



## 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:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), establish a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado, under the Endangered Species Act of 1973, as amended (Act). 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 provides 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. The geographic boundary of the NEP is the entire 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.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This final rule, public comments on our February 17, 2023, proposed rule, a final environmental impact statement, and the record of decision, are available on the internet at <https://www.regulations.gov> at Docket No. FWS-R6-ES-2022-0100.

*Information Collection Requirements:* Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or Info\_Coll@fws.gov (email). Please reference “OMB Control Number 1018–BG79” in the subject line of your comments.

**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. 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:** The Service is establishing a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado, under section 10(j) of the Act.

### **Previous Federal Actions**

Please refer to the proposed section 10(j) rule for the gray wolf in Colorado published on February 17, 2023 (88 FR 10258), for a detailed description of previous Federal actions concerning this species.

### **Peer Review**

In accordance with our joint policy on peer review published in the *Federal Register* on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review, we solicited independent scientific review of the proposed rule. We invited seven independent peer reviewers and received four responses. The peer reviews can be found at <https://www.regulations.gov> and

<https://fws.gov/library/categories/peer-review-plans>. In preparing this final rule, we incorporated the results of these reviews, as appropriate, into this final rule. A summary of the peer review comments, and our responses can be found in the *Summary of Comments and Recommendations* below.

### **Summary of Changes from the Proposed Rule**

As a result of comments, additional data received during the comment period, and additional analysis, several changes were made to the rule we proposed on February 17, 2023 (88 FR 10258). In this final rule, we:

- Improved consistency with the State of Colorado’s Wolf Restoration and Management Plan (State Plan) (CPW 2023b, entire) by clarifying that take of gray wolves attacking pets is not excepted but take of gray wolves that are attacking “working dogs,” or dogs that guard or herd livestock, is excepted.
- Recognized the sovereignty of Tribal nations by adding a provision to allow take of gray wolves that are significantly impacting ungulate populations on Tribal reservation lands of the Ute Mountain Ute and Southern Ute Tribes in the State of Colorado.
- Changed several terms: In regard to justification for written take authorization, “shoot-on-sight” is now “depredation”; we have changed references in the proposed rule from “problem wolves” to “depredating” wolves; and “sport hunting” is now “recreational harvest.”
- Clarified that a “designated agent” is an employee of a Federal, State, or Tribal agency who is authorized or directed by the Service to conduct management activities for the gray wolf.
- Removed the term “relocate” from the definition of “remove.”
- Removed the term “substantial income” from the definition of “livestock producer.”

- Clarified that take would not be excepted if there is any evidence of baiting of gray wolves, including the use of unusual attractants, artificial feeding, or intentional feeding.

### **Summary of Comments and Recommendations**

In the proposed rule published on February 17, 2023 (88 FR 10258), we requested that all interested parties submit written comments on the proposal by April 18, 2023. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We held public information meetings to present information and obtain feedback on March 14, 15, 16, 22, and 28, 2023. We issued news releases and posted them on our website announcing the proposal and the dates of the public meetings. During the 60-day comment period, we received over 20,000 separate comments associated with 4,290 pieces of correspondence, including form letters with multiple signatures, such as 1 correspondence having 16,233 signatures.

Below, we summarize the substantive comments pertinent to the rulemaking and our responses to those comments. We considered substantive comments to be those that provided information relevant to our requested action, such as data, pertinent anecdotal information, or opinions backed by relevant experience or information, and literature citations. Due to the similarity of many comments, we combined multiple comments into a single, synthesized comment for many issues. We considered nonsubstantive those comments that expressed a statement or opinion without providing supporting information or relevance, restated data or information that we already have but without an alternate perspective to consider, or were beyond the scope of our proposed action. Comments from peer reviewers, Federal agencies, State agencies, and Tribes are grouped separately. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below. Appendix

D of our final environmental impact statement provides a full summary report of our response to comments that we received on the proposed rule.

#### *Peer Reviewer Comments*

As discussed in *Peer Review* above, we received comments on our proposed rule from four peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the proposed rule. We summarize substantive peer reviewer comments below.

The peer reviewers generally concurred with our methods and conclusions and provided additional literature, information, clarifications, and suggestions to improve the final rule. For example, all four peer reviewers agreed that our description and analysis of the biology, habitat, population trends, conservation status, and distribution of the species is accurate and that our conclusions are accurate and supported by the provided evidence. Three peer reviewers shared that our proposed rule did not have any significant oversights, omissions, or inconsistencies, while one peer reviewer recommended that we more fully consider the dispersal and expansion capabilities of the species in terms of the geographic separation of the NEP. Three peer reviewers also recommended that we more fully explore the potential for individuals in the NEP to interact with the Mexican wolf (*Canis lupus baileyi*), and one peer reviewer commented that we should clarify whether the NEP would include Mexican wolves. In *Comments from States*, below, we have provided additional information regarding the Mexican wolf and clarified that this NEP applies only to the gray wolf. Finally, the peer reviewers provided additional literature for our consideration, such as an additional citation regarding the dispersal of the gray wolf into Colorado, and we incorporated the recommended literature, as needed. We address specific comments from the peer reviewers below.

*Comment:* A peer reviewer suggested that we may have overestimated the ability for small, newly established populations of the gray wolf to withstand high rates of

human-caused mortality due to life-history traits such as high reproductive potential and dispersal capabilities.

*Our response:* In the past, reintroduced populations of the gray wolf in the Northern Rocky Mountains (NRM) population area demonstrated steady population growth despite low levels of human-caused mortality. However, in the final rule we have clarified that high levels of natural and human-caused mortality during the early establishment period may limit population growth and make the State of Colorado's gray wolf population goals more challenging (see *Actions and Activities in Colorado That May Affect Introduced Gray Wolves*, below).

*Comment:* A peer reviewer commented that the proposed rule provides take provisions for gray wolves without addressing the possibility that unusual attractants, artificial feeding, or intentional feeding may have been involved.

*Our response:* In the final rule, we have clarified that take would not be excepted if there is any evidence of baiting of gray wolves, including the use of unusual attractants, artificial feeding, or intentional feeding.

*Comment:* A peer reviewer recommended that we more thoroughly discuss or define the State of Colorado's definition of success for their reintroduction efforts.

*Our response:* In the final rule, we have summarized the State of Colorado's reintroduction objectives, as outlined in their management plan (CPW 2023b, entire), and clarified that our success objectives for the NEP are similar.

#### *Federal Agency Comments*

One Federal agency, the U.S. Department of Agriculture (USDA) Forest Service, provided comments on the proposed rule:

*Comment:* The USDA Forest Service indicated general support for the action but provided comments regarding the potential for gray wolves to disperse south out of the NEP.

*Response:* We provide additional information regarding this issue in *Comments from States*, below. To summarize, 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 at least until the State of Colorado achieves its recovery goals for the gray wolf.

*Comments from States*

We received comments from five State wildlife agencies and one State agriculture agency. The States that commented were generally supportive of the proposed rule. Three of the States expressed concern over reintroduced wolves dispersing out of the NEP and potentially interacting with the Mexican wolf and specifically requested research and scientific collection permits under section 10(a)(1)(A) of the Act to be able to return wolves to Colorado. The State of Colorado has agreed to accept the return of gray wolves to the State, until their recovery goals are achieved, at which time they will revisit this commitment (CPW 2023a). The State of Colorado's acceptance of returned gray wolves is to ensure that their restoration plan is successful. To help minimize potential interactions and to help protect Mexican wolf genetic integrity, we have simultaneously issued a section 10(a)(1)(A) permit to be held by the Service, which will authorize our designated agents to assist in the capture and return of wolves originating from the Colorado NEP.

*Comment:* Commenters stated that the Mexican wolf was listed as a separate subspecies of gray wolf in 2015, and that this listing recognized the unique physical, ecological, and genetic differences of the Mexican wolves from all other gray wolves. The commenters stated that these unique differences occurred and evolved over time due to separation of Mexican wolves from the larger gray wolves to the north, so were concerned that the proposed release and establishment of an experimental population of larger northern wolves in Colorado closer to the wild Mexican wolf population will

dramatically increase the risk of strong and irreversible genetic swamping of the Mexican wolf.

*Our response:* We recognize the unique characteristics of the Mexican wolf and the recovery efforts of our agency and the States of Arizona and New Mexico. We have simultaneously issued a section 10(a)(1)(A) permit to allow our designated agents to capture gray wolves that venture out of the NEP so that they may be returned to Colorado. Additionally, we do not intend to initiate or allow adaptive introgression between gray wolves and Mexican wolves as part of the genetic management of Mexican wolves (87 FR 39357, July 1, 2022).

*Comment:* A commenter suggested that we include information in the final rule about the State of Wyoming's predator management area, where licensing for lethal take is not needed.

*Our response:* This rule applies only to management activities for the gray wolf that take place within the NEP's boundary in the State of Colorado, so we have not included additional information regarding activities in the State of Wyoming.

*Comment:* A commenter recommended that the final rule provide assurances that the NEP wolves in Colorado will not be considered "sensitive species" by other Federal agencies, such as the Bureau of Land Management or the USDA Forest Service.

*Our response:* We do not have the authority to dictate which species receive sensitive species status under other Federal agencies' conservation frameworks.

*Comment:* A commenter recommended that the final rule consider all gray wolves that may disperse into the State of Utah as part of the NEP, which could allow for their immediate capture and return to the State of Colorado.

*Our response:* The exceptions provided in the rule are limited to the NEP area identified in the regulation (i.e. the State of Colorado). We use this boundary as a means to identify the NEP as required by our regulations. Any gray wolf that enters Utah will



take on endangered status under the Act. Relocation of gray wolves to Colorado will be conducted under other authorities under the Act.

*Comment:* A commenter stated that we inconsistently define “occupied range” and that the State of Colorado’s proposed reintroduction zones are within the species’ current range.

