DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on Petitions to Establish the Northern Rocky Mountain Distinct Population Segment of Gray Wolf (Canis lupus) and to Remove the Gray Wolf in the Northern Rocky Mountain Distinct Population Segment from the List of Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 90-day petition finding and initiation of a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding for two petitions—(1) the first that sought removal of the gray wolf from the designation of endangered under the Endangered Species Act of 1973, as amended (ESA); and (2) the second that requested to establish the northern Rocky Mountain Distinct Population Segment (Rocky Mountain DPS) of gray wolf (*Canis lupus*) and to remove the gray wolf in the northern Rocky Mountain DPS from the Federal list of threatened and endangered species, pursuant to the ESA. Although only one of these petitions presented substantial information, we have considered the collective weight of evidence indicating that the northern Rocky Mountain population of gray wolves may qualify as a DPS and that delisting may be warranted. We are initiating a status review to determine if delisting the species is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species.

DATES: The finding announced in this document was made on October 17, 2005. To be considered in the 12-month finding for this petitioned action, data, information, and comments should be submitted to us by December 27, 2005.

ADDRESSES: Data, information, written comments and materials, or questions concerning these petitions and this finding should be submitted to the U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator, 100 N. Park, Suite 320, Helena, Montana 59601. Comments on this finding also may be sent by electronic mail to *WesternGrayWolf@fws.gov.* The petition finding, supporting information, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Western Gray Wolf Recovery Coordinator, at telephone number 406–449–5225, extension 204.

SUPPLEMENTARY INFORMATION:

Background

Historically, wolves (*Canis lupus*) occupied all of the conterminous United States, except for arid deserts and mountaintops of the western United States and portions of the eastern and southeastern United States (Youngman and Goldman 1944; Hall 1981; Mech 1974; Nowak 2000). The gray wolf was eliminated from Montana, Idaho, and Wyoming by the 1930s (Young and Goldman 1944). Thereafter, only isolated observations of individuals and non-breeding pairs were reported in the area. In 1974, the USFWS listed the eastern timber wolf (*C. l. lycaon*) as threatened in Minnesota and the northern Rocky Mountain wolf (*C. l. irremotus*) as endangered in Montana and Wyoming under the ESA (16 U.S.C. 1531 et seq.) (U.S. Department of the Interior 1974; 39 FR 1171, January 4, 1974). To eliminate problems with listing separate subspecies of the gray wolf whose taxonomy was contentious, and identifying relatively narrow geographic areas in which those subspecies were protected, on March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*C. lupus*) as endangered throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified as threatened. In 1995 and 1996, we reintroduced wolves from western Canada to remote public lands in central Idaho and Yellowstone National Park (Bangs and Fritts 1996; Fritts et al. 1997; Bangs et al. 1998). Prior to this reintroduction of wolves, we determined that a few lone individual wolves but no packs remained in Idaho, Wyoming, and Washington. By the end of 2004, there were an estimated 835 wolves in 110 packs in the United States northern Rocky Mountains (USFWS *et al.* 2005). Sixty-six of these packs met our definition of a ''breeding pair'' (i.e., an adult male and an adult female that raise at least 2 pups until December 31 of the year of their birth) (USFWS et al. 1994; USFWS et al. 2005; 68 FR 15817, April 1, 2003). As noted in the 2003, 2004, and 2005 Rocky Mountain Wolf Recovery Annual Reports, the USFWS will propose delisting (removal from protection under the ESA) once all provisions required for delisting are met, including adequate regulatory mechanisms in the form of State laws and wolf management plans that would reasonably assure that the gray wolf would not become threatened or endangered again.

