel (landowner and a limited number of his agents), the number of animals, and the time period (not to exceed 6 months). Also, private landowners will be allowed to take red wolves in the act of killing livestock or pets on private lands without the need for Service approval.

Experience at Alligator River and the Park indicates a need to extend the harassment and take provisions now in place for private livestock owners to include all private landowners. Wolves that come in close proximity to private residences may cause property damage by killing pets or removing and/or physically defacing small property items. In addition, private individuals may not want the animals on their property because they fear them or consider them a nuisance. Although currently not covered by such rule provisions, these stipulations have been implemented as reasonable law enforcement procedures. To date, there have been at least 15 incidents where animals on private property were harassed by private individuals. The special rule is revised to provide the legal basis for a provision now being implemented as a reasonable procedure.

Currently, there are at least 12 red wolves once present at Alligator River whose fate is unknown. Three of these wolves were observed but never captured. Transmitters malfunctioned on the other eight wolves. One animal, whose transmitter malfunctioned in December 1989, would now be 7 years old. The remaining 11 animals are 1 to 3 years of age, and contact with them was lost in 1991, 1992, or 1993. As wolves are great wanderers, it is possible that some of these five animals may have dispersed outside the experimental population boundaries (which could also happen with future animals). There is no possibility of such dispersing wolves mixing with populations of red wolves that have been classified as endangered, because the only existing red wolves in the wild are those introduced as experimental populations (and offspring) or those introduced (and offspring) onto isolated islands for propagation purposes. As a

result, animals dispersing outside the experimental population boundaries will not contribute to the conservation of the species.

As other resident wild canid populations are hunted and trapped, it is possible for a dispersing red wolf to be taken incidental to such lawful activities. Dispersing red wolves could also enter upon private property or attempt to kill livestock or pets. Providing greater protection for dispersing red wolves than that provided for red wolves within the experimental population boundaries would seriously erode the public support that is so essential for the success of reintroductions. Therefore, the special rule is revised to apply the same taking provisions to red wolves outside the experimental population boundaries as within, with one exception. This exception is that taking does not need to be reported to the refuge manager or Park superintendent. Such reporting will be encouraged to the degree possible, but it will not be required. It is impractical to inform the general population of such requirements outside the localized experimental population boundaries, and red wolves taken are not likely to be recognized as red wolves, even after such taking occurs and an animal is in hand.

The proposed rule for Alligator River provided for any person to take red wolves incidental to lawful recreational activities (51 FR 26564). Objections to this provision from the Defenders of Wildlife, the National Audubon Society, the Humane Society of the United States, and the National Wildlife Federation, based on lack of necessity and risk of misinterpretation, resulted in its deletion from the final rule. Instead, the enforcement policy of the Service was clarified in the preamble to the final rule to the effect that there would be no penalty for taking incidental to otherwise lawful activity providing the taking was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, and providing the taking was immediately reported to the refuge manager. Experience at Alligator River did detect a need for this provision and did not detect any misinterpretation of the policy by private citizens. Eleven red wolves were killed by vehicles; one wolf was killed in a trapping incident; and two were shot, one close to a private residence. The vehicle deaths were interpreted as incidental to lawful activity, which required little investigation. The trapping and shooting incidents were investigated and settlements were reached in two cases. In addition, the incidental take

provision originally proposed and then deleted at Alligator River was included in the final rule for the Park. No taking of red wolves has occurred despite several instances of wolves visiting and having been seen on private lands. Therefore, this is additional evidence that the provision is not being misinterpreted by private individuals in order to indiscriminately take red wolves. As now promulgated for Alligator River, the incidental taking provision is ambiguous. The language used for defining incidental take under § 17.84(c)(4)(i) used the terms "unavoidable", "unintentional," and "lack of reasonable due care," which are subject to differing legal interpretations. Therefore, for this final rule the Service changes the provisions by stating that only intentional or willful take will be prosecuted on private lands. The final rule does not change the standard for lands owned or managed by Federal, State, or local government agencies.

The basic premise is that a red wolf that is incidentally taken in any type of legal activity on private lands will not be a violation of the special rule. However, a higher standard of conduct is expected on public lands, where the conservation of red wolves is an objective.

