

**PETITION TO DELIST THE GRAY WOLF (*CANIS LUPUS*)  
UNDER SECTION 4(d) OF THE ENDANGERED SPECIES ACT**

**SUBMITTED TO THE U.S. SECRETARY OF THE INTERIOR  
ACTING THROUGH THE U.S. FISH AND WILDLIFE SERVICE**

Submitted by:  
American Stewards of Liberty and Co-Petitioners

August 21, 2026

# Notice of Petition

**The Honorable Doug Burgum**

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## PETITION

We respectfully submit this petition to delist the gray wolf (*Canis lupus*) entities currently listed as an endangered or threatened species in the contiguous 48 United States, except for the Mexican wolf (*Canis lupus baileyi*), to the U.S. Fish and Wildlife Service for consideration pursuant to Section 4 of the Endangered Species Act, 16 U.S.C § 1533.

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## 1. INTRODUCTION

American Stewards of Liberty,<sup>1</sup> the Committee For a Constructive Tomorrow (CFACT),<sup>2</sup> the Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA),<sup>3</sup> the Kansas Natural Resource Coalition (KNRC),<sup>4</sup> the Great Lakes Timber Professionals Association (GLTPA),<sup>5</sup> and the Blue Ribbon Coalition (BRC)<sup>6</sup> (collectively, the Petitioners) submit this petition to the U.S. Fish and Wildlife Service (FWS) pursuant to Section 4 of the Endangered Species Act (ESA). We request that you remove the gray wolf (*Canis lupus*) entities listed in the contiguous 48 United States from the list of threatened and endangered species.

The gray wolf is the largest wild member of *Canidae*, or the dog family. Gray wolves in the contiguous 48 states, with the exception of gray wolves found in the Northern Rocky Mountains (NRM) distinct population segment area (the eastern one-third of Washington and Oregon, a small part of north-central Utah, and all of Montana, Idaho, and Wyoming), are currently protected under the ESA as threatened in Minnesota and endangered in all or portions of the remaining 43 states.<sup>7</sup> There is also an experimental population of gray wolves that has been listed in Colorado.<sup>8</sup> Those three populations (excluding gray wolves in the NRM, which are currently delisted) are the subject of this petition. The Mexican wolf subspecies (*C. l. baileyi*) and the red wolf (*Canis rufus*) are not included in this petition.

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<sup>1</sup> American Stewards of Liberty is a 501(c)(3) non-profit organization whose mission is to protect property rights and the liberties they secure by ensuring public policies impacting land use are in alignment with full Constitutional protections. American Stewards has members in all fifty states, many of whom are landowners that have been directly harmed by federal and state gray wolf protections.

<sup>2</sup> CFACT is a Washington D.C.-based 501(c)(3) organization whose mission is to steer the cause of environmental protection back to a place where the rule of law, limited government, and individual liberty guide its course.

<sup>3</sup> R-CALF USA is the largest trade association exclusively representing United States cattle and sheep farmers and ranchers. R-CALF USA has approximately 4,000 members in 43 states who own and operate cow/calf, backgrounding and stocking, and feeding businesses and ewe/lamb and lamb feeding businesses. Some of R-CALF USA's members have ranching operations in regions where gray wolves have been reintroduced, and their livestock are subject to gray wolf predation.

<sup>4</sup> The Kansas Natural Resource Coalition is an association of 34 Kansas counties which promotes balanced, necessary, and effective administrative policymaking through meaningful formal government-to-government relationships. Many KNRC member counties encompass substantial agricultural and ranching areas where livestock production is an important component of the local economy and land use. Wolves introduced into Colorado may disperse into Kansas, where they are currently considered an endangered species.

<sup>5</sup> The Great Lakes Timber Professionals Association is a 501(c)(3) organization representing members in Michigan and Wisconsin and is committed to leading Forest Products Industry in sustainable forest management.

<sup>6</sup> The Blue Ribbon Coalition is a 501(c)(3) organization serving members in all 50 states, fighting to preserve recreation access to America's public lands, working across all outdoor recreation sectors.

<sup>7</sup> U.S. Fish and Wildlife Service, "Gray Wolf Recovery News and Updates," last modified July 24, 2026, accessed July 28, 2026, <https://www.fws.gov/initiative/protecting-wildlife/gray-wolf-recovery-news-and-updates>.

<sup>8</sup> U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado," *Federal Register* 88, no. 215 (November 8, 2023): 77,014–39, <https://www.fws.gov/species-publication-action/establishment-nonessential-experimental-population-gray-wolf-colorado-1>.

The listed gray wolf entities are comprised of members of the gray wolf species (*Canis lupus*), a common mammal found throughout a substantial portion of the northern hemisphere. None of the listed entities are recognized as subspecies of gray wolf, in contrast, for example, to the Mexican wolf, which is a recognized subspecies of gray wolf and is subject to its own experimental population rule and recovery plan.<sup>9</sup> The Mexican wolf's range is limited in the U.S. to southern Arizona and New Mexico, where an experimental population of Mexican wolves exists, and to Mexico. It does not overlap territorially with the listed gray wolf entities, with a considerable distance separating the two ranges.<sup>10</sup> As previously stated, this petition does not include the Mexican wolf.

There is a lengthy history of efforts to remove the gray wolf species from the endangered and threatened species lists due to its current populations in the NRM and the western Great Lakes (WGL) regions, with only limited success. The primary reason for these repeated failures is that prior listing actions have uniformly treated gray wolves in the lower 48 states as a unique “species” under the ESA when these wolves are merely a tiny portion of a considerably larger gray wolf population extending through Canada and Alaska and continuing across Asia and Europe. Because the gray wolf is a common species throughout much of the Northern Hemisphere, the gray wolf entities listed in the lower 48 states are not valid “species” under the ESA and should be delisted on that basis pursuant to 50 C.F.R. § 424.11(e), which requires delisting when “the listed entity does not meet the definition of a species.”<sup>11</sup>

The experimental wolf population in Colorado should also be delisted, because under the ESA the Secretary may only authorize the release of a population of an endangered or threatened species as an experimental population.<sup>12</sup> It necessarily follows that if gray wolves are not eligible to be listed as an endangered or threatened species, then the experimental population must be removed from the list as well.<sup>13</sup>

When evaluating the conservation status of a listed or unlisted group of fish or wildlife, the threshold determination required of FWS is whether that biological group meets the definition of “species” in the ESA.<sup>14</sup> This determination is “analytically distinct” from and “not influenced by” the subsequent decision regarding the species’ conservation status.<sup>15</sup> Only biological groups that satisfy the definition of “species” may be designated as an “endangered species” or a “threatened

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<sup>9</sup> U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico,” *Federal Register* 63, no. 7 (January 12, 1998): 1,752–72, <https://www.govinfo.gov/content/pkg/FR-1998-01-12/pdf/98-681.pdf>.

<sup>10</sup> U.S. Fish and Wildlife Service, “Mexican Wolf (*Canis lupus baileyi*),” accessed July 30, 2026, <https://www.fws.gov/species/mexican-wolf-canis-lupus-baileyi>.

<sup>11</sup> 50 C.F.R. § 424.11(e) (2026).

<sup>12</sup> 50 C.F.R. § 17.84(n) (2026); 16 U.S.C. § 1539(j) (2026); 50 C.F.R. § 17.81(a) (2026).

<sup>13</sup> See, e.g., 16 U.S.C. § 1539(j)(2) (2026).

<sup>14</sup> *Trout Unlimited v. Lohn*, 559 F.3d 946, 949 (9th Cir. 2009).

<sup>15</sup> *Id.* at 955.

species.”<sup>16</sup> Thus, any petition that seeks to list, delist, or reclassify a species must contain “information sufficient to establish whether the subject entity is a ‘species’ as defined in the Act,” as opposed to an arbitrary grouping of animals.<sup>17</sup>

As stated, the continental United States population of gray wolves (*Canis lupus*) is part of a substantially larger circumpolar global population and is considered a common mammal throughout much of North America, Asia and Europe. The population within the continental United States cannot properly be separated into one or more distinct population segments as there is significant cross-border interchange between gray wolves in the lower 48 states and the much larger Canadian gray wolf population, forming a single metapopulation.<sup>18</sup> Indeed, the gray wolf populations in the NRM and WGL regions, as well as the Pacific Northwest, are the result of gray wolves naturally dispersing from Canada. In addition, gray wolves from Canada were imported into the NMR area in the 1990s to create experimental populations in central Idaho and the Yellowstone National Park area. Consequently, gray wolves in the continental United States are a very small and insignificant part of the much larger, contiguous population of gray wolves found in Canada and Alaska. They have no distinctive traits or important genetic variations that would support treating them as listable entities under the ESA.

This petition is narrowly focused on the correctness of the listing status of the three aforementioned groupings of gray wolves. It does not address whether another category of gray wolves could or should be protected under the ESA, nor is it appropriate to do so at this time. Accordingly, the Petitioners request that FWS make a determination as to whether this petition presents substantial scientific or commercial information indicating that the delisting of the gray wolf entities currently listed in the lower 48 states may be warranted.

