

Dated: March 17, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AJ04

Endangered and Threatened Wildlife and Plants; Removing the Western Distinct Population Segment of Gray Wolf From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces our intention to conduct rulemaking under the Endangered Species Act of 1973, as amended (Act), to remove the Western Distinct Population Segment (DPS) of gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. Specifically, we intend to propose to delist the gray wolf in the Northern Rocky Mountains and western United States where it is presently

listed. If this proposal is finalized, the gray wolf would be delisted in the Western Gray Wolf DPS, existing special regulations established under section 4(d) of the Act for the Western DPS would be abolished, the nonessential experimental designations for reintroduced gray wolves would be removed, and future management of this species would be conducted by the appropriate State and tribal wildlife agencies. As published concurrently in this **Federal Register**, the Service also intends to initiate proposed rulemaking to delist gray wolves in the Eastern Gray Wolf DPS. Neither proposed rulemaking would affect the protection currently afforded by the Act to gray wolves in the Southwestern DPS, the nonessential experimental population in the Southwest DPS, or the red wolf (*Canis rufus*), a separate species found in the southeastern United States that is listed as endangered.

DATES: We are not seeking comments on this planned proposed rulemaking at this time. A public comment period, including the opportunity for public hearings and informational meetings, will follow the publication of the proposed rule to remove (or delist) the Western Gray Wolf DPS.

ADDRESSES: U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, #320, Helena, MT 59601; WesternGrayWolf@fws.gov.

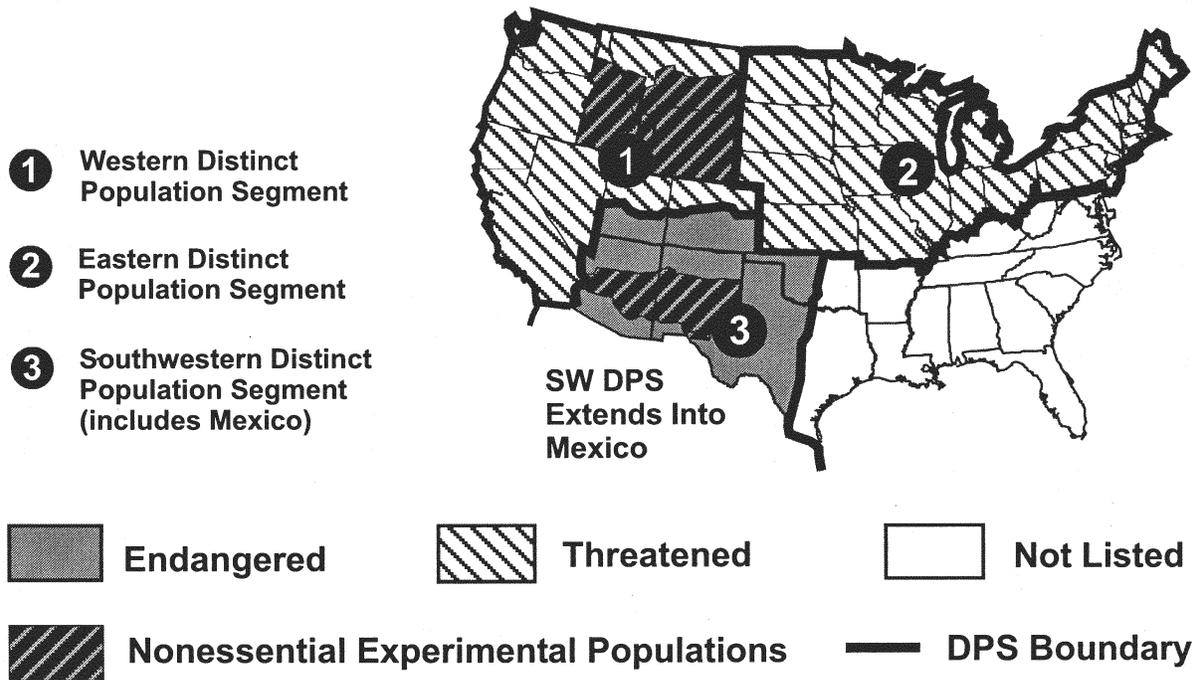
FOR FURTHER INFORMATION CONTACT: Ed Bangs, phone 406-449-5225 ext. 204. Additional information on gray wolf recovery in the Western DPS is available on our World Wide Web site at <http://westerngraywolf.fws.gov>. Direct all questions or requests for additional information to the Service (*see ADDRESSES* above).

SUPPLEMENTARY INFORMATION:

Background

Published concurrently in today's **Federal Register** is our final rule establishing three Distinct Population Segments (DPSs) of gray wolves within the conterminous 48 States in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996) and reclassifying two of these DPSs based on the status of current wolf populations within these DPSs. The Eastern Gray Wolf DPS and Western Gray Wolf DPS are reclassified as threatened while the Southwestern Gray Wolf DPS remains endangered (*see map*). The final reclassification rule summarizes information on the biology and ecology of gray wolves, taxonomy, historical range, previous Federal action, DPS designations, recovery plans, and the recovery progress of gray wolves in the lower 48 States.

