

From: [Zerrenner, Adam](#)
To: [Niva, Liisa M](#); [Hansen, Craig](#); [Broderdorp, Kurt](#); [LeBlanc, Darren](#); [Becker, Scott A](#)
Subject: Fw: WOLF 10(j): DCN FR 5308 | URGENT - Colorado wolf (Canis lupus) Final 10(j) rule and Final EIS
Date: Friday, August 4, 2023 7:45:43 AM
Attachments: [20230715_DOI_NTR_Final_CO_Wolf_10j_v1.mhcomments.docx](#)
[20230715_NOA_for_FEIS_DRD_v2.mhcomments.docx](#)
[20230715_DOI_Clearance_Briefing_Paper_v1.mhedits.docx](#)
[20230717_Draft_ROD_v1.mhcomments.docx](#)
[image001.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Good Morning,

For Matt's questions - I have put names of folks below to respond and discuss when we talk to Matt. Let me know if we should discuss any of this before our call. Thanks!

From: Hogan, Matt <Matt_Hogan@fws.gov>
Sent: Friday, August 4, 2023 5:51 AM
To: Bogardus, Michelle <michelle_bogardus@fws.gov>; Niva, Liisa M <Liisa_Niva@fws.gov>; Nelson, Marjorie (Marj) <marjorie_nelson@fws.gov>; DeBerry, Drue <drue_deberry@fws.gov>; Munoz, Anna <anna_munoz@fws.gov>; Hansen, Craig <Craig_Hansen@fws.gov>; Zerrenner, Adam <Adam_Zerrenner@fws.gov>
Subject: RE: WOLF 10(j): DCN FR 5308 | URGENT - Colorado wolf (Canis lupus) Final 10(j) rule and Final EIS

Congratulations and THANKS for the good work to get this ready to submit to HQ! I have a few comments on the attached and also a few questions/requests per below. I hope we can discuss all at our briefing at 9 am today. Thanks!

- Timeline below is what I have sent to DC...see comments highlighted...concern about confusion, include getting to EPA for NEPA deadlines [Liisa - When draft FEIS / ROD are transmitted to FR](#)
- When do we anticipate we will get RSOL surname - [Liisa - working to address comments now and need to discuss on our call w/Matt- authority, MX wolf...](#)
- When do we anticipate we will get R1/R8 concurrence - [Craig and I believe we received R1?](#)
- Per R2 concurrence, did we address edits/comments they suggested? [Liisa/Craig - MX wolf and working with them](#)
- What is the status of the comms plan and does it need to be included with the package when it goes to DC [Have it and I believe yes, Craig?](#)
- Do we feel like we are coordinated with ES HQ on the contents of the rule and ROD [Craig](#)
- Before we submit to HQ, can we rearrange the documents in an order that makes sense for the reviewer... critical documents and documents needing surname/signature up front...supporting documents following [Craig](#)
- What is the status of setting up a briefing for the DRT [Liisa/Adam - Anna received BP to request DRT briefing 7/31 from Tom. What is status from DRD/RD? Powerpoint is under review and fatal flaw FEIS ready Friday 8/11 from contractor](#)
- What is the status of OIRA review and what is the last day that they could determine significant that would NOT impact out timeline [Liisa - Completed briefing 8/1 and follow up docs sent on ppt, draft FEIS and MX wolf economics; now right maybe 8/15?](#)
- What is the status of the permits for CO, NM, AZ, UT - [Liisa - working with RO to complete and notice in FR - timing of this Notice with NEPA / Rule notice needs to be discussed](#)
- Can you provide me a table that details the various take authorizations under the rule for easy reference to include states outside CO [Kurt](#)

There are **nine documents** that must be drafted, finalized, reviewed, surnamed, and signed over the next 11 months before the subject final rule becomes effective on **December 15**, a target date that ensures we accommodate Colorado Parks and Wildlife's (CPW's) **December 31, 2023**, release deadline and also accounts for the year-end holidays. These eight documents, listed in reverse order from the December 15,

2023, deadline are:

1. The **Final Rule**, which to become effective by **December 15** must publish in the *Federal Register* by Wednesday **November 15**. – **NTR says must clear DOI by Nov 3**
2. The **Final Record of Decision (ROD)**, which must be signed by either the **Regional Director** or the **Director** before the Director signs the Final Rule, so by Wednesday **November 8, 2023**.
3. The **Notice of Availability (NOA)** for the **Final Environmental Impact Statement (FEIS)** and **draft ROD**, which must publish in the *Federal Register* at least 30 days before the final ROD is signed, so by **Friday October 6, 2023**. **NTR says must clear DOI by Sept 29**
4. The **NOA for the 10(a)(1)(A) permits**, which should also publish by Friday **October 6, 2023**.
5. The **FEIS**, which is not signed but needs to travel with the package, is due to the RO by **July 13, 2023**.
6. The **draft ROD**, also due to the RO by **July 13, 2023**.
7. The **10(a)(1)(A) permits**, also due to the RO by **July 13, 2023**.
8. The **OIRA Significance Memo** for the final rule, which is due to the RO by April 24, 2023.
9. The intra-Service biological opinion

From: Bogardus, Michelle <michelle_bogardus@fws.gov>
Sent: Thursday, August 3, 2023 3:39 PM
To: Hogan, Matt <Matt_Hogan@fws.gov>
Subject: WOLF 10(j): DCN FR 5308 | URGENT - Colorado wolf (Canis lupus) Final 10(j) rule and Final EIS

Hi Matt - attached are the documents for the wolf 10(j) from ES.

~~~~~  
Michelle D. Bogardus (she/her)  
*Acting* Chief of Staff  
U.S. Fish and Wildlife Service, [Mountain-Prairie Region](#)  
Work Cell: 808-518-8326

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**From:** Bogardus, Michelle <michelle\_bogardus@fws.gov>  
**Sent:** Wednesday, August 2, 2023 3:53 PM  
**To:** Hogan, Matt <Matt\_Hogan@fws.gov>  
**Subject:** Fw: DCN FR 5308 | URGENT - Colorado wolf (Canis lupus) Final 10(j) rule and Final EIS

Please see note below for description of documents and surname.

Michelle

~~~~~  
Michelle D. Bogardus (she/her)
Acting Chief of Staff
U.S. Fish and Wildlife Service, [Mountain-Prairie Region](#)
Work Cell: 808-518-8326

From: Hansen, Craig <Craig_Hansen@fws.gov>
Sent: Tuesday, August 1, 2023 5:18 PM

To: Bogardus, Michelle <michelle_bogardus@fws.gov>

Cc: Broderdorp, Kurt <kurt_broderdorp@fws.gov>; Zerrenner, Adam <Adam_Zerrenner@fws.gov>; Niva, Liisa M <Liisa_Niva@fws.gov>; Backsen, Sarah <Sarah_Backsen@fws.gov>; Szuszwalak, Joseph A <joseph_szuszwalak@fws.gov>; Miller, Rachel A <rachel_miller@fws.gov>; Walton, Annette J <annette_walton@fws.gov>; Becker, Scott A <scott_becker@fws.gov>