This incidental taking provision places trust in the public to be responsible citizens by obeying the special rule. The Service intends to revisit this issue to determine if excessive taking of red wolves is occurring because of the revised special rule.

Extensive review of the special rule during preparation of proposed and final revisions detected additional needs for clarification. The current special rule (§ 17.84(c)(10)) provides for the close monitoring of reintroduced populations, vaccination against diseases prior to release, and immediate recapture of wolves that need special care or that move off of Federal lands. Early in the project all animals were vaccinated because the entire population consisted of released animals. As the project progressed, released wolves and their progeny reproduced and expanded their range and population.

Obviously, vaccination cannot be implemented for wild wolves that have never been captured. Therefore, the special rule is clarified by revising the statement to the effect that all "released or captured" wolves will be vaccinated. At present, most wolves are vaccinated because the majority of wolves born in the wild are eventually captured. However, as populations continue to expand, the percentage of wolves that have not been captured will increase.

Rule modifications also recognize that it may be impossible to capture some wolves. However, other provisions provide for the control of wolves that are causing conflicts but cannot be captured.

The intent of the special rule regarding the recapture of wolves leaving Federal lands was that it would be implemented only when such wolves caused conflicts and/or the landowner wanted the wolves removed. This intent is not clear. Red wolves had established themselves on private lands within 2 years (1989) of the first reintroduction releases, and several private landowners have agreed to allow the wolves to inhabit their property. Obviously, there is no need to remove wolves from private lands when the landowner has no problem with the wolves being there. Therefore, the special rule is modified to provide that all landowner requests to remove wolves from their property will be honored, but wolves that inhabit lands where the landowner agrees to allow them to reside will not be recaptured unless they cause a conflict.

Special Rule Changes for Alligator River

Experiences at Alligator River indicate that a need exists for application of the private landowner harassment and take provisions to this population as well. Twenty-seven incidents have been reported at Alligator River, some of which probably did not involve red wolves. The provisions could have been utilized in some of these incidents and may have altered the final outcome in a positive manner with regard to reducing adverse impacts and increasing public support. As these provisions have worked well in incidents in the Park population, with no difficulties encountered in their interpretation or application, this rule will extend these provisions to the Alligator River population.

The proposed rule called for the addition of Martin and Bertie Counties as a buffer zone. However, after further consideration, the Service has determined that this addition lacks sufficient justification and the counties are not being added to the designated reintroduction area (see Issue 7 in the following section).

Summary of Comments and Recommendations

In the November 24, 1993, proposed rule (58 FR 62086), all interested parties were requested to submit comments or recommendations that might contribute to the development of a final rule. Appropriate county, State, and Federal agencies; scientific, environmental, and

land use organizations; and other interested parties were notified and requested to submit questions or comments on the proposed rule. On December 6, 1993, the Service mailed copies of the proposed rule to 270 persons and organizations. A 30-day comment period was provided. Nine comments were received, including three from individuals, three from State agencies and organizations, and three from national agencies and organizations. Six of the nine respondents took the opportunity to comment on the reintroductions; there were three who supported the reintroductions and three who did not. The three responses supporting the reintroductions were from two individuals and one national organization. The three responses not supporting the reintroductions were from one State agency (North Carolina Department of Agriculture), one State organization (North Carolina Farm Bureau Federation), and one individual.

Comments received are presented below as a series of issues, with each being followed by the Service's response.

Issue 1: The North Carolina Department of Agriculture and the North Carolina Farm Bureau Federation specifically addressed their nonsupport with regard to the expansion of the Alligator River reintroduction to Pocosin Lakes. Also, the one individual voicing nonsupport was located in the expansion area.

Service Response: Pocosin Lakes did not exist in 1986 when regulations were finalized for the reintroduction of red wolves at Alligator River. The final rule stated that the project would be reevaluated after 5 years and such reevaluation would include public meetings. The result of the reevaluation, which included public meetings, was to expand the reintroduction project to Pocosin Lakes. This was a logical decision based on the success of the reintroduction to that point in time, the establishment of Pocosin Lakes as one of our national wildlife refuges which are mandated to conserve and recover endangered species, and the location of Pocosin Lakes within the existing experimental population boundaries established in the final rule of November 19, 1986 (51 FR 41790). The reintroductions per se have previously been through the rulemaking process and are outside the scope of this revision to the existing rule.