*Our response:* We have verified that we use the term “occupied range” consistently throughout the rule. Additionally, although two male gray wolves are known to occur within the State of Colorado, they do not meet the definition of a population or a pack, as explained in this preamble to the final rule, so the NEP is wholly geographically separate from other populations of the species.

*Comment:* A commenter noted that the rule’s requirement to report lethal or injurious take within 24 hours may be impractical due to the remoteness of some areas.

*Our response:* In response to this comment, we added language to the reporting requirement to give additional time when necessary.

*Comment:* A commenter noted that the rule should be consistent with CPW’s State Plan (CPW 2023b, entire), which does not allow killing of a wolf that is attacking pets.

*Our response:* We have updated the final rule accordingly, so that it does not provide an exception for take of gray wolves that are attacking pets. This change improves consistency with the State of Colorado’s plan. Additionally, we have added a definition for “working dogs” and a take exception for gray wolves that are attacking working dogs that are guarding or herding livestock. Pets are typically under the immediate control of their owner, so the owner may opportunistically harass wolves if they are encountered.

*Comment:* A commenter stated that annual reporting should be required for only 5 years post-reintroduction but did not provide any rationale or information to support this suggestion.

*Our response:* The regulatory requirements under section 10(j) of the Act for designation of a nonessential experimental population require a process for periodic review and evaluation of success or failure of the release and the effect on recovery of the species. While annual reporting is not specifically required, we must continue to periodically assess the effects of the NEP on recovery for as long as the species is federally listed. We have determined that annual reporting is appropriate, because this frequency of reporting allows for more quickly adjusting management and responding to changing conditions.

*Comment:* In the exception for take by landowners on their private land, the word “their” should be removed, because it would exclude the exception for individuals who lease private lands for livestock production but do not own the property.

*Our response:* We have removed the term “their” from the exception, such that a lessee would also be able to protect their livestock under the exception.

#### *Comments from Tribes*

We received one comment letter from a Tribe, the Southern Ute Indian Tribe. The Southern Ute Indian Tribe generally supports the action and provided comments that we summarize below along with our responses.

*Comment:* The Southern Ute Indian Tribe requested that the final rule include a provision to take gray wolves if they are unacceptably reducing ungulate populations. The Tribe requested that we add this provision to recognize the sovereignty of Tribal nations and to be consistent with the State of Colorado’s management plan (CPW 2023b, entire) that also recognizes Tribal sovereignty.

*Our response:* In response to this comment, we added a provision to the rule to allow Tribes in the State of Colorado to take wolves that are having an unacceptable impact on wild ungulate herds or populations. However, the exception is limited to Tribal lands, does not include areas outside of Tribal reservation lands, and requires a science-based, peer-reviewed determination that the impacts to the ungulate populations are significant before take of gray wolves can be authorized.

*Comment:* The Southern Ute Indian Tribe requested that wolf management options in the rule include the removal of problem wolves (which we are now referring to as “depredating wolves”) from Tribal land upon request.

*Our response:* The rule allows the Tribes to become designated agents, which will allow them to address wolf management issues. Additionally, we will be available to assist through education and training, and will continue to coordinate and assist the State and the Tribes to help resolve conflicts, as time and resources allow.

#### *Public Comments*

*Comment:* Commenters both supported and opposed the provisions of the rule that would allow for the lethal control of gray wolves. Some commenters asked that we prohibit most forms of lethal take of gray wolves in the NEP, with some supporting lethal take only in defense of human life. Some commenters requested that the allowable take be more liberal, while others felt that lethal control can lead to less public respect and tolerance of wolves and may encourage more poaching. Some commenters recommended several nonlethal measures to manage depredating wolves.

*Our response:* The final rule recognizes that lethal take is a management tool for the gray wolf that may be necessary in specific situations, such as when nonlethal management actions are ineffective and may not resolve conflict. Nonlethal tools may be appropriate and effective in some situations, but their effectiveness depends on various characteristics of the area and individual livestock operations. For instance, many tools

such as fladry (strips of fabric mounted along fencelines to deter wolves), radioactivated guard boxes, and electric fencing, are effective only in small, localized areas, and innovative tools, such as diversionary feeding, range riding, and hazing, have reduced wolf depredations in certain situations. We anticipate that lethal removal will be used as a last resort to balance conserving the species and preventing depredations.

*Comment:* Commenters noted that the regulations for depredation (formerly called “shoot-on-sight” in the proposed rule) and opportunistic and intentional harassment are too vague and that key terms like “harassing” and “molesting” are not clearly defined.

*Our response:* In the final rule, we have clarified the definition of “in the act of attacking” and provided examples of harassment activities. Our definition is consistent with section 3 of the Act and other section 10(j) rules. Additionally, the final rule now specifies the requirements to qualify for a “depredation” (called “shoot-on-sight” in the proposed rule) authorization. The terms “take,” “harm,” and “harass” are defined in section 3 of the Act, so we have not defined them in this rule.

## **Final Rule Issued Under Section 10(j) of the Act**

### **Background**

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 3, 2020). Information in these documents is relevant to reintroduction efforts for gray wolves that may be undertaken in Colorado, and the report 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*

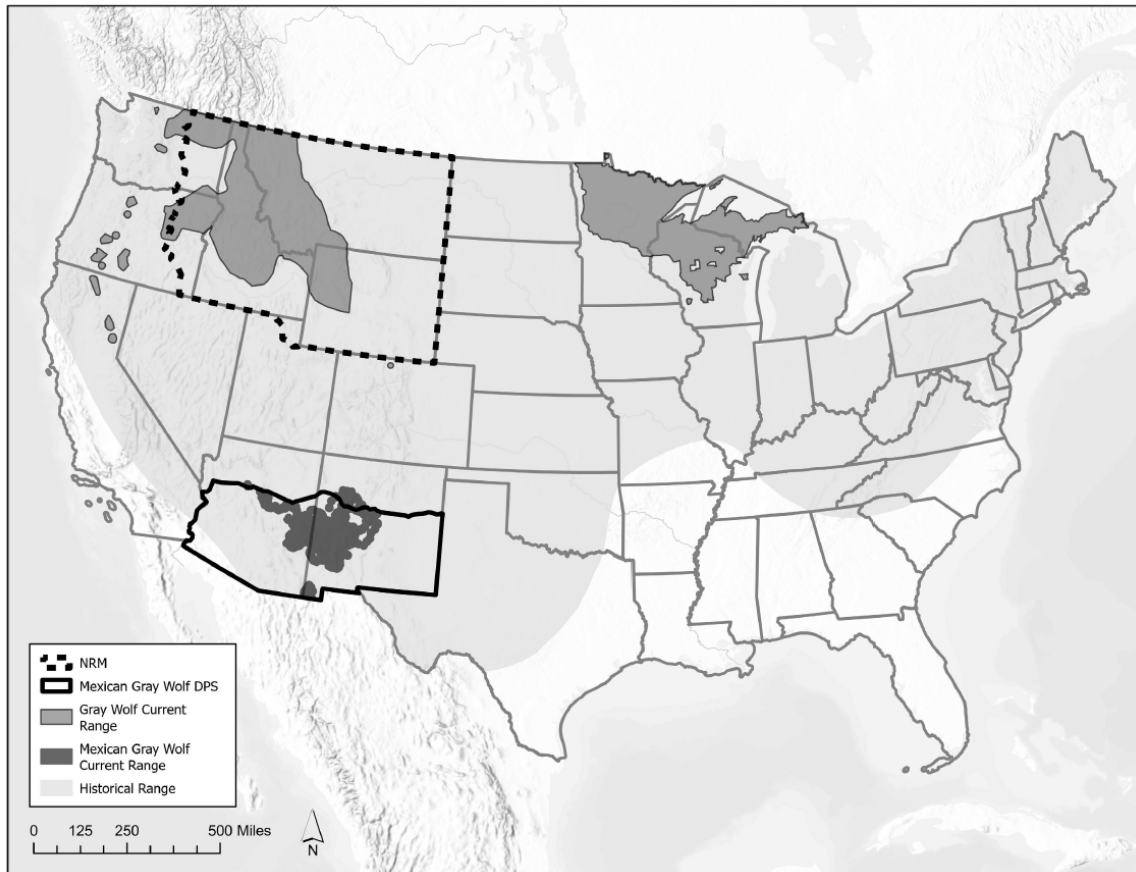
Gray wolves are the largest wild members of the canid (dog) family, with adults ranging in weight from 18 to 80 kilograms (40 to 175 pounds), depending on sex and geographic locale. Gray wolves are highly territorial, social animals that live and hunt in packs. They are well adapted to traveling fast 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, the 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). When we first listed two subspecies of the gray wolf 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 2 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 and increased in number (Service 2020, pp. 10, 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 (figure 1) (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 Eastern Canada” metapopulation (Service 2020, pp. 27–28).



**Figure 1.** Historical range (Nowak 1995) and current range of gray wolves (*Canis lupus*) (as of December 2021), and Mexican wolves (as of 2022) in the lower 48 United States. NRM = The recovered Northern Rocky Mountains distinct population segment (DPS).

Gray wolves in the Western United States are distributed across the NRM and into western Oregon, western Washington, northern California, and most recently in north-central Colorado (figure 1, above; Service 2020, p. 28). Based on the most current abundance estimates of gray wolves, Idaho estimated 1,337 gray wolves inhabited the State as of August 2022 (Idaho Department of Fish and Game (IDFG) 2023, unpaginated), and Montana had an estimated 1,087 gray wolves at the end of 2022 (Parks

et al. 2023, pp. 9–11). In addition, the most recent year-end minimum counts for 2022 indicated at least 338 gray wolves in Wyoming, 216 wolves in Washington, 178 wolves in Oregon, and 18 in California (California Department of Fish and Wildlife (CDFW) 2022, unpaginated; Oregon Department of Fish and Wildlife (ODFW) 2023, p. 2; Washington Department of Fish and Wildlife (WDFW) et al. 2023, pp. 2–3; Wyoming Game and Fish Department (WGFD) et al. 2023, p. 3).