## 2. SPECIES AND HABITAT DESCRIPTION

Gray wolves have a circumpolar range, and are currently found throughout much of North America, Asia, and Europe. In its *Red List of Threatened Species*, the International Union for the Conservation of Nature (IUCN) explains that although the gray wolf’s original worldwide range has been reduced somewhat, the species remains common over much of its range. The present worldwide gray wolf population is estimated to be in the order of 200,000 to 250,000 animals.

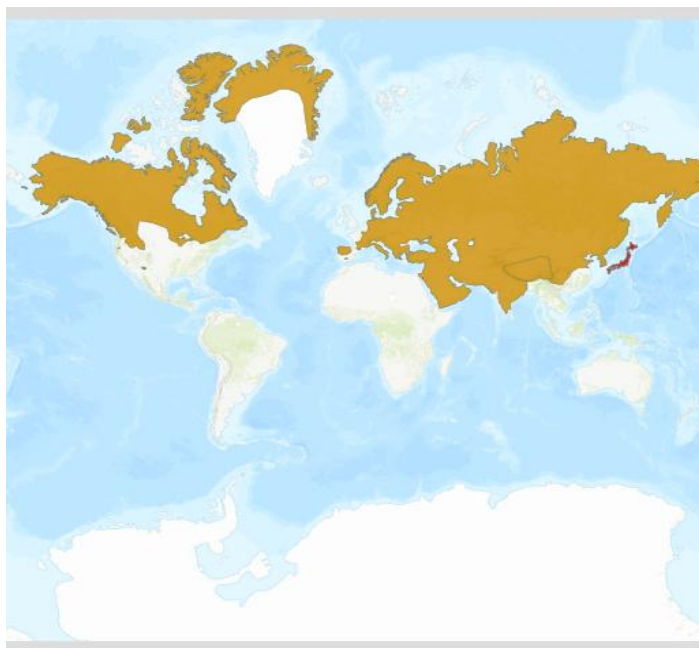
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<sup>16</sup> 16 U.S.C. § 1532(6), (20) (2026); see also *Am. Wildlands v. Kempthorne*, 530 F.3d 991, 994 (D.C. Cir. 2008): “In determining whether to list a species as threatened or endangered, the Service must first define the species so the agency can estimate its population.”

<sup>17</sup> 50 C.F.R. § 424.14(c)(7) (2026).

<sup>18</sup> U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife,” *Federal Register* 85, no. 213 (November 3, 2020): 69,778–895, <https://www.federalregister.gov/documents/2020/11/03/2020-24171/endangered-and-threatened-wildlife-and-plants-removing-the-gray-wolf-canis-lupus-from-the-list-of-endangered-and-threatened-wildlife>.

Because of its large population size and extensive range, the IUCN classifies the gray wolf as a species of “Least Concern.”<sup>19</sup>



Map of the current range of the gray wolf (*canis lupus*) from the ICUN species assessment.<sup>20</sup>

The National Park Service estimates the current North American population of gray wolves at between 67,100 and 74,100 individuals, with between 53,600 and 57,600 of those animals in Canada.<sup>21</sup>

Adult gray wolves range in weight from 18 to 80 kilograms (40 to 175 pounds), depending on sex and location. Their bodies are well-suited for traveling over long distances in search of food, and to catching and eating large mammals.<sup>22</sup> Gray wolves are habitat generalists, able to thrive in a variety of habitats and consume a variety of prey species, primarily large and medium mammals. In North America, they mainly subsist on deer, elk, and other species, but are very capable of shifting their diet to take advantage of available food resources.<sup>23</sup> The diversity of habitats gray wolves occupy reflects their adaptability and includes temperate forests, mountains, tundra, taiga, grasslands and even deserts.<sup>24</sup> They are highly territorial social animals and group hunters, normally living in packs of 7 or less but sometimes attaining pack sizes of 20 or more

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<sup>19</sup> L. Boitani, et al., “*Canis lupus*,” *The IUCN Red List of Threatened Species* (2023) (amended version of 2018 assessment), <https://www.iucnredlist.org/species/3746/247624660#amendment>.

<sup>20</sup> Ibid.

<sup>21</sup> National Park Service, “Wolf Ecology,” *Yellowstone National Park*, last modified January 12, 2025, <https://www.nps.gov/yell/learn/nature/wolf.htm>.

<sup>22</sup> U.S. Fish and Wildlife Service, “Removing the Gray Wolf,” 85 Fed. Reg. at 69,786.

<sup>23</sup> Ibid.

<sup>24</sup> U.S. Fish and Wildlife Service, “Gray Wolf (*Canis lupus*),” accessed July 24, 2026, <https://www.fws.gov/species/gray-wolf-canis-lupus>.

wolves. FWS commented on gray wolves' resilience in the agency's most recent *Species Status Assessment for the Gray Wolf (Canis lupus) in the Western United States* (the Western SSA), writing in 2023:

Based on the best available scientific information, our analysis of the current condition of gray wolves in the Western United States demonstrates that, despite current levels of regulated harvest, lethal control, and episodic disease outbreaks, wolf abundance in the Western United States has generally continued to increase and occupied range has continued to expand since reintroduction in the 1990s ... currently have high levels of genetic diversity and connectivity, further supporting the resiliency of wolves throughout the West ... [which] retain the ability to adapt to changes in their environment.<sup>25</sup>

There are currently two populations of gray wolves in the lower 48 United States, one in the western United States and one in the WGL region. FWS describes these populations as “growing or stable metapopulations.”<sup>26</sup> The core of the western population is found in the NRM region, primarily in Idaho, Montana, and Wyoming. This population expanded and packs are now further distributed across Oregon, Washington, and northern California, with wolves recently documented in north-central Colorado. As of the end of 2022, there were an estimated 2,797 wolves in 286 packs, with most of the wolves found within the NRM boundary, discussed in more detail below.<sup>27</sup>

The western United States population is located at the southern fringe of and is interconnected with the large population of gray wolves in southwestern Canada, which are estimated to number over 15,000 animals. Wolves currently occupying the NRM region are the result of natural immigration from Canada into Northwest Montana and the reintroduction of gray wolves from inland Alberta and British Columbia into central Idaho and Yellowstone National Park.<sup>28</sup>

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<sup>25</sup> U.S. Fish and Wildlife Service, “Species Status Assessment for the Gray Wolf (*Canis lupus*) in the Western United States, Version 1.2” (U.S. Fish and Wildlife Service, December 22, 2023), xii, [https://www.fws.gov/sites/default/files/documents/20231222\\_western-wolf-ssa\\_final\\_508.pdf](https://www.fws.gov/sites/default/files/documents/20231222_western-wolf-ssa_final_508.pdf).

<sup>26</sup> “A metapopulation is a population that exists as partially isolated sets of subpopulations that ‘interact’ when individuals move from one subpopulation to another. A metapopulation is widely recognized as being more secure over the long term than are several isolated populations that contain the same total number of individuals. A metapopulation is more secure because adverse effects experienced by one of its subpopulations resulting from genetic drift, demographic shifts, and local environmental fluctuations can be countered by occasional influxes of individuals and their genetic diversity from the other components of the metapopulation.” U.S. Fish and Wildlife Service, *Gray Wolf Biological Report: Information on the Species in the Lower 48 United States* (U.S. Fish and Wildlife Service, October 13, 2020), 28, <https://downloads.regulations.gov/FWS-R6-ES-2022-0100-0794/content.pdf>.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

The WGL population is found in the northern portions of Minnesota and Wisconsin, and in Michigan's Upper Peninsula. The Minnesota wolf population has increased from an estimated 1,000 individuals in 1978, when the gray wolf species was listed, to over 2,600 today. The estimated wolf population in Wisconsin is about 900 animals, while the estimated wolf population in Michigan's Upper Peninsula is about 700 animals. In total, there are about 4,200 wolves in the Great Lakes area. Those wolves are also found at the southern fringe of and are interconnected with the sizeable wolf population in eastern Canada, which is estimated to number about 12,000 to 14,000 animals. Population growth in the WGL region is attributed to the dispersal of wolves from Canada.<sup>29</sup> In its *Species Status Assessment for the Gray Wolf (Canis lupus) in the Eastern United States* (Eastern SSA), FWS noted that, "despite past harvest seasons, ongoing lethal depredation control, and periodic disease outbreaks, the population in the Western Great Lakes has maintained a large population size and broad distribution."<sup>30</sup>

FWS analyzed the state of the science on gray wolf genetics and taxonomy in its 2020 *Gray Wolf Biological Report: Information on the Species in the Lower 48 United States*.<sup>31</sup> It recognized the "ongoing debate about taxonomy and evolutionary history," and noted a "general agreement that wolves currently found in the Great Lakes area and neighboring provinces in Canada are genetically distinct to some degree from wolves further west in the Rocky Mountains or the Pacific northwest."<sup>32</sup> However, the significance and extent of this genetic distinction are unclear despite a plethora of research on the subject, and all gray wolves listed in the lower 48 states (with the exception of the Mexican wolf) are listed as a single species: *Canis lupus*.