Subject: DCN FR 5308 | URGENT - Colorado wolf (*Canis lupus*) Final 10(j) rule and Final EIS

DCN FR 5308 | URGENT - Colorado wolf (*Canis lupus*) Final 10(j) rule and Final EIS

Greetings, Michelle:

The Acting Colorado Field Supervisor, with direction from the Regional Director, asked that I electronically transmit the subject package directly to you. A screen-cap of the note-to-reviewer (NTR) is provided below for ease of reference, with a bulleted summary here:

- There are **11 documents** (12 including the NTR) associated with this package.
- They are attached to this email, and also available in this shared folder: [20230404_FR5308_Final_CO_Wolf_10j](#)
 - The **primary documents** are the
 - Final rule under section 10(j) of the Endangered Species Act,
 - The final environmental impact statement (EIS),
 - The draft ROD, and
 - The notice of availability (NOA) for the final EIS and the draft record of decision (ROD).
 - **Supporting documents** include: Literature cited, an information memo (IM) for the Regional Director, R6's NTR, and Department-required NTR and clearance briefing paper (CBP).
 - At this time, we await a few items for this package: RSOL concurrence (we are actively addressing a few comments from RSOL in the FEIS) and cross-regional concurrence from Regions 1 and 8 (which we expect by this Friday). Outreach has been decoupled from this surname package.
 - Please note that the Policy Review Branch (PRB) and the Recovery Branch at HQ have completed their preliminary reviews of this package. We addressed and incorporated all of their edits and suggestions.

We would appreciate the Regional Director Office's surname of the package by **Friday August 11, 2023**. We hope to transmit the package to HQ recovery on **Monday, August 14, 2023**, so this would allow us some time to address any needed changes to the documents.

Thank you for your assistance and for your review. We also appreciate the flexibility allowed for transmitting this urgent and expedited package. Please do not hesitate to contact any of us if we can be of any assistance at any time.

Sincerely,

Craig Hansen

Regional Recovery Coordinator and RO Recovery Project Manager for the gray wolf in Colorado

NOTE TO REVIEWER (NTR)

Final Rule: Establishment of a Nonessential Experimental Population of
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subject:	the Gray Wolf in Colorado
Level of Controversy	High
Date Submitted:	Tuesday, August 1, 2023
Prepared by:	Craig Hansen 303-236-4749
Identify DTS Assignment #:	DCN FR 5308 (Files also available on Teams)
Critical Dates (if any):	<input type="checkbox"/> Check if critical date is not applicable <input checked="" type="checkbox"/> R6 RD or DRD Surname by August 11, 2023 In order to meet the State of Colorado's gray wolf release deadline, we must transmit this package to HQ by Monday August 14, 2023. <i>The Information Memo (IM) and Clearance Briefing Paper (CBP) provide a table of critical dates for surname by HQ and clearance by the Department.</i>
Description/ Main Message:	<p>This surname package for our final rule to establish a nonessential experimental population of the gray wolf in the State of Colorado under section 10(j) of the Endangered Species Act includes the following 14 documents:</p> <ul style="list-style-type: none"> • The final section 10(j) rule (<i>must clear DOI by November 3</i>) • A notice of availability (NOA) for the final environmental impact statement (EIS) and draft record of decision (ROD) (<i>must clear DOI by September 29</i>) • The final EIS • The draft ROD • DOI's Clearance Briefing Paper (CBP) • Information Memo (IM) for the Regional Director • DOI's Note to Reviewer (NTR) • R6's Yellow Surname Sheet for surname by the RD or DRD • List of literature cited in the final rule • Signed Intra-Service biological opinion • Cross-Regional Concurrence from Regions 2 and 3, and cross-program concurrence from OLE • This NTR. <p>As of August 1, 2023, we await the following, which we will add to the package as soon as possible:</p> <ul style="list-style-type: none"> • Outreach Materials from the OC • RSOL Concurrence • Cross-Regional Concurrence from Regions 1 and 3 <p>Following the publication of our proposed rule on February 17 (88 FR 10258), and our review of public comments received during the public comment period, which closed on April 18, 2023, we have prepared a final rule to designate a nonessential experimental population (NEP) of the federally endangered gray wolf (<i>Canis lupus</i>) in Colorado under section 10(j) of the Endangered Species Act (Act). This rule would contribute to the conservation of the federally listed entity, the gray wolf in the lower-44 States, and help support the State of Colorado's voter-mandated gray wolf reintroduction program. Changes from proposed to final rule were largely minor - mostly clarifications and corrections - except for the addition of the take provision for gray wolves that may be significantly affecting ungulate populations on tribal lands ("ungulate provision"). For the final rule to become effective by December 15, we must publish the final rule by November 15, 2023.</p> <p>We have also prepared a final environmental impact statement (EIS) and draft record of decision (ROD) for this action, which we must announce in the <i>Federal Register</i> at least 30-days before the ROD is signed. The notice of availability (NOA) for the FEIS and drOD also included in this package, must publish no later than October 6, 2023.</p>

	As of August 1, 2023, we await RSOL surname and cross-regional concurrence from <u>Regions 1 and 8</u> .
Files that require Digital Surname or Signature	REGIONAL DIRECTOR OR DEPUTY REGIONAL DIRECTOR: <ul style="list-style-type: none"> Surname the "Yellow Surname Sheet" PDF. OTHER REVIEWERS: <ul style="list-style-type: none"> Surname in DTS; and Surname the Yellow Digital Surname Sheet.
Contact for additional information	Lisa Niya , Colorado Field Office, 303-238-4779 Craig Hansen, Mountain-Prairie Regional Office, 303-238-4749



Craig Hansen
U.S. Fish & Wildlife Service, Region 6
Ecological Services - Branch of Classification & Recovery
Recovery Coordinator / Fish & Wildlife Biologist
Phone: (303) 236-4749 **Fax:** (303) 236-0027
Email: craig_hansen@fws.gov



[Our Mission](#)
[Video: Overview of the SSA](#)
[SSA Framework - SharePoint for Staff](#)
[Intro to the SSA @ NCTC: Course Schedule & Registration](#)
[Recovery Planning & Implementation \(RPI\) @ NCTC: Course Registration](#)
[Recovery Planning and Implementation \(RPI\)](#)
[The SSA Manuscript](#)
[SSA Reports on ECOS](#)
[Species with Recovery Plans on ECOS](#)
[National Listing Workplan](#)
[National Recovery Workplans](#)
[National Down and Delisting Workplan](#)
[Recovery Plans](#)
[Region 6 Recovery Resources](#)
[Writing Tips](#)
[Recovery Grants \(Internal\)](#)
[Region 6 ESA Practitioners' SharePoint](#)
For correspondence templates and resources,
please go to the [Correspondence OneDrive](#)
[Headquarters' Briefing Paper Template SharePoint](#).