Until recently, only lone wolves had been confirmed in Colorado, beginning with a dispersing individual that died in 2004 from a vehicle collision (CPW 2023b, p. 4). 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 2020–2021 (CPW 2023b, p. 4). This pair produced offspring in spring 2021, becoming the first documented reproductively active pack in Colorado in recent history. However, as of June 2023, only two males from this pack remain in Colorado (Eric Odell, pers. comm., CPW, June 26, 2023). The two individual wolves do not meet the definition of a population of gray wolves used by the Service for previous NEP designations in the NRM (i.e., two breeding pairs successfully raising at least two pups for 2 consecutive years; Service 1994, appendix 8). In January of 2020, CPW personnel also confirmed at least six wolves traveling together in Moffatt County in northwestern Colorado (Service 2020, p. 9). Later that year, CPW personnel documented only one wolf in that area, and, at present, there is no indication that any wolf or wolves remain in that part of Colorado. As such, we do not consider any gray wolves currently found in Colorado to constitute a population.

### *Life Cycle*

Gray wolves are highly territorial social animals and group hunters, normally living in packs of 7 or fewer but sometimes attaining pack sizes of 20 or more (Service 2020, p. 6). Wolves reach sexual maturity at 1–4 years for males and 1–5 years for females (Mech et al. 2016, entire; Wikenros et al. 2021, entire) 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, p. 7; Jimenez et al. 2017, p. 1).

### *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).



In the Western United States, habitat models have identified suitable 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 (Bennett 1994, entire; Switalski et al. 2002, entire; Carroll et al. 2003, entire; Carroll et al. 2006, entire; Larsen and Ripple 2006, entire; Oakleaf et al. 2006, pp. 558–559; Maletzke et al. 2015, entire; ODFW 2015, entire; Dittmer et al. 2022, entire). Large blocks of suitable habitat have been identified in the central and southern Rocky Mountains but are currently unoccupied, with the exception of occasional dispersing wolves and two male wolves in north-central Colorado.

### *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). 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, pp. 272–273; Boyd and Pletcher 1999, entire; Treves et al. 2009, entire; Jimenez et al. 2017, entire; Mech 2017, entire). 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*

Targeted extirpation programs and 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 gray wolves in three regions: the western Great Lakes; the NRM; and Mexican wolves in the Southwest and Mexico. We drafted recovery plans and implemented recovery programs for gray wolves in these three regions (Service 1987, entire; Service 1992, entire; Service 2017, entire). 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. Mexican wolves have been listed separately as an endangered subspecies of gray wolf since 2015 and are not addressed in this rule.

The currently listed entity of gray wolf, to which the Colorado NEP belongs, includes all or parts of 44 States; this listed entity encompasses populations of gray wolves in the Great Lakes States of Minnesota, Michigan, and Wisconsin as well as wolves outside the delisted NRM in the Western United States. We have not included gray wolves outside the NRM and western Great Lakes in any recovery plan. However, as noted above, the presence of gray wolves in California, western Oregon, and western Washington, as well as the two remaining wolves 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 States and neighboring Canadian provinces.

There are no Federal recovery plans addressing wolf recovery in western States outside of Idaho, Montana, and Wyoming. However, 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 that provide mechanisms to regulate wolf mortality, similar to most other species of wildlife managed under State authority. 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 2022, 10 packs of gray wolves (totaling at least 52 wolves and 6 breeding pairs) were documented in western Washington where wolves are federally listed (WDFW et al. 2023, p. 17). In the western two-thirds of Oregon, where gray wolves are federally listed, there were a minimum of 38 wolves in 10 groups (ODFW defines a group as 2 or more wolves traveling together (ODFW 2023, p. 4)); 4 of these groups were considered breeding pairs at the end of 2022 (ODFW 2023, pp. 5–6). Wolves originating from Oregon have also expanded their range

into California, where a minimum of 18 wolves in 3 packs were documented at the end of 2022 (CDFW 2022, entire).

In addition to gray wolves found in the western States outside of the delisted NRM population, the Great Lakes metapopulation, consisting of more than 4,200 wolves, is broadly distributed across Minnesota, Michigan, and Wisconsin (Erb and Humpal 2022, entire; Wisconsin Department of Natural Resources (WI DNR) 2022, entire; Michigan Department of Natural Resources (MI DNR) 2023, entire). Recently, both Michigan and Minnesota updated their State wolf management plans (MI DNR 2022, entire; Minnesota Department of Natural Resources 2023, entire). The WI DNR recently revised their draft wolf management plan and will present it to their Natural Resource Board in October 2023 to determine next steps to finalize the plan (WI DNR 2023, entire).

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, appendices 8 and 9; Fritts and Carbyn 1995, p. 26; Bangs 2002, p. 1; 73 FR 10514, February 27, 2008; 74 FR 15123, 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 2 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 (77 FR 55530 at 55538–55539, September 10, 2012; 74 FR 15123 at 15132,

April 2, 2009). For additional information on NRM wolf recovery goals, see 74 FR 15123 (April 2, 2009) at pp. 15130–15135 and references therein.

Wolves in the NRM distinct population segment (DPS) 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 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 the NRM population: (1) Had 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 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 genetically diverse and had demonstrated successful genetic exchange through natural dispersal and human-assisted migration management between all 3 core refugia (74 FR 15123, April 2, 2009). Gray wolves in the NRM remain well above the recovery goals established for this region (see *Historical and Current Range*, above).

### *Reintroduction*

To date, purposeful reintroduction of gray wolves to Colorado has not occurred; current wolf occupancy in Colorado is the result of natural wolf dispersal from the NRM population (Service 2020, pp. 15–19, 28; see *Historical and Current Range*, above). The reintroduction of gray wolves in Idaho and Wyoming in the 1990s contributed to achieving the recovery goals for the NRM population in 2002 (Service et al. 2008). For additional details on NRM reintroduction efforts, please see our biological report (Service 2020, entire) and *Release Procedures* 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 implementing regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of an endangered or threatened species that will be released into habitat that is capable of supporting the experimental population outside the species' current range. Under section 10(j) of the Act, we determine whether or not an experimental population is essential to the continued existence of the species based on the best available science. Our regulations define an

essential population as one whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as “nonessential” (50 CFR 17.80(b)).

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 (50 CFR 17.82). The designation as an experimental population and treatment as a threatened species 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 (50 CFR 17.83; see 16 U.S.C. 1539(j)(2)(C)(i)). 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) (50 CFR 17.83) and 7(a)(4) (50 CFR 402.10) of the Act apply (50 CFR 17.83). 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. As a result, NEPs provide additional flexibility in managing the nonessential population.

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 *Effects on Wild 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);

(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); and

(5) When an experimental population is being established outside of its historical range, any possible adverse effects to the ecosystem that may result from the experimental population being established.



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 *Experimental Population* and *Experimental Population Regulation Requirements*, 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 Experimental Population Essential or Nonessential?*, 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, remove, and/or contain the experimental population designated in the regulations from nonexperimental 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).

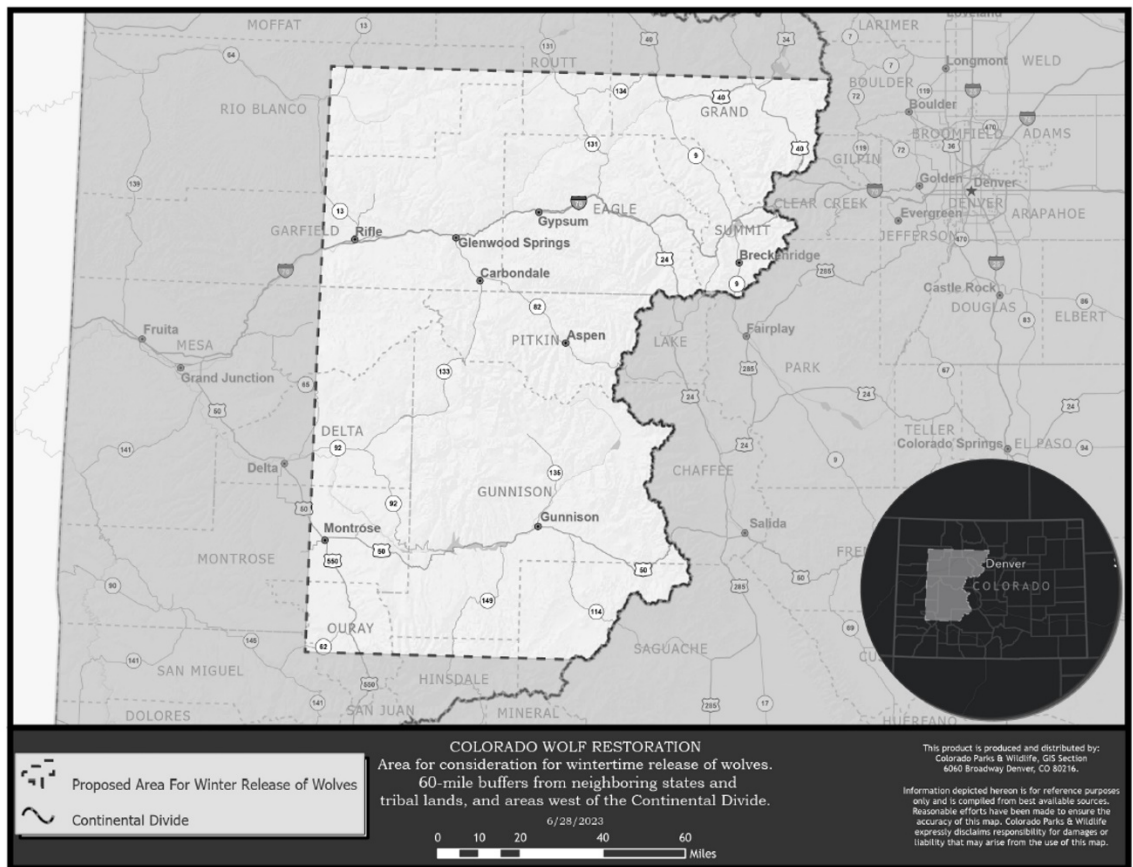
Under 50 CFR 17.81(e), the Service must consult with appropriate State fish and wildlife agencies, affected Tribal governments, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable,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

## **Experimental Population**

We are designating 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 31, 2023.

