

**Billing Code 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS-R6-ES-2022-0100; FXES11130600000-223-FF06E00000]**

**RIN 1018-BG79**

**Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado**

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

**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to establish a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). The State of Colorado (Colorado Parks and Wildlife or CPW) requested the Service establish an NEP in conjunction with their State-led gray wolf reintroduction effort. Establishment of this NEP will provide for allowable, legal, purposeful, and incidental taking of the gray wolf within a defined NEP area while concurrently providing for the conservation of the species in Colorado and the other 43 States where it is currently listed as endangered. The geographic boundaries of the NEP would include the State of Colorado. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species. We are seeking comments on this proposal. We also seek comments on our associated environmental impact statement (EIS), prepared pursuant to the National Environmental

Policy Act (NEPA) of 1969, as amended, which analyzes the potential environmental impacts associated with the designation of an NEP.

**DATES:** We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov>. In the Search box, enter FWS-R6-ES-2022-0100, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: 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.

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

*Availability of supporting materials:* This proposed rule and the EIS is available on <https://www.regulations.gov> at Docket No. FWS-R6-ES-2022-0100 and on the Service’s website at <https://www.fws.gov/coloradowolf>. We will also post information

regarding public meetings at this website. Hardcopies of the documents are also available for public inspection at the address shown in **FOR FURTHER INFORMATION CONTACT**. Additional supporting information that we developed for this proposed rule will be available on the Service's website, at <https://www.regulations.gov>, or both.

**FOR FURTHER INFORMATION CONTACT:** Nicole Alt, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 134 Union Boulevard, Suite 670, Lakewood, CO 80228; telephone 303-236-4773. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Information Requested**

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 other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

- (+) (1) The proposed geographic boundary of the NEP;
- (+) (2) Information pertaining to the conservation status of gray wolves and how it relates to the proposed reintroduction and rulemaking efforts;

(3) (3) Potential effects of the proposed reintroduction on other native species and the ecosystem; and

(4) (4) The adequacy of the proposed regulations for the NEP.

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.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

### **Peer Review**

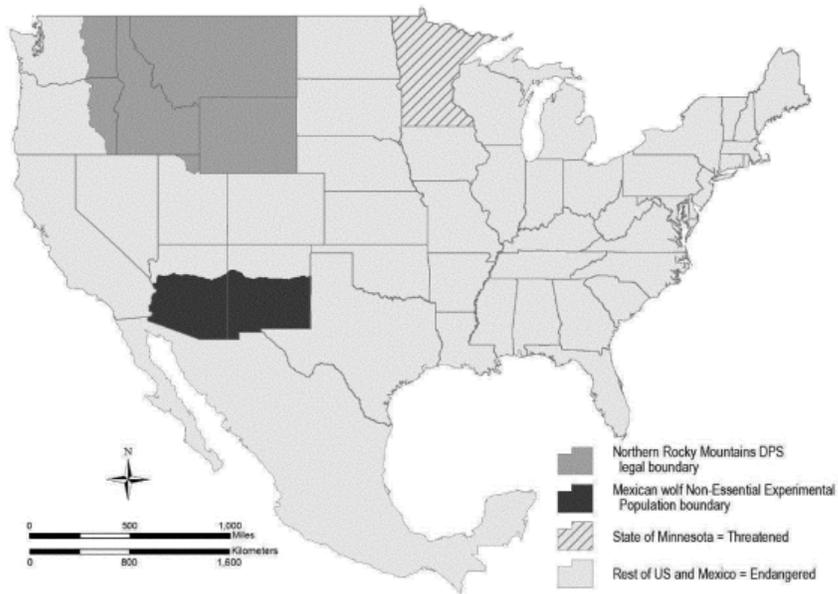
In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and the internal memorandum clarifying the Service's interpretation and implementation of that policy (Service in litt. 2016), we will seek the 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 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.

### **Previous Federal Actions**

Our November 3, 2020, final rule to remove the gray wolf from the Federal List of ~~Endangered and Threatened and Endangered~~ Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) provides a full summary of our previous Federal actions for the species (85 FR 6977~~89-69782~~). Please see that final rule for additional information and detail regarding our previous Federal actions for the gray wolf. Below, we summarize the previous Federal actions for the species that are most relevant to this proposed action or were completed since the November 3, 2020, final rule.

The gray wolf was originally listed as a subspecies or as regional populations of subspecies in the lower 48 United States and Mexico. Early listings were under legislative predecessors of the Act—the Endangered Species Preservation Act of 1966 and the Endangered Species Conservation Act of 1969. Later listings were under the Endangered Species Act of 1973. In 1978, we published a rule reclassifying the gray wolf

throughout the lower 48 United States and Mexico, subsuming the earlier listings of subspecies or regional populations of subspecies. The 1978 reclassification was undertaken to address changes in our understanding of gray wolf taxonomy and protect the species in the lower 48 United States and Mexico (~~March 9, 1978,~~ 43 FR 9607, March 9, 1978). Since that time, a long regulatory and legal history has resulted in two currently listed entities of gray wolves in the United States. These are: (1) *C. lupus* in Minnesota, listed as threatened, and (2) *C. lupus* wherever found in the remaining 44 U.S. States (“44-State entity”), and Mexico, listed as endangered (~~f~~Figure 1). In the United States, this includes: all of Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, ~~Vermont~~, West Virginia, and Wisconsin; and portions of Arizona, New Mexico, Oregon, Utah, and Washington (~~f~~Figure 1). The gray wolf is currently delisted in the Northern Rocky Mountains (NRM), which area-that includes all of Idaho, Montana, and Wyoming, the eastern one-third of Oregon and Washington, and a small portion of north-central Utah (~~f~~Figure 1).- Figure 1 does not depict historical range; see figure 2 for historical and current ranges.



**Figure 1.** Current legal status of *C. lupus* under the Act in Minnesota, the 44-State entity wherever found, and Mexico. The former Northern Rocky Mountains (NRM) distinct population segment (DPS) and the Mexican wolf non-essential experimental population are not part of the currently listed entities. All map lines are approximations; see 50 CFR 17.84(k) for exact boundaries. ~~Figure 1 does not depict historical range, see Figure 2 for historical and current ranges.~~

On November 3, 2020, we published the final rule to delist the two currently listed *C. lupus* entities under the Act (85 FR 69778). The rule became effective on January 4, 2021. On February 10, 2022, the U.S. District Court for the District of Northern California vacated the final rule, resulting in the reinstatement of the 44-State entity as endangered and the Minnesota entity as threatened (*Defenders of Wildlife v. U.S. Fish & Wildlife Serv.*, No. 21-CV-00344-JSW, 2022 WL 499838 (N.D. Cal. Feb. 10, 2022)) (Figure 1, above). As a result, the gray wolf is listed as an endangered species under the Act in the State of Colorado and all or parts of 43 additional States. The List of Endangered and Threatened Wildlife in 50 CFR 17.11(h) does not currently reflect this

status information. However, the entries on the List pertaining to the gray wolf will be corrected before any final rule to this proposed rulemaking action is effective.

### **Background and Biological Information**

We provide detailed background information on gray wolves in the lower 48 United States in a separate Gray Wolf Biological Report (Service 2020, entire) and the 2020 final rule to delist the two currently listed *C. lupus* entities under the Act (85 FR 69778, November 30, 2020). Information in these documents is relevant to reintroduction efforts for gray wolves that may be undertaken in Colorado, and it can be found along with this rule at <https://www.regulations.gov> in Docket No. FWS-R6-ES-2022-0100 (see *Supplemental Documents*). We summarize relevant information from these documents below.

### ***Species Description***

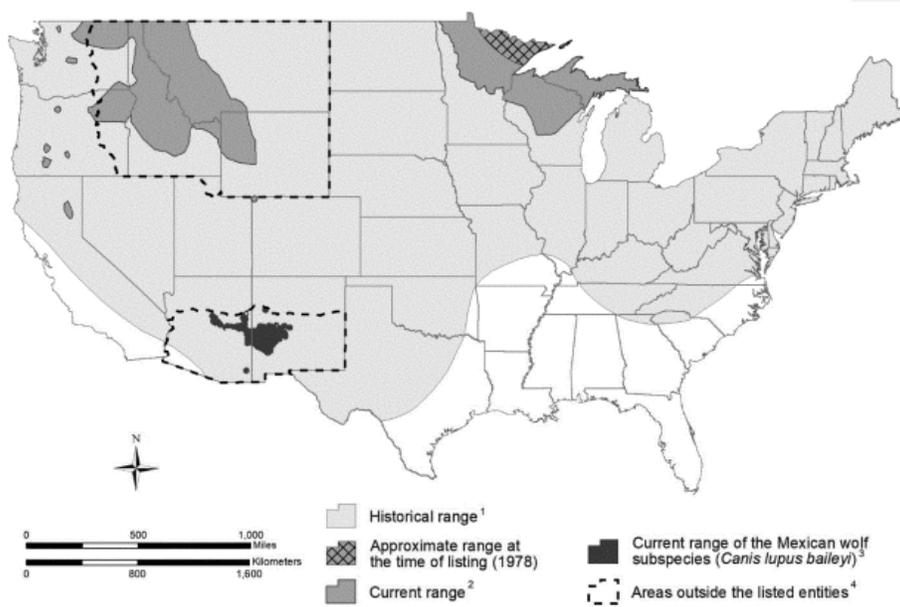
Gray wolves are the largest wild members of the canid (dog) family, with adults ranging in weight from 18 to 80 kilograms (40 to 175 pounds), depending on sex and geographic locale. Gray wolves are highly territorial, social animals that live and hunt in packs. They are well adapted to traveling fast and far in search of food, and to catching and eating large mammals. In North America, they are primarily predators of medium to large mammals, including deer, elk, and other species, and are efficient at shifting their diet to take advantage of available food resources (Service 2020, p. 6).

### ***Historical and Current Range***

Gray wolves have a broad circumpolar range. In the lower 48 United States, range and number of gray wolves declined significantly during the 19<sup>th</sup> and 20<sup>th</sup> centuries primarily due to humans killing wolves through poisoning, unregulated trapping and

shooting, and government-funded wolf extermination efforts (Service 2020, pp. 9–14). By the time subspecies were first listed under the Act in 1974, gray wolves had been eliminated from most of their historical range within the lower 48 United States. Outside of Alaska, wolves occurred in only two places within the lower 48 United States. An estimated 1,000 wolves persisted in northeastern Minnesota, and a small, isolated group of about 40 wolves occurred on Isle Royale, Michigan (Service 2020, pp. 12–14).

During the years since the species was reclassified in 1978, gray wolves within the lower 48 United States expanded in distribution (Figure 2) and increased in number (Service 2020, p. 14). Gray wolves within the lower 48 United States now exist primarily in two large, stable or growing metapopulations in two separate geographic areas in the lower 48 United States—one in the western Great Lakes area of the Eastern United States and one in the Western United States (Service 2020, p. 27). Subpopulations of gray wolves within each of these metapopulations are well-connected as evidenced by documented movements between States and high levels of genetic diversity (Service 2020, p. 27). The western Great Lakes metapopulation consists of more than 4,200 individuals broadly distributed across the northern portions of Michigan, Minnesota, and Wisconsin (Service 2020, p. 27). This metapopulation is also connected, via documented dispersals, to the large and expansive population of about 12,000–14,000 wolves in eastern Canada. As a result, gray wolves in the Great Lakes area do not function as an isolated metapopulation of 4,200 individuals in ~~3~~ States, but rather as part of a much larger “Great Lakes and ~~E~~eastern Canada” metapopulation (Service 2020, pp. 27–28).



**Figure 2.** Historical range and current range (as of January 2020) of gray wolves (*Canis lupus*) in the lower 48 United States.

<sup>1</sup>Based on Nowak (1995)

<sup>2</sup>Based on State data.

<sup>3</sup>U.S. portion of range only.

<sup>4</sup>Northern Rocky Mountains distinct population segment (RM-DPS) and Mexican wolf nonessential experimental population area boundaries.

Gray wolves in the Western United States are distributed across the NRM and into western Oregon, western Washington, northern California, and most recently in northcentral Colorado (Figure 2, above; Service 2020, p. 28). The Western United States metapopulation consisted of more than 1,900 gray wolves in 2015 (at least 1,880 in the NRM and at least 26 outside the NRM boundary), the final year of a combined northern Rocky Mountains wolf annual report (Service 2020, p. 28, Appendix 2). Based on the most current abundance estimates of gray wolves, Idaho estimated 1,543 gray wolves inhabited the State as in August 2021, and Montana had 1,144 gray wolves at the end of

2021 (Parks et al. 2022, pp. 9–10). In addition, the most recent year-end minimum counts for 2021 indicated at least 314 gray wolves in Wyoming, 206 wolves in Washington, 175 wolves in Oregon, and 17 in California (California Department of Fish and Wildlife (CDFW) 2021, entire; Oregon Department of Fish and Wildlife (ODFW) 2022, p. 4; Washington Department of Fish and Wildlife (WDFW) 2022, p. 13; Wyoming Game and Fish Department (WGFD) (~~WGFD~~) 2022, p. 3).