### 3. REGULATORY HISTORY

In 1973, when the ESA was enacted, the species units entitled to the statute's protections included species, subspecies, and "any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature."<sup>33</sup> In 1978, Congress narrowed the definition of "species" by eliminating the vague reference to groups of animals "in common spatial arrangement" and substituting "distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."<sup>34</sup> Notably, the ESA never defines what a

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<sup>29</sup> U.S. Fish and Wildlife Service, *Gray Wolf Biological Report*, 28.

<sup>30</sup> U.S. Fish and Wildlife Service, *Species Status Assessment for the Gray Wolf (Canis lupus) in the Eastern United States*, Version 1.1 (U.S. Fish and Wildlife Service, November 3, 2025), x, [https://ecos.fws.gov/docs/recovery\\_plan/20251103\\_SSA%20for%20the%20Gray%20Wolf%20in%20the%20Eastern%20United%20States\\_final\\_508.pdf](https://ecos.fws.gov/docs/recovery_plan/20251103_SSA%20for%20the%20Gray%20Wolf%20in%20the%20Eastern%20United%20States_final_508.pdf).

<sup>31</sup> U.S. Fish and Wildlife Service, *Gray Wolf Biological Report*, x.

<sup>32</sup> *Ibid.*, 1-2.

<sup>33</sup> Endangered Species Act of 1973, Pub. L. No. 93-205, § 3(11), 87 Stat. 884, 886 (1973), reprinted in *1973 U.S.C.A.N.* 981, 983, <https://www.govinfo.gov/content/pkg/STATUTE-87/pdf/STATUTE-87-Pg884.pdf>.

<sup>34</sup> Endangered Species Act Amendments of 1978, Pub. L. No. 95-632, § 2(5), 92 Stat. 3751, 3752 (1978) (codified as amended at 16 U.S.C. § 1532(16)), <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3751.pdf>.

biological species is, instead relying upon recognized taxonomic species (*Canis lupus*) from scientific authorities.<sup>35</sup>

In 1978, the gray wolf species was listed under the ESA.<sup>36</sup> Several gray wolf subspecies had been listed previously, but this arrangement was not considered satisfactory because the species' taxonomy was out of date (and remains subject to considerable dispute), wolves dispersed outside of recognized subspecies' boundaries, and wolves from unlisted subspecies occurred in parts of the lower 48 states. Consequently, FWS listed the gray wolf species, but only in the lower 48 states. The gray wolf species was listed as a threatened species in Minnesota and as an endangered species elsewhere in the lower 48 states and Mexico.<sup>37</sup> At that time, the gray wolf was known to occupy only a portion of northern Minnesota and Isle Royale in Lake Superior in the lower 48 states, although dispersing wolves were likely present in other locations.<sup>38</sup>

Crucially, when the gray wolf was listed, the term "species" had not been amended and still included "any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature."<sup>39</sup> In its 1978 listing rule, FWS did not explain why the gray wolf grouping that was listed was considered to comply with this definition, nor did FWS discuss the status of the gray wolf elsewhere in North America or in the remainder of its worldwide range.<sup>40</sup>

As stated above, later that same year, Congress amended the ESA and, among other changes, eliminated the vague reference to "group[s] of fish or wildlife of the same species or smaller taxa in common spatial arrangement" and substituted "distinct population segments" ("DPS"). The following year, Congress reconsidered its decision to allow population segments to be listed based on concerns that FWS could arbitrarily designate groups of animals that individually, yet not collectively, may qualify as endangered or threatened. At that time, the

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<sup>35</sup> See 50 C.F.R. § 424.11(a) (2026) (explaining that FWS "shall rely on standard taxonomic distinctions" in determining whether a taxonomic group or population is a species for the purposes of the ESA).

<sup>36</sup> U.S. Fish and Wildlife Service, "Reclassification of the Gray Wolf in the United States and Mexico, with Determination of Critical Habitat in Michigan and Minnesota," *Federal Register* 43 (March 9, 1978), 9,607–15, <https://www.fws.gov/federal-register-file/reclassification-gray-wolf-us-and-mexico-determination-critical-habitat>.

<sup>37</sup> *Ibid.*

<sup>38</sup> The Mexican gray wolf population was later reclassified as a separate gray wolf subspecies and listed as endangered in 2015. The Mexican wolf's range is limited to southern Arizona and New Mexico, where an experimental population has been introduced, in addition to Mexico. This subspecies is not included within this delisting petition because it is classified and listed as a separate subspecies and is extremely rare in contrast to the remaining gray wolf species. See U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; Endangered Status for the Mexican Wolf," *Federal Register* 80 (January 16, 2015): 2,488, <https://www.federalregister.gov/documents/2015/01/16/2015-00441/endangered-and-threatened-wildlife-and-plants-endangered-status-for-the-mexican-wolf>.

<sup>39</sup> *Endangered Species Act*, § 3(11), 87 Stat., 884, 886.

<sup>40</sup> FWS later explained that it included the lower 48 states to ensure gray wolves would be protected wherever they are found, and not that gray wolves actually existed throughout the lower 48 states or that the area was needed for recovery of the species. U.S. Fish and Wildlife Service, "Removing the Gray Wolf," 85 Fed. Reg. 69,782.

General Accounting Office asserted that FWS “has interpreted the term ‘species’ to include any population of the animal, regardless of its size, location or total numbers,” which “could result in the listing of squirrels in a specific city park, even though there is an abundance of squirrels in other parks in the same city, or elsewhere in the country.”<sup>41</sup> Although Congress did not restrict FWS’s authority to treat populations of animals as “species” under the ESA, the Senate Committee on Environment and Public Works stated that it “is aware of the great potential for abuse of this authority and expects the FWS to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted.”<sup>42</sup>

In 1996, FWS, along with the National Marine Fisheries Service, jointly adopted a new policy for determining whether a group of animals constitutes a distinct population segment (DPS Policy).<sup>43</sup> Under the DPS Policy, a population of animals may be listed if the population is both “discrete” (i.e., “markedly separated” from other populations of the same species) and “significant” (i.e., important to the welfare of the entire species). Only if both criteria are satisfied is the population considered a DPS.<sup>44</sup> After a DPS has been qualified, the final element is consideration of “the population segment’s conservation status in relation to the Act’s standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?).”<sup>45</sup> FWS explained the importance of satisfying both factors, writing “the interests of conserving genetic diversity would not be well served by efforts directed at either well-defined but insignificant units or entities believed to be significant but around which boundaries cannot be recognized.”<sup>46</sup>

Since the early 2000s, FWS has relied on the amended definition of “species” in the ESA and the DPS Policy’s requirements to revise the listing of the gray wolf in the lower 48 states. For example, in 2003, FWS adopted a rule establishing three new regional gray wolf DPS covering vast areas of the country: Western, Eastern, and Southwestern.<sup>47</sup> This rule was ultimately vacated, and the three DPS never went into effect.<sup>48</sup> There was a noteworthy legal shift after 2003, with FWS retreating from attempts to establish regional DPSs that included large portions of the lower

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<sup>41</sup> S. Rep. No. 96-151, at 6–7 (1979), [https://www.everycrsreport.com/files/20100810\\_RL34238\\_66bd23e6df6556e09c539684d8689c0c289b70fe.html](https://www.everycrsreport.com/files/20100810_RL34238_66bd23e6df6556e09c539684d8689c0c289b70fe.html).

<sup>42</sup> Ibid.

<sup>43</sup> U.S. Fish and Wildlife Service and National Marine Fisheries Service, “Policy Regarding Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act,” *Federal Register* 61 (February 7, 1996): 4,722, <https://www.govinfo.gov/content/pkg/FR-1996-02-07/pdf/96-2639.pdf>.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., 4,725.

<sup>46</sup> Ibid., 4,724.

<sup>47</sup> U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Final Rule to Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves,” *Federal Register* 68, no. 62 (April 1, 2003): 15804–75, <https://www.govinfo.gov/content/pkg/FR-2003-04-01/pdf/03-7018.pdf>.

<sup>48</sup> See *Defenders of Wildlife v. Secretary, U.S. Department of the Interior*, 354 F. Supp. 2d 1156 (D. Or. 2005); *Nat’l Wildlife Fed. v. Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005).

48 states that were unoccupied and instead focusing on areas that are occupied by gray wolves, namely the WGL and NRM.<sup>49</sup>

In 2007 and 2011, FWS issued rules determining that gray wolves in the WGL satisfied the two-part DPS test and declared wolves in that area to be recovered.<sup>50</sup> However, both delisting rules were later vacated by reviewing courts.<sup>51</sup> Notably, while the gray wolf entities were listed in 1978 under the old definition of “species,” FWS applied the amended definition of “species” and the DPS Policy in making these listing decisions.