### *Reintroduction Areas and Release Sites*

The NEP area is the entire State of Colorado. This scale is appropriate, given that CPW has proposed a discrete release area (figure 2), and gray wolves have high dispersal ability (Jimenez et al. 2017, p. 582). Furthermore, gray wolves released on the west side of the Continental Divide may move to locations beyond the western portion of the State, including east of the Continental Divide. Within the statewide NEP designation, CPW proposes to release gray wolves obtained from the delisted NRM population (Idaho, Montana, eastern Oregon, eastern Washington, Wyoming) at multiple sites west of the Continental Divide. Individual release sites will be located on private or State lands with high habitat suitability and low wolf–livestock conflict risk based on models developed by Ditmer et al. (2022, entire). All release sites will be located west of the Continental Divide (Colorado Revised Statute 33–2–105.8) (figure 2). CPW proposes to release a total of 10 to 15 wolves at a 50:50 sex ratio each year during winter for 3 to 5 years (CPW 2023b, p. 20), although exact numbers and sex ratios may vary due to factors associated with capture from source populations (CPW 2023b, Appendix B, p. B-34). 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 2023b, p. 22).



**Figure 2.** Map of the State of Colorado with county boundaries and the general area for CPW’s proposed initial (1–3 years) release site area for a nonessential experimental population (NEP) of gray wolves. Used with permission from CPW.

### *Release Procedures*

CPW officials plan to capture wild 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 protocols specific to each jurisdiction from which donor wolves are to come. 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 *Reintroduction Areas and Release Sites* and *Release Procedures* above, the CPW plans to “hard release” gray wolves on State or private lands within a discrete release area (figure 2, 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), CPW does not plan to implement any special management practices 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 Populations*

Our regulations at 50 CFR 17.81 require that we consider any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere. The preferred donor population for the reintroduction of gray wolves to Colorado is the delisted NRM population. Gray wolves in these States are managed by State fish and wildlife agencies and Tribes. These wolves are an appropriate source for the Colorado reintroduction because they share similarities in habitat and preferred prey; one of the wolves in Colorado dispersed from the NRM population; and the NRM population reached numerical, spatial, and temporal recovery goals by the end of 2002 (Service 2020, p. 15; see *Recovery Efforts to Date*, above). The NRM wolf population continues to demonstrate stable to slightly increasing demographic trends with an estimated 1,337 wolves in Idaho as of August 2022 and slightly more than 1,800 wolves in Montana, Oregon, Washington, and Wyoming at the end of 2022 (IDFG 2023, unpaginated; ODFW 2023, p. 2; Parks et al. 2023, pp. 9–11; WDFW et al. 2023, pp. 2–3; WGFD et al 2023, p. 3). Further, the NRM population is part of a larger metapopulation of wolves that encompasses all of Western Canada (Service 2020, p. 29). Given the demonstrated resilience and recovery trajectory of the NRM population and limited number of animals that will be captured for translocation, we expect negative impacts to the donor population to be negligible.

### *Likelihood of Population Establishment and Survival*

In our findings for designation of an NEP, we must consider if the reintroduced population will become established and survive in the foreseeable future. In this portion of the preamble, we address the likelihood that populations introduced into the NEP will become established and survive. 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.” However, the Act does not define the term “foreseeable future.” Similarly, our implementing regulations governing the establishment of an NEP under section 10(j) of the Act use the term “foreseeable future” (50 CFR 17.81(b)(2)) but do not define the term. 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 rule, we define the foreseeable future for our evaluation of the likelihood of survival and establishment as approximately 13 years, which reflects 3 wolf generations of approximately 4–4.5 years per generation (vonHoldt et al. 2008, p. 257; Mech et al. 2016, pp. 1,6), and 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. This timeframe is also similar to the

amount of time it took wolves to begin recolonizing areas outside of the core of the NRM (Idaho, Montana, and Wyoming) in Oregon and Washington (Service 2020, p. 28).

In evaluating the likelihood of establishment and survival of this NEP in the foreseeable future, 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 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 (IUCN 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*, above, 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 CPW Commission in 2016 (85 FR 69778 at 69837, November 3, 2020).

The State of Colorado currently classifies the gray wolf as an endangered species; this classification regulates take. 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 31, 2023. Colorado Revised Statute 33–2–105.8 calls for the development and implementation of a Colorado Wolf Restoration and Management Plan, which was finalized and approved by the CPW Commission in May 2023 (CPW 2023b, entire). The plan follows a phased approach whereby the conservation status of gray wolves is linked with numerical and temporal population targets (CPW 2023b, pp. 24–25). Although agency-directed lethal control may be used to mitigate conflicts with specific individual wolves and/or packs that repeatedly depredate livestock, purposeful eradication of wolves in Colorado is no longer a tool used for wolf management. Lethal control may consist of removing wolves that repeatedly depredate on livestock, whereas purposeful eradication likely involves removal of all wolves within the State. 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 two known individual wolves presently in north-central Colorado, large blocks of gray wolf 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 could support varies among the models. One model estimated that the State could support between 407 and 814 wolves based on prey and habitat availability (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 includes 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 could affect the long-term persistence of wolves in some areas (Mech et al. 2019, entire).

Recognizing the limitations of wolf habitat suitability models that do not account for the presence of livestock, Ditmer et al. (2022, entire) used voting records for proposition 114 in Colorado to quantify and map an index of tolerance for wolves and combined it with spatially explicit data on livestock distributions and land ownership to predict wolf conflict risk in Colorado (Ditmer et al. 2022, p. 1). Conflict risk was juxtaposed with estimates of wolf ecological suitability developed using seasonal prey densities along with environmental and anthropogenic features that influence wolf habitat use (Ditmer et al. 2022, p. 1) to predict areas of high habitat suitability and increased conflict risk in summer and winter for gray wolves across Colorado. The models predicted over 58 million acres (23 million hectares) of potential suitable gray wolf habitat occurs on the western slope of Colorado. Approximately 56 percent of this total, or 32.5 million acres (13.2 million hectares) was considered suitable seasonal wolf habitat that contained high ecological suitability and low conflict risk (Ditmer et al. 2022, p. 11). However, approximately 14 percent, or 8.3 million acres (3.4 million hectares), the majority of which occurs in the northern part of the western slope of Colorado, were identified as being potential conflict hotspots where significant overlap between ecological suitability and conflict risk was predicted (Ditmer et al. 2022, pp. 9–11).

Wolves can successfully occupy a wide range of habitats provided adequate prey exists (Mech 2017, pp. 312–315). Wolves in the Western United States rely on habitats

containing large prey such as mule deer, elk, and moose (Smith et al. 2010, entire). CPW manages wild ungulate populations, such as moose, elk, bighorn sheep, and mule deer, etc., using herd management plans, which establish population objective minimums and maximums for each ungulate herd in the State (CPW 2020, entire). The herd management plans consider both biological and social factors when setting herd objective ranges (CPW 2020, entire). Like other Western States, mule deer in Colorado have declined due to a multitude of factors since the 1970s to a statewide post-hunt population estimate of 416,430 animals in 2021, which was well below the target statewide population objective of 484,100. In 2021, of 54 mule deer herds in Colorado, 18 were below their population objective minimum with the western part of the State being the most affected. In contrast, elk populations in Colorado are stable with a 2021 post-hunt population estimate of 308,920 elk. Although 34 of 42 elk herds are within or above the population objective range, the ratio of calves per 100 cows (a measure of overall herd fitness) has been on the decline in some southwestern herd units (CPW 2020, p. 7).

Moose are not native to Colorado so, to create hunting and wildlife viewing opportunities, CPW transplanted moose to the State beginning in 1978. Since then, they transplanted moose on four other occasions through 2010. The 2021 post-hunt moose population was estimated at 3,510 animals and continues to increase as moose expand into new areas of Colorado. 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 2020, entire). 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 NEP area and would support population establishment and survival.

*Reintroduction expertise/experience/track record*

Conservation efforts to reintroduce gray wolves to the NRM began in 1995, with the reintroduction of wolves to portions of Idaho and Wyoming and the continued natural recolonization of wolves in northwestern Montana. Following their release, wolves rapidly increased in abundance and distribution in the region due to natural reproduction and 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, reaching 1,655 wolves by the end of 2008 (Service et al. 2016, table 6b), while total mortality averaged approximately 16 percent annually between 1999 and 2008 (Service et al. 2000–2009, entire). Wolf numbers and distribution in Idaho, Montana, and Wyoming stabilized after 2008 as suitable habitat became increasingly saturated (74 FR 15123 at 15160, April 2, 2009).

Between 2009 and 2015, when gray wolves were managed primarily under State authority due to delisting (73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011; 77 FR 55530, September 10, 2012), Idaho, Montana, and Wyoming began to manage wolves with the objective of reversing or stabilizing population growth while continuing to maintain populations well above Federal recovery targets for the NRM population. During this period, States began to use public harvest as a management tool to achieve State-specific management objectives. 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). Although this mortality rate was significantly higher than mortality rates during the previous decade, the NRM population demonstrated an ability to sustain itself, consistent with scientific information demonstrating that the species' reproductive and dispersal capacity can compensate for a range of mortality rates (Service 2020, pp. 8–9).