Until recently, only lone wolves had been confirmed in Colorado beginning with a dispersing individual that died as a result of a vehicle collision in 2004. A disperser from Wyoming was first documented in north-central Colorado during the summer of 2019 and paired up with another wolf during the winter of 2020 (CPW 2021a). This pair produced offspring in spring 2021, becoming the first documented reproductively active pack in Colorado in recent history. At present, this pack contains the only known wolves in Colorado, and it ~~is comprised of 7~~ seven individuals (CPW 2021a, entire). In January of 2020, CPW personnel also confirmed at least ~~six~~ 6 wolves traveling together in Moffatt County in northwest Colorado (Service 2020, p. 9). This group was down to a single individual later that year, and, at present, there is no indication that any wolf or wolves remain in this part of Colorado.

### ***Life Cycle***

Gray wolves are highly territorial, social animals and group hunters, normally living in packs of 7 or less but sometimes attaining pack sizes of 20 or more wolves (Service 2020, p. 6). Wolves of both sexes reach sexual maturity between 1 and 3 years of age and, once paired with a mate, may produce young annually until they are over 10 years old. Litters are born from early April into May and can range from 1 to 11 pups but

generally include 5 to 6 pups (Service 2020, p. 6). Normally a pack has a single litter annually, however, multiple litters have been documented in approximately 25 percent of packs annually in Yellowstone National Park (Stahler et al. 2020, p. 52). Offspring usually remain with their parents for 10–54 months before dispersing (reviewed by Mech and Boitani 2003, Jimenez et al. 2017).

### ***Habitat Use***

The gray wolf is highly adaptable and can successfully occupy a wide range of habitats provided adequate prey (primarily ungulates) exists and human-caused mortality is sufficiently regulated (Mech 2017, pp. 312–315). Wolf packs typically occupy and defend a territory of 33 to more than 2,600 square kilometers (km<sup>2</sup>) (13 to more than 1,004 square miles (mi<sup>2</sup>)), with territories tending to be smaller at lower latitudes (Mech and Boitani 2003, p. 163; Fuller et al. 2003, pp. 187–188). The large variability in territory size is likely due to differences in pack size; prey size, distribution, and availability; lag time in population responses to changes in prey abundance; and variation in prey vulnerability (e.g., seasonal age structure in ungulates) (Mech and Boitani 2003, p. 163).

To identify areas of suitable wolf habitat in the conterminous United States, researchers have used models that relate the distribution of wolves to characteristics of the landscape. These models have shown the presence of wolves is correlated with prey availability and density, livestock density, road density, human density, land ownership, habitat patch size, and forest cover (Mladenoff et al. 1995, pp. 284–292; Mladenoff et al. 1999, pp. 41–43; Carroll et al. 2003, entire; Carroll et al. 2006, p. 542; Oakleaf et al. 2006, pp. 558–559; Hanley et al. 2018, pp. 6–8).

Modeled wolf habitat in the Western United States includes occupied wolf habitat in the northern Rocky Mountains, southern Rocky Mountains (including Colorado and Utah), the Cascade mountains of Washington and Oregon, and a small portion of the northern Sierra Nevada (Oakleaf et al. 2006, pp. 558–559; Carroll et al. 2003, entire; Carroll et al. 2006, p. 542; Larsen and Ripple 2006, entire; Maletzke et al. 2015, entire). With the exception of occasional dispersing wolves and a single group of at least 7 wolves in north-central Colorado, large blocks of modeled habitat in the central and southern Rocky Mountains are not currently occupied, despite estimates that these areas could potentially support more than 1,000 wolves (Bennett 1994, pp. 112, 275–280; Carroll et al. 2003, entire).

#### ***Movement Ecology***

Gray wolves rarely disperse before 10 months of age, and most commonly disperse between 1–3 years of age (Gese and Mech 1991, p. 2949; Treves et al. 2009, entire; Jimenez et al. 2017, p. 589). When pups less than lone year of age disperse, they generally do so in late winter as they approach their first birthday. Generally, by the age of 3 years, most wolves will have dispersed from their natal pack to locate social openings in existing packs or find a mate and form a new pack (Service 2020, p. 7). Dispersers may become nomadic and cover large areas as lone animals, or they may locate unoccupied habitats and members of the opposite sex to establish their own territorial pack (Jimenez et al. 2017, p. 589). Dispersal distances in North America typically range from 65 to 154 kilometers (km) (40 to 96 miles) (Jimenez et al. 2017, p. 585), although dispersal distances of several hundred kilometers are occasionally reported (Jimenez et al. 2017, p. 588). The ability to disperse long distances allows

populations of gray wolves to quickly expand and recolonize vacant habitats provided rates of human-caused mortality are not excessive (e.g., Mech 1995, Boyd and Pletcher 1999, Treves et al. 2009, Mech 2017, Hendricks et al. 2019). However, the rate of recolonization can be affected by the extent of intervening unoccupied habitat between the source population and newly colonized area, as Allee effects (reduced probability of finding a mate at low densities) are stronger at greater distances from source populations (Hurford et al. 2006, p. 250; Stenglein and Van Deelen 2016, entire).

### ***Causes of Decline and Threats***

Unregulated, human-caused mortality was the primary factor that caused population declines of gray wolves across the lower 48 States during the late 1800s and early 1900s. Although there are some places wolves are not likely to persist long-term due to high human or livestock densities, the regulation of human-caused mortality has been a primary factor contributing to increased wolf abundance and distribution in the lower 48 States. Regulation of human-caused mortality has significantly reduced the number of wolf mortalities caused by humans and, although illegal and accidental killing of wolves is likely to continue with or without the protections of the Act, at current levels those mortalities have had minimal impact on the abundance or distribution of gray wolves. The high reproductive potential of wolves, and their innate behavior to disperse and locate social openings or vacant suitable habitats, allows populations of gray wolves to withstand relatively high rates of human-caused mortality (Service 2020, pp. 8–9). See ***Historical and Current Range*** and ***Habitat Use*** sections above for additional information.

### ***Recovery Efforts to Date***

Following our 1978 reclassification of the species under the Act, our national wolf strategy focused on conservation of wolves in three regions: the western Great Lakes population; the NRM population; and the southwestern population of Mexican wolves. We drafted recovery plans and implemented recovery programs for gray wolves in three regions of the lower 48 United States (Service 1987, entire; Service 1992, entire; Service 2017, entire). Wolves in one of these regions—*C. l. baileyi*, in the Southwestern United States and Mexico—are listed separately as an endangered subspecies and are not assessed in this [proposed](#) rule.

The currently listed entity of gray wolf, to which the proposed Colorado NEP belongs, includes all or parts of 44 States; this listed entity encompasses populations of gray wolves in the Great Lakes [S](#)tates of Michigan and Wisconsin as well as wolves outside the delisted NRM in the [W](#)estern United States. The revised NRM Wolf Recovery Plan established recovery criteria for wolves in three recovery areas across Idaho, Montana, and Wyoming (Service 1987, entire), while the Recovery Plan for the Eastern Timber Wolf (Service 1992, entire) addressed populations of gray wolves in the upper Midwest. The remaining populations of gray wolves outside the NRM and western Great Lakes are not addressed in any recovery plans. However, as noted above, the presence of gray wolves in California, Oregon, and Washington, as well as the single pack in Colorado, is a result of dispersal and recolonization from core populations in the NRM in addition to reproduction and dispersal from resident packs in these [S](#)tates and neighboring Canadian provinces.

While there are no Federal recovery plans addressing wolf recovery in western States outside Idaho, Montana, and Wyoming, the States of California, Colorado,

Oregon, Washington, and Utah have demonstrated a commitment to wolf conservation by developing management plans or codifying laws and regulations to protect wolves (November 30, 2020, 85 FR 69778-~~69796~~); this includes the passage of a voter-led initiative in Colorado calling specifically for the reintroduction of gray wolves to the western portion of the State (Colorado Revised Statute 33-~~2-~~105.8). At the end of 2021, 6 packs of gray wolves (totaling at least 43 wolves and ~~4four~~ breeding pairs) were documented in western Washington where wolves are federally listed (WDFW et al. 2022, p. 16). -In the western two-thirds of Oregon, where gray wolves are federally listed, a minimum of 31 wolves including at least 2 breeding pairs were distributed across ~~3three~~ packs and ~~4four~~ additional groups of ~~2two~~ to ~~3three~~ wolves at the end of 2021 (ODFW 2022, p. 5). -Wolves originating from Oregon have also expanded their range into California where a minimum of 17 wolves in ~~3three~~ packs were documented at the end of 2021 (CDFW 2021, entire).

In addition to gray wolves found in the western States outside of the delisted NRM population, the Great Lakes metapopulation, consisting of approximately 4,200 wolves, is broadly distributed across the threatened Minnesota population and wolves in Michigan and Wisconsin that are part of the 44-State listed entity (Service 2020, p. 27). These States have an established history of cooperating with and assisting in recovery efforts for gray wolves and have made a commitment, through legislative actions, to continue these activities. For additional information regarding State management plans in Minnesota and the 44-State entity, see our November 3, 2020, final rule to delist the two currently listed *C. lupus* entities under the Act (85 FR 69778). -At present, both

Minnesota and Wisconsin are in the process of updating their State wolf management plans.

Because the NRM population of gray wolves has started to naturally expand into Colorado (Service 2020, pp. 15–19, 28), and would likely be the source of gray wolves for the State’s reintroduction efforts, we discuss the Colorado NEP in relation to the adjacent NRM population, in addition to the status of the 44-State listed entity, which includes wolves in Colorado. Below, we discuss recovery of gray wolves in the NRM.

The NRM Wolf Recovery Plan was approved in 1980 (Service 1980, p. i) and revised in 1987 (Service 1987, p. i). The recovery goal for the NRM was reevaluated and, when necessary, modified as new scientific information warranted (Service 1987, p. 12; Service 1994, ~~a~~Appendices 8 and 9; Fritts and Carbyn 1995, p. 26; Bangs 2002, p. 1; ~~February 27, 2008,~~ 73 FR 10514, February 27, 2008; ~~April 2, 2009,~~ 74 FR 151230–~~15135,~~ April 2, 2009). The Service’s resulting recovery goal for the NRM population of gray wolves was: 30 or more breeding pairs, defined as an adult male and an adult female wolf that have produced at least ~~two~~ pups that survived until December 31 of the year of their birth, during the previous breeding season (Service 1994), comprising at least 300 wolves equitably distributed among Idaho, Montana, and Wyoming for 3 consecutive years, with genetic exchange (either natural or, if necessary, agency managed) between subpopulations. To provide a buffer above these minimum recovery levels, each State was to manage for at least 15 breeding pairs and 150 wolves in midwinter (~~September 10, 2012,~~ 77 FR 55530–~~55539,~~ September 10, 2012, pp. 55538–~~55539;~~ April 2, 2009, 74 FR 151232, April 2, 2009, p. 15132). F). For additional

information on NRM wolf recovery goals and their evolution over time, see 74 FR 15130–15135 ([April 2, 2009](#)) and references therein.

Wolves in the NRM ~~distinct population segment~~<sup>DPS</sup> have recovered and were delisted. The NRM population achieved its numerical and distributional recovery goals at the end of 2000 (Service et al. 2008, table 4). The temporal portion of the recovery goal was achieved in 2002 when the numerical and distributional recovery goals were exceeded for the ~~third~~<sup>3<sup>rd</sup></sup>-successive year (Service et al. 2008, table 4). In 2009, we concluded that gray wolves in the NRM far exceeded recovery goals. We also concluded that ~~t~~<sup>h</sup>e NRM population: (1) ~~had~~<sup>s</sup> at least 45 reproductively successful packs and 450 individual wolves each winter (near the low point in the annual cycle of a wolf population); (2) ~~was~~<sup>i</sup>s equitably distributed within the 250,000-km<sup>2</sup> (100,000-mi<sup>2</sup>) area containing 3 areas of large core refugia (National Parks, wilderness areas, large blocks of remote secure public land) and at least 170,228 km<sup>2</sup> (65,725 mi<sup>2</sup>) of suitable wolf habitat; and (3) ~~was~~<sup>i</sup>s genetically diverse and ~~had~~<sup>s</sup> demonstrated successful genetic exchange through natural dispersal and human-assisted migration management between all ~~3~~<sup>three</sup> core refugia<sup>22</sup> ([74 FR 15123, April 2, 2009](#), [74 FR 15133, April 2, 2009](#); p. 15133). Post-delisting and subsequent monitoring, and the expansion of the NRM population into western Washington, western Oregon, northern California, and Colorado (Service 2020, pp. 15–19, 28) indicate that populations of gray wolves in the NRM remain well above minimum recovery levels (see *Historical and Current Range* section, above).