FWS established the NRM DPS in a 2008 rulemaking, again applying the new definition of “species” and the DPS Policy. In the same rulemaking, the agency delisted the new DPS.<sup>52</sup> The rulemaking was challenged in court but ultimately upheld due to Congressional action instructing FWS to republish its 2009 rule delisting the NRM DPS.<sup>53</sup> As a result, gray wolves within the NRM DPS area have been delisted since the 2011–2012 timeframe. Gray wolves remain listed in the rest of the lower 48 states: (i) as a threatened species in Minnesota, and (ii) as an endangered species in all or portions of 44 other states. The latter group includes a designated nonessential experimental population in Colorado but excludes those states and the portions of states within the NRM DPS area.<sup>54</sup>

In 2020, FWS made another attempt to delist the gray wolf in the lower 48 states, issuing an extremely detailed final rule (the 2020 Delisting Rule) that removed the currently listed gray wolf entities from the list of endangered and threatened species.<sup>55</sup> Notably, FWS began its analysis by explaining that the gray wolf entities currently listed do not meet the ESA’s current definition of “species.” FWS concluded that neither the population of wolves in Minnesota nor the wolves in all or portions of the remaining 44 states encompass an entire species or a subspecies of gray

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<sup>49</sup> See U.S. Fish and Wildlife Service, “Final Rule Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife,” *Federal Register*, February 27, 2008: 10,514–60, <https://www.fws.gov/species-publication-action/final-rule-designating-northern-rocky-mountain-population-gray-wolf>; U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife,” *Federal Register* 72, no. 26 (February 8, 2007): 6,052–103, <https://www.govinfo.gov/content/pkg/FR-2007-02-08/pdf/07-471.pdf>.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Humane Society of the United States v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008).

<sup>52</sup> U.S. Fish and Wildlife Service, “Final Rule Designating the Northern Rocky Mountain Population of Gray Wolf,” 73 Fed. Reg. 10,514.

<sup>53</sup> Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, § 1713, 125 Stat. 38, 150–51 (2011), <https://www.congress.gov/index.php/bill/112th-congress/house-bill/1473>. Section 1713 provides: “Before the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall reissue the final rule published on April 2, 2009 (74 Fed. Reg. 15123 et seq.) without regard to any other provision of statute or regulation that applies to issuance of such rule.”

<sup>54</sup> See 50 C.F.R. § 17.11 (2026).

<sup>55</sup> U.S. Fish and Wildlife Service, “Removing the Gray Wolf,” 85 Fed. Reg. 69,778.

wolf. Consequently, FWS explained, these entities are eligible for listing only if they qualify as DPSs under the DPS Policy's criteria. Here FWS explained that none of the entities are "discrete," i.e., markedly separated from other populations of the same taxon, and therefore do not qualify as a DPS.<sup>56</sup>

Because none of the listed groupings of gray wolves qualify as a DPS, FWS could have determined they are not a "species" and should therefore be delisted.<sup>57</sup> However, FWS did not delist the gray wolf entities on that basis. Instead, FWS conducted a review of the entities' status, including various configurations of gray wolves in the lower 48 states, and ultimately determined that none of them are in danger of extinction or likely to become extinct in the foreseeable future. FWS then concluded that gray wolves in the lower 48 states (with the exception of the separate Mexican wolf subspecies) have recovered and delisted them on that basis.<sup>58</sup>

Environmental groups challenged the 2020 Delisting Rule, and in 2022 a federal district judge vacated the rule. The court briefly addressed FWS's determination that the gray wolf entities do not meet the current definition of "species" in the ESA, rejecting that argument.<sup>59</sup> This decision relied upon minimal supporting authority, citing to a single case which addressed the creation of a DPS under the current "species" definition and its effect on the listing of the portion of the range outside the DPS.<sup>60</sup> Notably, the circuit court decision cited in *Zinke* explained that FWS is required by the ESA to periodically revisit and, if warranted, revise the status of listed species, and may recognize "recovered distinct population segments."<sup>61</sup> The district court's decision has been appealed to the Court of Appeals for the Ninth Circuit. As this case slowly works its way through the legal system, FWS has reinstated the gray wolf's previous listing status: gray wolves in the Northern Rocky Mountain DPS area are delisted; gray wolves in Minnesota are listed as threatened; and gray wolves in all or portions of the remaining 44 states are listed as endangered.<sup>62</sup>

Finally, in 2024, FWS addressed petitions submitted by environmental groups to list gray wolves in the western United States, including gray wolves in the NRM DPS area or, alternatively, throughout their current range. FWS ultimately determined, first, that the NRM DPS is no longer valid because the population in that region has grown to the point that it is no longer discrete, i.e., separated from other populations of the same taxon. The effect of that determination is that gray

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid, 69,783-84.

<sup>58</sup> Ibid, 69,879-93.

<sup>59</sup> *Defenders of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812 (N. D. Cal. 2022), 821-823.

<sup>60</sup> Id. (citing *Humane Soc'y of the United States v. Zinke*, 865 F.3d 585 (D.C. Cir. 2017)).

<sup>61</sup> *Kemphorne*, 865 F.3d at 595-96.

<sup>62</sup> U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; Reinstatement of Endangered Species Act Protections for the Gray Wolf (*Canis lupus*) in Compliance with Court Order," *Federal Register* 88, no. 212 (November 3, 2023): 75,506-12, , <https://www.fws.gov/species-publication-action/endangered-and-threatened-wildlife-and-plants-reinstatement-endangered-0>.

wolves in the DPS area can be relisted as they are no longer eligible to be treated as a separate species.<sup>63</sup>

FWS also determined in the 2024 rulemaking that gray wolves in the western United States constitute a valid DPS, following the DPS Policy. First, FWS determined that wolves in the western United States are discrete, i.e., separate from gray wolves in the WGL area and, moreover, separated from gray wolves in western Canada by the international border. Next, FWS determined that population in the western United States is significant because the loss of the population would purportedly create a large “gap” between gray wolves in Canada and the Mexican wolf subspecies. However, FWS went on to determine that the wolf population in the DPS area is not in danger of extinction or likely to become so in the foreseeable future due to the extensive habitat and prey available.<sup>64</sup>

The 2024 rulemaking was challenged by environmental groups and the district court set aside the finding that the new western wolf DPS did not meet the definition of an “endangered species” or a “threatened species.”<sup>65</sup> FWS’s findings that the NRM area no longer constitutes a DPS and that the western United States does constitute a valid DPS were not disturbed, as those findings were not challenged. The district court’s decision has been appealed to the Court of Appeals for the Ninth Circuit. Briefing is currently taking place.

The Congressional Research Service prepared a comprehensive case study on the challenges presented by the numerous attempts to categorize, list and delist gray wolves over the years.<sup>66</sup> The study noted that “many of FWS’s rulemaking preambles detail the difficulties involved in identifying listable entities and analyzing them in light of disagreements over the taxonomic classification of wolf species and subspecies,” and further that “*classifications and disagreements within the scientific community may result in a previously listed entity no longer qualifying as a ‘species’ under the ESA or in the Services being unable to identify any listable entity that qualifies as endangered or threatened.*”<sup>67</sup>

#### 4. DELISTING REQUIREMENTS

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<sup>63</sup> U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; Finding for the Gray Wolf in the Northern Rocky Mountains and the Western United States,” *Federal Register* 89, no. 26 (February 7, 2024): 8391–95, <https://www.fws.gov/species-publication-action/endangered-and-threatened-wildlife-and-plants-finding-gray-wolf-northern>.

<sup>64</sup> *Ibid.*, 8,394-95.

<sup>65</sup> *Center for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 801 F. Supp. 3d 1151 (D. Mont. 2025).

<sup>66</sup> Erin H. Ward, “The Gray Wolf Under the Endangered Species Act (ESA): A Case Study in Listing and Delisting Challenges,” Congressional Research Service Report R46184 (Congressional Research Service, updated November 25, 2020), <https://crsreports.congress.gov/product/pdf/R/R46184>.

<sup>67</sup> *Ibid.* (emphasis added).

Section 4 of the ESA authorizes FWS to remove a species from the list of threatened and endangered species, with the specific requirements for a delisting position detailed in 50 C.F.R. § 424.14(c).<sup>68</sup> There are several additional requirements for adding or removing a species in subsection (d):

- (1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;
- (2) Identification of the factors under section 4(a)(1) of the Act that may affect the species and where these factors are acting upon the species;
- (3) Whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the Act may cause the species to be an endangered species or threatened species (i.e., the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are;
- (4) Information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and
- (5) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.”<sup>69</sup>

Any interested person may submit a written petition to the Services requesting that one of the actions described in § 424.10 be taken for a species.<sup>70</sup> While the ESA does not define the term interested person, another federal agency that is responsible for administering the ESA, the National Oceanic and Atmospheric Administration, defines the term in its Information Quality Guidelines in part as “an individual or entity that uses, benefits from, or is harmed by the disseminated information at issue.”<sup>71</sup> The Petitioners meet this definition.