Issue 2: One individual was opposed, in general, to classifying endangered animals as nonessential experimental and, within this designation, relaxing protection for them. This individual

favored more, not less, protection and wondered why the provisions would be extended to animals outside the experimental population areas and if the provisions would apply in the future to the island propagation sites.

Service Response: The provisions for classifying listed species as nonessential experimental were provided by 1982 amendments to the Act. These provisions were designed to resolve the dilemma of significant local opposition to translocation efforts due to concerns over the rigid protection and prohibitions surrounding listed species under the Act. The resolution was to provide new administrative flexibility for selectively applying the prohibitions of the Act to experimental populations. Final regulations establishing procedures for designation of experimental populations, determination of such populations as "essential" or "nonessential," and promulgation of appropriate protective regulatory measures were published in the Federal Register on August 27, 1984 (49 FR 33885). These provisions were necessary to obtain public support for attempts to reintroduce red wolves and were, therefore, an essential ingredient in success at reestablishment of the species. Prior to these provisions, attempts to reintroduce red wolves and other endangered species, particularly predators, were routinely unsuccessful because of local opposition.

The reasons for extending the provisions of this rule to animals outside the experimental population boundaries are believed to be adequately explained in the Background section of this rule. These provisions do not apply to the island propagation projects, and the Service has no intention of declaring these animals nonessential experimental in the future.

Issue 3: Responses from the North Carolina Wildlife Resources Commission (Commission), North Carolina Department of Agriculture (Department), and North Carolina Farm Bureau Federation (Federation) addressed the reporting requirements. The Department and Federation believe that livestock owners should be allowed to take red wolves engaged in depredation without notifying the Service and awaiting recapture attempts. At the other extreme, the Humane Society of the United States (Society) wants no provision for private citizens to take red wolves for any purpose. The Commission recommended that "immediately" be defined as 5 business days, and the Commission and Federation recommended that "immediately" be deleted from the provision for taking

outside the designated experimental population area. The Commission also pointed out that local residents are more familiar with and are more likely to call the local State wildlife enforcement officer through an available toll free number.

Service Response: The Service agrees to delete the word "immediately" from the provision for taking outside of the designated experimental population area because the intent was to delete reporting requirements altogether. In addition, the term "immediately" has been replaced by "within 24 hours" for areas within the experimental population areas. It is important to report taking and harassment incidents quickly so that Service personnel can respond right away in order to minimize conflicts and retrieve any carcasses for necropsy before such carcasses deteriorate to the degree that necropsy results are compromised. Five days, as recommended by the Commission, would not allow such a quick response. Telephone access is such that reporting incidents within 24 hours should pose no burden on the public.

Changes are made to allow private landowners to take wolves that are in the act of killing livestock or pets prior to reporting such incidents to the Service.

The Service contacted the Tennessee Wildlife Resources Agency to obtain approval to also list the local State wildlife enforcement officer in that State as a contact for meeting the reporting requirements. Such approval was received, and this change, as recommended by the Commission, has been made. The State enforcement officer will, in turn, notify the Park superintendent or refuge manager so that Service personnel can respond to such incidents.

Issue 4: The Commission, Society, Federation, and American Sheep Industry Association (Association) commented on the incidental taking provision. The Federation supported the inclusion of lawful activities, other than recreational, in the provision. The Commission recommended that "incidental" be defined as "unavoidable, unintentional, or not resulting from negligent conduct, taking reasonable due care" in order to prevent the prosecution of well-intentioned citizens who may kill a red wolf, believing it to be a coyote. The Society, on the other hand, believes that the broad definition will invite abuse. The Association was concerned about whether the provision would be applied to livestock owners outside the Park, as well as inside, and who would make the decision on negligent conduct.