### ***Reintroduction***

To date, purposeful reintroduction of gray wolves to Colorado has not occurred, although wolves dispersing from the NRM population have been documented in the State

(Service 2020, pp. 15–19, 28; see *Historical and Current Range* section [above](#)).

Reintroduction efforts for gray wolves in the NRM States of Idaho, Montana, and Wyoming were successful, and recovery goals for the NRM population were achieved in 2002 (Service et al. 2008) and have been maintained since delisting. For additional details on NRM reintroduction efforts, please see our biological report (Service 2020, [entire](#)) and the *Release Procedures* section in this document, [below](#).

### **Regulatory Framework**

Section 9 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the prohibitions afforded to threatened and endangered species.

Section 9 of the Act prohibits take of endangered wildlife. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also 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 a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 et seq.) included the addition of section 10(j), which allows for populations of listed species planned to be reintroduced to be designated as “experimental populations.” 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 reintroduced species to encourage recovery in collaboration with partners, especially private landowners. Under section 10(j) of the Act, and our regulations ~~in title 50 of the Code of Federal Regulations~~ at 50 CFR 17.81, the Service may designate a population of an endangered or threatened species that will be released within its probable historical range as an experimental population. The Service may also designate an experimental population for an endangered or threatened species outside of the species' probable historical range in extreme cases when the Director of the Service finds that the primary habitat of the species within its historical range has been unsuitably and irreversibly altered or destroyed. All experimental populations are classified as "nonessential" unless we determine that the loss of the experimental population would be likely to appreciably reduce the likelihood of the survival of the species in the wild. We propose to classify gray wolves released to the State of Colorado as nonessential.

We treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations with respect to that population. The designation as an experimental population allows us to develop tailored "take" prohibitions that are necessary and advisable to provide for the conservation of the species. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population, allowing us discretion in devising management programs to provide for the conservation of the species.

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 a listed species or adversely modify its critical habitat. For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the population is located within a National Wildlife Refuge or unit of the National Park Service. When NEPs are located outside of a National Wildlife Refuge or National Park Service unit, for the purposes of section 7, we treat the population as proposed for listing and only sections 7(a)(1) and 7(a)(4) of the Act apply. In these instances, NEPs provide additional flexibility in managing the nonessential population because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

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. 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 (see *Possible Adverse Effects on Wild and Captive Breeding Populations*, below);

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future (see *Likelihood of Population Establishment and Survival*, below);

(3) The relative effects that establishment of an experimental population will have on the recovery of the species (see *Effects of the NEP on Recovery Efforts*, below); 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 (see *Likelihood of Population Establishment and Survival*, below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act 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 (see **Proposed Experimental Population and Experimental Population Regulation Requirements** sections, below);

(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 (see *Is the Proposed Experimental Population Essential or Nonessential?* Section, below);

(3) Management restrictions, protective measures, or other special management concerns for that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulations from natural populations (see *Management Restrictions, Protective Measures, and Other Special Management*, below); 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 (see *Review and Evaluation of the Success or Failure of the NEP*, below).

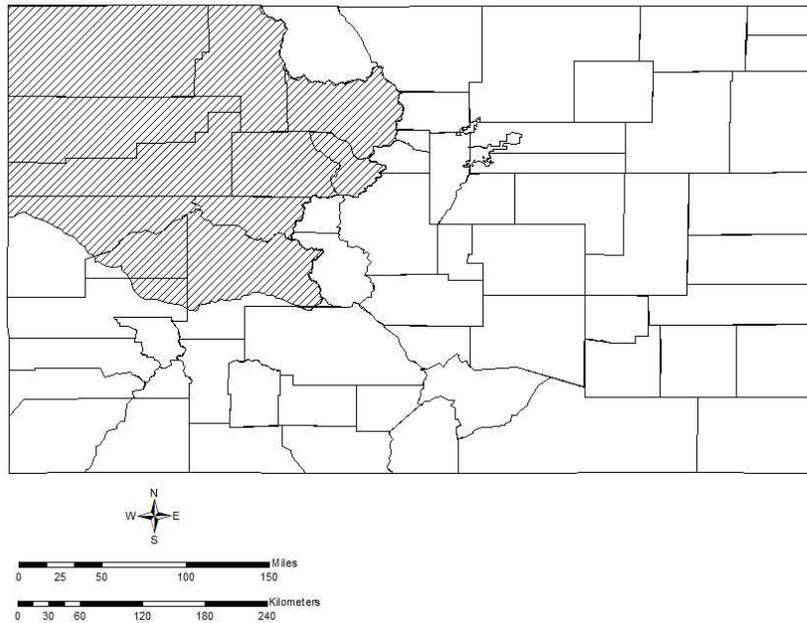
Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, affected Tribes, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, affected Tribes, and persons holding any interest in land that may be affected by the establishment of an experimental population.

#### **Proposed Experimental Population**

We are proposing to designate this NEP at the request of CPW, to facilitate their planned reintroduction of gray wolves to the State per the requirements of Proposition 114 (now codified as Colorado Revised Statute 33-~~2~~-105.8), which directs the CPW Commission to take the steps necessary to reintroduce gray wolves to lands west of the Continental Divide by December 23, 2023.

#### ***Proposed Reintroduction Areas and Release Sites***

The proposed NEP area is the entire State of Colorado. This scale is appropriate, given that CPW has proposed a discrete release area (Figure 3), and gray wolves have high dispersal ability (Jimenez et al. 2017, p. 582). Within the statewide NEP reintroduction area, CPW proposes to release gray wolves obtained from the delisted portion of the NRM population (Idaho, Montana, eastern Oregon, eastern Washington, Wyoming, or a mix of these States) at multiple sites west of the Continental Divide. Individual release sites will be located on private or State lands and will be selected based on areas of high habitat suitability and low wolf–livestock conflict risk based on models developed by Ditmer et al. (2022). All release sites will be located west of the Continental Divide (Colorado Revised Statute 33–2–105.8), and north of U.S. Highway 50 (Figure 3). CPW proposes a total of 10 to 15 wolves at a 50:50 sex ratio be released in the State each year during winter for up to 3 consecutive years, although exact numbers and sex ratios may vary due to factors associated with capture from source populations (CPW 2021b, p. 24). After initial releases are completed, CPW will monitor the success of reintroduction efforts and document wolf abundance and distribution annually to evaluate progress toward meeting State wolf recovery objectives (CPW 2021b, p. 24).



**Figure 3.** Map of the State of Colorado with county boundaries and the general area (crosshatched) for CPW’s potential initial (1–3 years) release site area for a nonessential experimental population of gray wolves.

### ***Release Procedures***

CPW officials plan to capture donor gray wolves in cooperating States in the Western United States where wolves are federally delisted (Montana, Idaho, Wyoming, the eastern third of Washington and Oregon, and north-central Utah) using a combination of net gunning, helicopter darting, or trapping. -Wolf captures will be conducted in accordance with approved capture protocols specific to each jurisdiction from which donor wolves are to come ~~from~~. -Animals will be a mix of sex and age classes, with a sex ratio of 50:50 preferred, and ideally donor animals will be unrelated and of dispersing age (2 years and older). Each wolf selected for transport will be photographed, examined to

evaluate condition and to obtain biological measurements and samples, tested for diseases, vaccinated for a wide variety of diseases, and treated for internal and external parasites. -Additionally, wolves will be fitted with either a global positioning system (GPS) or a very high frequency (VHF) radio transmitter as well as other markers to assist with individual identification. -Captured animals will be transported to Colorado in large, aluminum crates (similar to those used for wolf reintroduction in the NRM) by aircraft, ground transportation, or a mix of techniques, with a goal of releasing captured animals as quickly as possible to minimize time in captivity and capture-related stress. All animals will be “hard released” (released shortly after transport to reintroduction sites with no preconditioning; CPW 2021b, pp. 19–21) during winter (November through March), with no acclimation time between capture, transport, and release. The Final Report on Wolf Restoration Logistics Recommendations developed by the Colorado Wolf Restoration and Management Plan Technical Working Group (CPW 2021b, entire) provides additional details regarding the proposed release procedures.

#### ***Reintroduction Site Management***

As noted in the ***Proposed Reintroduction Areas ~~and~~ Release Sites*** and ***Release Procedures*** sections above, gray wolves will be “hard released” on State or private lands within a discrete release area (Figure 3, above). Given that gray wolves released in this manner are more likely to disperse immediately from the release site rather than remain together at the site (CPW 2021b, entire), no special management practices will be implemented at individual release sites. For additional information, please see the State of Colorado’s Final Report on Wolf Restoration Logistics Recommendations (CPW 2021b, entire).

### How Will the NEP Further the Conservation of the Species?

Under 50 CFR 17.81(b), before authorizing the release as an experimental population, the Service must find by regulation that such release will further the conservation of the species. We explain our rationale for making our finding below. In making such a finding, we must consider effects on donor populations, the likelihood of establishment and survival of the experimental population, the effects that establishment of the experimental population will have on recovery of the species, and the extent to which the experimental population will be affected by Federal, State, or private activities.

#### *Effects on Wild and Captive Breeding Populations*

The donor population for the proposed reintroduction of gray wolves to Colorado is the delisted NRM population, found in Idaho, Montana, eastern Oregon, eastern Washington, and Wyoming. Gray wolves in these States are managed by State fish and wildlife agencies and Tribes. The NRM population reached numerical, spatial, and temporal recovery goals by the end of 2002 (Service 2020, p. 15; see the ***Recovery Efforts to Date*** section, above). This population is characterized as stable or growing and is bolstered by connections with even larger metapopulations to the north in neighboring Canada (Service 2020, p. 29). Given the demonstrated resilience and recovery trajectory of the NRM population and limited number of animals that will be collected, we expect negative impacts to the donor population to be negligible.

#### *Likelihood of Population Establishment and Survival*

In this section of the preamble we address the likelihood that populations introduced into the proposed NEP will become established and survive in the foreseeable future. In defining the experimental population boundary, we attempted

to encompass the area where the population is likely to become established in the foreseeable future. The term “foreseeable future” appears in the Act in the statutory definition of “threatened species.” The Act does not define the term “foreseeable future.” However, our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. While we use the term “foreseeable future” here in a different context (to determine the likelihood of population establishment and to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant effects of release and management of the species and to the species’ likely responses in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

For the purposes of this proposed rule, we define the foreseeable future as approximately 10 years, the time horizon within which we can reasonably forecast population expansion of gray wolves in Colorado given the results of previous reintroduction efforts of gray wolves in the NRM, as well as expansion of this population into portions of the currently listed 44-State entity in California, Colorado, Oregon, and Washington during a similar timeframe (Service 2020, p. 28). In evaluating the likelihood

of establishment and survival of this proposed NEP, we considered the extent to which causes of extirpation in the NEP area have been addressed, habitat suitability and prey availability within the NEP area, and existing scientific and technical expertise and experience with reintroduction efforts. As discussed below, we expect that gray wolves will become established during this time span, given the species' adaptability and dispersal ability.

*Addressing Causes of Extirpation Within the Experimental Population Area*

Investigating the causes for the extirpation of gray wolves is necessary to understand whether we are sufficiently addressing threats to the species in the proposed NEP so that reintroduction efforts are likely to be successful. The International Union for the Conservation of Nature's Guidelines for Reintroduction and Other Conservation Translocations (2013, p. 4) identifies several criteria to consider prior to undertaking a reintroduction, including "strong evidence that the threat(s) that caused any previous extinction have been correctly identified and removed or sufficiently reduced." Wolves depend on abundant prey (primarily ungulates) and can successfully colonize and occupy a wide range of habitats as long as human-caused mortality is adequately managed (Mech 2017, pp. 312–315). Historical wolf declines in Colorado resulted from purposeful efforts to eradicate the species by State and Federal authorities, primarily due to conflicts with domestic livestock production (Service 2020, pp. 9–14; see *Habitat Use* and *Causes of Decline and Threats* sections s above a for additional information). In 2004, CPW created a Wolf Management Working Group, largely in response to dispersal of wolves from the NRM population to Colorado and other western States. The working group developed a series of recommendations for wolf management in Colorado, including recognition of

the ecological value of wolves and an intent to accept their presence in Colorado (Colorado Wolf Management Working Group 2004, p. 3). The recommendations of the Wolf Management Working Group were formally adopted by the Colorado Wildlife Commission in 2005 and were reaffirmed by the Colorado Parks and Wildlife Commission in 2016 (85 FR ~~69778~~[69837](#), [November 3, 2020](#); p. [69837](#)).

