



April 18, 2023

Public Comments Processing
Attn: FWS-R6-ES-2022-0100
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: State of Colorado Comments on Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado

Colorado Parks and Wildlife (CPW) and the Colorado Department of Agriculture (CDA) thank the United States Fish and Wildlife Service (USFWS) for the opportunity to provide comment on the Draft Environmental Impact Statement (DEIS) and the Proposed Rule to establish a nonessential, experimental population (NEP) status for gray wolves in Colorado. We recognize that this effort was done at CPW's request, and we appreciate the coordination and cooperation that has gone into the development of this Proposed Rule and associated DEIS.

The USFWS preferred alternative (Alternative 1) in the DEIS is our preferred alternative as well. This alternative will provide the greatest amount of management flexibility, in a consistent and clear manner.

We have reviewed the documents and have the following comments to contribute in the interest of strengthening and clarifying the rationale behind the determination and designation.

USFWS requested information on the following topics, which we generally comment on below, and provide specific comments in greater detail further in this letter.

- Proposed geographic boundary of the NEP
 - CPW and CDA appreciate that the geographic boundary of the NEP is the entirety of the state of Colorado. It is important that all of the state of Colorado be included. Even though wolf reintroduction is statutorily restricted to occurring west of the Continental Divide, it is expected that wolves will disperse into areas east of the Continental Divide. Having consistent management throughout the state is important.
- Information pertaining to the conservation status of gray wolves and how it relates to the proposed reintroduction and rulemaking efforts
 - A reintroduction of wolves to Colorado, as mandated by Colorado Statute 33-2-105.8, will benefit the conservation status of gray wolves. This is well

supported and justified in the proposed rule. Developing tools, such as the NEP designation, will allow for greater management flexibility and increase the success of the restoration of wolves to Colorado.

- The adequacy of the proposed regulations for the NEP
 - We provide detailed comments on particular issues below.
- Management flexibilities that could be added to the final rule to address expanding gray wolf populations
 - We discuss management flexibilities that could be added to the final rule in detailed comments below.
- Whether to allow lethal management of gray wolves that are having a significant impact to ungulate populations, similar to the provisions in the 2005 final rule that established a northern Rocky Mountains (NRM) gray wolf nonessential experimental population (70 FR 1286, January 6, 2005).
 - A management response to wild ungulate impacts will not be considered in our Draft Plan's Phase 1 or 2, as we do not anticipate that wolf population sizes could demonstrably be shown to have an impact on ungulate population metrics that would justify this act.

Specific comments on the proposed rule follow.

In the preamble, under *Regulatory Framework*, the draft rule notes that the ESA defines “take” of listed species to include pursuit. This should not be included as a form of take as pursuit is an important strategy for non-lethal conflict reduction between livestock and wolves. For example, livestock owners should be able to chase wolves away with ATVs or on horseback or otherwise “pursue” them, but only in order to protect livestock.

In the preamble, under *Proposed Experimental Population*, it states that the CPW Commission will take the steps necessary to reintroduce wolves to lands west of the Continental Divide by December 23, 2023. This should be corrected to December 31, 2023.

In the preamble, under *Proposed Reintroduction Areas and Release Sites*, there are a couple of points that need clarification. It is stated that all release sites will be located west of the Continental Divide, and north of Highway 50, as outlined in Figure 3 of the proposed rule. The map depicted in Figure 3 of the proposed rule has major discrepancies from where the proposed reintroductions may take place, as it excludes areas west of the Continental Divide, but south of Highway 50. We request that the map in the final rule accurately reflect the area under consideration in our Draft Plan to reduce confusion.

In the same paragraph, the Preamble states that CPW will release 10-15 wolves each year for up to 3 consecutive years. In accordance with our Draft Plan, this may be conducted for up to 5 years, and perhaps longer, depending on the success we have in reintroducing animals to the state. The legend in Figure 3 should be corrected to reflect this. This timeline is also described in the last paragraph in the *Effects on Wild Populations* section and should be corrected.

In the section entitled *Habitat suitability/prey availability* (Within the *Likelihood of Population Establishment and Survival* heading), it is stated that there is, “a single group of at least seven wolves presently in north-central Colorado...”. This is referenced earlier in the document, but qualified as known to be true in September 2022. We currently have confirmed only 2 animals in that group, as of March 2023. This information should be corrected in the final rule.