When considering whether to delist a species, FWS will typically determine whether it remains threatened or endangered because of any one, or a combination of, the following factors:

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<sup>68</sup> 16 U.S.C. § 1533(a)(2)(B), (b)(3) (2026).

<sup>69</sup> 50 C.F.R. § 424.14(c), (d) (2026).

<sup>70</sup> 50 C.F.R. § 424.14(a) (2026); 5 U.S.C. § 553(e) (2026).

<sup>71</sup> National Oceanic and Atmospheric Administration, *Information Quality Guidelines* (last updated July 17, 2024), <https://www.noaa.gov/organization/information-technology/policy-oversight/information-quality/information-quality-guidelines>. NOAA issued these guidelines pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, and OMB’s government-wide guidelines, 67 *Federal Register* 8452 (February 22, 2002), pt. III.A.4.

- (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) over-utilization for commercial, recreational, scientific, or educational purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) other natural or manmade factors affecting the species' continued existence.<sup>72</sup>

The ESA requires that FWS make all delisting determinations “solely on the basis of the best scientific and commercial data available.”<sup>73</sup> The Supreme Court has explained that this requirement ensures that the ESA is not “implemented haphazardly, on the basis of speculation or surmise.”<sup>74</sup>

Based on a review of the aforementioned five factors, FWS will delist a species if the available data substantiates that the listed species is no longer threatened or endangered for one of the following four reasons: (1) extinction; (2) recovery; (3) new information shows the listed entity does not meet the definition of an endangered or threatened species; or (4) **new information “shows the listed entity does not meet the definition of a species.”**<sup>75</sup> Thus, the delisting of a species is warranted when, as here, new information or a reanalysis of the original information demonstrates that the scientific basis for the listing determination was erroneous, and that the animal in question is not in fact a separate “species,” as such term is defined for the purposes of the ESA.

Directly on point, in a recent final ruling removing Johnson's seagrass (*Halophila johnsonii*) from the list of threatened and endangered species, the National Marine Fisheries Service (NMFS) stated that, “When conducting a status review, **if we determine the entity under review does not meet the statutory definition of a species, the status review concludes without further evaluation**, because we can only list entities that qualify as species under the ESA.”<sup>76</sup>

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<sup>72</sup> 16 U.S.C. § 1533(a)(1) (2026); see also 50 C.F.R. §§ 424.11(c)-(d); *Friends of Blackwater v. Salazar*, 691 F.3d 428, 432 (D.C. Cir. 2012) (ESA section 4(c) “makes clear that a decision to delist ‘shall be made in accordance’ with the same five factors”).

<sup>73</sup> 16 U.S.C. § 1533(b)(1)(A) (2026); 50 C.F.R. § 424.11(d) (2026).

<sup>74</sup> *Bennett v. Spear*, 520 U.S. 154, 176 (1997).

<sup>75</sup> 50 C.F.R. § 424.11(e) (2026) (emphasis added).

<sup>76</sup> National Marine Fisheries Service, “Endangered and Threatened Wildlife and Plants; Removal of Johnson’s Seagrass From the Federal List of Threatened and Endangered Species Including the Corresponding Designated Critical Habitat,” *Federal Register* 87, no. 72 (April 14, 2022): 22,137–149 (emphasis added), <https://www.federalregister.gov/documents/2022/04/14/2022-08029/endangered-and-threatened-wildlife-and-plants-removal-of-johnsons-seagrass-from-the-federal-list-of>.

Consequently, as this petition argues that the species determination was in error, the ESA's five-factor analysis is neither applicable nor required.

The ESA authorizes any interested person to submit a written petition to FWS requesting the delisting of a threatened or endangered species.<sup>77</sup> Within 90 days of receipt of a petition, to the maximum extent practicable, FWS must make a finding as to whether the petition presents “substantial scientific or commercial information indicating that the petitioned action may be warranted.”<sup>78</sup> The regulations define “substantial scientific or commercial information” as:

credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial information.”<sup>79</sup>

When FWS has already conducted a finding on, or review of, the listing status of the petitioned species, FWS “will evaluate any petition received thereafter . . . to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding.”<sup>80</sup> FWS has explained that this determination is satisfied if, for example, the petition provides new information or a new analysis or interpretation not previously considered in the final agency action.<sup>81</sup>

As the courts have explained, the “substantial scientific or commercial information” standard for a 90-day “may be warranted” determination “is not a rigorous one.”<sup>82</sup> The standard “is not overly-burdensome, does not require conclusive information, and uses the ‘reasonable person’ to determine whether the substantial information has been presented.”<sup>83</sup> If there is conflict in the scientific evidence, FWS “must credit the supporting evidence unless that evidence is unreliable, irrelevant, or otherwise unreasonable to credit.”<sup>84</sup> FWS is not allowed to “discount

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<sup>77</sup> 16 U.S.C. § 1533(b)(3)(A) (2026); 50 C.F.R. § 424.14(a) (2026).

<sup>78</sup> 16 U.S.C. § 1533(b)(3)(A) (2026); 50 C.F.R. § 424.14(h) (2026).

<sup>79</sup> 50 C.F.R. § 424.14(h)(1)(i) (2026).

<sup>80</sup> 50 C.F.R. § 424.14(h)(1)(iii) (2026).

<sup>81</sup> U.S. Fish and Wildlife Service and National Marine Fisheries Service, “Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions,” *Federal Register* 81, no. 187 (September 27, 2016): 66,462, 66,480, <https://www.govinfo.gov/content/pkg/FR-2016-09-27/pdf/2016-23003.pdf>, (“new” means that the information was not considered in the prior determination or the petition presents a different interpretation or analysis of that data.)

<sup>82</sup> *E.g., Buffalo Field Campaign v. Williams*, 579 F. Supp. 3d 186, 196-200 (D.D.C. 2022).

<sup>83</sup> *Moden v. U.S. Fish and Wildlife Serv.*, 281 F. Supp. 2d 1193, 1204 (D. Or. 2003) (characterizing the standard as “non-stringent”); *see also Center for Biological Diversity v. Morgenweck*, 351 F. Supp. 2d 1137, 1140-41 (D. Colo. 2004) (90-day finding is subject to a “lesser standard”); *Humane Society v. Pritzker*, 75 F. Supp. 3d 1, 14 (D.D.C. 2014) (requirement for “conclusive evidence” applied an inappropriately high standard of evidence).

<sup>84</sup> *Buffalo Field Campaign*, 579 F. Supp. 3d at 200.

scientific studies that support the petition or resolve reasonable extant scientific disputes against the petition.”<sup>85</sup>

Following a determination that a petitioned action “may be warranted,” FWS is then required to promptly commence a review of the status of the species at issue.<sup>86</sup> Within 12 months of receiving the petition to delist, FWS is required to make one of the following findings: (1) the petitioned action is not warranted; (2) the petitioned action is warranted, in which case FWS shall publish a proposed rule to implement the action; or (3) the petitioned action is warranted but precluded by pending proposals regarding other species’ listing status.<sup>87</sup> A finding that the petitioned action “may not be warranted,” is “not warranted,” or is “warranted” but “precluded” is subject to judicial review.<sup>88</sup>

## **5. JUSTIFICATION FOR PETITIONED ACTION**

### **A. Challenge to the validity of the species classification**

Under the ESA, FWS must determine whether a candidate for listing meets the definition of either an “endangered species” or a “threatened species.” An endangered species is one that is “in danger of extinction throughout all or a significant portion of its range.”<sup>89</sup> A threatened species is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>90</sup>

Before FWS can even proceed to the endangered or threatened analysis, when evaluating the conservation status of either a listed or unlisted group of fish or wildlife, the mandatory initial threshold determination is whether that biological group meets the definition of “species” in the ESA.<sup>91</sup> This determination is “analytically distinct” from and “not influenced by” the subsequent decision regarding the species’ conservation status.<sup>92</sup> Only biological groups that satisfy the definition of “species” may be designated as an “endangered species” or a “threatened species.”<sup>93</sup>

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<sup>85</sup> *Id.* at 197.

<sup>86</sup> 16 U.S.C. § 1533(b)(3)(A) (2026).

<sup>87</sup> 16 U.S.C. § 1533(b)(3)(B)(i)–(iii) (2026); 50 C.F.R. § 424.14(h)(2) (2026).

<sup>88</sup> 16 U.S.C. § 1533(b)(3)(C)(ii) (2026).

<sup>89</sup> 16 U.S.C. § 1532(6) (2026).

<sup>90</sup> 16 U.S.C. § 1532(20) (2026).

<sup>91</sup> *Trout Unlimited*, 559 F.3d at 949.

<sup>92</sup> *Id.* at 955.