Gray wolves are currently classified as an endangered species by the State of Colorado and can ~~only~~ be taken only in self-defense. The State of Colorado expanded its conservation efforts for gray wolves through the passage of Proposition 114 (now codified as Colorado Revised Statute ~~33-2-~~105.8), which directs the CPW Commission to take the steps necessary to reintroduce gray wolves to lands west of the Continental Divide by December 23, 2023. -Colorado Revised Statute ~~33-2-~~105.8 calls for the development and implementation of a Colorado Wolf Restoration and Management Plan, which is expected by late 2023. The plan follows a phased approach where the conservation status of gray wolves is linked with numerical and temporal population targets (CPW 2022a, p. 2). For additional information, please see CPW 2022a (entire). Purposeful eradication is no longer a tool used for wolf management. Based on the elimination of purposeful eradication, and the fact that gray wolves are protected under State and Federal laws, we do not anticipate the original cause of wolf extirpation from Colorado to be repeated.

#### *Habitat suitability/prey availability*

Excluding occasional dispersing wolves and a single group of at least seven wolves presently in north-central Colorado, large blocks of modeled habitat in the central and southern Rocky Mountains are not currently occupied by gray wolves. Models

developed to assess habitat suitability and the probability of wolf occupancy indicate that Colorado contains adequate habitat to support a population of gray wolves, although the number of wolves that the State is modeled to potentially support varies among the models. One model that evaluated wolf abundance in relation to prey and habitat availability in Colorado estimated that the Sstate could support between 407 and 814 wolves (Bennett 1994, pp. 112, 275–280).

Carroll et al. (2003, entire) examined multiple models to evaluate suitable wolf habitat, occupancy, and the probability of wolf persistence given various landscape changes and potential increases in human density in the southern Rocky Mountains, which included portions of southeastern Wyoming, Colorado, and northern New Mexico. Using a resource selection function (RSF) model developed for wolves in the Greater Yellowstone Ecosystem and projecting it to Colorado, Carroll et al. (2003, pp. 541–542) identified potential wolf habitat across north-central and northwest Colorado and the southwestern part of the State. RSF model predictions indicate that Colorado could support an estimated 1,305 wolves with nearly 87 percent of wolves occupying public lands in the State. Carroll et al. (2003, entire) also used a dynamic model that incorporated population viability analysis to evaluate occupancy of gray wolves and persistence based on current conditions as well as potential changes resulting from increased road and human densities in the future. The dynamic model based on current conditions predicted similar distribution and wolf population estimates as the RSF model; however, as predicted, as road and human densities increased in Colorado, the availability of suitable habitat and the estimated number of wolves that habitat could support declined (Carroll et al. 2003, pp. 541–543).

An analysis similar to that of Carroll et al. (2003, entire) was conducted for the entirety of the Western United States and indicated that high-quality wolf habitat exists in Colorado and Utah, but that wolves recolonizing Colorado and Oregon would be most vulnerable to landscape changes because these areas lack, and are greater distances from, large core refugia (Carroll et al. 2006, pp. 33–36). The authors proposed that habitat improvements, primarily in the form of road removal or closures, could mitigate these effects (Carroll et al. 2006, p. 36). Switalski et al. (2002, pp. 12–13) and Carroll et al. (2003, p. 545) also cautioned that model predictions may be inaccurate because they did not account for the presence of livestock and the potential use of lethal removal to mitigate conflicts, which may affect the likelihood of establishment of gray wolves as well as their year-to-year survival and distribution on the landscape.

CPW manages ungulate populations using hHerd mManagement pPlans, which establish population objective minimums and maximums for each ungulate herd in the State (CPW 2019, entire). The hHerd mManagement pPlans consider both biological and social factors when setting herd objective ranges (CPW 2019, entire). Similar to mule deer populations in other western States, mule deer in Colorado have declined due to a multitude of factors since the 1970s to a statewide population estimate of 433,100 animals in 2018, which was well below the minimum statewide population objective of 500,450 (CPW 2019, entire). In 2018, of 54 mule deer herds in the State, 23 were below their population objective minimum with the western part of the State being the most affected. In contrast, elk populations in Colorado we are stable in 2018 with a winter population estimate of 287,000 elk ~~in 2018~~ (CPW 2019, entire). Although 22 of 42 elk herds are above the maximum population objective, the ratio of calves per 100 cows (a

measure of overall herd fitness) has declined in some southwestern herd units, and research has been initiated to determine potential causes. Moose are not native to Colorado, so to create hunting and wildlife viewing opportunities, CPW transplanted moose to the State beginning in 1978 and has since transplanted moose on four other occasions through 2010. In 2018, the moose population was estimated at 3,200 animals and continues to increase as moose expand into new areas of the State.

In summary, while deer and elk numbers are down from their peak populations in some parts of Colorado, they still number in the hundreds of thousands of individuals, and the State is actively managing populations to meet objectives (CPW 2019, entire). In addition, as of the latest estimates, elk numbers exceed their population objectives in 22 of 42 herds (CPW 2019, p. 8). Introduced moose provide an additional potential food resource for wolves in some parts of the State. Therefore, wolf habitat and prey are suitable and abundant within the proposed NEP area and would support population establishment and survival.

#### *Reintroduction expertise/experience/track record*

Purposeful efforts to reintroduce gray wolves to the ~~W~~western United States began in 1995, with the reintroduction of wolves to portions of Idaho, Montana, and Wyoming. After reintroduction efforts ceased in 1996, a rapid increase in the number and distribution of wolves occurred due to the availability of high-quality, suitable wolf habitat in the NRM. Between 1995 and 2008, populations of gray wolves in the NRM increased an average of 24 percent annually (Service et al. 2016, ~~t~~Table 6b), while from 1999 to 2008, total wolf mortality (includes all forms of known wolf mortality) averaged approximately 16 percent of the minimum known wolf population each year (Service et

al. 2000–2009, entire). Wolf numbers and distribution stabilized after 2008 as suitable habitat became increasingly saturated ([74 FR 15123](#), April 2, 2009, ~~74 FR~~; p. 15160).

Between 2009 and 2015, some or all of the NRM States (depending upon the Federal status of wolves at that time; see ~~85 FR 69778–69779–69782~~, [November 3, 2020](#); [pp. 69779–69782](#)) began to manage wolves with the objective of reversing or stabilizing population growth while continuing to maintain populations of wolves well above Federal recovery targets for the NRM population. The primary method used to manage wolves and achieve management objectives is through regulated public harvest. As a result, during those years when legal harvest occurred, total wolf mortality in the NRM increased to an average of 29 percent of the minimum known population (Service et al. 2010–2016, entire), while population growth declined to an average of approximately 1 percent annually (Service et al. 2010–2016, entire). Where high levels of mortality occur, the species’ reproductive capacity and dispersal capability can compensate for mortality rates of 17 to 48 percent (Service 2020, pp. 8–9); this [situation](#) appears to be the case in the reintroduced NRM population. As of 2015, the final year of a combined NRM wolf count at the end of federally required post-delisting monitoring in Idaho and Montana, wolves in the NRM remained well above minimum recovery levels with a minimum known population of 1,704 wolves distributed across Idaho, Montana, and Wyoming. An additional 177 wolves were documented in the NRM portions of Oregon and Washington at the end of 2015. For more information regarding the success of reintroduction efforts in the NRM, please see the *Recovery Efforts to Date* section above.

Given these outcomes of purposeful reintroduction efforts, habitat suitability and prey availability in the proposed reintroduction area in Colorado (see *Habitat*

*suitability/prey availability* section\_ above), the demonstrated resiliency of gray wolves in the United States, and the ongoing development of a comprehensive Gray Wolf Restoration and Management plan in Colorado, the best available scientific data indicate that the introduction of gray wolves into suitable habitat in Colorado is biologically feasible and would promote the conservation of the species.

***Effects of the NEP on Recovery Efforts***

We are proposing to issue this rule to support CPW's planned effort to reintroduce gray wolves to the State of Colorado, and to further the conservation of the currently listed 44-State entity. CPW developed a draft Gray Wolf Restoration and Management Plan for the reintroduction and management of gray wolves in the State, with the goal of restoring the species to Colorado in a phased approach to the point where it no longer needs protection under State statute (CPW 2022a, entire). This management plan focuses on the primary threat to gray wolves, which is human-caused mortality (e.g., Fuller et al. 2003, Mech 2017). We anticipate the State's plan will be finalized in the spring of 2023.

As noted in the ***Recovery Efforts to Date*** section\_ above, populations of gray wolves in the 44-State listed entity number more than 4,500 individuals and occupy portions of California, Michigan, Minnesota, Oregon, and Washington (Service 2020, pp. 27–28). Although ~~there are~~ wolves are present in Colorado, they do not currently meet our definition of a population. Reintroduction efforts in Colorado will provide additional redundancy for this population (~~85 FR 69778~~, November 3, 2020; ~~p.~~ ~~85 FR~~ 69883) and would function as an extension of the delisted NRM population (Service 2020, pp. 19, 28). If successful, the reintroduction in the NEP would improve redundancy

by increasing the number of populations at the southern extent of the currently occupied range and representation by increasing the ecological diversity of the habitats occupied by the listed entity. For these reasons, reintroduction efforts undertaken by CPW would increase the redundancy and representation, and hence viability, of the currently listed 44-State entity (e.g., Smith et al. 2018).

Previous NEP designations have conserved and recovered gray wolves in other regions of the United States, particularly in the NRM. Additional management flexibility, relative to the mandatory prohibitions covering non-essential experimental species under the Act, is expected to help address local, State, and Tribal concerns about wolf-related conflicts in Colorado, similar to those experienced in other NRM States. Addressing these concerns proactively may result in greater human acceptance of gray wolves and other species of concern. Based on modeling efforts, this action is expected to establish a population of gray wolves in Colorado of between 400–1,300 individuals that will contribute to the conservation and recovery of the listed entity by increasing redundancy and representation.

#### ***Actions and Activities in Colorado That May Affect Introduced Gray Wolves***

Similar to other western States, a large proportion of Colorado is composed of publicly owned Federal lands (approximately 36 percent; Congressional Research Service 2020). Public lands include National Forests, National Parks, National Monuments, and National Wildlife Refuges, which comprise approximately 63 percent of all public lands in Colorado. In addition, the Bureau of Land Management manages approximately 35 percent of public land in Colorado, much of which is located in the western portion of the State where reintroduction efforts for gray wolves will take place

(Figure 3). Although much of this public land is largely unavailable and/or unsuitable for intensive development and contains an abundance of ungulates, livestock grazing does occur on public lands in Colorado, which may increase the potential for mortality of gray wolves from lethal control of chronically depredating packs. However, in both Minnesota and the northern Rocky Mountains, lethal control of depredating wolves has had little effect on wolf distribution and abundance (Service 2020 p. 22; ~~November 3, 2020~~, 85 FR 69778, ~~November 3, 2020~~; p. 69842).

Humans sparsely inhabit most of the NEP area containing suitable habitat for gray wolves. However, the NEP area contains human infrastructure and activities that pose some risk to success of the NEP. Risks include hunting, animal damage control activities, and high-speed vehicular traffic. The biggest risks likely include illegal take of wolves and individuals hit by motor vehicles. U.S. Department of Agriculture Wildlife Services~~Animal Damage Control~~ programs are closely regulated by State and Federal law and policy. Vehicle collisions are not anticipated to be a significant cause of mortality (~~85 FR 69778~~). However, if population levels and controllable sources of mortality are adequately regulated, the life-history characteristics of wolf populations provide natural resiliency to high levels of human-caused mortality (85 FR 69778, November 3, 2020). In conjunction with previous reintroduction efforts, this proposed rule reflects continuing success in recovering gray wolves through long-standing cooperative and complementary programs by a number of Federal, State, and Tribal agencies. In particular, the stakeholder engagement process developed by CPW in support of its Gray Wolf Restoration and Management Plan development is broadly based and includes a diverse array of stakeholders in the State, which has helped to address potential adverse effects to

gray wolves through Federal, State, or private actions. Therefore, Federal, State, or private actions and activities in Colorado that are ongoing and expected to continue are not likely to have significant adverse effects on gray wolves within the proposed NEP area.