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. Wolves in the NRM continue to remain above minimum recovery levels, demonstrating availability of technical expertise to successfully reintroduce gray wolf populations. For more information regarding the success of reintroduction efforts in the NRM, please see *Recovery Efforts to Date*, above.

Based on the success of past gray wolf reintroduction efforts in the NRM where biological recovery was achieved within 7 years, the availability of suitable wolf habitat and adequate wild ungulate prey in the NEP (see *Habitat suitability/prey availability*, above), the demonstrated resiliency of gray wolves in the United States, and the development of a comprehensive Gray Wolf Restoration and Management Plan in Colorado, the best available scientific data indicate that the reintroduction of gray wolves into suitable habitat in Colorado supports the likely success of establishment and survival of the reintroduced population, and the experimental population has a high likelihood of becoming established within the foreseeable future.

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

We are designating an experimental population of gray wolf in Colorado 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 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 2023b, entire). This management plan focuses on the primary threat to gray wolf

populations, which is human-caused mortality (e.g., Fuller et al. 2003, entire; Mech 2017, pp. 311–312; Hill et al. 2022, entire).

As noted in *Recovery Efforts to Date*, above, populations of gray wolves in the 44-State listed entity number more than 4,300 individuals and occupy portions of California, Michigan, Minnesota, Oregon, Washington, and Wisconsin (CDFW 2022, unpaginated; Erb and Humpal 2022, unpaginated; WI DNR 2022, p. 4; ODFW 2023, p. 2; WDFW et al. 2023, pp. 2–3). Two gray wolves are currently known to be present in Colorado, and they do not currently meet our definition of a gray wolf population, which is two breeding pairs of gray wolves that each successfully raise at least two young to December 31 of their birth year for 2 consecutive years (Service 1994). As explained above in *Recovery Efforts to Date*, there is no recovery plan that addresses the entire currently listed entity. In the absence of a recovery plan, we evaluate how the experimental population will contribute to the conservation of the species by considering the conservation biology principles of redundancy, resiliency, and representation.

Reintroduction efforts in Colorado will provide additional redundancy and representation for the 44-State listed entity. Redundancy is the ability for the species to withstand catastrophic events, for which adaptation is unlikely, and is associated with the number and distribution of populations. Representation is the ability of a species to adapt to changes in the environment and is associated with its ecological, genetic, behavioral, and morphological diversity. Once established, the reintroduction in the NEP will 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 will 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 nonessential 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 past modeling efforts, it has been estimated that Colorado could biologically support approximately 400 to 1,200 wolves (Bennett 1994, pp. 112, 275–280; Carroll et al. 2006, p. 33), but due to social constraints that could limit the distribution of wolves in the State (Ditmer et al. 2022, p. 12), the total number of wolves that Colorado could support may be slightly lower. Nonetheless, this action will contribute to the conservation of the listed entity by increasing redundancy and representation.

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

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 2, above). Although much of this public land is largely unavailable and/or unsuitable for intensive development and contains an abundance of wild 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; 85 FR 69778 at 69842, November 3, 2020).

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 wolves killed as a result of mistaken identity, accidental capture during animal damage control activities, and high-speed vehicular traffic. Human-caused mortality includes both controllable and uncontrollable sources of mortality. Controllable sources of mortality are discretionary, can be limited by the managing agency, and include permitted take, recreational harvest, and direct agency control. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population size and include things such as natural mortalities, illegal take, and accidental deaths (e.g., vehicle collisions, capture-related mortalities) (85 FR 69778, November 3, 2020). Although the effects of uncontrollable sources of mortality may be greatest for wolf populations that are small in size, which is most likely to occur during the early phases of recovery in Colorado, based on experiences with wolf recovery in the NRM (where uncontrollable sources of mortality were also present) and the availability of suitable habitat in Colorado, we expect that these sources of mortality will have minimal effect on gray wolf population growth and persistence in the State. If population levels and controllable sources of mortality are adequately regulated, the life-history characteristics of wolf populations provide natural resiliency to relatively high levels of human-caused mortality (85 FR 69778, November 3, 2020).

In conjunction with previous reintroduction efforts, implementation of this final rule reflects continuing success in recovering gray wolves through longstanding cooperative and complementary programs by several Federal, State, and Tribal agencies. In particular, the stakeholder engagement process developed by CPW in support of its



Gray Wolf Restoration and Management Plan (CPW 2023b, entire) 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 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 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 Colorado NEP area encompasses the entire State. As discussed below, we conclude that after initial releases, any gray wolves found in Colorado will, with a high degree of likelihood, have originated from and be members of the NEP. However, we recognize that absent identifying tags or collars, it may be very difficult for members of the public to easily determine the origin of any individual gray wolf. Therefore, we will use geographic location to identify members of the NEP. As such, any gray wolf within the State of Colorado will be considered part of the NEP regardless of its origin. Similarly, any wolf outside of the State will take on the status of that location. For example, a wolf moving from Wyoming into Colorado will take on the NEP status, whereas a wolf moving from Colorado into Wyoming will take on a not-listed status, or endangered status if it moves into any other adjacent State.

By the end of 2022, a minimum count of two wolves were known to occupy Colorado and do not constitute a population (see *Historical and Current Range*, above). While an adult female wolf dispersed from Wyoming to Colorado in 2019 to form half of the first reproductively active pack in the State in recent history, the origins of her mate are unknown. It is likely the male dispersed from the Greater Yellowstone area (approximately 480 km (300 miles) north and west of their current location), but his exact origin is uncertain (CPW 2021a, entire). The mean dispersal distance of male wolves in the NRM is 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 average dispersal distance for gray wolves. In addition, Wyoming manages gray wolves in northwestern Wyoming via a trophy management area, which restricts the number of gray wolves that can be harvested in that area. The southern extent of the trophy management area generally coincides with the southern extent of the gray wolf current range in the NRM (figure 1, above). Outside of the trophy management area, wolves are managed as predators and can be harvested at any time without a license and with no harvest limit. Gray wolf packs are unlikely to persist long term in portions of Wyoming where they are designated as predatory animals (85 FR 69778, November 3, 2020), which further limits the ability for individuals to enter Colorado from Wyoming.

Despite these challenges, it is possible that gray wolves dispersing from the NRM population could successfully enter the NEP. However, these movements would likely be infrequent given the NEP's distance from existing populations, and the normal dispersal distances for gray wolves. Additionally, the small numbers of individuals likely to occupy the NEP following the release and the sizable distances between populations makes any potential interaction between individuals or a merging of populations highly unlikely. Further, even if gray wolves from the NRM or other populations were to disperse into the NEP, the presence of one or a few individual dispersing gray wolves

would not constitute a population, as described above. Therefore, gray wolves reintroduced into Colorado will be wholly geographically separate from the delisted portion of the NRM population as well as the remainder of the currently listed 44-State entity. Based on this geographic separation, we conclude that any gray wolves found in Colorado after the initial release will, with a high degree of likelihood, be members of the NEP; therefore, we conclude that geographic location is an appropriate means to identify members of the NEP.

As noted in *Release Procedures*, above, CPW plans to fit individual animals reintroduced to the Colorado NEP with GPS collars or a mix of GPS and VHF collars, with GPS preferred in the early stages of the reintroduction effort. Reintroduced wolves fitted with radio telemetry collars and other identifiable marks prior to release 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). However, as reintroduced wolves begin to reproduce and disperse from Colorado packs, wolf abundance and distribution will increase in Colorado and the ability to capture and mark a high proportion of the population will decline. Given the challenges associated with marking a high number of wolves as the population increases and 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.

*Is the 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 designating 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*

We have included management measures to address potential conflicts between wolves and humans and wolves and livestock. Management of the nonessential experimental population would allow gray wolves in the NEP to be hazed, killed, or relocated by the Service or our designated agent(s) for livestock depredations. Under special conditions, the public may harass or kill wolves in the act of attacking livestock (defined below). We have also included an exception to allow nonlethal and lethal management of gray wolves that are having an unacceptable impact to ungulate herds or populations on Tribal lands (defined below). 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 ungulate population decline; (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.

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 are listed below:

*Depredating wolves*—Gray wolves that have been confirmed by the Service or our designated agent as having depredated on livestock at least once within the last 30 days, and are routinely present and present a significant risk to the health and safety of livestock.

*Designated agent*—An employee of a Federal, State, or Tribal agency that is authorized or directed by the Service to conduct gray wolf management consistent with this rule.

The State of Colorado and Tribes within the State with wolf management plans also may become designated agents by submitting a request to the Service to establish a memorandum of agreement (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 portion of their State or Tribal wolf management plans that does not exceed the exceptions provided in 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 we solicit additional public comment, and this rule is modified accordingly.

*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 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. See table 1 below for additional details on incidental take of gray wolves within the NEP area.

*Intentional harassment*—The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions that are designed to cause physical discomfort and temporary physical injury but not death. The term does not apply if there is evidence of unusual attractants or artificial or intentional feeding.

*Interagency consultation*—For purposes of section 7(a)(2) of the Act, section 10(j) of the Act and our regulations (at 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. Where actions

may affect gray wolves within units of the National Wildlife Refuge system or National Park Service in Colorado the Service will coordinate with the National Park Service and National Wildlife Refuge system to address their section 7(a)(2) obligations.

*In the act of attacking*—The actual biting, wounding, grasping, or killing of livestock or working 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. This definition does not apply if there is evidence of unusual attractants or artificial or intentional feeding.

*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 owners (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 rule, also includes all non-Federal land and land within Tribal reservations. Individuals legally using Tribal lands are considered landowners for the purposes of this rule.

*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.