Status of the Gray Wolf in the Continental U.S.



This advance notice of proposed rulemaking (ANPR) announces our intent to propose rulemaking to remove the Western Gray Wolf DPS from protection under the Act based on evidence, as described in the final reclassification rule, indicating that the gray wolf in the Western Gray Wolf DPS is exceeding its wolf population recovery goals and on our preliminary analysis of threats to the DPS. The exterior boundary of the Western DPS encompasses the States of California, Idaho, Montana, Nevada, Oregon, Washington, Wyoming, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70. Gray wolves in this geographic area are included in the Western DPS, except for gray wolves that are part of an experimental population. Gray wolves in captivity that originated from, or whose ancestors originated from, this geographic area are also included in the Western DPS.

In addition, this ANPR also announces our intention to propose to remove the two nonessential experimental population designations (NEPs) for gray wolves in the northern Rocky Mountains. The final rule establishing those two NEPs in Idaho, Montana, and Wyoming indicated specifically that they were created to help establish viable wolf populations in central Idaho and the Greater Yellowstone Ecosystem (59 FR 60252

and 60266; November 22, 1994). Since these NEPs are part of the larger recovery program, these designations would be removed if the Western DPS is delisted.

In addition, this ANPR announces our intention to respond to a petition for delisting the gray wolves in the Rocky Mountains through this anticipated proposed rulemaking. As stated in the final reclassification rule published today, Mr. Karl Knuchel, on behalf of the Friends of Northern Yellowstone Elk Herd Inc., has petitioned us to delist gray wolves in the Rocky Mountains.

Conservation and Recovery of the Gray Wolf in the Western DPS

Understanding the Service's strategy for gray wolf recovery first requires an understanding of the meaning of "recover" and "conserve" under the Act. "Conserve" is defined in the Act itself (section 3(3)) while "recovery" is defined in the Act's implementing regulations at 50 CFR 402.02. Conserve is defined, in part, as "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." Recovery is defined as "improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria

set out in section 4(a)(1) of the Act." Essentially, recover and conserve both mean to bring a species to the point at which it is no longer threatened or endangered and no longer needs the protections of the Act.

Critical to our analysis of whether a species is ready for delisting is the achievement of the species' recovery goals, the reduction of threats to the species that caused the species to become listed, and the reduction of any new threats that could cause the species to become endangered in the foreseeable future. To determine the appropriate goals for achieving recovery, we rely on a peer-reviewed Recovery Plan: The revised Northern Rocky Mountain Wolf Recovery Plan (Service 1987). In addition, we conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002 to ensure long-term population viability of gray wolves in the northwestern United States (Bangs 2002). Based on the opinions of experts who responded in that review, we have adopted the definition of wolf population viability and recovery developed in the 1994 Environmental Impact Statement for the reintroduction of gray wolves to Yellowstone National Park and central Idaho (Service 1994) in place of the 1987 Recovery Plan goal. That definition is "Thirty breeding pairs of wolves (defined as an adult male and an

adult female that raise at least 2 pups until December 31 of the year of their birth), comprising some +300 individuals in a metapopulation with some genetic exchange between subpopulations, for three successive years.”

As documented in the final rule for reclassification of the gray wolf to threatened in the Western DPS (published concurrently), at least 300 wolves in a minimum of 30 packs since the end of 2000 have been well distributed across the 3 recovery areas, and at the end of 2001 there were 563 wolves in 34 packs in the Northern U.S. Rockies (Service *et al.* 2002). More than 200 wolves have existed in at least 20 packs since the end of 1997.

A minimum of 30 breeding pairs was first documented in 2000, and a minimum of 34 breeding pairs was documented in 2001. We fully expect to confirm in early 2003 that the wolf population in the northern Rocky Mountains will have again exceeded 30 breeding pairs in 2002, thus achieving the wolf population recovery goal as defined in the revised Northern Rocky Mountains Wolf Recovery Plan and the 1994 Environmental Impact Statement. Because the wolf population is continuing to expand since that time, we anticipate concluding that the gray wolves in the Western DPS have exceeded the numerical population goal required for delisting.

In making a delisting determination, the Service must assess the factors or threats that affect the species as required by section 4 of the Act and its implementing regulations (50 CFR part 424). For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following delisting and removal of the Act's protections. Our evaluation of the future threats to the gray wolf in the Western DPS, especially those threats to wolves in the NEPs in Idaho, Montana, and Wyoming that would occur after removal or reduction of the protections of the Act, will be partially based upon the wolf management plans and assurances of the States and tribes in that area. If the gray wolf is federally delisted, then State and tribal wolf management plans will be the major determinants of wolf protection and prey availability, will set and enforce limits on human utilization and other forms of taking, and will determine the overall regulatory framework for conservation of gray wolves.