### **Experimental Population Regulation Requirements**

Our regulations at 50 CFR 17.81(c) include a list of what we should provide in regulations designating experimental populations under section 10(j) of the Act. We explain what our proposed regulations include and provide our rationale for those regulations below.

#### ***Means To Identify the Experimental Population***

Our regulations require that we provide appropriate means to identify the experimental population, which may include geographic locations, number of individuals to be released, anticipated movements, and other information or criteria. The proposed Colorado NEP area is the entire State. Although seven to eight gray wolves currently occupy the State (see *Historical and Current Range* section above), they do not meet the definition of a population of gray wolves (two breeding pairs successfully raising at least two pups for 2 consecutive years; Service 1994, Appendix 8) used by the Service for previous NEP designations in the NRM; as such, we do not consider any gray wolves currently found in Colorado to constitute a population. While it is thought that wolves in Colorado originated in the Greater Yellowstone area approximately 480 kilometers (300 miles) from their current area of occurrence in the State, it is often difficult to determine the exact origin of dispersing wolves (CPW 2021a, entire). The mean dispersal distance of male wolves was 98.1 km (60 miles) (Jimenez et al. 2017, p. 585). The nearest known

pack in Wyoming is more than 200 km (124 miles) from the Colorado border, which is more than ~~two~~ times the normal dispersal distance for gray wolves. In addition, gray wolves in most of Wyoming, outside of the wolf trophy game management area, are considered predators and can legally be killed with no limit on such take. Wolf packs are unlikely to persist in portions of Wyoming where they are designated as predatory animals (85 FR 69778, [November 3, 2020](#)). Wolves reintroduced into Colorado will therefore be geographically separate from the delisted portion of the NRM population as well as the remainder of the currently listed 44-State entity.

As noted in the *Release Procedures* section, above, individual animals reintroduced to the proposed Colorado NEP will be fitted with GPS collars or a mix of GPS and VHF collars, with GPS preferred in the early stages of the reintroduction effort. Fitment of radio telemetry collars will enable CPW to determine if animals within Colorado are members of the reintroduced NEP, and not extant wolves from other populations (e.g., the delisted NRM population). Given the distance from known packs in Wyoming and other populations of gray wolves, we will consider all gray wolves found in the State of Colorado to be members of the NEP.

Although CPW and the Service determined that there is no existing population of wolves in the proposed NEP area that would preclude reintroduction and establishment of an experimental population in the State (see definition of wolf population in **Proposed Experimental Population** section, above), both agencies will continue to monitor for the presence of any naturally recolonizing wolves. If a naturally recolonizing population of wolves is discovered in the proposed Colorado NEP area prior to release, the Service will exclude that geographic area where the natural recolonizing wolves occur from the NEP

area to ensure geographic separation is maintained between recolonizing wolves and reintroduced wolves. Any naturally recolonizing population of wolves would be considered endangered under the Act.

***Is the Proposed Experimental Population Essential or Nonessential?***

When we establish experimental populations under section 10(j) of the Act, we must determine whether or not that population is essential to the continued existence of the species. This determination is based solely on the best scientific and commercial data available. Our 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. We are proposing to designate the population of gray wolves in Colorado as nonessential for the following reason:

Populations of gray wolves within the 44-State listed entity include the Great Lakes metapopulation and growing populations in California, Oregon, and Washington. Multiple large, growing or stable metapopulations of gray wolves inhabiting separate and ecologically diverse areas ensure that the survival of the listed species does not rely on any single population. Therefore, the loss of the Colorado NEP would not be likely to appreciably reduce the likelihood of survival of the species in the wild, and we find that the Colorado NEP is not essential to the continued existence of the species.

***Management Restrictions, Protective Measures, and Other Special Management***

Management of the nonessential experimental population would allow reintroduced wolves to be hazed, killed, or relocated by Service-authorized Federal, State, and Tribal agencies for domestic animal depredations and excessive predation on

big game populations. Under special conditions, the public could harass or kill wolves attacking livestock (cattle, sheep, horses, mules, and domestic bison).

As the lead agency for reintroduction efforts for gray wolves in Colorado, CPW will coordinate with the Service on releases, monitoring, and other tasks as needed to ensure successful reintroduction of the species to the State. Definitions pertaining to special management provisions that may be implemented by the Service and CPW are listed below:

*Active den site*—A den or a specific above-ground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

**Commented [WS1]:** This term is not used in the regulatory text.

*Breeding pair*—An adult male and an adult female wolf that, during the previous breeding season, produced at least two pups that survived until December 31 of the year of their birth.

**Commented [WS2]:** This term is not used in the regulatory text.

*Designated agent*— Implementation of the proposed rule will likely entail CPW and one or more Tribes in the State of Colorado assuming designated agent status. “Designated agent” includes Federal agencies authorized or directed by the Service, and the State of Colorado or Tribes within the State with wolf management plans that provide for the conservation and management of wolves and have established cooperative agreements or a Memorandum of Agreement (MOAs) with the Service. Federal agencies, the State of Colorado, or Tribes within the State may become “designated agents” through cooperative agreements with the Service whereby they agree to assist the Service to implement all or portions of this proposed rule. If Federal agencies, the State of Colorado, or Tribes within the State become “designated agents” through a cooperative agreement, the Service will help coordinate their activities and retain

authority for program direction, oversight, and guidance to ensure wolf conservation and management activities are conducted within the provisions of this proposed rule.

The State of Colorado and Tribes within the State with wolf management plans also may become “designated agents” by submitting a petition to the Service to establish an MOA under this proposed rule. Once accepted by the Service, the MOA may allow the State of Colorado or Tribes within the State to assume lead authority for wolf conservation and management within their respective jurisdictions and to implement the portions of their State or Tribal wolf management plans that are consistent with this proposed rule. The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this [proposed](#) rule, issuing written authorizations for wolf take on reservations without wolf management plans, and an annual review of the State or Tribal program to ensure consistency with this proposed rule. Under either a cooperative agreement or an MOA, no management outside the provisions of this proposed rule is allowed unless additional public comment is solicited and this rule is modified accordingly.

*Domestic animals*—Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including [for](#) use as pets. This includes livestock (as defined below) and dogs.

*Incidental take*: Experimental population rules contain specific prohibitions and exceptions regarding the taking of individual animals under the Act. These rules are compatible with most routine human activities in the proposed NEP area (e.g., resource monitoring, invasive species management, and research; see **How [Will](#) the NEP Further the Conservation of the Species?** above). Section 3(19) of the Act defines

“take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” “Incidental take” is further defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. If we adopt this [section 10\(j\)](#) rule as proposed, management of the NEP would allow employees of the Service and designated agents acting on our behalf to intentionally take gray wolves under certain circumstances. See [Table 1](#) below for additional details on incidental take of gray wolves within the proposed NEP area.

*Intentional harassment*—The deliberate harassment of wolves, including by less-than-lethal munitions, that are designed to cause physical discomfort and temporary physical injury but not death. The wolf may have been tracked, waited for, chased, or searched out and then harassed.

*Interagency ~~C~~onsultation*—For purposes of section 7(a)(2) of the Act, section 10(j) of the Act and our regulations (50 CFR 17.83) provide that nonessential experimental populations are treated as species proposed for listing under the Act except on National Park Service and National Wildlife Refuge System lands, where they are treated as threatened species for the purposes of section 7(a)(2) of the Act. We intend to address our section 7(a)(2) consultation obligations for gray wolves within units of the National Wildlife Refuge system in Colorado through a programmatic intra-Service consultation prior to finalizing this [proposed](#) rule and will coordinate with the National Park Service to address section 7(a)(2) obligations on any National Park Service units in Colorado.

*In the act of attacking*—The actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a

reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.

*Landowner*—An owner or lessee of private land, or their immediate family members, or the owner’s employees, contractors, or volunteers who are currently employed to actively work on that private land. In addition, the owner(s) (or their employees or contractors) of livestock that are currently and legally grazed on that private land and other leaseholders on that private land (such as outfitters or guides who lease hunting rights from private landowners), are considered landowners on that private land for the purposes of this regulation. Private land, under this proposed rule, also includes all non-Federal land and land within Tribal reservations. Individuals legally using Tribal lands in the State of Colorado with wolf management plans are considered landowners for the purposes of this proposed rule. “Landowner” in this proposed rule includes legal grazing permittees or their current employees on State, county, or city public or Tribal grazing lands.

*Livestock*—Cattle, sheep, pigs, horses, mules, goats, domestic bison, and herding and guarding animals (alpacas, llamas, donkeys, and certain breeds of dogs commonly used for herding or guarding livestock). Livestock excludes dogs that are not being used for livestock guarding or herding.

*Non-injurious*—Does not cause either temporary or permanent physical damage or death.

*Opportunistic harassment*—Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

*Private land*—All land other than that under Federal Government ownership and

administration and including Tribal reservations.

*Problem wolves*—Wolves that we or our designated agent(s) confirm to have attacked any other domestic animals twice within a calendar year are considered problem wolves for purposes of agency wolf control actions.

*Public land*—Federal land such as that administered by the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, USDA Forest Service, Bureau of Reclamation, Department of Defense, or other agencies with the Federal Government.

*Public land permittee*—A person or that person’s employee who has an active, valid Federal land-use permit to use specific Federal lands to graze livestock or operate as an outfitter or guiding business that uses livestock. This definition does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, Christmas trees, or logging, mining, oil or gas development, or other uses that do not require livestock. In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.

*Remove*—Place in captivity, relocate to another location, or kill.

*Research*—Scientific studies resulting in data that will lend to enhancement of the survival of gray wolves.

*Rule*—~~Federal regulations~~—“This rule” in the regulatory text or “this regulation” refers to the ~~is~~ proposed NEP regulations.

*State land*—Lands owned, managed, and leased by the State of Colorado including those lands held for the purpose of generating revenue for the support of Colorado public schools.

**Commented [WS3]:** This term is not used in the regulatory text.

*Unacceptable impact*—Impact to an ungulate population or herd where a State or Tribe has determined through scientific investigations that wolves are one of the major causes of the population or herd not meeting established State or Tribal management goals.

**Commented [WS4]:** This term is not used in the regulatory text.

*Ungulate population or herd*—An assemblage of wild ungulates living in a given area.

**Commented [WS5]:** This term is not used in the regulatory text, except for in the definition of “unacceptable impact” (which is not used in the regulatory text).

*Wounded*—Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf bite.

Table 1—Allowable Forms of Take for Gray Wolves in the Proposed Colorado NEP Area

Take Provision	Description of Provision in the Proposed Experimental Population Rule
Take in <del>s</del> Self- <del>d</del> Defense	Any person may take a wolf in defense of the individual’s life or the life of another person.
Agency take of wolves determined to be a threat to human life and safety	The Service, or our designated agents, may promptly remove (that is, place in captivity or kill) any wolf determined by the Service or designated agent to be a threat to human life or safety.
Non-injurious take of problem wolves by private landowner or grazing permittee	Anyone may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or our designated agent(s) within 7 days.
Injurious, nonlethal take of problem wolves by private landowner or grazing permittee	After the Service or our designated agents(s) has <del>ve</del> confirmed wolf activity on private land, on a public land grazing allotment, or on a Tribal reservation, the Service or our designated agent(s) may issue written take authorization valid for not longer than 1 year to any landowner or public land permittee to intentionally harass wolves in a nonlethal, injurious manner. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization.

Taking wolves “in the act” of attacking livestock on PRIVATE land

Any landowner may immediately take (injure or kill) a gray wolf in the act of attacking (wound, harass, molest, or kill) livestock or dogs (working or pet) on their private land. -Any wolf taken in the act must be reported to the Service or ~~our~~their designated agent within 24 hours. -The carcass and surrounding area must not be disturbed in order to preserve physical evidence that the livestock or dogs were recently attacked by a wolf or wolves. The Service or ~~our~~their designated agent(s) must be able to confirm that the livestock or dog were wounded, harassed, molested, or killed by a wolf or wolves. -The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

Taking wolves “in the act” of attacking livestock on PUBLIC land

Any livestock producer and public land permittee who is legally using public land under a valid Federal land-use permit may immediately take a gray wolf in the act of attacking their livestock on the person’s allotment or other area authorized for their use without prior written authorization. The Service or ~~our~~their designated agent(s) must be able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by a wolf or wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed, in order to preserve physical evidence that the take was conducted according to this rule. Any person legally present on public land, except land administered by the National Park Service or U.S. Fish and Wildlife Service, may immediately take a wolf that is in the act of attacking the individual’s stock animal or dog, provided conditions noted in “taking of wolves in the act on private land” are met.