*Livestock producer*—A person who is actively engaged in farming/ranching and receives income from the production of livestock.

*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. Opportunistic harassment includes scaring wolves with noise (e.g., yelling or shooting firearms into the air), movement (e.g., running or driving toward the wolf), or objects (e.g., throwing a rock at a wolf or releasing bear pepper spray).

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

*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, 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.

*Relocation*—Capture and movement to another location within the NEP.

*Remove*—Place in captivity or kill.

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

*Rule*—"This rule" in the regulatory text refers to the NEP regulations.



*Tribal land*—any lands where title is either held in trust by the United States for the benefit of an Indian Tribe or individual Indian or held by an Indian Tribe or individual Indian subject to restrictions by the United States against alienation (i.e., sale or transfer).

*Unacceptable impact*—Tribally determined decline in a wild ungulate population or herd, where wolf predation is a major cause of the population or herd not meeting established Tribal management goals on Tribal land. The Tribal determination must be peer-reviewed and reviewed and commented on by the public prior to a final, written determination by the Service that an unacceptable impact has occurred and that wolf removal will benefit the affected ungulate herd or population.

*Working dogs*—Guard or herding dogs used in livestock production.

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

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

Take Provision	Description of Provision in the Experimental Population Rule
Take in defense of human life	Any person may take a 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.
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.
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 our designated agent within 7 days.
Intentional harassment	After the Service, or our designated agent, has confirmed wolf activity on private land or on a public land grazing allotment, the Service or our designated agent 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. Intentional harassment must be reported to the Service or a designated agent within 7 days. This exception does not apply if there is evidence of unusual attractants or artificial or intentional feeding.
Taking wolves “in the act of attacking” livestock on PRIVATE land	Consistent with State or Tribal requirements, any landowner may take (injure or kill) a gray wolf in the act of attacking (wounding, harassing, molesting, or killing) livestock or working dogs on their private land. Any wolf taken in the act must be reported to the Service or our designated agent within 24 hours.

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

We will allow additional reasonable time if access to the site is limited. The carcass of any wolf taken and surrounding area must not be disturbed in order to preserve physical evidence that the livestock or working dogs were recently attacked by a wolf or wolves. The Service or our designated agent 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. This exception to the prohibition on take does not apply if there is evidence of unusual attractants or artificial or intentional feeding.

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 their livestock or working dogs on the person’s allotment or other area authorized for their use without prior written authorization from the Service. The Service or our designated agent must be able to confirm that the livestock or working dogs were wounded, harassed, molested, or killed by a wolf or wolves. The carcass of any wolf taken and the area surrounding it must not be disturbed to preserve 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 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. We will allow additional reasonable time if access to the site is limited. This exception to the prohibition on take does not apply if there is evidence of unusual attractants or artificial or intentional feeding.

Additional taking by private citizens on their PRIVATE land

At the Service’s or our designated agents’ direction, the Service or designated agent may issue a “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 has been confirmed by the Service or our designated agent within the last 30 days; and (2) the Service or our designated agent has determined that 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 our 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. We will allow additional reasonable time if access to the site is limited. This exception does not apply if there is evidence of unusual attractants or artificial or intentional feeding.

Additional taking by grazing permittees on PUBLIC land

At the Service’s or our designated agents’ direction, the Service or designated agent may issue a “depredation” 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) 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 within the last 30 days; and (2) the Service or our designated agent has determined that 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 our designated agent has authorized lethal removal of 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. We will allow additional reasonable time if access to the site is limited. This exception does

	<p>not apply if there is evidence of unusual attractants or artificial or intentional feeding.</p> <p>The Service or our designated agent may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of depredating wolves. The Service or our designated agent will consider: (1) Evidence of wounded livestock or working dogs or remains of livestock or working dogs that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock or working dogs; (2) the likelihood that 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>
Agency take of wolves that depredate livestock	
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 is reported within 24 hours. We will allow additional reasonable time if access to the site is limited. Shooting a wolf as a result of mistaking it for another species is not considered incidental take and may be referred to the appropriate authorities for prosecution.</p>
Permits for recovery actions that include take of gray wolves	<p>Permits are available and required, except as otherwise allowed by this rule, for scientific purposes, enhancement of propagation or survival, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).</p>
Additional taking provisions for agency employees and our designated agents	<p>Any Service employee or our designated agent may take a gray wolf from the NEP: (1) For take related to the release, tracking, monitoring, recapture, and management for the NEP; (2) to aid or euthanize sick, injured, or orphaned wolves or transfer to a licensed veterinarian for care; (3) to dispose of a dead specimen; (4) to salvage a dead specimen that may be used for scientific study; (5) to aid in law enforcement investigations involving wolves (collection of specimens for necropsy, etc.); or (6) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent, to prevent these gray wolves from passing on or teaching those traits to other wolves.</p>
Take of gray wolves that are contributing to unacceptable impacts to wild ungulate populations or herds on Tribal land	<p>This would allow nonlethal and/or lethal management of gray wolves that are having an unacceptable impact to wild ungulate herds or populations on Tribal lands. This exception requires Tribes to develop 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) data indicating that wolves are a major cause of the ungulate population decline; (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.</p>

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

CPW plans to use ground and aerial monitoring techniques to document wolf reproductive success, abundance, and distribution in Colorado post-release. This information will be summarized in an annual report by CPW 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. A copy of the report will be submitted annually to the Service by June 30<sup>th</sup> and posted on CPW's website. 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 *Release Procedures*, above.

The Service will 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 recovery goals and conservation of the species. During this evaluation, we will assess the reintroduction program and coordinate with CPW if it is determined that modifications to reintroduction protocols are necessary. We believe that 5 years after the reintroductions is a reasonable timeline for this evaluation because that timeline would allow for evaluation of the success of the management program and of wolf population growth and abundance in order to assess progress toward achieving the State of Colorado's recovery goals. 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.

### *Other Considerations*

Above, we considered potential effects of the release on wild populations of the delisted NRM potential donor populations. We also considered potential effects of the release on the Mexican wolf. The number of gray wolves in Colorado could continue to grow and expand, which could increase the likelihood that gray wolves in Colorado disperse far enough south to encounter Mexican wolves. The timing and extent of any potential future contact are uncertain and difficult to project, but if contact were to occur, interbreeding is a concern for the Mexican wolf. If gray wolves come to occupy Mexican wolf recovery areas, these physically larger wolves are likely to dominate smaller Mexican wolves and quickly occupy breeding positions, as will their hybrid offspring. Hybrid population(s) thus derived will not contribute towards recovery of Mexican wolves because they will significantly threaten integrity of the listed entity (Odell et al. 2018, entire). However, potential inbreeding would be unlikely to have significant effects on the gray wolf, given the narrow geographic range in which such contact would likely occur relative to the species' overall range. Additionally, we do not intend to initiate or allow adaptive introgression between gray wolves and Mexican wolves as part of the genetic management of Mexican wolves (87 FR 39357, July 1, 2022). To help minimize interactions and protect Mexican wolf genetic integrity, we have simultaneously issued a section 10(a)(1)(A) permit to be held by the Service, which would authorize our designated agents to assist in the capture and return of wolves originating from the Colorado NEP.

### **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 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 Western United States and the western Great Lakes.

### **Required Determinations**

#### *Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)*

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. 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 final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, 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 rule is not significant.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 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.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

This rule is modeled after previous NEP designations in Idaho, Montana, and Wyoming that contributed to the recovery of gray wolves while allowing for the control and management of wolves that caused conflicts and economic impacts on livestock producers. The majority of gray wolves in the Western United States are part of the NRM population, which is no longer protected under the Act. Despite increased incidences of human-caused mortality in the NRM population after delisting, this population is stable to increasing.(Service 2020, pp. 14–19; 85 FR 69778, November 3, 2020).

The State of Colorado has recognized the utility of NEP designations in reintroducing 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 2022). This process, which involved a Stakeholder Advisory Group comprising a diverse array of stakeholders such as agricultural producers, hunting guides, wolf conservation advocates, and other interests and a Technical Working Group comprising 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 depredating wolves (see definition above under *Management Restrictions, Protective Measures, and Other Special Management*) in this rule, relative to endangered species that receive the full protections of 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 working 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 2022 totaled \$187,382.00 (WGFD et al. 2023, pp. 24). 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.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period on the proposed rule (88 FR 10258, February 17, 2023) that may pertain to our consideration of the probably incremental economic impacts of this NEP designation. Based on this information, we affirm our



certification that this NEP designation under section 10(j) of the Act will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions (66 FR 28355, May 22, 2001). E.O. 13211 defines a “significant energy action” as an action that (i) is a significant regulatory action under E.O. 12866 (or any successor order, including most recently E.O. 14094 (88 FR 21879, April 11, 2023)); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or 14094. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

*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.), we make the following finding:

(1) This rule will 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 NEP designation for gray wolves in Colorado would not impose any additional management or protection requirements on the States or other entities. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7).

“Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not impose a cost of \$100 million or more in any given year on local or State governments or private entities and it would not place additional requirements on any city, county, or other local municipalities. Therefore, a small government agency plan is not required.

#### *Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have determined that this rule will not have significant implications concerning taking of private property by the Federal Government. This 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. Additionally, because of the regulatory flexibility provided by NEP designations under section 10(j) of the Act, the increased flexibility provided by this rule for State or Tribal-led gray wolf management will reduce regulatory restrictions on private lands and will result in minor positive economic effects for a small percentage of livestock producers. Therefore, we conclude that this rulemaking for the gray wolf does not pose significant taking implications.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132, this rule does not have significant federalism effects. This 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 gray wolf conflicts, which 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 rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of CPW. We cooperated with CPW and other State agencies in the preparation of this rule. Therefore, this rule does not have significant federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of Executive Order 13132.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order. We are

designating the NEP in accordance with the provisions of the Act. To assist the public in understanding the NEP, this rule presents the areas of the NEP on a map and the rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule contains existing and new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). 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. The OMB previously reviewed the new information collection requirements contained in this rulemaking related to the establishment of an NEP of the gray wolf (*Canis lupus*) in the State of Colorado, under section 10(j) of the ESA and assigned OMB Control Number 1018–0189. OMB has previously approved the information collection requirements associated with permitting requirements associated with native endangered and threatened species, and experimental populations, and assigned OMB Control Number 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).