Service Response: The Service found it necessary to change the language in this provision to clarify the intent and to remove any ambiguity. Experience during the past several years indicates that direct human-induced red wolf mortality is rare. The Service has therefore determined that it is appropriate to modify the language of the special rule to implement section 9 provisions for the red wolf by limiting the section 9 prohibition on private lands to cover intentional and willful taking only. Unlike the protection afforded all endangered and most threatened species, this provision will make the taking of a red wolf on private lands a specific intent crime. This provision will apply to all private landowners. The concept of a general intent violation (i.e. avoidable take or take through mistaken identity) that was present in the earlier rule is now used only on lands owned or managed by Federal, State, or local government agencies.

Issue 5: In addition to comments addressed under reporting requirements, the Association's comments indicated overall support for the provision but recommended that a maximum of 48 hours Service response time be included and that the biologist "on site of the depredation" give approval in a reasonable time period. The Commission recommended that approval be given within 5 days and that takings be reported to the Service project leader or biologist. The Federation also supported expanding the harassment provisions to private individuals around residences. However, the Department and the Federation felt that the take provisions did not go far enough in protecting the interests of livestock owners and thought that a time period should be specified for approval of livestock owners to "take" offending animals. As indicated in the comments on reporting requirements, the Society recommends that private citizens not be allowed to take red wolves for any reason and that other provisions in the rule are sufficient to protect private residences without allowing the taking of animals by private citizens. The Society also believes private citizens should have the responsibility to protect pets and private property from wildlife.

Service Response: The Service has revised the provision to allow private landowners to harass wolves in an opportunistic manner at any time on their property and to take such animals with Service approval if the Service's attempts to take the animals are unsuccessful. Notification would allow the Service to remove the offending

animals, which are still valuable to the recovery objectives as breeding animals. If unsuccessful in removing the animals, the Service will permit the landowner to take action to remove any returning animals. The provision has also been revised to make it clear that the Service project leader or biologist on site of the depredation will provide approval to the private landowner and has indicated in the previous sections explaining the rule changes that such approval will be provided when the Service abandons attempts to capture the offending animal. A definite time period for such approval cannot be provided because of the variation in individual wolf behavior; e.g., one wolf may stay in the vicinity or return daily, while others may not return for days. The Service also adopts the 48-hour Service response time to reported incidents, as recommended and indicated in the previous sections explaining the rule changes. The Service project leader or biologist has been added as a contact for reporting any taking, although it was intended that reports to this individual would meet the provision as previously stated, because the Service project leader or biologist serves as the representative of the Park superintendent or refuge manager.

While the position of the Society regarding responsibility of private citizens to protect pets and property is reasonable with regard to naturally occurring wildlife species, programs to purposely reintroduce predators, such as the red wolf, must be accompanied by provisions to protect private property from the presence of such reintroduced animals if the landowner does not want them on his property. Such protection is necessary in order to obtain local public support, which is essential to success. Without such support, reintroductions are doomed, because the animals can be efficiently eliminated, as evidenced by past history.

Issue 6: The Federation did not understand the need to list the North Carolina counties as part of the historic range of the species and stated that it should be presented in the information section unless it is absolutely necessary to establish the nonessential experimental use population designation.

Service Response: The Service believes that it is helpful to establish experimental population boundaries for reintroduction efforts.

Issue 7: The Commission objected to the addition of any counties to the experimental population area because (1) it would increase the public's perception of "government land-grabbing" and (2) it is unnecessary since

the provisions for red wolves within the designated experimental population area will also be applied to red wolves outside the designated experimental population area, except for reporting requirements.

The Association expressed concerns that as red wolves continue to disperse from "core areas," the areas will increase in size and more private property will be brought under the experimental population designation. The Association also expressed concerns that the provision for allowing the "take" of red wolves under certain circumstances on property outside the buffer zone will eventually be removed.

Service Response: The proposed addition of Martin and Bertie Counties was to provide a buffer around the release area. Although red wolves would not be released in these counties, their proposed addition, for management purposes, was because of their close proximity. The Service would expend efforts within these counties to provide information on the project and would quickly respond and handle any problems caused by dispersing red wolves. Such rapid response would necessitate the reporting of such problems to the Service as soon as possible. Because the Service will be monitoring the animals and will be contacting individual landowners regarding the capture of dispersing animals, the more intensive broad-scale management within the counties may not be necessary. Therefore, the Service agrees to not designate additional counties for the experimental population area.