Additional taking by private citizens on their PRIVATE LAND

At the Service’s or our designated agent’s(s) direction, the Service or designated agent(s) may issue a “shoot on-sight” written take authorization of limited duration (45 days or less) to a landowner or their employees to take up to a specified (by the Service or our designated agent(s)) number of wolves on their private land if: (1) The landowner has had at least one depredation by wolves on livestock that has been confirmed by the Service or our designated agent(s) within the last 30 days; and (2) ~~The~~ Service or our designated agent(s) has~~ve~~ determined that problem wolves are routinely present on the private land and present a significant risk to the health and safety of livestock; and (3) ~~The~~ Service or our designated agent(s) has~~ve~~ authorized lethal removal of wolves from that same private lands. The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this proposed rule. -These permits may be terminated at any time once threats have been resolved or minimized.

Additional taking by grazing permittees on PUBLIC LAND

At the Service’s or our designated agent’s(s) direction, the Service or designated agent(s) may issue a “shoot on-sight” written take authorization of limited duration (45 days or less) to a public land grazing permittee to take up to a specified (by the Service or our designated agent(s)) number of wolves on that permittee’s active livestock grazing allotment if: (1) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by the Service or our designated agent(s) within the last 30 days; and (2) ~~The~~ Service or our designated agent(s) has~~ve~~ determined that problem wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock; and (3) ~~The~~ Service or our designated agent(s) has~~ve~~ authorized lethal removal of wolves from that same allotment. The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this proposed rule. These permits may be terminated at any time once threats have been resolved or minimized.

Commented [WS6]: What does the phrase in quotation marks mean? Why is it in quotation marks?

Agency take of wolves that repeatedly depredate livestock	<p>The Service or our designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of problem wolves. The Service or our designated agent(s) will consider: (1A) Evidence of wounded livestock, dogs, or other domestic animals, or remains of livestock, dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock, dogs, or domestic animals; (2B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken; (3C) Evidence of unusual attractants or artificial or intentional feeding of wolves; and (4D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.</p>
Agency take to reduce impacts on wild ungulates	<p>If wolf predation is having an unacceptable impact on wild ungulate populations as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question. States or Tribes must submit science-based reports showing that proposed actions meet regulatory standards as defined in 50 CFR 17.84(a)(4). The Service must determine that an unacceptable impact to wild ungulate populations or herds has occurred, and that the proposed lethal removal is science-based and will not impede wolf conservation.</p>
Incidental take	<p>Any person may take a gray wolf if the take is incidental to an otherwise lawful activity, if reasonable due care was practiced to avoid such taking, and such taking was reported within 24 hours. (The Service may allow additional time if access is limited.)</p>
Permits for recovery actions that include take of gray wolves	<p>Permits are available for scientific purposes, enhancement of propagation or survival, zoological exhibition, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).</p>
Additional taking provisions for agency employees	<p>Any employee or agent of the Service or appropriate Federal, State, or Tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild, if such action is for—(1A) Scientific purposes; (2B) To avoid conflict with human activities; (3C) To further wolf survival and recovery; (4D) To relocate wolves that have moved outside of the NEP back into the NEP; (5E) To aid or euthanize sick, injured, or orphaned wolves; (6F) To dispose of a dead specimen; (7G) To salvage a dead specimen that may be used for scientific study; (8H) To aid in law enforcement investigations involving wolves; or (9I) To remove wolves or wolf-like canids with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent(s), from passing on or teaching those traits to other wolves.</p>

**Commented [WS7]:** Changed the letters to numbers for consistency with the previous paragraphs.

**Commented [WS8]:** Same comment as above.

***Review and Evaluation of the Success or Failure of the NEP***

Radio transmitters, remote cameras, surveys of roads and trails to document wolf sign, and other monitoring techniques will be used to document wolf reproductive success, abundance, and distribution in Colorado post-release. This information will be

summarized in an annual report that describes wolf conservation and management activities that occurred in Colorado each calendar or biological year to evaluate progress towards achieving the State of Colorado's downlisting and recovery criteria. The annual report may include, but not be limited to: post-release wolf movements and behavior; wolf minimum counts or abundance estimates; reproductive success and recruitment; territory use and distribution; cause-specific wolf mortalities; and a summary of wolf conflicts and associated management activities to minimize wolf conflict risk. For additional details, please see CPW 2021b (entire) and the *Release Procedures* section above.

The Service will informally evaluate Colorado's wolf reintroduction and management program in an annual summary report. Additionally, 5 years after the last reintroductions are completed, the Service will evaluate whether the wolf population is meeting the State's goals. During this evaluation, we will assess the reintroduction program and coordinate with CPW if it is determined that modifications to reintroduction protocols are necessary. Five years after the reintroductions is a reasonable timeline for this evaluation because it would mirror the minimum post-delisting monitoring period used to evaluate the success of management programs after species have achieved recovery. It would also provide a suitable period to evaluate wolf population growth and abundance in order to assess progress towards achieving the State of Colorado's recovery goals, while concurrently minimizing wolf-related conflicts in the State. If modifications to wolf monitoring and management activities are needed, the Service will coordinate closely with CPW to ensure progress towards achieving recovery goals while concurrently minimizing wolf-related conflicts in Colorado.

## Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing gray wolves into the State of Colorado with the regulatory provisions in this proposed rulemaking will further the conservation of the species in the currently listed 44-State entity. The NEP status is appropriate for the introduced population; the potential loss of the experimental population would not appreciably reduce the likelihood of the survival of the species in the 44-State listed entity since ~~more than~~ 4,600 wolves are distributed across at least 6 different States in the ~~W~~western United States and the ~~w~~western Great Lakes.

## Required Determinations

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

Executive Order (E.O.) 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.

*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. 601 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if finalized, this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The majority of gray wolves in the Western United States are part of the NRM population, which no longer has protection under the Act. Despite increased incidences of human-caused mortality in the NRM population as a result of delisting, this population is stable to increasing, and wolves from this population have readily dispersed to other States, including Colorado. This proposed rule is modeled after previous NEP designations in Idaho, Montana, and Wyoming that facilitated the recovery of gray

wolves while allowing for the control of wolves that caused conflicts with livestock producers.

The State of Colorado has recognized the utility of NEP designations in recovering gray wolves while addressing the concerns of local, State, and Tribal governments, as well as private entities, and engaged in an extensive stakeholder outreach process to develop a State management plan with broad-based support (CPW 2022b). This process, comprising ~~of~~ a Stakeholder Advisory Group (~~SAG~~) including a diverse array of stakeholders such as agricultural producers, hunting guides, wolf conservation advocates, and other interests, and a Technical Working Group (~~TWG~~) comprising ~~of~~ gray wolf experts, assisted in the formulation of an impact-based management matrix and the overall Colorado Gray Wolf Management and Restoration Plan.

The reduced restrictions on taking problem wolves (see definition above under *Management Restrictions, Protective Measures, and Other Special Management*) in this ~~proposed~~ rule, relative to endangered species that receive the full protections of ~~s~~Sections 7 and 9 of the Act, will make the management of wolves easier and more effective, thus reducing the economic losses that result from depredation of wolves on livestock and guard animals and dogs. Furthermore, a State program to compensate livestock producers who experience livestock losses caused by wolves is being developed and will be implemented upon CPW Commission approval. As a point of reference, compensation for livestock losses in Montana in 2021 totaled \$103,815.95 (Parks et al. 2022, p. 19), and compensation in Wyoming for the same period totaled \$208,124.00 (~~W~~~~G~~~~F~~~~D~~~~Y~~~~o~~~~m~~~~i~~~~n~~~~g~~~~G~~~~a~~~~m~~~~e~~~~a~~~~n~~~~d~~~~F~~~~i~~~~s~~~~h~~~~D~~~~e~~~~p~~~~a~~~~r~~~~t~~~~m~~~~e~~~~n~~~~t~~ et al. 2022, pp. 23–24). We expect

compensation levels in Colorado to be similar, although compensation amounts can vary considerably from year to year (W ~~GFD~~ ~~Yoming Game and Fish Department~~ et al. 2022, ~~f~~Figure 19). The potential effect on livestock producers in western States is very small, but more flexible wolf management will provide benefits to stakeholders and livestock producers by providing options to protect assets.

*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 proposed rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, that, if adopted, 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. Small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This proposed 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). This proposed NEP designation for gray wolves in Colorado 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, this proposed rule will not have significant implications concerning taking of private property by the Federal ~~G~~government. This proposed rule will substantially advance a legitimate government

interest (conservation of a listed species) and will not present a bar to all reasonable and expected beneficial use of private property. Because of the regulatory flexibility provided by NEP designations under section 10(j) of the Act, we believe that the increased flexibility in this regulation and State or Tribal lead wolf management will reduce regulatory restrictions on private lands and will result in minor positive economic effects for a small percentage of livestock producers.

*Federalism (E.O. 13132)*

In accordance with Executive Order 13132, this ~~proposed rule regulation~~ will not have significant ~~F~~Federalism effects. This ~~proposed~~ rule will not have substantial direct effects on the States, on the relationship between the States and the Federal Government, or on the distribution of power and responsibilities among the various levels of government. CPW requested that we undertake this rulemaking to support the conservation of wolves in the 44-State entity and in Colorado and to provide increased take authority to resolve wolf conflicts, which we believe will assist with conservation of the species. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially affected. This ~~proposed special~~ rule operates to maintain the existing relationship between the States and the Federal ~~G~~overnment and is being undertaken at the request of CPW. We have endeavored to cooperate with CPW and other State agencies in the preparation of this ~~proposed~~ rule. Therefore, this ~~proposed~~ rule does not have significant ~~F~~Federalism effects or implications to warrant the preparation of a ~~F~~Federalism ~~a~~Assessment pursuant to the provisions of Executive Order 13132.

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

In accordance with Executive Order 12988 (February 7, 1996, 61 FR 4729), the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

*Paperwork Reduction Act*

This proposed rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). 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. OMB has previously approved the information collection requirements associated with permitting and reporting requirements associated with native endangered and threatened species, and experimental populations, and assigned the following OMB Control Numbers:

- 1018–0094, “Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR parts 10, 13, and 17” (expires January 31, 2024), and
- 1018–0095, “Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84” (expires September 30, 2023).

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we are in the process of analyzing the impacts of this proposed rule. On July 21, 2022, we published a document in the *Federal Register* [that was a notification of announcing](#) our intent to prepare an environmental impact statement (EIS) to evaluate the

potential environmental impacts of issuing a proposed rule as requested by the State of Colorado for its reintroduction and management of the gray wolf (87 FR 43489). We accepted comments until August 22, 2022. Based on any new information resulting from public comment received on the notification of intent or on this proposed rule, we will determine if there are any significant impacts or effects that would be caused by implementing this proposed rule. We will make the draft ~~EIS environmental impact statement~~ available for public inspection and comment when it is complete. All appropriate NEPA ~~analysis documents~~ will be finalized before this proposed rule is finalized.

*-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, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

*Clarity of This Regulation (E.O. 12866)*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. -For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### **References Cited**

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Authors**

The primary authors of this proposed rule are the staff members of the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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

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

#### **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 § 17.84 by adding~~revising~~ paragraph (a) to read as follows:

§ 17.84 Special rules—vertebrates.

(a) Wolf, gray (*Canis lupus*). ~~(1) The regulations in this paragraph (a) sets forth the provisions of a rule to establish an experimental population of gray wolves. The Service finds that establishment of an experimental population of gray wolves as described in this paragraph (a) will further the conservation of the species.~~

**Commented [WS9]:** Is “reestablishment” appropriate? Or should it just be “establishment”?

~~(2) Determinations. The gray wolves (wolf)-identified in paragraphs (a)(39) and of this section constitute a nonessential experimental population (NEP) under § 17.81(c)(2). These wolves will be managed in accordance with the respective provisions of this rule paragraph (a) in the boundaries of the nonessential experimental population (NEP) area within the State of Colorado or any Tribal reservation found in the State that has a wolf management plan, as further provided in this rule paragraph (a). Furthermore, the State of Colorado or any Tribe within the State that has a wolf management plan consistent with this rule can petition the Service to assume the lead authority for wolf management under this rule within the borders of the NEP area in the State or reservation as set forth in paragraph (a)(11) of this section.~~

~~(2) Purpose of the rule. The Service finds that reestablishment of an experimental population of gray wolves, as defined in this paragraph (a), will further the conservation of the species. The Service also finds that the experimental population is not essential under § 17.81(c)(2).~~

**Commented [WS10]:** Is “reestablishment” appropriate? Or should it just be “establishment”?

~~(3) Designated area. The site for this experimental population is within the historical range of the species. The Colorado NEP area encompasses the entire State of Colorado. All wolves found in the wild within the boundary of the Colorado NEP area are considered nonessential experimental animals. Any wolf that is outside the Colorado~~

**Commented [WS11]:** I think it makes more sense to have the defined geographic area of the NEP closer to the beginning of the rule, so I moved it to paragraph (3).