NOTE: This e-mail correspondence and any attachments to and from this sender are subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties

Briefing Paper for Departmental Clearance of *Federal Register* Documents

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

II. **RIN** (for rulemaking documents): 1018–BG79

III. **Docket or tracking number:** FWS–R6–ES–2022–0100

IV. **DCN** (from DTS): FR00005021

V. **Summary:**

We have prepared a final rule to designate a nonessential experimental population of the federally endangered gray wolf (*Canis lupis*) in Colorado under section 10(j) of the Endangered Species Act (Act). This rule would contribute to the conservation of the federally listed entity, the gray wolf in the 44 States and help support the State of Colorado’s voter-mandated gray wolf reintroduction program.

VI. Is the action controversial? Yes. No.

If yes, please answer the following:

a. What are the controversial issues?

As with most of our actions for the gray wolf, this proposed rule would be controversial and of interest to a variety of stakeholders and the public. Many Federal and State agencies, local government officials, non-governmental organizations, agricultural producer groups, and landowners are interested in the development of the State of Colorado’s wolf management plan and this associated section 10(j) rule. Several states including Arizona, New Mexico, and Utah have expressed concern over Colorado’s reintroduction of gray wolves and potentially dispersing wolves from Colorado. Five states are participating as cooperating agencies (Arizona, Colorado, New Mexico, Utah and Wyoming).

Colorado Governor Jared Polis is very supportive of and personally engaged in wolf reintroductions. Local government officials and other stakeholders in the counties west of the Continental Divide have expressed concerns regarding wolf reintroduction and are especially concerned about the potential for domestic livestock depredation and negative effects on big game populations. Both Colorado Senators are tracking our progress and are interested in our support of the state reintroduction. Multiple counties and other local government agencies are participating as cooperating agencies.

The Service is committed to informing and coordinating on the section 10(j) rule with local Tribes, including the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe. The Ute Tribe in Utah is concerned about wolves reaching their lands. Informal consultation with these Tribes is ongoing, and formal consultation will take place in conjunction with this rulemaking and NEPA process. Tribes outside of Colorado have inquired about the rulemaking and we are providing² an informal webinar in early October, 2023.

Commented [HM1]: This would suggest we would have finished formal consultation by now...true?

We anticipate that some non-governmental organizations and the public, while generally supportive of reintroducing wolves to Colorado, may express concerns about possible management actions for the species. They may have an unfavorable view of section 10(j) rule provisions that potentially authorize lethal take of wolves to manage conflicts.

Commented [HM2]: Shouldn't this be past tense since we have had a public comment period?

b. Who will care about these issues?
A spectrum of stakeholders, as described above under VI(a).

c. How strongly will they care?
We anticipate strong interest and concerns from the various stakeholders mentioned above.

Commented [HM3]: Same comment as above

VII. Communications:

a. Has the bureau communications office coordinated with DOI communications staff?
 Yes. No.

If yes, please note whom you contacted and how (e.g., email, voicemail):

b. Does this document require a press release?
 Yes. No.

Press release title: TBD

VIII. Is timing critical? Yes. No.

Target date to clear DOI: 10/3/2023, or as priorities allow.

No-later-than date to clear DOI (if applicable): 9/29/2023.

If you provided an NLT date, please answer the following:

a. What is the main driver of the timing? Other

Under Colorado Revised Statute 33-2-105.8, the Colorado Parks and Wildlife (CPW) Commission must finalize their gray wolf reintroduction and management plan by December 31, 2023, and wolf reintroductions must occur by that same date. The Department and the Service have committed to completing the final section 10(j) rule by December 31, 2023. To meet this commitment, completion of the final rule and supporting NEPA analyses must occur quickly to allow time for publication of the rule and for it to become effective by NLT December 31, 2023.

Commented [BS4]: Seems like this should be filled in?

Commented [CMH5R4]: Thank you

Commented [HM6]: Don't understand these different dates and the timeline that I have and have sent to HQ says Target date to clear DOI Nov 3

Commented [BS7]: I made one little edit and for some reason it track-changed the entire paragraph – sorry! Just removing old references to the proposed rule.

b. What happens if the deadline is missed? The section 10(j) rule may not be in place as the State of Colorado begins their voter-mandated reintroduction efforts. Because gray wolves are currently listed as endangered in 44 states, including Colorado, without the 10(j) rule, gray wolves released in Colorado would receive the full protections of the Act, resulting in less management flexibility to address conflicts and promote stakeholder buy in.

IX. Background (use this space to provide additional helpful information):

The State of Colorado is leading the reintroduction effort of gray wolves in Colorado. Gray wolves in Colorado are currently federally listed as endangered under the Endangered Species Act (Act). The State of Colorado specifically requested that we develop a section 10(j) rule for gray wolves in Colorado to support their reintroduction program. Section 10(j) of the Act provides for the reintroduction of listed species and provides regulatory flexibility for these reintroduced populations. We developed this section 10(j) rule that will further the conservation of the gray wolf in the 44-State entity. It will also provide increased management flexibility if CPW and affected Tribes develop management plans that are consistent with the rule and that are formally approved by the Service. Integrating state and tribal management commitments in the rule proactively to build consistency between the rule and future management plans is key to address the uncertainty surrounding future Federal or state-led management of gray wolves in Colorado.

Commented [HM8]: Some of this paragraph reads like future tense but we should have done all these things in the final, no?

X. Is there an information collection associated with this document?

Yes. No.

If yes, please answer the following:

a. Does the document have any approved OMB control number(s)? Yes. No.

If yes, provide the OMB control number(s) and expiration date(s):

OMB Control Number 1018-0094, expires January 31, 2024

b. Does the document require a new OMB control number or a renewal of an existing approval?

If a new number or a renewal is required, what is the current status?

OMB approval is being requested and information and requests for comment on this new information collection is included in this rule.

XI. Approval is requested to send the document to:

The Office of the Federal Register for publication, or

OIRA for review.

XII. Primary contact:

Name: Gary Frazer

Phone: (202) 208-4646

Email: gary_frazer@fws.gov

Note to Reviewers

DTS #: FR0XXXX

Please provide a brief description in bullet format.

- This final rule establishes a nonessential experimental population (NEP) of the federally endangered gray wolf (*Canis lupis*) in Colorado under section 10(j) of the Endangered Species Act (Act).
- On November 3, 2020, Colorado voters approved the Gray Wolf Reintroduction Initiative that directs the Colorado Parks and Wildlife (CPW) Commission to take steps necessary to reintroduce gray wolves west of the Continental Divide by December 31, 2023.
- We developed this rule in cooperation with CPW to support their reintroduction program. Section 10(j) of the Act allows for populations of listed species planned to be reintroduced to be designated as “experimental populations.” This designation gives greater regulatory flexibility and discretion in managing the reintroduced species to encourage recovery in collaboration with partners, especially private landowners.
- We are requesting clearance from Exec Sec by November 3, 2023. This timeline is necessary so that a final rule can be published by November 15 and become effective NLT December 31, 2023.
- Additionally, we must publish the notice of availability (NOA) of the final environmental impact statement (EIS) at least 30-days prior to the publication of the final rule, so we request clearance of the NOA by September 29, 2023.
- Colorado Governor Jared Polis is very supportive of and personally engaged in wolf reintroductions. Both Colorado Senators are tracking our progress and are interested in our support of the state reintroduction.
- Coordination with Tribes is ongoing, including with the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe, and Tribes outside of Colorado that are concerned about fully protected wolves entering their lands.