The Service has no intention of removing the "take" provisions on property outside the buffer zone. Reintroduced red wolves will continue to be managed as experimental populations until the recovery objective of 220 red wolves in the wild is met. At that time, the species would be delisted and managed as a resident species by the State.

National Environmental Policy Act

Environmental assessments were prepared under the authority of the National Environmental Policy Act of 1969 and are available for inspection by the public at the Service's Asheville Field Office (see ADDRESSES section). These assessments formed the basis for a decision that these actions are not major Federal actions which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR Parts 1500-1508). These minor rule changes do not require

revision of the environmental assessments.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The Fish and Wildlife Service has determined that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). No private entities will be affected by this action. The rule does not contain any information collection or recordkeeping requirements as defined

in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Author

The principal author of this final rule is V. Gary Henry (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

Regulations is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544, 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entries for red wolf to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|----------------------|-------------------------------|--|--|---------|-----------------------|------------------|---------------|
| Common name | Scientific name | | | | | | |
| MAMMALS: | | | | | | | |
| * Wolf, red | * <i>Canis rufus</i> | * U.S.A. (SE U.S.A., west to central TX). | * Entire, except where listed as Experimental Populations below | E | * 1, 248, 449, 579 | NA | * NA |
| do | do | do | U.S.A. (portions of NC and TN—see § 17.84(c)(9)) | XN | 248, 449, 579 | NA | 17.84(C) |
| * | * | * | * | * | * | * | * |

3. Section 17.84 is amended by revising paragraphs (c)(4), (c)(9)(i) and (c)(10) of the section to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *
(4)(i) Any person may take red wolves found on private land in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that such taking is not intentional or willful, or is in defense of that person's own life or the lives of others; and that such taking is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(ii) Any person may take red wolves found on lands owned or managed by Federal, State, or local government agencies in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that such taking is incidental to lawful activities, is unavoidable, unintentional, and not exhibiting a lack of reasonable due care, or is in defense of that person's own life or the lives of others, and that such taking is reported within 24 hours to the refuge manager (for the red wolf

population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(iii) Any private landowner, or any other individual having his or her permission, may take red wolves found on his or her property in the areas defined in paragraphs (c)(9) (i) and (ii) of this section when the wolves are in the act of killing livestock or pets, *Provided* that freshly wounded or killed livestock or pets are evident and that all such taking shall be reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(iv) Any private landowner, or any other individual having his or her permission, may harass red wolves found on his or her property in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported within 24 hours to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)

of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer, as noted in paragraph (c)(6) of this section for investigation.

(v) Any private landowner may take red wolves found on his or her property in the areas defined in paragraphs (c)(9) (i) and (ii) of this section after efforts by project personnel to capture such animals have been abandoned, *Provided* that the Service project leader or biologist has approved such actions in writing and all such taking shall be reported within 24 hours to the Service project leader or biologist, the refuge manager (for the red wolf population defined in paragraph (c)(9)(i) of this section), the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii) of this section), or the State wildlife enforcement officer for investigation.

(vi) The provisions of paragraphs (4) (i) through (v) of this section apply to red wolves found in areas outside the areas defined in paragraphs (c)(9) (i) and (ii) of this section, with the exception that reporting of taking or harassment to the refuge manager, Park superintendent, or State wildlife enforcement officer, while encouraged, is not required.

* * * * *

(9)(i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrrell, and Washington Counties; because of its proximity and potential conservation value, Beaufort County is also included in the experimental population designation.

* * * * *

(10) The reintroduced populations will be monitored closely for the

duration of the project, generally using radio telemetry as appropriate. All animals released or captured will be vaccinated against diseases prevalent in canids prior to release. Any animal that is determined to be in need of special care or that moves onto lands where the landowner requests their removal will be recaptured, if possible, by Service and/or Park Service and/or designated State wildlife agency personnel and will be given appropriate care. Such animals

will be released back into the wild as soon as possible, unless physical or behavioral problems make it necessary to return the animals to a captive-breeding facility.

* * * * *

Dated: December 27, 1994
Mollie H. Beattie,
Director, Fish and Wildlife Service.
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