NEP area, with the exception of wolves in the States of Idaho, Minnesota, Montana, Wyoming, and portions of the States of Oregon, Washington, and Utah, is considered endangered. Any wolf originating from the Colorado NEP area and dispersing beyond its borders may be managed by the wolf management regulations established for that area or may be returned to the Colorado NEP area if it has not been involved in conflicts with people, or it may be removed if has been involved with conflicts with people.

(43) Definitions. Key terms used in this rule paragraph (a) of this section have the following meanings:

*Active den site*—A den or a specific above-ground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

*Breeding pair*—An adult male and an adult female wolf that, during the previous breeding season, produced at least two pups that survived until December 31 of the year of their birth.

*Designated Agent*—~~Includes~~ Federal agencies authorized or directed by the Service, ~~and~~ the State of Colorado, or Tribes within the State ~~that have~~with wolf management plans that provide for the conservation and management of wolves ~~and that~~ ~~and~~ have established ~~a~~ cooperative agreements or ~~m~~Memorand~~u~~m~~a~~ of ~~a~~Agreement (MOA~~s~~) with the ~~Service, Federal agencies, the State of Colorado, or Tribes within the State may become “designated agents” through cooperative agreements with the Service whereby they agree to assist the Service to implement all or portions of this rule. If federal agencies, the State of Colorado, or Tribes within the State become “designated agents” through a cooperative agreement, the Service will help coordinate their activities and retain authority for program direction, oversight, and guidance to ensure wolf~~

**Commented [WS12]:** This term is not used in the regulatory text. The definitions paragraph should contain only terms used in the rule.

**Commented [WS13]:** This term is not used in the regulatory text. The definitions paragraph should contain only terms used in the rule.

**Commented [WS14]:** The information provided here is way too detailed for a definitions section. I have moved it into other paragraphs in the rule text.

~~conservation and management activities are conducted within the provisions of this rule. The State of Colorado and Tribes within the State with wolf management plans also may become “designated agents” by submitting a petition to the Service to establish an MOA under this rule. Once accepted by the Service, the MOA may allow the State of Colorado or Tribes within the State to assume lead authority for wolf conservation and management within their respective jurisdictions and to implement the portions of their State or Tribal wolf management plans that are consistent with this rule. The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this rule, issuing written authorizations for wolf take on reservations without wolf management plans, and an annual review of the State or Tribal program to ensure consistency with this rule. Under either a cooperative agreement or an MOA, no management outside the provisions of this rule is allowed unless additional public comment is solicited and this rule is modified accordingly.~~

*Domestic animals*—Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including for use as pets. This term includes livestock ~~(as defined below)~~ and dogs.

*Intentional harassment*—The deliberate harassment of wolves, including by less-than-lethal munitions, that are designed to cause physical discomfort and temporary physical injury but not death. The wolf may have been tracked, waited for, chased, or searched out and then harassed.

*In the act of attacking*—The actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a

reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.

*Landowner*—~~Any of the following entities:~~

(i) An owner or lessee of private land, or their immediate family members, or the owner's employees, contractors, or volunteers who are currently employed to actively work on that private land.

(ii) ~~In addition, the owner(s) (or their employees or contractors) of livestock that are currently and legally grazed on that private land and other leaseholders on that private land (such as outfitters or guides who lease hunting rights from private landowners), are considered landowners on that private land for the purposes of this regulation.~~

(iii) ~~Private land, under this regulation, also includes all non-Federal land and land within Tribal reservations.~~ Individuals legally using Tribal lands in the State of Colorado with wolf management plans ~~are considered landowners for the purposes of this rule.~~

(iv) ~~"Landowner" in this regulation includes~~ legal grazing permittees or their current employees on State, county, or city public or Tribal grazing lands.

*Livestock*—Cattle, sheep, pigs, horses, mules, goats, domestic bison, and herding and guarding animals (alpacas, llamas, donkeys, and certain breeds of dogs commonly used for herding or guarding livestock). Livestock ~~does not include~~ dogs that are not being used for livestock guarding or herding.

*Non-injurious*—Does not cause either temporary or permanent physical damage or death.

*Opportunistic harassment*—Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

*Private land*—All land other than that under Federal Government ownership and administration and including Tribal reservations.

*Problem wolves*—Wolves that we or our designated agent(s) confirm to have attacked any other domestic animals on private land twice within a calendar year ~~are considered problem wolves for purposes of agency wolf control actions.~~

*Public land*—Federal land such as that administered by ~~the Service, the~~ National Park Service, ~~Service,~~ Bureau of Land Management, ~~Bureau of Reclamation, U.S. Department of Agriculture's~~ DA Forest Service, ~~Bureau of Reclamation,~~ Department of Defense, or other agencies with in the Federal Government.

*Public land permittee*—A person or that person's employee who has an active, valid Federal land-use permit to use specific Federal lands to graze livestock or operate an outfitter or guiding business that uses livestock and. ~~In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.~~

This ~~term~~ definition does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, or Christmas trees, ~~or~~ logging, mining, oil or gas development, or other uses that do not require livestock.

~~In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.~~

*Remove*—Place in captivity, relocate to another location, or kill.

*Research*—Scientific studies resulting in data that will lead to enhancement of the survival of the gray wolf.

*Rule*—~~Federal regulations~~ “~~—T~~~~his rule” or “this regulation” refers to this proposed NEP regulations in this paragraph (a).~~

*State land*—Lands owned, managed, and leased by the State of Colorado for the purpose of generating revenue for the support of Colorado public schools.

*Unacceptable impact*—Impact to ungulate population or herd where a State or Tribe has determined through scientific investigations that wolves are one of the major causes of the population or herd not meeting established State or Tribal management goals.

*Ungulate population or herd*—An assemblage of wild ungulates living in a given area.

*Wounded*—Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf bite.

(~~54~~) *Allowable forms of take of gray wolves*. Take of gray wolves in the experimental population is allowed -only in the se specific circumstances ~~described under this paragraph (a)(4), is allowed~~: opportunistic harassment; intentional harassment; take on private land; take on public land except land administered by the Service and the National Park Service ~~and the U.S. Fish and Wildlife Service~~; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; take for research purposes;

**Commented [WS15]:** This term is not used in the regulatory text. The definitions paragraph should contain only terms used in the rule.

**Commented [WS16]:** This term is not used in the regulatory text. The definitions paragraph should contain only terms used in the rule.

**Commented [WS17]:** This term is not used in the regulatory text, except for in the definition of “unacceptable impact” (which is not used in the regulatory text). The definitions paragraph should contain only terms used in the rule.

and take to protect stock animals and ~~dogs~~. ~~Other than as expressly provided by the regulations~~ in this rule, all other forms of take are considered a violation of section 9 of the Act. Any wolf or wolf part taken legally must be turned over to the Service unless otherwise specified in this ~~rule paragraph (a)~~. Any take of wolves must be reported as ~~set forth outlined~~ in paragraph (a)(6) of this section.

**Commented [WS18]:** “Stock animals” is not defined, but “livestock” is. Please be consistent with using the defined terms. If you prefer “stock animals,” then define that term.

(i) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or ~~a~~ designated agent(s) within 7 days as ~~set forth outlined in~~ paragraph (a)(6) of this ~~section~~.

**Commented [WS19]:** Paragraph (a)(6) has no such 7-day reporting requirement.

(ii) *Intentional harassment.* After we or ~~a~~ designated agent(s) have confirmed wolf activity on private land, on a public land grazing allotment, or on a Tribal reservation, we or ~~the~~ designated agent(s) may issue written take authorization valid for not longer than 1 year, with appropriate conditions, to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization.

(iii) *Take by landowners on their private land.* Landowners may take wolves on their private land in the following two additional circumstances:

(A) Any landowner may immediately take a gray wolf in the act of attacking ~~(wound, harass, molest, or kill)~~ livestock or dogs (working or pet) on their private land. ~~To preserve physical evidence that the livestock or dogs were recently attacked by a wolf or wolves, t~~he carcass and surrounding area must not be disturbed ~~in order to preserve physical evidence that the livestock or dogs were recently attacked by a wolf or wolves.~~ The Service or ~~their~~ designated agent(s) must be able to confirm that the livestock or

dogs were wounded, harassed, molested, or killed by wolves. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(B) At the Service's or ~~our~~ designated agent ~~'(s)~~ direction, the Service or designated agent ~~(s)~~ may issue a "shoot-on-sight" written take ~~authorization~~ of limited duration (45 days or ~~fewerless~~) to a landowner or their employees to take up to a specified (by the Service or our designated agent ~~(s)~~) number of wolves on their private land if:

**Commented [WS20]:** I changed the word "authorization" to "permit" to be consistent with subparagraph (4). But I don't know which word is appropriate in this usage.

~~(1)~~ The landowner has had at least one depredation by wolves on livestock that has been confirmed by the Service or our designated agent ~~(s)~~ within the last 30 days; and

~~(2)~~ The Service or our designated agent ~~(s)~~ ~~has~~ determined that problem wolves ~~are~~ routinely ~~occurpresent~~ on the private land and present a significant risk to the health and safety of livestock; and

**Commented [WS21]:** Changed "present" to "occur" to prevent having "present" in this usage followed immediately by "present" as a verb with another meaning.

~~(3)~~ The Service or our designated agent ~~has(s) have~~ authorized lethal removal of wolves from ~~thoseat~~ same private lands.

~~(4) The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule.~~ These ~~permits~~ may be terminated at any time once threats have been resolved or minimized.

**Commented [WS22]:** This provision is provided above in paragraph (A).

(iv) *Take on public land.* Any livestock producer and public land permittee (see definitions in paragraph (a)(3) of this section) who is legally using public land under a valid Federal land-use permit may immediately take a gray wolf in the act of attacking

~~his/her~~ livestock on the person's ~~his/her~~ allotment or other area **authorized** for the person's ~~his/her~~ use without prior written **authorization**.

(A) The Service or ~~their~~ designated agent(~~s~~) must be able to confirm that the livestock or dog were wounded, harassed, molested, or killed by a wolf or wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed, ~~in order~~ to preserve physical evidence that the take was conducted according to this rule. Any person legally present on public land, except land administered by the Service or the National Park Service ~~or U.S. Fish & Wildlife Service~~, may immediately take a wolf that is in the act of attacking the individual's stock animal or dog, provided conditions ~~described~~ **noted** in paragraph (a)(4)(iii)(A) of this section for private land (i.e., "in the act of attacking") ~~"taking of wolves in the act on private land"~~ **are met**.

**Commented [WS23]:** I didn't know what the quoted material was supposed to mean, but I tried to make the cross-reference reflect the same info.

(B) At the Service's or our designated agent(~~s~~) direction, the Service or designated agent(~~s~~) may issue a "shoot-~~on-sight~~" written take **authorization** of limited duration (45 days or ~~fewerless~~) to a public land grazing permittee to take up to a specified (by the Service or our designated agent(~~s~~)) number of wolves on that permittee's active livestock grazing allotment if all of the following situations occur:

(1) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by the Service or our designated agent(~~s~~) within the last 30 days; ~~and; and~~

(2) The Service or our designated agent ~~has(s) have~~ determined that problem wolves ~~are~~ routinely ~~occur present on~~ that allotment and present a significant risk to the health and safety of livestock; ~~and; and~~

**Commented [WS24]:** Changed "present" to "occur" to prevent having "present" in this usage followed immediately by "present" as a verb with another meaning.

(3) The Service or our designated agent(s) have authorized lethal removal of wolves from that same allotment.

~~(4) The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule.~~ These permits may be terminated at any time once threats have been resolved or minimized.

(v) Agency take of wolves that repeatedly depredate livestock.

The Service or our designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of problem wolves.

The Service or our designated agent(s) will consider:

(A) Evidence of wounded livestock, dogs, or other domestic animals, or remains of livestock, dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock, dogs, or domestic animals;

(B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken;

(C) Evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that ???