Controversial: X

- Several states including Arizona, New Mexico, and Utah have expressed concern over Colorado’s reintroduction and potentially dispersing wolves from Colorado. Five states are participating as cooperating agencies (Arizona, Colorado, New Mexico, Utah and Wyoming) in the NEPA process.
- Local government officials and other stakeholders in the counties west of the Continental Divide have expressed concerns regarding wolf reintroduction and are especially concerned about the potential for domestic livestock depredation and negative effects on big game populations.
- Some non-governmental organizations and the public, while generally supportive of reintroducing wolves to Colorado, may express concerns about possible management

Commented [HM1]: Can we just say 30 days? Vs. at least?

Commented [BS2]: Words missing here?

Commented [CMH3R2]: Whoops, thank you

Commented [HM4]: Confusion per deadline above...rule by Nov 3, NOA by Sept 29? Can we simplify to avoid confusion?

Commented [HM5]: Haven't these concerns already been expressed?

actions for the species and may have an unfavorable view of section 10(j) rule provisions that potentially authorize lethal take of wolves to manage conflicts.

Non-Controversial:

Contact for additional information: Gary Frazer, Assistant Director – Ecological Services,
(202) 208-4646

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 the State of Colorado; Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a final environmental impact statement and draft record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (EIS) and draft record of decision (ROD) under the National Environmental Policy Act of 1969, as amended, for our intended action of establishing a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado. The State of Colorado (Colorado Parks and Wildlife or CPW) requested that the Service establish an NEP in conjunction with their State-led gray wolf reintroduction effort. Establishment of this NEP under section 10(j) Endangered Species Act of 1973 (Act), as amended (16 USC 1531 et seq.), would provide for allowable, legal, purposeful, and incidental take of the gray wolf within the State of Colorado, while also providing for the conservation of the species. In the FEIS, we analyzed the environmental consequences of a range of alternatives for our proposed rule. The action

would be implemented through a final rule. **DATES:** The Service will issue a record of decision no sooner than 30 days after publication of this notice of availability of the final EIS in the **Federal Register**.

Commented [A1]: Do we have flex to do less if this gets delayed in HQ and we need to implement the final rule in less than 30 days?

ADDRESSES: *Document availability:* The final EIS, draft ROD, and other supporting documents are available on the internet at <https://www.regulations.gov> at Docket No. FWS-R6-ES-2022-0100 and on the Service's website at <https://www.fws.gov/coloradowolf>, or from the office listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Liisa Niva, Acting 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, or by email at Colorado_wolf_10j@fws.gov. 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:

We announce the availability of the final environmental impact statement (EIS) and our draft record of decision (ROD) for the proposed establishment of a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado under section 10(j) of the Act. We developed the final EIS in compliance with the agency decision making requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended. Our final EIS provides updates, as needed, to

Commented [A2]: Should this still say proposed since this is accompanying our final rule and it will no longer be proposed?

information presented in the draft EIS, including revisions in response to issues raised in comments received during the public review period. We have described and evaluated all alternatives in our final EIS. Our draft decision is based on our review of the alternatives and their environmental consequences, as described in the final EIS.

Commented [A3]: Still a draft decision?

Background

On July 21, 2022 (87 FR 43489), we published a notice of intent to prepare an environmental impact statement (EIS) for this action and held in-person public scoping meetings on August 2, 3, 4, and virtually on August 10, 2022. Cooperating agencies included multiple Federal and state agencies, Tribal governments, and local governments. We also participated in tribal working groups and tribal coordination meetings. Additionally, we shared information with the public through a dedicated website, emails, in-person meetings, and webinars.

We published the proposed rule and noticed the availability of the draft EIS on February 17, 2023 (88 FR 10258), which opened a 60-day public comment period for both documents. During the public comment period, we hosted four in-person informational public meetings on March 14, 15, 16, and 28 and a virtual public meeting March 22, 2023. The public comment period closed on April 18, 2023. We received 4,290 pieces of correspondence during the public comment period, with 1 correspondence having 16,233 signatures. We developed our final EIS after assessing and considering all comments, both individually and collectively. Our response to the substantive comments that we received are provided as an appendix to the final EIS.

Authors

The primary authors of this notice are the staff members of the Colorado

Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Marjorie Nelson,
Acting Assistant Regional Director,
U.S. Fish and Wildlife Service.

U.S. Department of Interior, Fish and Wildlife Service

DRAFT RECORD OF DECISION

Establishment of a Nonessential Experimental Population of the Gray Wolf (*Canis lupus*) in the State of Colorado

This draft Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 40 Code of Federal Regulations 1505.2). The purpose of this draft ROD is to document the decision of the Service for the selection of an alternative to respond to the State of Colorado's request to implement a section 10(j) rule to establish a nonessential experimental population of the gray wolf (*Canis lupus*) in Colorado. This reintroduction effort is a result of Colorado Revised Statute (CRS) 33-2-105.8, passed on November 3, 2020, which directs the Colorado Parks and Wildlife (CPW) Commission to take the steps necessary to begin reintroductions of gray wolves to a portion of the species' historical range in Colorado by December 31, 2023. The alternatives considered have been fully described and evaluated in the September [planned] 2023 final environmental impact statement (EIS) for the project.

Commented [HM1]: Is this still a draft ROD?

This draft ROD states the Service's decision and presents the rationale for its selection. This ROD summarizes the alternatives considered in the final EIS and addresses the measures the Service adopted to avoid or minimize environmental harm from implementation of the selected alternative.

Decision

Based on a review of the alternatives and their environmental consequences, as described in the final EIS, the Service intends to implement alternative 1 (the preferred alternative). The selected action will be implemented through issuance of a final nonessential experimental population rule under section 10(j) (final 10(j) rule) of the Endangered Species Act of 1973 (Act), as amended (16 United States Code [USC] 1531 et seq.).

Alternatives Considered

The Service developed a range of alternatives, including alternative 1 (the preferred alternative), alternative 2, and a no-action alternative. As noted above, development of this 10(j) rule is a result of the citizen-initiated 2020 ballot measure in Colorado (Proposition 114) and the resulting CRS 33-2-105.8, which requires the CPW Commission to take the steps necessary to begin reintroductions of gray wolves to a portion of the species' historical range by December 31, 2023. The alternatives selected were developed during internal scoping, during which the Service considered the types of regulatory frameworks, consistent with section 10 of the Act, it may implement based on its federal authority under the Act; Federal priorities for management of gray wolf recovery; and the best available science. In addition, the selection of alternatives was based on information gained through the public scoping process and comments received from the public on the draft EIS. All proposed alternatives were considered, but not all were evaluated in detail in the EIS. The 16 additional alternatives, alternative elements, or alternative element themes were identified and not evaluated further because they were outside the Service's legal authority or did not substantially meet the purpose of, and need for, the proposed action, including those that were not economically or

technically practicable or feasible. Alternatives brought forward for detailed analysis in the EIS were alternative 1 (the preferred alternative), alternative 2, and the no-action alternative.