<sup>93</sup> 16 U.S.C. § 1532(6), (20) (2026); *see also Am. Wildlands*, 530 F.3d at 994: “In determining whether to list a species as threatened or endangered, the Service must first define the species so the agency can estimate its population.”

Thus, any petition that seeks to list, delist, or reclassify a species must contain “information sufficient to establish whether the subject entity is a ‘species’ as defined in the Act.”<sup>94</sup>

In its 2019 update of the Regulations for Listing Species and Designating Critical Habitat, FWS and NOAA stated that “the Services will delist a species when, based upon the best available scientific and commercial data, they determine the species no longer meets the definition of a threatened or endangered species.”<sup>95</sup> Put simply, if there is not a valid species, as determined under the ESA, the inquiry stops there and the animal must be delisted.

FWS came to this exact conclusion with respect to the existence of a listable species in its 2020 Delisting Rule, finding:

two currently listed entities are: (1) *C. lupus* in Minnesota (listed as threatened); and (2) *C. lupus* in all or portions of 44 U.S. States and Mexico (listed as endangered). Neither of the entities encompasses an entire species, or a subspecies, of gray wolf. Thus, the currently listed entities would only constitute listable entities (i.e., meet the statutory definition of “species”) if they qualified as DPSs.<sup>96</sup>

FWS supported its conclusion with a determination that the two listed entities were not markedly separated from the rest of the taxon, and that there was not a significant genetic distinction. FWS further noted the lack of any discrete populations due to the interconnected nature of the gray wolf populations in the Great Lakes and western United States regions and the adjoining gray wolf populations in Canada.<sup>97</sup> It continued by addressing the potential for territorial gaps, finding that “any gaps in suitable habitat are unlikely to preclude dispersal because gray wolves are capable of traveling long distances through a variety of habitats.”<sup>98</sup>

After finding that the listed entities failed the discreteness test, FWS explicitly stated that “because the two currently listed entities are not discrete, we need not evaluate their significance (61 FR 4725, February 7, 1996). Neither of the listed entities is a DPS, and thus neither entity is a “species” as that term is defined under the Act.”<sup>99</sup>

## 1. Qualification under the 1996 DPS Policy

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<sup>94</sup> 50 C.F.R. § 424.14(c)(7) (2026).

<sup>95</sup> U.S. Fish and Wildlife Service and National Marine Fisheries Service, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat,” *Federal Register* 84, no. 166 (August 27, 2019): 45,020–45,053, 45,036, <https://www.govinfo.gov/content/pkg/FR-2019-08-27/pdf/2019-17518.pdf>.

<sup>96</sup> U.S. Fish and Wildlife Service, “Removing the Gray Wolf,” 85 Fed. Reg. at 69,783.

<sup>97</sup> *Ibid.*, 69,783–84.

<sup>98</sup> *Ibid.*, 69,784.

<sup>99</sup> *Ibid.*

Once more, out of an abundance of caution, we will proceed through the complete analysis under the DPS Policy. As previously noted, gray wolves in the contiguous 48 states, with the exception of the NRM population, are currently protected under the ESA as threatened in Minnesota and endangered in the remaining states, and there exists an experimental population in Colorado. Consequently, this analysis will exclude the gray wolves in the NRM area and focus on the remaining wolves, keeping in mind Congress’s admonition to use the best available science while exercising DPS authority sparingly.<sup>100</sup>

### *Discreteness*

The first element of the DPS test is the discreteness of the population segment in relation to the remainder of the species to which it belongs. There are two ways to prove discreteness: the population is “markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors” or it is “delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.”<sup>101</sup>

Gray wolves in the western United States are not currently part of any recognized DPS, nor are they a subspecies. Similarly, gray wolves in Minnesota do not represent a subspecies or DPS. The same applies to gray wolves in the eastern United States. The WGL DPS was first established in 2007, and after judicial intervention reestablished in 2009.<sup>102</sup> However, the entire rule was vacated by the 2014 decision in *Humane Society of the United States v. Jewell*,<sup>103</sup> so while FWS may still use the term as a geographic point of reference, no WGL DPS officially exists at this time. Any new DPS must be designated through the rulemaking process under ESA Section 4 and cannot be created as a direct response to this petition.

FWS evaluated gray wolves in the lower 48 states in its 2020 Gray Wolf Biological Report.<sup>104</sup> It found that gray wolves currently inhabit “two large, growing or stable metapopulations in separate geographic areas in the lower 48 United States—the western U.S. and the Great Lakes area in the eastern U.S.”<sup>105</sup> A few years later, the Western SSA cited research finding that “there has been consistent gene flow within and among the NRM states and

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<sup>100</sup> DPS Policy, 61 Fed. Reg. 4,722.

<sup>101</sup> *Ibid.*, 4,725.

<sup>102</sup> U.S. Fish and Wildlife Service, “Final Rule To Identify the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment and To Revise the List of Endangered and Threatened Wildlife,” *Federal Register* 74 (April 2, 2009), 15,123–46, <https://www.fws.gov/species-publication-action/final-rule-identify-western-great-lakes-populations-gray-wolves-distinct>.

<sup>103</sup> 76 F. Supp. 3d 69 (D.D.C. 2014).

<sup>104</sup> U.S. Fish and Wildlife Service, *Gray Wolf Biological Report*.

<sup>105</sup> *Ibid.*, 27.

Canada.”<sup>106</sup> The Eastern SSA found likewise, writing, “In the Western Great Lakes area, effective dispersal and interbreeding appears to be occurring among Michigan, Minnesota, and Wisconsin as well as between these states and Canada.”<sup>107</sup>

Reinforcing the idea that discrete wolf populations do not exist in the United States, FWS ultimately concluded in the 2020 Biological Report:

[G]ray wolves in the Great Lakes area are connected to the large and expansive population of wolves in Canada ... do not function as an isolated metapopulation of around 4,200 individuals, but are part of a much larger “Great Lakes and eastern Canada” metapopulation that includes wolves in adjacent eastern Canada ... Similar to wolves in the Great Lakes area, the gray wolf metapopulation in the western United States is interconnected with a much larger “western United States and eastern Canada” metapopulation of wolves that includes wolves throughout western Canada.<sup>108</sup>

The findings of the 2020 Biological Report tie into the second measure of discreteness – an international border. There must be “differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.”<sup>109</sup> Recent FWS rulings have indicated that mere legal separation by a border is insufficient and the wrong analytical framework. In its 2025 Greater Yellowstone grizzly bear finding, the Service emphasized that the DPS Policy does not require absolute separation but nevertheless concluded that a proposed DPS no longer met the discreteness requirement because expanding bear populations were no longer “markedly separated” from neighboring populations. This reflects an emphasis on actual biological connectivity rather than legal boundaries alone.<sup>110</sup>

The habitat-management factor is particularly weak as a differentiator. The Rocky Mountains, boreal forest, and Great Lakes ecosystems do not terminate at the international boundary. Neither prey availability, vegetation, nor topography changes appreciably because one crosses from Montana into Alberta or from Minnesota into Ontario. Further, gray wolves are highly adaptable habitat generalists capable of dispersing long distances and occupying a wide variety of habitat. Unlike islands, fenced reserves, or geographically isolated mountain ranges, the Canadian border generally does not correspond to a natural ecological barrier. Nor is there a physical wall like the one along much of the southern border with Mexico. Consequently, differences in habitat management are primarily administrative rather than ecological and therefore do not meaningfully

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<sup>106</sup> U.S. Fish and Wildlife Service, *Species Status Assessment for the Gray Wolf in the Western United States*, 140.

<sup>107</sup> U.S. Fish and Wildlife Service, *Species Status Assessment for the Gray Wolf in the Eastern United States*, 134.

<sup>108</sup> U.S. Fish and Wildlife Service, *Gray Wolf Biological Report*, 27-28.

<sup>109</sup> DPS Policy, 61 Fed. Reg. at 4,725.

<sup>110</sup> U.S. Fish and Wildlife Service, “Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Greater Yellowstone Ecosystem of the Grizzly Bear in the Lower-48 States,” *Federal Register* 90, no. 9 (January 15, 2025): 3,762–65, <https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00325.pdf>.

distinguish the populations themselves. The biological population remains continuous despite different governmental authorities.

At bottom, gray wolves in the United States are part of a much larger metapopulation that includes gray wolves in Canada. While provincial management in Canada varies from one province to another, there is no evidence that there are significant differences in light of section 4(a)(1)(D) of the ESA, i.e., the existing regulatory mechanisms are adequate to protect the species. A recent Canadian governmental report determined “The General Status of Species in Canada classifies grey wolf as Secure in Canada.”<sup>111</sup> Consequently, gray wolves in the United States are not a discrete population.