Experimental populations established under section 10(j) of the Act, as amended, require information collection and reporting to the Service. We will collect information on the gray wolf NEP to help further the recovery of the species and to assess the success of the reintroduced populations. There are no forms associated with this information collection. The respondents notify us when an incident occurs, so there is no set frequency for collecting the information. Other Federal agencies provide us with the vast majority of the information on experimental populations under cooperative agreements for the conduct of the recovery programs. However, the public also provides some

information to us. The new information collection requirements identified below require approval by OMB:

1. ***Appointment of designated agent***—A designated agent is an employee of a Federal, State, or Tribal agency that is authorized or directed by the Service to conduct gray wolf management. A prospective designated agent submits a letter to the Service requesting designated agent status. The letter includes a proposal for the work to be completed, a list of individuals that may perform the work, and a resume (or similar) demonstrating qualifications of each individual to competently perform the work. The Service will then respond to the requester with a letter authorizing them to complete the work.
2. ***Request for written take authorization***—After receiving confirmation of wolf activity on private land or on a public land grazing allotment, we or the designated agent 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.
3. ***Request for “depredation” written take authorization***—The Service or designated agent may issue a “depredation” written take authorization of limited duration (45 days or fewer) to a landowner or their employees, or to a public land grazing permittee, to take up to a specified (by the Service or our designated agent) number of wolves.
4. ***Reporting requirements***—Except as otherwise specified in this rule or in an authorization, any take of a gray wolf must be reported to the Service, or our designated agent as follows (additional reasonable time will be allowed if access to the site is limited):

- a. ***Lethal take*** must be reported within 24 hours. We will allow additional reasonable time if access to the site is limited.
- b. ***Opportunistic or intentional harassment*** must be reported within 7 days.
- c. Gray wolves ***taken into captivity for care or to be euthanized*** must be reported to the Service within 24 hours, or as soon as reasonably appropriate.

5. ***Annual report***—To evaluate progress toward achieving State downlisting and delisting criteria, CPW will summarize monitoring information in an annual report. The report, due by June 30 of each year, will describe wolf conservation and management activities that occurred in Colorado for as long as the gray wolf is federally listed during any portion of a calendar or biological year. The annual report will 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.

6. ***Recovery or reporting of dead individuals and specimen collection from experimental populations***—This type of information is for the purpose of documenting incidental or authorized scientific collection. Specimens are to be retained or disposed of only in accordance with directions from the Service. Most of the contacts with the public deal primarily with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

**7. *Proposal – Take of Gray Wolves on Tribal Lands (NEW in Final Rule)*—**

The exception to allow take of gray wolves that are contributing to unacceptable impacts to wild ungulate population or herds on Tribal land requires Tribes to develop a science-based proposal that must, at a minimum, include the following information:

- The basis of ungulate population or herd management objectives;
- Data indicating that the ungulate herd is below management objectives;
- Data indicating that wolves are a major cause of the ungulate population decline;
- Why wolf removal is a warranted solution to help restore the ungulate herd to management objectives;
- The level and duration of wolf removal being proposed;
- How ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and
- 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.

We will use the information described above to assess the effectiveness of control activities and develop means to reduce problems with livestock where depredation is a problem. Service recovery specialists use the information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved.

*Title of Collection:* Endangered and Threatened Wildlife, Experimental Populations – Colorado Gray Wolf (50 CFR 17.84).

*OMB Control Number:* 1018–0189.

*Form Numbers:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Individuals; private sector; and State/local/Tribal governments.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually for annual report and on occasion for other requirements.

*Total Estimated Annual Non-hour Burden Cost:* None.

Requirement	Number of Annual Respondents	Number of Annual Responses Each	Total Annual Responses	Average Completion Time	Total Annual Burden Hours
<b><i>Appointment of Designated Agent</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Request for Written Take Authorization</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Request for "Depredation" Written Take Authorization</i></b>					



Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Reporting Requirement – Lethal Take</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Reporting Requirement – Opportunistic or Intentional Harassment</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Reporting Requirement – Captivity for Care or to be Euthanized</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Annual Report</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Notification – Recovery or Reporting of Dead Specimen and Specimen Collection</i></b>					
Individuals	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
Private Sector	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Proposal – Take of Gray Wolves on Tribal Lands (NEW in Final Rule)</i></b>					
State/Local/Tribal Gov't	1	1	1	30 min (reporting) 30 min (recordkeeping)	1
<b><i>Totals:</i></b>	<b>25</b>		<b>25</b>		<b>25</b>

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

We will accept and consider all public comments concerning the information collection requirements received in response to this final rule. Send your written comments and suggestions on this information collection to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) (email). Please reference “OMB Control Number 1018–BG79” in the subject line of your comments.

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

We have prepared a final environmental impact statement (FEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with this rule to designate the Colorado nonessential experimental population of gray wolves. The purpose of the FEIS is to identify and disclose the environmental consequences resulting from the designation of the gray wolf in Colorado. The FEIS is an outgrowth of the public scoping process we conducted from July 21, 2022, to August 22, 2022, and the public and peer review comments we received on the draft environmental impact statement (DEIS) (see 88 FR 10318, February 17, 2023), and our February 17, 2023, proposed rule (88 FR 10258). We used the FEIS, which we announced in the *Federal Register* on September 19, 2023 (88 FR 64399), to inform our final decision for

this rulemaking.

### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. We have considered possible effects of this rule on federally recognized Indian Tribes. In accordance with Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. In July 2022, we sent notification letters to the Native American Tribes within and adjacent to the NEP about this rule, and to determine their interest in participating in Tribal consultation under Secretaries' Order 3206 for this action. We invited the Ute Mountain Ute and the Southern Ute Indian Tribes to serve as cooperating agencies in the development of the environmental impact statement. In October 2022, we provided an informational webinar to the interested Tribes and in January 2023, we participated in government-to-government consultation with the Southern Ute Indian Tribe. In February 2023, we participated in an informational meeting with the Ute Mountain Ute Indian Tribe. If future activities resulting from this rule may affect Tribal resources, the Service will communicate and consult on a government-to-government basis with any affected Native American Tribes in order to find a mutually agreeable solution.

### **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 rule are the staff members of the Colorado Ecological Services Field Office.

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

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

### **Regulation Promulgation**

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

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

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

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

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

#### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* * * * *				
Wolf, gray	<i>Canis lupus</i>	U.S.A.: All of AL, AR, CA, CT, DE, FL, GA, IA, IN, IL, KS, KY,	E	32 FR 4001, 3/11/1967;

		LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA as follows: (1) Northern AZ (that portion north of the centerline of Interstate Highway 40); (2) Northern NM (that portion north of the centerline of Interstate Highway 40); (3) Western OR (that portion of OR west of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR west of the centerline of Highway 95 south of Burns Junction); (4) Most of UT (that portion of UT south and west of the centerline of Interstate Highway 84 and that portion of UT south of Interstate Highway 80 from Echo to the UT/WY Stateline); and (5) Western WA (that portion of WA west of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA west of the centerline of Highway 395 south of Mesa); Mexico.		41 FR 24062, 6/14/1976; 43 FR 9607, 3/9/1978; 73 FR 75356, 12/11/2008; 74 FR 47483, 9/16/2009; 80 FR 9218, 2/20/2015; 50 CFR 17.95(a). <sup>CH</sup>
Wolf, gray [Colorado XN]	<i>Canis lupus</i>	U.S.A. (CO)	XN	88 FR [Insert <u>Federal Register</u> page where the document begins], [Insert date of publication in the <u>Federal Register</u> ]; 50 CFR 17.84(n). <sup>10j</sup>
Wolf, gray	<i>Canis lupus</i>	U.S.A. (MN)	T	43 FR 9607, 3/9/1978; 50 CFR 17.40(d); <sup>4(d)</sup> 50 CFR 17.95(a). <sup>CH</sup>
* * * * *				

3. Amend § 17.84 by adding paragraph (n) to read as follows:

**§ 17.84 Special rules—vertebrates.**

\* \* \* \* \*

(n) Wolf, gray (*Canis lupus*). (1) *Purpose*. The regulations in this paragraph (n) set 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 (n) will further the conservation of the species.

(2) *Determinations*. The gray wolves identified in paragraph (n)(3) of this section constitute a nonessential experimental population (NEP) under § 17.81(c)(2). These wolves will be managed in accordance with the provisions of this rule in the boundaries of the 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. Furthermore, the State of Colorado or any Tribe within the State that has a wolf management plan consistent with this rule can request 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 (n)(10) of this section.

(3) *Designated area*. The Colorado NEP area encompasses the entire State of Colorado. All gray wolves found in the wild within the boundary of the Colorado NEP area are considered nonessential experimental animals. Any gray wolf that is outside the Colorado 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.

(4) *Definitions*. Key terms used in this rule have the following meanings:

*Depredating wolves*—Gray wolves that have been confirmed by the Service or our designated agent as having depredated on livestock at least once within the last 30

days, and are routinely present and present a significant risk to the health and safety of livestock.

*Designated agent*—An employee of a Federal, State, or Tribal agency that is authorized or directed by the Service to conduct gray wolf management consistent with this rule.

*Intentional harassment*—The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions that are designed to cause physical discomfort and temporary physical injury but not death.

*In the act of attacking*—The actual biting, wounding, grasping, or killing of livestock or working 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 working dogs is likely to occur at any moment.