Alternative 1 (Preferred Alternative)

Alternative 1 is the preferred alternative. Under this alternative, the Service will approve a section 10(j) rule for the gray wolf population in Colorado, including any gray wolf living in, dispersing into, or reintroduced into the state, providing the Service and its designated agents management flexibility and providing for conservation of the species. Specifically, alternative 1 will:

1. Designate the population of gray wolves being introduced to Colorado by the State of Colorado as an experimental population under section 10(j) of the Act.

The designation “experimental population” has its origin in a 1982 amendment to the Act, which created section 10(j). The “experimental population” designation gives the Service more flexibility to manage endangered species by relaxing “take” prohibitions and consultation requirements under the Act.

2. Establish an experimental population boundary to include the entire state of Colorado. Including the entire State in the experimental population boundary provides consistent regulatory management given that gray wolves may disperse long distances from the initial reintroduction sites. National Park and National Wildlife Refuge lands in Colorado would be included in the experimental population boundary; however, site-specific regulations may apply on some federal ownerships.
3. Define in the 10(j) rule the allowable take of gray wolves in response to the management activities in the Final Colorado Wolf Restoration and Management Plan (State Plan).

“Take” under the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect. Federal land management agencies may prohibit use of firearms or other methods of lethal take in national parks or national wildlife refuges. Any take or method of take on public lands must be consistent with the federal rules and regulations on those public lands. Provisions related to take that would be included in the section 10(j) rule can be found in table 2-1.

Table 2-1 Actions Permitted Under Alternative 1

Situation	Alternative Element
Listed status of wolves	Threatened
Take in self-defense	Any person may take a gray 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 designated agent(s) may promptly remove any wolf that the Service or designated agent(s) determines to be a threat to human life or safety.
Opportunistic harassment	Any person may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be

Commented [HM2]: Does it say T because of the 10j...should we note?

Situation	Alternative Element
Intentional harassment	<p>reported to the Service or designated agent(s) within seven days.</p> <p>After the Service or designated agent(s) have confirmed wolf activity on private lands, on a public land-grazing allotment, or on a Tribal reservation, the Service or designated agent(s) may issue a written take authorization valid for not longer than one 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 take authorization. Intentional harassment must be reported to the Service or a designated agent within seven days.</p>
Taking of wolves “in the act” of depredation on private land	<p>Consistent with State or Tribal requirements, any landowner may take a gray wolf in the act of attacking livestock or working dogs on private land, provided the landowner provides evidence of livestock, stock animals, or working dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and the Service or designated agent(s) is able to confirm the livestock, stock animals, or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule.</p>
Taking of wolves “in the act” of depredation on public land	<p>Consistent with State or Tribal requirements, any livestock producer and public land permittee who is legally using public land under a valid federal land-use permit may take a gray wolf in the act of attacking livestock or working dogs legally present on public lands without prior written authorization. The Service or designated agent(s) must be able to confirm the livestock or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule. Any person legally present on public land may immediately take a wolf that is in the act of attacking the individual’s stock animal or working dog, provided conditions noted in “taking of wolves in the act on private land” are met. Any take or method of take on public lands must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p>
Additional taking by private citizens on their private land	<p>At the Service’s or designated agents’ direction, the Service or designated agent may issue a repeated depredation 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) number of wolves on their private land if: (1) the landowner has had at least one depredation by wolves on livestock that</p>

Commented [HM3]: Does the landowner have to provide evidence and get our confirmation and approval before they can take a wolf?

Commented [HM4]: Seems to be a different standard on private vs. public land...intentional?

Situation	Alternative Element
	<p>has been confirmed by the Service or designated agent within the last 30 days; and (2) the Service or designated agent has determined that repeatedly depredating 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 designated agent has authorized lethal removal of wolves from that same private land. These authorizations may be terminated at any time once threats have been resolved or minimized. Any lethal or injurious take must be reported to the Service or a designated agent with 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p>
<p>Additional taking by grazing permittees on public land</p>	<p>At the Service’s or designated agent(s) direction, the Service or designated agent(s) may issue a repeated depredation written take authorization of limited duration (45 days or less) to a public land-grazing permittee to take repeatedly depredating wolves on that permittee’s active livestock grazing allotment if: (1) the grazing allotment has at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent(s) within the past 30 days, and (2) the Service or designated agent(s) has determined that repeatedly depredating wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock, and (3) the Service or designated agent(s) has authorized lethal removal of repeatedly depredating wolves from that same allotment. These authorizations may be terminated at any time once threats have been resolved or minimized. Any take or method of take on public land must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent with 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p>
<p>Agency take of wolves that repeatedly depredate livestock</p>	<p>The Service and designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of repeatedly depredating wolves. The Service or designated agent(s) would consider: (1) evidence of wounded livestock, working dogs, or other domestic animals, or remains of livestock, working dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that they were in the act of attacking livestock, working dogs, or other domestic animals; (2) the likelihood of additional wolf-caused losses or attacks may occur if no control action is taken; (3) evidence of unusual attractants or artificial or intentional feeding of wolves; and (4) evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.</p>
<p>Incidental take</p>	<p>Take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported to the Service or designated</p>

Situation	Alternative Element
	agent(s) within 24 hours (the Service will allow additional time if access to the site of the take is limited). 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.
Additional taking provisions for agency employees	Any employee or agent of the Service may take a wolf from the wild if such action is (1) for take related to the release, tracking, monitoring, recapture, and management for the experimental population; (2) to aid or euthanize sick, injured, or orphaned wolves; (3) to salvage a dead specimen that may be used for scientific study; (4) to aid in law enforcement investigations involving wolves; or (5) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or designated agents, to prevent them from passing on or teaching those traits to other wolves.
Tribal take to reduce impacts on wild ungulates	The Service has included an exception to allow nonlethal and lethal management of gray wolves that are having an unacceptable impact on ungulate herds or populations on Tribal lands. This exception requires a science-based proposal that must, at a minimum, include the following information: (1) the basis of ungulate population or herd management objectives; (2) data indicating that the ungulate herd is below management objectives; (3) what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population; (4) why wolf removal is a warranted solution to help restore the ungulate herd to management objectives; (5) the level and duration of wolf removal being proposed; (6) how ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and (7) demonstration that attempts were and are being made to address other identified major causes of ungulate herd or population declines or of Tribal government commitment to implement possible remedies or conservation measures in addition to wolf removal. The proposal must be subjected to both public and peer review prior to it being finalized and submitted to the Service for review. At least three independent peer reviewers with relevant expertise in the subject matter that are not staff of the Tribe submitting the proposal must be used to review the proposal. Upon Service review, and before wolf removals can be authorized, the Service will evaluate the information provided by the requesting Tribe and provide a written determination to the requesting Tribal game and fish agency on whether such actions are scientifically based and warranted.