### *Significance*

If, and only if, a population segment is considered discrete, then it must next be evaluated for its biological and ecological significance. Notably, FWS must find that a discrete population is important to its taxon as a whole, and not merely to the United States.<sup>112</sup> Given that the entire gray wolf population in the lower 48 states amounts to about 7,000 wolves, when compared to the current North American population of gray wolves estimated at between 67,100 and 74,100 individuals and a global wolf population exceeding 200,000 animals, the United States population is not significant to the gray wolf taxon as a whole.<sup>113</sup>

The DPS Policy’s significance evaluation includes, but is not limited to, a 4-factor test:

1. Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,
2. Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon,
3. Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or
4. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.<sup>114</sup>

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<sup>111</sup> Environment and Climate Change Canada, “Grey Wolf: Non-Detriment Finding,” Government of Canada, published December 18, 2008, revised February 17, 2014, accessed July 31, 2026, <https://www.canada.ca/en/environment-climate-change/services/convention-international-trade-endangered-species/non-detriment-findings/grey-wolf.html>.

<sup>112</sup> *National Ass’n of Home Builders v. Norton (NAHB)*, 340 F.3d 835, 849 (9th Cir. 2003).

<sup>113</sup> National Park Service, “Wolf Ecology.”

<sup>114</sup> DPS Policy, 61 Fed. Reg. 4,725.

While this petition argues that there are no discrete gray wolf populations in the lower 48 states, and further that the relatively minute gray wolf population in the lower 48 states is insignificant compared to the overall North American and global populations, we will briefly address these factors out of an abundance of caution. The Ninth Circuit addressed these issues when it rejected FWS's establishment of a DPS for the Arizona pygmy-owl population in *National Association of Home Builders*. That holding is relevant to the gray wolf analysis.

The first factor of persistence in an unusual or unique setting is inapplicable. As previously discussed, the gray wolf is a habitat generalist that occupies an extremely wide variety of habitats. The areas where gray wolves are found in the United States are not unusual or unique. The third factor addressing the only surviving occurrence of a taxon is also clearly inapplicable given the gray wolf's vast range and large populations on three continents.

The second factor addresses a gap in the range of the taxon. The Ninth Circuit in *National Association of Home Builders* noted that "listing rules suggest that finding a gap significant based on the curtailment of a taxon's current range requires the loss of a geographic area that amounts to a substantial reduction of a taxon's range."<sup>115</sup> Alternatively, the court found that the "the loss of a discrete population that is numerous and constitutes a large percentage of the total number of taxon members could be considered a significant curtailment of a taxon's current range."<sup>116</sup> The court pointed to other listing rules, where the FWS has found a significant gap due to the loss of the United States range only where some additional significance to the taxon as a whole also existed.<sup>117</sup> As the entire gray wolf population sits at the southern edge of the North American gray wolf range (see the map of the gray wolf's range, above), its loss could not create a gap, as there is no population on the proverbial "other side" of the gray wolf in the lower 48 states. Beyond that, as illustrated by the same map of the gray wolf's range, the current range in the lower 48 states represents but a tiny fraction of the North American gray wolf range. In terms of numbers, the population in the lower 48 states amounts to no more than 10% of the North American population, and about 3% of the species' worldwide population.

The fourth factor requires marked genetic differentiation. As in the case of the pygmy-owl noted earlier, while some genetic distinction is suspected to exist between the western and eastern gray wolf populations, the science is unsettled as to whether this distinction rises to the level of markedness. More importantly, there is no evidence of **marked** genetic differences between gray wolves in the United States and gray wolves in Canada. As discussed, gray wolf populations in the United States are the direct result of wolves dispersing from Canada or being imported from

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<sup>115</sup> *NAHB*, 340 F.3d at 849.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*; See also *Center for Biological Diversity v. Jewell*, No. CV-12-02296-PHX-DGC, 2014 WL 5703029, at \*12 (D. Ariz., November 5, 2014) (upholding FWS's finding that the Sonoran Desert Area population of the bald eagle is not significant to the bald eagle taxon, discussing and following *NAHB*), *aff'd sub nom.*, *Center for Biological Diversity v. Zinke*, 868 F.3d 1054 (9th Cir. 2017).

Canada to establish an experimental population. There is no reason to suspect that there are significant genetic differences between gray wolves in the United States and gray wolves in Canada.

In its 2024 rulemaking, FWS determined that the gray wolf population in the western United States constitutes a separate DPS.<sup>118</sup> The argument that the two-part test in the DPS Policy is satisfied is not persuasive. FWS ignored the fact that the gray wolf population in the western United States consists of fewer than 3,000 gray wolves, compared to the gray wolf species as a whole, which has an enormous circumpolar population and range. FWS was required to acknowledge the substantial wolf population and range outside the continental U.S. and explain why the small population in the western United States is important to the gray wolf taxon. Its failure to perform such analysis casts doubt upon the validity of this determination.

Instead, FWS simply asserted that the loss of the gray wolf population in the western United States would create a significant gap in the range of the taxon because the loss would create a gap of more than 1,000 miles between the Mexican wolf to the south and gray wolves in Canada to the north.<sup>119</sup> But the Mexican wolf is a separate, unique subspecies. They have been reintroduced and are managed as a nonessential experimental population in Arizona and New Mexico. As such they are deliberately separated from the gray wolves in the western United States population. In other words, a gap not only exists currently but must be maintained to protect the Mexican wolf's unique characteristics.<sup>120</sup>

At bottom, the significance criterion focuses on the importance of the discrete population to the welfare of the entire taxon. For example, in 2012, FWS determined that the Sonoran Desert Area population of the bald eagle does not meet the significance criterion of the DPS and, therefore, is not a listable entity under the ESA.<sup>121</sup> FWS explained that the bald eagle, much like the gray wolf, is highly adaptable and is able to occupy a broad range of vegetation communities and ecosystems throughout North America wherever there is a sufficient source of prey.<sup>122</sup> The agency also found that the bald eagle population in the Sonoran Desert area does not possess any unique traits or behavioral advantage that would render the population important to the taxon as a

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<sup>118</sup> U.S. Fish and Wildlife Service, "Finding for the Gray Wolf," 89 Fed. Reg. 8,394–95.

<sup>119</sup> *Ibid.*, 8,394.

<sup>120</sup> See U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for the Nonessential Experimental Population of the Mexican Wolf," Federal Register 80, no. 11 (January 16, 2015): 2,512–2,567, [https://www.fws.gov/sites/default/files/federal\\_register\\_document/2015-00436.pdf](https://www.fws.gov/sites/default/files/federal_register_document/2015-00436.pdf), (discussing the importance of separation to minimize contact and potential interbreeding with gray wolves).

<sup>121</sup> U.S. Fish and Wildlife Service, "Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Sonoran Desert Area Bald Eagle as Threatened or Endangered," *Federal Register* 77 (May 1, 2012): 25,792, [https://www.fws.gov/sites/default/files/federal\\_register\\_document/2012-10016.pdf](https://www.fws.gov/sites/default/files/federal_register_document/2012-10016.pdf).

<sup>122</sup> *Ibid.*, at 25,806, 25,810.

whole.<sup>123</sup> FWS explained that the population's importance to the taxon as a whole is the critical factor in determining a population can be found significant under the DPS Policy:

Significance of the discrete population segment is not necessarily determined by existence of one of [significance factors] standing alone. Rather, information analyzed under these considerations is evaluated relative to the biological or ecological importance of the discrete population to the taxon as a whole.<sup>124</sup>

FWS's determination was challenged by environmental groups and upheld in the courts.<sup>125</sup> The district court explained that "[a] holistic look at a species' population is appropriate when assessing whether a population gap would be significant to the species as a whole."<sup>126</sup> The court provided examples of other FWS findings, explaining that some additional significance to the taxon as a whole must exist.<sup>127</sup> The creation of a gap, without more, is not sufficient.

In this case, there is little doubt that the small population of gray wolves found in the lower 48 states is not important to the gray wolf taxon as a whole. The United States population is the result of gray wolves dispersing from Canada and constitutes roughly 3 percent of the species' worldwide population and a similar percentage of its current range. By contrast, in delisting the Arizona pygmy-owl population, the FWS explained that the Arizona population occupies approximately 5 percent of the species' current range and 12 percent of the species historic range, and that the loss of that portion of the species' range would not be significant to the taxon as a whole.<sup>128</sup> The gray wolves in the United States do not have unique biological characteristics and do not occupy an unusual ecological setting. There is no evidence that they possess markedly different genetic characteristics. They are simply a cross-border extension of the much larger population of the same wolves that are common throughout much of Canada.

## **B. ESA Section 4(a)(1) Five-Factor Analysis**

In most circumstances, FWS will determine whether a species remains threatened or endangered because of any one, or a combination of, ESA Section 4(a)(1)'s five factors.<sup>129</sup> When conducting this analysis, is important to keep in mind that "the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an 'endangered species'

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<sup>123</sup> Ibid., 25,810.

<sup>124</sup> Ibid., 25,805.

<sup>125</sup> *Center for Biological Diversity v. Jewell*, 2014 WL 5703029, at \*12; *Zinke*, 868 F.3d at 1058.