In the section entitled *Actions and Activities in Colorado that May Affect Introduced Gray Wolves*, we share the following comments. In the second paragraph of that section, controllable sources of mortality are discussed. The inclusion of ‘sport hunting’ in this section is inappropriate, because while federally listed, the condition under which 10(j) designation is relevant, sport hunting (i.e., regulated hunting) is not considered. This term should be removed from the document to eliminate potential confusion on this issue.

In the section entitled, *Management Restrictions, Protective Measures and Other Special Management*, we share the following comments. The second sentence states: “Management of the nonessential experimental population would allow reintroduced wolves to be hazed, killed, or relocated...” The management flexibility described in this section would be applied to all wolves in the state regardless of whether or not they were reintroduced, progeny of reintroduced animals, or animals that dispersed into the state. This sentence should be restructured so that it is clear that management flexibility would be applied to all wolves within the boundaries of the NEP.

In the same section, under *Designated agent*, it states that with the approval of an MOA, Colorado will be able to “assume lead authority for wolf conservation and management” within its jurisdiction and “implement the portions of their State wolf management plans that are consistent with this proposed rule.” Colorado may implement any parts of its state plan that are not consistent with the 10(j) rule, as long as they are *more restrictive* than the 10(j) rule. This is based on Section 6(f) of the ESA, which allows states to enforce laws or rules that are more restrictive than “the exemptions or permits provided for in” the ESA. Please clarify this in the final rule.

In the definition of *Domestic Animals*, and specifically the inclusion of pets, we request that domestic, non-working pets *not* be included in this definition. Our draft regulations and plan do not include an ability to take wolves when a conflict with domestic pets occurs, and having consistent rules and regulations between federal and state agencies is important in this issue.

The definition of *Livestock* deviates from the list of livestock as defined in CRS 33-2-105.8. Domestic bison are not included in the definition of livestock in CRS 33-2-105.8. Matching these definitions (i.e., removing bison from the 10j definition) is critical to eliminate confusion.

The draft rule defines “opportunistic harassment” as harassment without prior purposeful actions to track or search out a wolf. According to Table 1, engaging in opportunistic harassment does not require prior written authorization, so long as it is “non-injurious.” However, “harass” is defined in FWS regulations as an act “which creates the likelihood of injury to wildlife.” See 50 CFR 17.3. In other words, harassment by definition is likely to be injurious. Please clarify the

provision in Table 1 governing opportunistic harassment to ensure the public understands what is and is not authorized, and to make it consistent with the regulatory definition of “harass” at 50 CFR 17.3.

In Table 1, in the Description for “*Taking wolves ‘in the act of attacking’ livestock on PUBLIC land*”, the requirement for the report of lethal or injurious take within 24 hours may be impractical. Some backcountry producers may be several days away from having the ability to make this report. We suggest that language be changed to state: “Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours *unless impractical, but within 72 hours.*”

The draft rule (Table 1) authorizes “any person legally present on public land” to immediately take a wolf that is in the act of attacking the individual’s dog. CPW’s plan and regulations will not authorize take of wolves that were attacking pet dogs. Please alter the 10(j) rule to match CPW’s on this issue.

The CPW regulations refer to permits authorizing take of chronically depredating wolves as “Chronic Depredation Permits” rather than “shoot on sight” permits because we think “shoot on sight” is confusing, as livestock owners may also “shoot on sight” wolves caught in the act of attacking livestock or dogs. Please consider eliminating the phrase “shoot on sight” and replacing it with “Chronic Depredation Permits” to provide more clarity to the public.

Regarding incidental take in Table 1, the draft rule authorizes take that is “incidental to an otherwise lawful activity,” but states that “Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution”. This should be amended to: “Shooting a wolf as a result of mistaking it for another species is not considered an incidental take and will be referred to the appropriate authorities for prosecution.”

The second to the last provision in Table 1 “Permits required for recovery actions” describes situations where permits may be issued for recovery efforts. Several of these are already covered in existing agreements. Unless the action results in death, captivity more than 45 days, removal from Colorado, or permanent disabling, CPW is authorized under our Section 6 agreement to take wolves for conservation purposes. Please specify this in the rule.

FWS has an obligation under the ESA to protect, conserve, and foster the recovery of Mexican wolves. Under “Other Considerations” in the proposed rule and in the DEIS, the Service acknowledges the challenges posed to Mexican wolves, but concludes that “the Service will work with states to minimize impacts to Mexican wolf recovery, including through federal permitting mechanisms or other tools,” and that “adverse impacts to the Mexican wolf population are not expected.” DEIS at 4-36, 4-37. The 10(j) and DEIS should provide information on the Service’s plans to fulfill its obligations for conservation of the Mexican wolf population.