State and tribal gray wolf management plans, to the extent that they have been

developed, serve as significant indicators of public attitudes and agency goals, which, in turn, are evidence of the probability of continued conservation after protection under the Act is removed. Such indicators of attitudes and goals are especially important in assessing the future of a species that was officially persecuted by government agencies as recently as 40 years ago and still is reviled by some members of the public.

The State of Idaho has already completed its gray wolf management plan. The Service is working closely with the States of Montana and Wyoming as they develop wolf management plans that will meet this requirement. We expect that these plans will be completed in the near future, and will enable us to propose delisting of the Western Gray Wolf DPS. We will also consult, if they request, with Native American tribes and organizations to further discuss and evaluate their wolf management and protection plans prior to issuing a proposed delisting rule.

We recognize that large portions of the historic range, including potentially still-suitable habitat within the Western Gray Wolf DPS, are not currently occupied by gray wolves. We emphasize that our proposal to delist gray wolves in the Western DPS will be based on the current status of, and threats faced by, the existing wolf populations within this DPS. This approach is consistent with the 9th Circuit Court's decision in *Defenders of Wildlife et al. v. Norton et al.*, where the Court noted that “[a] species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat.” Similarly, we believe that when a listed species has recovered to the point where it is no longer in danger of extinction, or likely to become endangered in the foreseeable future, throughout all or a significant portion of its current range, it is appropriate to delist the species even if a substantial amount of the historical range remains unoccupied.

The wolf's progress toward recovery in the Western Gray Wolf DPS, together with our expectation that management of threats to the wolf within the DPS will be adequate, lead us to believe that we will be able to propose delisting of the Western DPS in the near future.

Post-Delisting Monitoring

Upon removal of a species from the List of Endangered and Threatened Wildlife, section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program in cooperation

with the States for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the post-delisting monitoring program, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

In anticipation of delisting this species, we also announce our intent to work with State resource agencies, tribes, and other partners to design an effective post-delisting monitoring program for the Western Gray Wolf DPS to be implemented upon delisting. A proposed post-delisting monitoring plan will be provided in the proposed rule for delisting the Western Gray Wolf DPS.

Effects of This Advance Notice of Proposed Rulemaking

This ANPR announces our intent to propose rulemaking to remove the protections afforded to gray wolves in the Western Gray Wolf DPS under the Act. If we make a final decision to delist the gray wolf in the Western DPS, the prohibitions and conservation measures provided by the Act would no longer apply to this DPS, and the nonessential experimental population designations established to aid the recovery of gray wolves in the Western Gray Wolf DPS would be removed. Therefore, taking, interstate commerce, import, and export of gray wolves in the Western Gray Wolf DPS would no longer be prohibited under the Act once the DPS is delisted. In addition, Federal agencies would no longer be required to consult with us under section 7 of the Act to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of gray wolves in the Western Gray Wolf DPS.

Until the Western Gray Wolf DPS is delisted, the take and use of gray wolves in the Western Gray Wolf DPS must comply with the Act and all other existing Federal, State, and local laws and regulations. Upon delisting, we anticipate that State and tribal gray wolf management plans, along with other appropriate Federal, State, and local laws and regulations, would guide gray wolf management in the Western Gray Wolf DPS.

This ANPR does not address gray wolves in the Eastern DPS, Southwestern DPS, or the current nonessential experimental population designation in the Southwest.

No Request for Comment

The Service has not made a final decision as to any potential regulatory matter discussed herein and does not request any public comment on this ANPR. We will be following standard rulemaking procedures and anticipate publishing a proposed rule on the removal of the Western Gray Wolf DPS from the List of Endangered and Threatened Wildlife in the near future. A public comment period will open upon publication of the proposed rule in the **Federal Register**, and we anticipate conducting public hearings during the public comment period to

discuss the proposed rulemaking with you.

References Cited

- Bangs, E.E. 2002. Wolf population viability peer review—draft summary. U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Suite 320, Helena, MT. 59601. Unpublished report. 9 pp.
- U.S. Fish and Wildlife Service. 1987. Northern Rocky Mountain wolf recovery plan. Denver, CO 119 pp.
- U.S. Fish and Wildlife Service. 1994. The reintroduction of gray wolves to Yellowstone National Park and central Idaho. Final Environmental Impact Statement. U.S. Fish and Wildlife Service, Helena, Montana.

U.S. Fish and Wildlife Service, Nez Perce Tribe, National Park Service, and USDA Wildlife Services. 2002. Rocky Mountain Wolf Recovery 2001 Annual Report. T. Meier, ed. U.S. Fish and Wildlife Service, Ecological Services, 100 N. Park, Suite 320, Helena, MT. 59601. 43 pp.

List of Subjects in 50 CFR Part 17

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

Dated: March 17, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

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