<sup>126</sup> *Center for Biological Diversity v. Jewell*, 2014 WL 5703029, at \*12.

<sup>127</sup> *Id.*

<sup>128</sup> U.S. Fish and Wildlife Service, "Final Rule to Remove the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*) From the Federal List of Endangered and Threatened Wildlife," *Federal Register* 71 (April 14, 2006): 19,452, 19,454, 19,457, <https://www.govinfo.gov/content/pkg/FR-2006-04-14/pdf/06-3470.pdf>.

<sup>129</sup> Ibid., § 1533(a)(1); see also 50 C.F.R. §§ 424.1 l(c)-(d) (2026); *Friends of Blackwater v. Salazar*, 691 F.3d at 432, (ESA section 4(c) "makes clear that a decision to delist 'shall be made in accordance' with the same five factors").

or a ‘threatened species.’”<sup>130</sup> However, this petition argues that the original species determination was in error, and that gray wolves in the continental United States are not a species as defined in the ESA. Accordingly, we assert that the five-factor analysis is neither applicable nor required for the delisting decision, in accordance with the 2022 final ruling removing Johnson's seagrass from the endangered species list.<sup>131</sup> Notwithstanding our assertion, out of an abundance of caution, we will address the 5 factors.

### *Gray Wolf Populations in the Continental United States*

#### **(1) The present or threatened destruction, modification, or curtailment of its habitat or range.**

This is not a factor affecting the U.S. gray wolf population. FWS reached similar conclusions in both SSAs, explaining in the Eastern SSA that “Habitat modification as a result of the human footprint or wildfire is not a primary stressor on wolf populations; based on the best available scientific information, the impacts of these sources are localized relative to the wide range of the species and wolves have been able to adapt to their effects. Thus, we do not further consider these sources of habitat modification in our analysis of current and future condition.”<sup>132</sup> The Eastern SSA documents that wolves in the Western Great Lakes states enjoy “high-quality habitat with abundant prey,”<sup>133</sup> while the Western SSA states that “habitat and prey for wolves are abundant and well distributed.”<sup>134</sup> FWS reported that gray wolves’ range has in fact expanded throughout the Western United States.<sup>135</sup>

#### **(2) Over-utilization for commercial, recreational, scientific, or educational purposes.**

This is not a factor affecting the U.S. gray wolf population.

#### **(3) Disease or predation.**

As apex predators, gray wolves do not have natural predators. Concerning disease, both the Eastern and Western SSAs state that the best available science indicates that disease in gray wolves has caused episodic, yet localized and short-term, population decreases and does not pose a significant long-term threat to the gray wolf population.<sup>136</sup>

#### **(4) The inadequacy of existing regulatory mechanisms.**

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<sup>130</sup> U.S. Fish and Wildlife Service, “Finding for the Gray Wolf,” 8,393.

<sup>131</sup> National Marine Fisheries Service, “Removal of Johnson’s Seagrass,” 87 Fed. Reg. 22,137.

<sup>132</sup> U.S. Fish and Wildlife Service, Species Status Assessment for the Gray Wolf in the Eastern United States, 114.

<sup>133</sup> *Ibid.*, x-xi.

<sup>134</sup> U.S. Fish and Wildlife Service, Species Status Assessment for the Gray Wolf in the Western United States, xii.

<sup>135</sup> *Ibid.*, x.

<sup>136</sup> *Ibid.*; U.S. Fish and Wildlife Service, Species Status Assessment for the Gray Wolf in the Eastern United States.

Regulation with respect to gray wolves has been extremely effective, evidenced by the numerous recent attempts to delist the gray wolf. One recent study has noted that gray wolf “recovery and conservation has been a remarkable success over the last 30 years. In the lower 48 states, many regions that had very few wolves three decades ago now have robust wolf populations with broad distributions in the United States.”<sup>137</sup> Within their current range, most states, tribal nations, and Federal agencies have management protocols and regulations addressing the conservation and take of wolves, which are detailed at length in the SSAs.<sup>138</sup>

#### **(5) Other natural or manmade factors affecting the species' continued existence.**

In its most recent Western SSA, FWS found that human-caused mortality is the primary stressor affecting wolf populations, with the main sources consisting of regulated harvests, lethal control to protect livestock, and illegal take.<sup>139</sup> The Western SSA goes on to state that “current levels of mortality in the NRM have not prevented the continued natural recolonization of suitable habitat in Oregon and Washington (where known wolves now total close to 400 individuals), California, or, more recently, in Colorado.”<sup>140</sup>

The Eastern SSA identified similar stressors and reached the same conclusion.<sup>141</sup> The FWS explicitly stated that “to date, the best available science indicates that current levels of human caused mortality have not caused significant reductions in gray wolf abundance throughout the Western Great Lakes ... human-caused mortality and other stressors have had minimal impact on wolf abundance or distribution in the Western Great Lakes”<sup>142</sup>

#### *Gray Wolf Populations Worldwide*

The foregoing discussion of ESA Section 4(a)(1)’s five factors focuses exclusively on the small population of gray wolves in the lower 48 states, of which the currently listed gray wolf entities are comprised. On a global basis, there is no evidence that would support listing the gray wolf species. The IUCN, a highly respected scientific organization, periodically publishes an assessment of the global status of the gray wolf species for its “Red List of Threatened Species” and has listed the gray wolf as a species of “Least Concern” for over 20 years. In its most recent assessment of the gray wolf, published in 2023, the IUCN explained:

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<sup>137</sup> David E. Ausband and L. David Mech, “The Challenges of Success: Future Wolf Conservation and Management in the United States,” *BioScience* 73, no. 8 (August 2023): 587–91, <https://doi.org/10.1093/biosci/biad053>.

<sup>138</sup> U.S. Fish and Wildlife Service, *Species Status Assessment for the Gray Wolf in the Western United States*, xi.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*, xii.

<sup>141</sup> U.S. Fish and Wildlife Service, *Species Status Assessment for the Gray Wolf in the Eastern United States*, x.

<sup>142</sup> *Ibid.*

Originally, the Grey [sic] Wolf was the world's most widely distributed mammal. It has become extinct in much of Western Europe, in Mexico and much of the USA, and their present distribution is more restricted; wolves occur primarily but not exclusively in wilderness and remote areas. Their original worldwide range has been reduced by about one-third by deliberate persecution due to depredation on livestock and fear of attacks on humans. Since about 1970, legal protection, land-use changes, rural human population shifts to cities and increasing prey populations have arrested wolf population declines and fostered natural recolonization in parts of its range and reintroduction in three areas of USA. Continued threats include competition with humans for livestock and game species, exaggerated concern by the public regarding the threat and danger of wolves, and fragmentation of habitat, with resulting areas becoming too small for populations with long-term viability.

Although the Grey Wolf still faces some threats, its relatively widespread range and stable population trend mean that the species, at global level, does not meet, or nearly meet, any of the criteria for the threatened categories. The global population is estimated to be in the order of 200-250 thousand individuals [sic]. Therefore, it is assessed as Least Concern.<sup>143</sup>

Thus, the gray wolf species is not in danger of extinction throughout all or a significant portion of its range nor is the gray wolf likely to become endangered in the foreseeable future.

## **6. CONCLUSION: FWS should delist the gray wolf.**

The current listed groupings of gray wolves are not valid species under the ESA, comprising neither subspecies nor distinct population segments. Without a valid species, there is no basis to list animals as either endangered or threatened. Put plainly, there is currently no valid scientific basis upon which to list gray wolves in the lower 48 states, a determination that carries with it significant economic consequences and should not be made lightly.

**Based on the substantial scientific or commercial information presented in this petition, and for the reasons discussed above, the Petitioners request that FWS make the requisite determination that delisting the gray wolf may be warranted, proceed to conduct a status review, and expeditiously publish proposed and final rules to remove it from the Endangered Species List.**

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<sup>143</sup> Boitani et al., *Canis lupus*, 2.

## 7. NOTICE TO STATE AGENCIES

Pursuant to 50 C.F.R. § 424.14(b), the Petitioners are required to provide notice to the State agency responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs. We have provided notice to the following state agencies, a record of which is included with this petition.

1. California Department of Fish and Wildlife
2. Colorado Parks and Wildlife
3. Idaho Fish and Game
4. Michigan Department of Natural Resources, Wildlife Division
5. Minnesota Department of Natural Resources, Fish and Wildlife Division
6. Montana Fish, Wildlife & Parks
7. New Mexico Game and Fish
8. North Dakota Game and Fish Department
9. Oregon Department of Fish and Wildlife
10. Utah Department of Natural Resources, Division of Wildlife Resources
11. Washington Department of Fish and Wildlife
12. Wisconsin Department of Natural Resources
13. Wyoming Game & Fish Department

Dated: August 21, 2026

Respectfully submitted,

American Stewards of Liberty

By:   
Margaret Byfield, Executive Director

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