(vi) Take in defense of human life. Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without demonstration of an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

**Commented [WS25]:** This is an incomplete statement. Either complete it or remove it.

**Commented [WS26]:** How can someone demonstrate after a wolf is killed that the person was experiencing an immediate and direct threat to human life?

(vii) *Take to protect human safety.* We or our designated agent(s) may promptly remove any wolf that we or our designated agent(s) determines to be a threat to human life or safety.

(viii) *Incidental take.* Take of a gray wolf is allowed if the take is accidental and/or incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported within 24 hours as set forth at paragraph (a)(6) of this section. We may refer incidental take that does not meet these provisions to the appropriate authorities for prosecution. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such take, or it was not reported within 24 hours (we may allow additional time if access to the site of the take is limited), and we may refer such taking to the appropriate authorities for prosecution.

Shooters have the responsibility to identify their target before shooting. 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.

(ix) *Take under permits.* Any person with a valid permit issued by the Service under 50 CFR 17.32, or our designated agent(s), may take wolves in the wild, pursuant to terms of the permit.

(x) *Additional take authorization for agency employees.* When acting in the course of official duties, any employee of the Service or our designated agent(s) may take a wolf or wolf-like canid for the following purposes:

- (A) Scientific purposes;
- (B) To avoid conflict with human activities;
- (C) To further wolf survival and recovery;

**Commented [WS27]:** I don't understand this, i.e., refer to "appropriate authorities for prosecution." Wouldn't this type of investigation and potential law enforcement action be something that FWS would do internally? Or are you talking about DOJ? I assume you are not talking about local or State law enforcement.

**Commented [WS28]:** I don't understand this. Wouldn't this type of investigation and potential prosecution be something that FWS would do internally? Or are you talking about DOJ? I assume you are not talking about local or State law enforcement.

(D) To relocate wolves that have moved outside of the NEP back into the NEP;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To dispose of a dead specimen;

(G) To salvage a dead specimen that may be used for scientific study;

(H) To aid in law enforcement investigations involving wolves; or

(I) To remove wolves or wolf-like canids with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent(s), from passing on or teaching those traits to other wolves.

(J) Such take must be reported to the Service within 7 days as ~~set forth outlined~~ in paragraph (a)(~~66~~) of this ~~section~~, and specimens are to be retained or disposed of only in accordance with directions from the Service.

**Commented [WS29]:** Paragraph (a)(6) has no such 7-day reporting requirement.

(xi) *Take for research purposes.* We may issue permits under 50 CFR 17.32, or our designated agent(s) may issue written **authorization**, for individuals to take wolves in the wild pursuant to approved scientific study proposals. Scientific studies should be reasonably expected to result in data that will ~~lead~~ to development of sound management of the gray wolf and ~~lead~~ to enhancement of its survival as a species.

(xii) *Take to protect stock animals and dogs.* ~~Any~~ person legally present on private or public land, except land administered by the ~~Service or the~~ National Park Service ~~or U.S. Fish and Wildlife Service~~, may immediately take a wolf that is in the act of attacking the individual's stock animal or dog, provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The person must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to

**Commented [WS30]:** Take of livestock and dogs seems to be covered in paragraphs (iii) and (iv). Why/how are the provisions in this paragraph different? Should these sections be combined or one section eliminated to avoid duplication?

confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this rule, the person must not disturb the carcass and the area surrounding it. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

~~(65)~~ *Reporting requirements.* Except as otherwise specified in ~~this rule paragraph (a) of this section~~ or in a **permit**, any take of a gray wolf must be reported to the Service or our designated agent~~(s)~~ within 24 **hours**. We will allow additional reasonable time if access to the site is limited. Report any take of wolves, including opportunistic harassment, to U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office Supervisor (134 Union Boulevard, Suite 670, Lakewood, Colorado 80225, 303-236-4213), or a Service-designated agent of another Federal, State, or Tribal agency. Unless otherwise specified ~~in this in-paragraph (a) of this section~~, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

~~(76)~~ *Prohibitions.* Take of any gray wolf in the ~~NEP experimental population~~ is prohibited, except as provided in paragraph (a)~~(55)~~ of this section. Specifically, the following actions are prohibited by this rule:

(i) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in ~~this paragraph (a) of this section~~ or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.

**Commented [WS31]:** Other paragraphs of this rule provide for a 7-day reporting period. Which time period is correct?

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (a) section.

~~(7) Designated area. The site for this experimental population is within the historical range of the species. The Colorado NEP area encompasses the entire State of Colorado. All wolves found in the wild within the boundary of the Colorado NEP area are considered nonessential experimental animals. With the exception of the States of Idaho, Minnesota, Montana, Wyoming, and portions of the States of Oregon, Washington, and Utah (see Figure 1, above), any wolf that is outside the Colorado NEP area is considered endangered. Any wolves originating from the Colorado NEP area and dispersing beyond its borders may be managed by the wolf management regulations established for that area or may be returned to the Colorado NEP area if it has not been involved in conflicts with people, or may be removed if has been involved with conflicts with people.~~

(8) ~~Monitoring.~~ Gray wolves in the ~~NEP experimental population areas~~ will be monitored by radio telemetry or other standard wolf population monitoring techniques as appropriate. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or our designated agent(s) and given appropriate care. Such an animal will be released back into its respective area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(9) ~~Review and Evaluation of the Success or Failure of the NEP.~~ Radio transmitters, remote cameras, surveys of roads and trails to document wolf sign, and other

monitoring techniques will be used to document wolf reproductive success, abundance, and distribution in Colorado post-release.

~~(i)- To evaluate progress toward achieving State downlisting and recovery criteria, tThe Service will summarize this information will be summarized in an annual report that describes wolf conservation and management activities that occurred in Colorado each calendar or biological year to evaluate progress towards achieving state downlisting and recovery criteria. -The annual report may include, but not be limited to: post-release wolf movements and behavior; wolf minimum counts or abundance estimates; reproductive success and recruitment; territory use and distribution; cause-specific wolf mortalities; and a summary of wolf conflicts and associated management activities to minimize wolf conflict risk.~~

~~(ii) To assess the reintroduction program, tThe Service will informally evaluate Colorado’s wolf reintroduction and management program in a summary report each year that wolf reintroductions occur in the Sstate and for a minimum of 5 years after reintroductions are complete. If the Service The evaluations on this time frame will allow the Service to assess the reintroduction program and to coordinate with CPW if it is determines d-that modifications to reintroduction protocols are necessary. Furthermore, the evaluation period post reintroductions is the same as the minimum post delisting monitoring period used to evaluate the success of management programs after species have achieved recovery and been removed from the protections of the Act. Similarly, this will provide a set period of time with which the Service will evaluate wolf population growth and abundance to assess progress towards achieving state recovery in Colorado while concurrently minimizing wolf related conflicts in the State. If modifications to and~~

**Commented [WS32]:** I assume from the info in the subparagraph that the Service is preparing this annual report. If another entity will have this reporting responsibility, please change the reg text accordingly.

**Commented [WS33]:** This type of background information is more appropriate for the preamble than in the reg text.

wolf monitoring and management activities are needed, the Service will coordinate closely with the State to ensure progress towards achieving recovery goals while concurrently minimizing wolf-related conflicts in Colorado.

~~(10)~~ Designated agents. Federal agencies, the State of Colorado, or Tribes within the State may become designated agents through cooperative agreements with the Service. Under the cooperative agreement, these entities agree to assist the Service to implement all or portions of this rule, and the Service helps coordinate their activities. The Service retains authority for program direction, oversight, and guidance to ensure wolf conservation and management activities are conducted within the provisions of this rule. The State of Colorado and Tribes with wolf management plans also may become designated agents by submitting a petition to the Service to establish an MOA under this rule, as described in paragraph (a)(11) of this section.

(11) Memorandum of Agreement (MOAs). The State of Colorado or any Tribe within the State with gray wolves, subject to the terms of this paragraph (a), may petition the Service for an MOA to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in the State or on that Tribal reservation, and implement all parts of their State or Tribal plan that are consistent with this rule. Once accepted by the Service, the MOA may allow the State of Colorado or Tribes within the State to assume lead authority for wolf conservation and management within their respective jurisdictions and to implement the portions of their State or Tribal wolf management plans that are consistent with this rule. Under an MOA, The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this rule, issuing written authorizations

for wolf take on reservations without wolf management plans, and ~~conducting an annual review of the State or Tribal program to ensure consistency with the provisions of this rule. Under either a cooperative agreement or an MOA, no management outside the provisions of this rule is allowed unless additional public comment is solicited and this rule is modified accordingly.~~

(i) A State or Tribal petition for wolf management under an MOA must ~~show:~~

(A) Demonstrate t~~That~~ authority and management capability reside in the State or Tribe to conserve the gray wolf throughout the geographical range of the experimental population within the State of Colorado or within the Tribal reservation;~~:-~~

(B) Demonstrate t~~That~~ the State or Tribe has an acceptable conservation program for the gray wolf; throughout the NEP area within the State or Tribal reservation, including the requisite authority and capacity to carry out that conservation program;~~:-~~

(C) D~~A descri~~beption of exactly what parts of the State or Tribal plan the State or Tribe intends to implement within the framework of this rule; ~~and-~~

(D) Include provisions for providing a report to the Service on at least an annual basis that ~~A descri~~besption of the State or Tribal management progress ~~will be reported to the Service on at least an annual basis~~ so the Service can determine if State or Tribal management was conducted in full compliance with this rule.

(ii) The Service will approve such a petition and enter into an MOA with the State of Colorado or appropriate Tribal representative upon a finding that the applicable criteria have been~~are~~ met and that approval is not likely to jeopardize the continued existence of the gray wolf.

**Commented [WS34]:** Jeopardize the continued existence of the gray wolf anywhere? Just in the NEP? How could approval of such an MOA that has jurisdiction only in Colorado “jeopardize the continued existence of the gray wolf”?

~~(iii) If the Service approves the petition, the Service will enter into an MOA with the State of Colorado or appropriate Tribal representative.~~

~~(iii+)~~ An MOA for State or Tribal management ~~as provided in this section~~ may allow the State of Colorado or any Tribe within the State to become designated agents and lead management of the ~~NEP nonessential experimental gray wolf population~~ within the borders of their jurisdictions in accordance with the State's or Tribe's wolf management plan, except that:

(A) The MOA may not provide for any form of management inconsistent with the protection provided to the species under this rule, without further opportunity for appropriate public comment and review and amendment of this rule.;

(B) The MOA cannot vest the State of Colorado or any Tribe within the State with any authority over matters concerning section 4 of the Act (determining whether a species warrants listing).; ~~and~~

(C) In the absence of a Tribal wolf management plan or cooperative agreement, the MOA cannot vest the State of Colorado with the authority to issue written **authorizations** for wolf take on reservations. The Service will retain the authority to issue these written **authorizations** until a Tribal wolf management plan is developed.

(D) The MOA for State or Tribal wolf management must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce the State or Tribal management program prohibitions on take.

(E) The MOA may not **authorize** wolf take beyond ~~what is included that stated~~ in the regulations in this paragraph (a) experimental population rules but may be more restrictive.

**Commented [WS35]:** I don't understand the purpose of this provision. Why would anyone assume such an MOA would give the State or a Tribe listing authority for the gray wolf or any other species? Suggest removing it.

(iv) The authority for the MOA ~~is~~~~will be~~ the Act, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and any applicable treaty.

(v) ~~F~~~~In order for~~ the MOA to remain in effect, the Service must find, on an annual basis, that the management under the MOA is not jeopardizing the continued existence of the gray ~~wolf~~. The Service or State or Tribe may terminate the MOA upon 90 days' notice if:

(A) Management under the MOA is likely to jeopardize the continued existence of the gray ~~wolf~~;

(B) The State or Tribe has failed materially to comply with this rule, the MOA, or any relevant provision of the State or Tribal wolf management plan; ~~or~~

(C) The Service determines that biological circumstances within the range of the gray wolf indicate that delisting the species is warranted; or

(D) The States ~~or Tribes~~ determine ~~s~~ that they no longer want the wolf management authority vested in them by the Service in the MOA.

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**Martha Williams,**  
*Director,*  
*U.S. Fish and Wildlife Service.*

**Commented [WS36]:** See my previous comment. I don't see how this MOA could "jeopardize the continued existence of the gray wolf." That statement is so broad and expansive. Do you mean "jeopardize the continued existence of the gray wolf in the NEP"?

**Commented [WS37]:** Same comment.