Commented [HM5]: Have we shared these conditions with the Tribes?

Alternative 2

Alternative 2 would establish an experimental population boundary dependent on, and separate from, the location of any existing population of gray wolves identified in Colorado. If an existing population

is identified, the Service would issue a section 10(j) rule for the population of gray wolves to be reintroduced in the limited territory. Alternative 2 would:

1. Address the possibility that an existing population of gray wolves is identified in Colorado before the section 10(j) rule is finalized.

An existing population, as defined by the Service, may include wolves that are living in the state and wolves that naturally disperse into the state. A wolf population is at least two breeding pairs of wild wolves successfully raising at least two young each year (until December 31 of the year of their birth), for two consecutive years.

2. Allow the State of Colorado to obtain a permit issued by the Service, if necessary, under section 10(a)(1)(A) of the Act that allows management flexibility for populations of federally listed threatened or endangered species while providing for conservation of the species as a whole.

The State could apply for a permit under section 10(a)(1)(A) of the Act for management of the existing population on state and private land. Any section 10(a)(1)(A) permit issued to the State would not apply to federal lands, and if an existing population of gray wolves is identified on federal lands before the section 10(j) rule is finalized, these wolves would be managed as an endangered species outside the 10(a)(1)(A) permit area.

3. Develop a section 10(j) rule for the remainder of the state in an area that is wholly separate geographically from the existing population.

Geographic boundaries for the 10(a)(1)(A) permit area would be delineated based on natural or human-made geographic features (i.e., mountain ranges, rivers) that encompass the range of the existing population to ensure that the existing, nonexperimental population is wholly separate geographically from the population of gray wolves that would be reintroduced by the State. If an existing population is not identified before a section 10(j) rule is issued, existing wolves living in or naturally dispersing to Colorado before that time would be managed under the section 10(j) rule, and a separate section 10(a)(1)(A) permit would not be issued.

4. Define the allowable take of gray wolves in the area covered by the section 10(a)(1)(A) permit.

Section 10(a)(1)(A) of the Act allows the Service to issue permits for the purposeful or direct take of federally listed species “for scientific purposes or to enhance the propagation or survival of the affected species.” The Service may issue several types of permits under section 10(a)(1)(A), depending on the proposed activity and the status of the affected species under the Act. Types of permits include an Enhancement of Survival permit; a Candidate Conservation Agreement with Assurances; and a Research and Recovery permit. These permits are applied to existing populations, rather than to reintroduced or experimental populations. Provisions related to take that would be included in the section 10(j) rule can be found in table 2-2.

Table 2-2 Actions Permitted Under Alternative 2

Situation	Alternative Element
Listed status of wolves	Threatened within the experimental population boundary. Endangered in the area covered under the section 10(a)(1)(A)

Situation	Alternative Element
	permit.
Consultation (per section 7)	Within the experimental population boundary, not required unless those actions are on lands of the National Park System or the National Wildlife Refuge System (16 USC §1539(j)(2)(C)(i)). Required in areas covered by the section 10(a)(1)(A) permit.
Take in self-defense	Any person may take a gray 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 designated agent(s) may promptly remove any wolf that the Service or designated agent(s) determines to be a threat to human life or safety.
Opportunistic harassment	Within the experimental population boundary, any person 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 designated agent(s) within seven days. Within the 10(a)(1)(A) permit area, opportunistic harassment may be authorized under a separate authority (section 10(a)(1)(A) of the Act [16 USC §1539(a)(1)(A)]).
Intentional harassment	Within the experimental population boundary, after the Service or designated agent(s) have confirmed wolf activity on private lands, on a public land-grazing allotment, or on a Tribal reservation, the Service or designated agent(s) may issue a written take authorization valid for not longer than one 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 specifically identified in the take authorization. Intentional harassment must be reported to the Service or a designated agent within seven days. Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.
Taking of wolves “in the act” of depredation on private land	Within the experimental population boundary, consistent with State or Tribal requirements, any landowner may take a gray wolf in the act of attacking livestock or working dogs on private land, provided the landowner provides evidence of livestock, stock animals, or working dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and the Service or designated agent(s) is able to confirm the livestock, stock animals, or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule. Within the 10(a)(1)(A) permit area, no lethal take would be

Situation	Alternative Element
Taking of wolves “in the act” of depredation on public land	<p>permitted; only nonlethal take would be allowed.</p> <p>Within the experimental population boundary, consistent with State or Tribal requirements, any livestock producer and public land permittee who is legally using public land under a valid federal land-use permit may take a gray wolf in the act of attacking livestock or working dogs legally present on public lands without prior written authorization. The Service or designated agent(s) must be able to confirm the livestock or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule. Any person legally present on public land may immediately take a wolf that is in the act of attacking the individual’s stock animal or working dog, provided conditions noted in “taking of wolves in the act on private land” are met. Any take or method of take on public lands must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p> <p>Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
Additional taking by private citizens on private land	<p>Within the experimental population boundary, at the Service’s or designated agents’ direction, the Service or designated agent may issue a repeated depredation 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 designated agent) number of wolves on private land if: (1) the landowner has had at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent within the last 30 days; and (2) the Service or designated agent has determined that repeatedly depredating 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 designated agent has authorized lethal removal of wolves from that same private land. These authorizations may be terminated at any time once threats have been resolved or minimized. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p> <p>Within the 10(a)(1)(A) area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
Additional taking by	Within the experimental population boundary, at the Service’s or

Situation	Alternative Element
grazing permittees on public land	<p>designated agent(s) direction, the Service or designated agent(s) may issue a repeated depredation written take authorization of limited duration (45 days or less) to a public land-grazing permittee to take repeatedly depredating wolves on that permittee's active livestock grazing allotment if: (1) the grazing allotment has at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent(s) within the past 30 days, and (2) the Service or designated agent(s) has determined that repeatedly depredating wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock, and (3) the Service or designated agent(s) has authorized lethal removal of repeatedly depredating wolves from that same allotment. These authorizations may be terminated at any time once threats have been resolved or minimized. Any take or method of take on public land must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited. Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
Agency take of wolves that repeatedly depredate livestock	<p>Within the experimental population boundary, the Service and designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of repeatedly depredating wolves. The Service or designated agent(s) would consider: (1) evidence of wounded livestock, working dogs, or other domestic animals, or remains of livestock, working dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that they were in the act of attacking livestock, working dogs, or other domestic animals; (2) the likelihood of additional wolf-caused losses or attacks may occur if no control action is taken; (3) evidence of unusual attractants or artificial or intentional feeding of wolves; and (4) evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed. Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
Incidental take	<p>Within the experimental population boundary, take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported to the Service or designated agent within 24 hours (the Service may allow additional time if access to the site of the take is limited). Shooting a wolf as a result of mistaking it for another species is not considered accidental and</p>