*Landowner*—Any of the following entities:

(A) 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.

(B) The owners, or their employees or contractors, of livestock that are currently and legally grazed on private land and herding and guarding animals (such as alpacas, llamas, or donkeys) and other leaseholders on private land, such as outfitters or guides who lease hunting rights from private landowners.

(C) Individuals legally using Tribal lands in the State of Colorado.

*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.

*Livestock producer*—A person who is actively engaged in farming/ranching and receives income from the production of livestock.

*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. Opportunistic harassment includes scaring wolves with noise (e.g., yelling or shooting firearms into the air), movement (e.g., running or driving toward the wolf), or objects (e.g., throwing a rock at a wolf or releasing bear pepper spray).

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

*Public land*—Federal land such as that administered by the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, U.S. Department of Agriculture's Forest Service, Department of Defense, or other agencies within 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 Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights. This term 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, logging, mining, oil or gas development, or other uses that do not require livestock.

*Relocation*—Capture and movement to another location.

*Remove*—Place in captivity or kill.

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



*Rule*—The regulations in this paragraph (n).

*Tribal land*—Any lands where title is either held in trust by the United States for the benefit of an Indian Tribe or individual Indian or held by an Indian Tribe or individual Indian subject to restrictions by the United States against alienation (i.e., sale or transfer).

*Unacceptable impact*—Tribally determined decline in a wild ungulate population or herd where wolf predation is a major cause of the population or herd not meeting established Tribal management goals on Tribal land. The Tribal determination must be peer-reviewed and reviewed and commented on by the public prior to a final, written determination by the Service that an unacceptable impact has occurred and that wolf removal will benefit the affected ungulate herd or population.

*Working dogs*—Guard or herding dogs typically used in livestock production.

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

(5) *Allowable forms of take of gray wolves.* Take of gray wolves in the experimental population is allowed without a permit only in these specific circumstances: opportunistic harassment; intentional harassment; take in defense of human life; take to protect human safety; take by designated agents to remove depredating wolves; incidental take; take under any previously authorized permits issued by the Service; take per authorizations for employees of designated agents; take for research purposes; and take to protect livestock animals and working dogs. Consistent with the requirements of the State or Tribe, take is allowed on private land. Take on public land is allowed as specified in paragraph (n)(5)(iv)(A) of this section. 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. Any take of wolves must be reported as set forth in paragraph (n)(6) of this section.

(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 within 7 days as set forth in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or a designated agent have confirmed wolf activity on private land or a public land grazing allotment, we or the designated agent may issue written take authorization, with appropriate conditions, valid for not longer than 1 year 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. Intentional harassment must be reported to the Service or a designated agent(s) within 7 days as set forth in paragraph (n)(6) of this section. The provisions in this paragraph (n)(5)(ii) do not apply if there is evidence of unusual attractants or artificial or intentional feeding.

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

(A) 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 (owned or leased), provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. To preserve physical evidence that the livestock or working dogs were recently attacked by a wolf or wolves, the carcass of any wolf taken and surrounding area must not be disturbed. The Service or designated agent 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) The Service or designated agent may issue a “depredation” written take authorization of limited duration (45 days or fewer) 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 has been confirmed by the Service or our designated agent within the last 30 days; and

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

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

(4) The authorizations set forth by this paragraph (n)(5)(iii)(B) may be terminated at any time once threats have been resolved or minimized.

(iv) *Take on public land.* Consistent with State or Tribal requirements, any livestock producer and public land permittee (see definitions in paragraph (n)(4) of this section) who is legally using public land under a valid Federal land-use permit may, without prior written authorization, take a gray wolf in the act of attacking livestock or working dogs on the person’s allotment or other area authorized for the person’s use.

(A) The Service or designated agent must be able to confirm that the livestock or working dog was wounded, harassed, molested, or killed by a wolf or wolves. To preserve physical evidence that the take was conducted according to this rule, the carcass of any wolf taken and the area surrounding it should not be disturbed. Any person legally present on public land may immediately take a wolf that is in the act of attacking the individual’s livestock animal or working dog, provided conditions described in paragraph (n)(5)(iii)(A) of this section for private land (i.e., “in the act of attacking”) are met. Any

take or method of take on public land must be consistent with the laws and regulations on those public lands.

(B) The Service or our designated agent may issue a “depredation” written take authorization of limited duration (45 days or fewer) to a public land grazing permittee to take up to a specified (by the Service or our designated agent) 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 within the last 30 days; and

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

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

(4) The authorizations set forth by this paragraph (n)(5)(iv)(B) may be terminated at any time once threats have been resolved or minimized.

(5) Any take or method of take on public land must be consistent with the rules and regulations on those public lands.

(v) *Agency take of wolves that depredate livestock.* The Service or our designated agent may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of depredating wolves. The Service or our designated agent will consider:

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

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

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

(D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.

(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 taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* The Service or our designated agent may promptly remove any wolf that we or our designated agent 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 (n)(6) of this section. We may refer incidental take that does not meet these provisions 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 incidental take 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, 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 a designated agent may take a

wolf, when necessary, in regard to the release, tracking, monitoring, recapture, and management of the NEP or to:

(A) Aid or euthanize a sick, injured, or orphaned wolf and transfer it to a licensed veterinarian for care;

(B) Dispose of a dead specimen;

(C) Salvage a dead specimen that may be used for scientific study;

(D) Aid in law enforcement investigations involving wolves (collection of specimens for necropsy, etc.); or

(E) Remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent, from passing on or teaching those traits to other wolves.

(F) Such take must be reported to the Service as set forth in paragraph (n)(6) of this section, and specimens are to be retained or disposed of only in accordance with directions from the Service.

(xi) *Take of gray wolves that are contributing to unacceptable impacts to wild ungulate populations or herds on Tribal land.* This exception requires Tribes to develop a science-based proposal that must, at a minimum, include the following information:

(A) The basis of ungulate population or herd management objectives;

(B) Data indicating that the ungulate herd is below management objectives;

(C) Data indicating that wolves are a major cause of the ungulate population decline;

(D) Why wolf removal is a warranted solution to help restore the ungulate herd to management objectives;

(E) The level and duration of wolf removal being proposed;

(F) How ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and

(G) 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.

(H) The proposal described in this paragraph (n)(5)(xi) must be subjected to both public and peer review prior to being finalized and submitted to the Service for review. Peer review must include at least three independent peer reviewers with relevant expertise in the subject matter who are not staff of the Tribe submitting the proposal. Before wolf removals can be authorized, the Service will evaluate the information in the proposal and provide a written determination to the requesting Tribal game and fish agency on whether such actions are scientifically based and warranted.

(xii) *Take for research purposes.* Permits are available and required, except as otherwise allowed by this rule, for scientific purposes, enhancement of propagation or survival, educational purposes, or other purposes consistent with the Act (50 CFR 17.32). Scientific studies should be reasonably expected to result in data that will lead to development of sound management of the gray wolf and to enhancement of its survival as a species.

(6) *Reporting requirements.* Except as otherwise specified in this rule or in an authorization, any take of a gray wolf must be reported to the Service or our designated agent as follows: Lethal take must be reported within 24 hours, and opportunistic or intentional harassment must be reported within 7 days. We will allow additional reasonable time if access to the site is limited.

(i) Report any take of wolves, including opportunistic harassment or intentional harassment, to U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office Supervisor (134 Union Boulevard, Suite 670, Lakewood, Colorado 80225;

ColoradoES@fws.gov), or a Service-designated agent of another Federal, State, or Tribal agency.

(ii) Unless otherwise specified in this paragraph (n), 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.

(7) *Prohibitions.* Take of any gray wolf in the NEP is prohibited, except as provided in paragraphs (n)(5) and (8) 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 population taken in violation of the regulations in this paragraph (n) or in violation of applicable State or Tribal fish and wildlife laws or regulations or the Act.

(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 (n).

(8) *Monitoring.* Gray wolves in the NEP area 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 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. If a gray wolf is taken into captivity for care or is euthanized, it must be reported to the Service within 24 hours or as soon as reasonably appropriate.

(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 delisting criteria, the State of Colorado will summarize monitoring information in an annual report. The report, due by June 30 of each year, will describe wolf conservation and management activities that occurred in Colorado for as long as the gray wolf is federally listed during any portion of a calendar or biological year. 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, the Service will evaluate Colorado's wolf reintroduction and management program in a summary report each year that wolf reintroductions occur in the State and for a minimum of 5 years after reintroductions are complete. If the Service determines that modifications to reintroduction protocols and wolf monitoring and management activities are needed, the Service will coordinate closely with the State to ensure progress toward achieving their State recovery goals while concurrently minimizing wolf-related conflicts in Colorado.

(10) *Memorandum of Agreement (MOA)*. The State of Colorado or any Tribe within the State, subject to the terms of this rule, may request an MOA from the Service to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in the State or on a Tribal reservation, and implement all parts of their State or Tribal plan that are consistent with this rule, provided that the State or Tribe has a wolf management plan approved by the Service.

(i) The State or Tribal request for wolf management under an MOA must demonstrate:

(A) 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) 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) Exactly what parts of the State or Tribal plan the State or Tribe intends to implement within the framework of this rule; and

(D) That 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 request upon a finding that the applicable criteria are met and that approval is not likely to jeopardize the continued existence of the gray wolf.

(iii) If the Service approves the request, the Service will enter into an MOA with the State or Tribe.

(iv) An MOA for State or Tribal management as provided in this rule may allow the State of Colorado or any Tribe within the State to become designated agents and lead management of the 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).

(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 that stated in the rule but may be more restrictive.

(v) The authority for the MOA 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.

(vi) 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 in the NEP. 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 in the NEP;

(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;

(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 that they no longer want the wolf management authority vested in them by the Service in the MOA.

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