In the *Paperwork Reduction Act* section, number 5 ‘*Annual Report*’, the last full sentence should read: “The report, due by June 30 of each year, will describe wolf conservation and management

activities that occurred in Colorado each calendar or biological year *up until 5-years post reintroduction*” (adding italicized phrase).

Draft EIS specific comments

On page 3-9 of the DEIS, reference is made to an investigation on the White River National Forest Lands near Meeker, Colorado. This investigation has concluded with no evidence of wolves being involved. This should be corrected in the Final EIS.

On page 4-31 of the DEIS, Phase 4 of the state plan is described. This phase has been removed from the Revised Draft that was presented to the Parks and Wildlife Commission in April 2023. A revised Table 3 will appear in the Final plan, anticipated to be presented and approved by the Commission in May 2023.

Proposed Rule language comments

CPW offers the following recommendations to the regulatory language to improve alignment with the CPW plan.

17.84 Special Rules – Vertebrates

(4) Definitions

Domestic Animals includes pets within the definition. CPW requests that domestic, non-working pets *not* be included in this definition. Our draft regulations do not include an ability to take wolves when a conflict with domestic pets occurs, and having consistent rules and regulations between federal and state agencies is important in this issue.

Livestock includes domestic Bison. Definition of livestock in CRS 33-2-105.8 does not include domestic bison. Matching these definitions (removing bison from the 10j definition) is critical for our purposes.

Livestock Producer is defined as a person that is actively engaged in farming/ranching and that receives a substantial amount of total income from the production of livestock. The amount of income that person receives from livestock production has nothing to do with whether or not they produce livestock. Additionally, what qualifies as ‘substantial’ is ambiguous. This income requirement should be removed from the definition.

Problem Wolves includes the phrase ‘on private land’. We do not see the purpose for limiting this to private lands only, and suggest that this phrase be removed. Further, the phrase “twice within a calendar year” is logistically problematic. We suggest changing this to “twice within a rolling 12-month period”.

(5) Allowable forms of take of gray wolves

(ii) Intentional harassment

The associated requirement for written take authorization is problematic for practical implementation of this important tool. There has been expressed throughout our public comment process, a strong desire for producers to have the tool of using less-than-lethal munitions as a proactive measure. It would be a very rare instance that someone using a less-than-lethal munition would be so close to a wolf (less than 30 yards) so as to cause it injury. Requiring a

written authorization to utilize this tool creates a substantial workload to, presuming that CPW takes a Designated Agent status, our field staff. We request that this tool remains a viable alternative while also not overtaxing CPW or other potential designated agent staff.

(iii) Take by landowners on their private land

Given the nature of the definition of private land in the proposed rule, “their” may limit applicability of this provision to private land actually owned by the landowner and would exclude leased non-federal lands where livestock may be grazing. This should be clarified in the final rule.

(iv) Take on public land

The proposed rule includes provisions authorizing *Any livestock producer and public land permittee (see definitions in paragraph (a)(4) of this section) who is legally using public land under a valid Federal land-use permit may take a gray wolf in the act of attacking livestock or dogs on the person’s allotment or other area authorized for the person’s use without prior written authorization.* We recommend changing this provision to read “Any livestock producer and public land permittee (see definitions in paragraph (a)(4) of this section) who is legally using public land under a valid Federal land-use permit may take a gray wolf in the act of attacking livestock or livestock guard animals legally present on public land.” The limitation of this provision to only the person’s allotment or other specific area authorized for use under a grazing permit would not account for livestock that may have strayed onto adjacent public lands. This is not an infrequent occurrence and can be due to recreators not closing gates, livestock being run through fences by predators, or any number of circumstances.

(6) Reporting Requirements

The requirement for the report of lethal or injurious take within 24 hours may be impractical. Some backcountry producers may be several days away from having the ability to make this report. We suggest that language be changed to state: “Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours *unless impractical, but within 72 hours.*”

We sincerely appreciate the efforts put forth by Colorado Ecological Services staff, and other USFWS employees in developing this proposed rule. Our comments are made with the intent to clarify and strengthen the proposed rule. Please contact Reid DeWalt, Assistant Director for Aquatics, Terrestrial, and Natural Resources at CPW reid.dewalt@state.co.us if you have further questions.

Sincerely,



Dan Gibbs
Executive Director
Colorado Department of Natural Resources



Kate Greenberg
Commissioner
Colorado Department of Agriculture