Situation	Alternative Element
	<p>may be referred to the appropriate authorities for prosecution.</p> <p>Within the 10(a)(1)(A) permit area, no incidental take would be permitted.</p>
<p>Additional taking provisions for agency employees</p>	<p>Within the experimental population boundary, any employee or agent of the Service may take a wolf from the wild if such action is (1) for take related to the release, tracking, monitoring, recapture, and management for the experimental population; (2) to aid or euthanize sick, injured, or orphaned wolves; (3) to salvage a dead specimen that may be used for scientific study; (4) to aid in law enforcement investigations involving wolves; or (5) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or designated agents, to prevent them from passing on or teaching those traits to other wolves.</p> <p>For areas covered under the 10(a)(1)(A) permit, the following forms of take may occur: (1) for scientific purposes; (2) to aid or euthanize sick, injured, or orphaned wolves; (3) to salvage a dead specimen that may be used for scientific study; (4) to aid in law enforcement investigations involving wolves; and (5) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or designated agents, to prevent them from passing on or teaching those traits to other wolves.</p>
<p>Tribal take to reduce impacts on wild ungulates</p>	<p>Within the experimental population boundary, the Service has included an exception to allow nonlethal and lethal management of gray wolves that are having an unacceptable impact on ungulate herds or populations on Tribal lands. This exception requires a science-based proposal that must, at a minimum, include the following information: (1) the basis of ungulate population or herd management objectives; (2) data indicating that the ungulate herd is below management objectives; (3) what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population; (4) why wolf removal is a warranted solution to help restore the ungulate herd to management objectives; (5) the level and duration of wolf removal being proposed; (6) how ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and (7) demonstration that attempts were and are being made to address other identified major causes of ungulate herd or population declines or of Tribal government commitment to implement possible remedies or conservation measures in addition to wolf removal. The proposal must be subjected to both public and peer review prior to it being finalized and submitted to the Service for review. At least three independent peer reviewers with relevant expertise in the subject matter that are not staff of the Tribe submitting the proposal must be used to review the proposal. Upon Service review, and before wolf</p>

Situation	Alternative Element
	removals can be authorized, the Service will evaluate the information provided by the requesting Tribe and provide a written determination to the requesting Tribal game and fish agency on whether such actions are scientifically based and warranted. Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.

No-Action Alternative

Under the no-action alternative, the Service would not issue a section 10(j) rule or other federal regulatory framework consistent with section 10 of the Act. An experimental population boundary would not be created in Colorado, and after the State-lead reintroduction, the gray wolf would be considered endangered throughout the state. The specific actions allowed under the no-action alternative are show in table 2-3.

Table 2-3 Actions Permitted Under the No-Action Alternative

Situation	Alternative Element
Consultation (per section 7)	Federal agencies are required to consult with the Service for any project or action they authorize, fund, or carry out that may affect federally listed endangered gray wolves in Colorado.
Listed status of wolves	Endangered
Take in self-defense	Any person may take a gray 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 designated agent(s) may promptly remove any wolf that the Service or designated agent(s) determines to be a threat to human life or safety.
Opportunistic harassment	May be authorized under a separate authority (section 10(a)(1)(A) of the Act [16 USC §1539(a)(1)(A)]).
Intentional harassment	No lethal or injurious nonlethal take would be permitted.
Taking of wolves “in the act” of depredation on private land	No lethal or injurious nonlethal take would be permitted.
Taking of wolves “in the act” of depredation on public land	No lethal or injurious nonlethal take would be permitted.
Additional taking by private citizens on private land	No lethal or injurious nonlethal take would be permitted.
Additional taking by grazing permittees on public land	No lethal or injurious nonlethal take would be permitted.
Agency take of wolves that	No lethal or injurious nonlethal take would be permitted.

Situation	Alternative Element
repeatedly depredate livestock	
Incidental take	Incidental take could be permitted or exempted under other Act authorities.
Additional taking provisions for agency employees	No lethal or injurious nonlethal take would be permitted.

Environmentally Preferred Alternative

The Service has identified alternative 1 as the environmentally preferred alternative for implementing the proposed action. Alternative 1 would provide a consistent federal regulatory framework and take provisions across the state for managing gray wolves that would be reintroduced by the State and gray wolves living in or naturally dispersing to Colorado. This alternative would provide the management flexibility within the experimental population boundary, which would include the entire state, while allowing for the conservation of the species. Management flexibility would be provided statewide because although gray wolves would be reintroduced on the Western Slope in accordance with CRS 33-2-105.8, wolves can disperse long distances and may eventually occur throughout the state. Alternative 1 would not result in damage to the biological or physical environment from its implementation. See section 2.4.2 of the final EIS for additional details on alternative 1.

In comparison, alternative 2 would offer limited management flexibility to the Service and its designated agents within the 10(a)(1)(A) permit area. The limited options for wolf management in the 10(a)(1)(A) permit area would not meet the purpose of the action, which is to promote the conservation of the species while reducing the regulatory burden. In addition, the Service developed alternative 2 to address the potential for an existing population of gray wolves to be identified in Colorado before the finalization of the section 10(j) rule. Gray wolves known to occur in Colorado as of the publication of the final EIS do not meet the Service’s definition of a population (see section 2.4.3 of the final EIS), and it is not possible for existing wolves in Colorado to meet this definition prior to finalization of the section 10(j) rule in December 2023. Therefore, implementation of alternative 2 is not needed to manage take of an existing population of wolves separately from the population that would be reintroduced by the State of Colorado.

In the short term, alternative 2 would have allowed wolves to reach population targets faster than alternative 1 due to the lower risk of human-caused wolf mortality within the 10(a)(1)(A) permit area as a result of a narrower definition of take. However, the long-term impact of alternative 2 on the conservation and recovery of gray wolves would have been identical to alternative 1, but without the regulatory flexibility available on a statewide basis. Alternative 2 may have decreased social tolerance for wolves, which may have led to increased wolf-human conflict. Like alternative 1, the Service does not expect any features of alternative 2 to damage the biological or physical environment.

Similarly, the no-action alternative would not offer management flexibility in any part of the state of Colorado and would not meet the purpose and need of the proposed action (see sections 1.2 and 1.3 of the final EIS). Because the Service and its designated agents would not have the ability to implement take of wolves to address conflicts, the no-action alternative could have short- and

long-term, adverse effects on Tribal cultural resources, socioeconomic resources, and environmental justice population groups of concern. In the short term, wolf population growth would be faster under the no-action alternative than under alternative 1 or alternative 2 due to the restrictions on take under the no-action alternative. However, the long-term impact of the no-action alternative on the conservation and recovery of gray wolves would be identical to the two action alternatives because wolf population growth would decrease as wolf population density approaches the statewide ecological carrying capacity. The no-action alternative is likely to result in the lowest social tolerance for wolves in Colorado because the lack of management flexibility reduces options for mitigating wolf-human conflict. Lower social tolerance for wolves would be detrimental to the long-term conservation of the species. Similar to alternatives 1, the Service does not foresee any features of the no-action alternative that would result in damage to the biological or physical environment.

Rationale for Decision

Alternative 1, the preferred alternative, is consistent with national policy and the Service's statutory mission. The proposed action addresses a request from the State of Colorado to designate a gray wolf population that would be reintroduced into Colorado as a nonessential experimental population under section 10(j) of the Act. The Service intends to select alternative 1 for implementation because it will result in an experimental population designation that supports the long-term conservation and recovery of the gray wolf. Under alternative 1, the listed status of wolves under the section 10(j) rule will be threatened. Designation of the experimental population as nonessential will relax take prohibitions and consultation requirements under the Act, such that allowable take will include non-injurious, nonlethal conflict minimization practices, potentially injurious hazing techniques, translocation, and lethal take. Collectively, the features of alternative 1 will result in an experimental designation of the gray wolf in Colorado that provides the necessary tools to address and resolve conflicts when and where they occur.

Alternative 1 Compared to Alternative 2

The Service selected alternative 1 over alternative 2 for the reasons identified above (see "Environmentally Preferred Alternative"). Alternative 2 would require regulation of take under separate federal regulatory tools for an identified existing population and the population of wolves that would be reintroduced to the state. Under the Service's definition of a wolf population, it is no longer possible for an existing population to be identified in the State of Colorado prior to when the section 10(j) rule will be finalized in December 2023. Upon finalization of the section 10(j) rule, alternative 1 will forgo permitting under section 10(a)(1)(A) within the State of Colorado, unlike alternative 2, which would remain contingent on this permitting. Alternative 1 is preferred because the experimental population boundary will include the entire state of Colorado, allowing for consistent regulatory practices and more efficient conflict resolution. Under alternative 2, if an existing population is discovered, this designated and limited portion of Colorado would require a State-issued 10(a)(1)(A) permit allowing for the purposeful or direct take of the gray wolf population, which would also include more limited take provisions. In this case, take provisions specified under the section 10(j) rule would apply to the area wholly separate geographically from the existing population. The Service considers its ability and the ability of its designated agents to respond to conflict situations through the take of a gray wolf as a necessary feature of managing a top predator, and this feature is retained across the state only under alternative 1.

Alternatives 1 and 2 would have similar short- and long-term impacts on wolf numbers and distribution in parts of the state where the section 10(j) rule is approved. Under alternative 2, wolf density may be higher in the short term in the 10(a)(1)(A) permit area because lethal control would not be authorized under the permit. In the long term under alternative 2, wolves would naturally disperse from the 10(a)(1)(A) permit area and colonize suitable habitat in the experimental population boundary with sufficient prey and minimal social conflicts with humans and other wolves. In the long term, the wolf population is expected to increase at rates similar to the management approach of alternative 1. Similar to alternative 1, wolf habitat and connectivity would not be affected because there would continue to be natural emigration and immigration from neighboring packs in the northern Rocky Mountains under alternative 2.

In summary, the Service concludes that alternative 1 offers more management flexibility to respond to conflicts and local community needs. The key difference between the alternatives is the listed status of the wolves—the species would remain endangered in an area covered under the section 10(a)(1)(A) permit but threatened within the experimental population boundary. While alternatives 1 and 2 are anticipated to have comparable conservation benefits, alternative 1 has been identified as a more cohesive approach to the authorization and management of conflict.

Alternative 1 Compared to the No-Action Alternative

Under the no-action alternative, all Act protections would apply to the gray wolf population, and it would remain listed as endangered. There would be no state or federal authority for lethal control except in the event of self-defense. All other scenarios, such as depredation on private or public land, would not allow for lethal or injurious nonlethal take. Illegal killing is expected to be higher under the no-action alternative than under the action alternatives based on studies completed elsewhere, particularly in the short term after wolves are reintroduced when there is uncertainty about the potential adverse impacts on local land users. The no-action alternative would be the most beneficial from a purely biological standpoint, but it would greatly limit authorized take by the Service and its designated agents. In summary, the take provisions in the 10(j) rule are valuable tools for agency management flexibility and to promote social tolerance for gray wolves within local communities, making alternative 1 the preferred alternative.

Alternative 2 Compared to the No-Action Alternative

Alternative 2 would provide more management flexibility for the population of gray wolves that would be reintroduced by the State of Colorado, compared to the no-action alternative. Under the no-action alternative, gray wolves would remain listed as endangered under the Act, whereas under alternative 2 wolves would be managed as endangered in the 10(a)(1)(A) permitted areas and managed as threatened inside the experimental population boundary. Alternative 2 would function similar to no-action alternative in 10(a)(1)(A) permitted areas.

Summary

Based on these findings and considerations, the Service is selecting alternative 1 for implementation. The designation of a nonessential experimental population under alternative 1 aligns with the State's request. Under the section 10(j) rule, establishment of the nonessential experimental population will allow for the taking of gray wolves in response to the management activities in the State Plan. Alternative 1 will widen the scope of authority for federal or state agencies and Tribes to exercise control in managing conflict.

Commented [HM6]: Should we also say consistent with the approved state management plan?

Monitoring or Enforcement Program

The Service, in partnership with CPW, will monitor progress in implementing the final 10(j) rule in support of the long-term conservation and recovery of the gray wolf in Colorado. CPW plans to use radio transmitters, remote cameras, and surveys of roads and trails to document wolf signs, and other monitoring techniques to document wolf reproductive success, abundance, and distribution in Colorado post-release. CPW will summarize this information in an annual report that describes wolf conservation and management activities that occurred in Colorado each calendar or biological year to evaluate progress toward achieving the State of Colorado’s downlisting and recovery criteria. The annual report will be due annually to the Service by June 30 and posted on CPW’s website. The annual report may include, but is not 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.

The Service will evaluate Colorado’s wolf reintroduction and management program in an annual summary report. Additionally, five years after the last reintroductions are completed, the Service will evaluate whether the wolf population is meeting the State’s recovery goals and conservation of the species. During this evaluation, the Service 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 mirrors the minimum post-delisting monitoring period used to evaluate the success of management programs after species have achieved recovery. It also provides a suitable period to evaluate wolf population growth and abundance to assess progress toward 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 toward achieving recovery goals while concurrently minimizing wolf-related conflicts in Colorado.

For More Information

You may obtain a copy of the final EIS and draft ROD online at [www://https.regulations.gov](https://www.regulations.gov) by searching for Docket No. FWS-R6-ES-2022-0100 or on the Service’s website <https://www.fws.gov/coloradowolf>. Alternatively, you may obtain a copy of the final EIS and draft ROD by contacting the U.S. Fish and Wildlife Service office via email ()