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States from endangered to threatened (68 FR 15804). On January 31, 2005, and August 19, 2005, the U.S. District Courts in Oregon and Vermont, respectively, concluded that the 2003 final rule was ''arbitrary and capricious'' and violated the ESA (*National Wildlife Federation* v. *Norton,* 1:03–CV–340, D. VT. 2005; *Defenders of Wildlife* v. *Norton,* 03–1348–JO, D. OR 2005). The Courts' rulings invalidated the April 2003 changes to the ESA listing for the gray wolf (*National Wildlife Federation* v. *Norton; Defenders of Wildlife* v. *Norton*). Therefore, the USFWS currently considers the classification of the gray wolf in the Rocky Mountains outside of areas designated as nonessential experimental populations to have reverted back to the endangered status that existed prior to the 2003 reclassification.

On October 30, 2001, we received a petition dated October 5, 2001, from the Friends of the Northern Yellowstone Elk Herd, Inc., (hereafter referred to as the Friends Petition) that sought removal of the gray wolf from the designation of endangered under the ESA (Karl Knuchel, P.C., A Professional Corporation Attorneys at Law in litt. 2001a). On November 16, 2001, we sent a letter to the attorney representing this group acknowledging the petition and requested clarification on several issues (T. J. Miller, USFWS, in litt. 2001). Additional correspondence in late 2001 provided clarification of their intent that the petition only apply to the Montana, Wyoming, and Idaho population and that the petition request full delisting of this population (Knuchel in litt. 2001b). In January 2002, this petition was assigned to Region 6 of the USFWS for processing (T. J. Miller in litt. 2002). Since 2002, the USFWS has focused its limited wolf recovery funding and staff resources toward authoring regulations and reclassification proposals, including the completion of the 2003 downlisting rule discussed above; assisting the Department of Justice in litigation; preparation of administrative records; wolf recovery and management; responding to correspondence and Freedom of Information Act requests (5 U.S.C. 552, as amended by Pub. L. 104–231, 110 Stat. 3048); and other administrative and legal mandates.

On July 19, 2005, we received a petition dated July 13, 2005, from the

Office of the Governor, State of Wyoming and the Wyoming Game and Fish Commission (hereafter referred to as the Wyoming Petition) to revise the listing status for the gray wolf (*Canis lupus*) by establishing the northern Rocky Mountain DPS and to concurrently remove the gray wolf in the northern Rocky Mountain DPS from the Federal list of threatened and endangered species (Dave Freudenthal, Office of the Governor, State of Wyoming, in litt. 2005). On August 17, 2005, we provided a written response to the petitioner explaining our intention to complete a 90-day finding on this petition as soon as possible (Ralph Morgenweck, USFWS , in litt. 2005).

Section 4(b)(3)(A) of the ESA requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. ''Substantial information'' is defined in 50 CFR 424.14(b) as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' Petitioners need not prove that the petitioned action is warranted to support a ''substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the scientific and commercial information supporting the action advocated by the petition. We do not conduct additional scientific and commercial research at this point, nor do we subject the petition to rigorous critical review regarding the delisting factors. If we find substantial scientific and commercial information exists to support the petitioned action, we are required to promptly commence a status review of the species (50 CFR 424.14). To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

Species Information

For detailed information on this species see the April 1, 2003, ''Final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the conterminous United States'' (68 FR 15804). Additional information, including weekly gray wolf recovery status reports and the Rocky Mountain Wolf Recovery 2005 Annual Report, are available online at *http://westerngraywolf.fws.gov/.*

Discussion of Information Presented by the Petitions and Readily Available in our Files

The Friends Petition identified the organization requesting delisting, noted that the gray wolf was protected under the ESA, and requested removal of the species from the protections of the ESA. This two-page petition noted ''that substantial scientific and commercial information exists that supports the request,'' but failed to elaborate on this claim. The Friends Petition did not discuss—(1) whether the northern Rocky Mountain gray wolf population constitutes a ''listable entity'' under the ESA (i.e., a species, a subspecies, or a Distinct Population Segment (61 FR 4722, February 7, 1996)), or (2) any of the five factors considered in delisting actions outlined in section 4(a)(1) of the ESA. While the Friends Petition provided a collection of ''exhibits'' in support of its request, the petition failed to present a case for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Therefore, the remainder of this finding focuses on the assertions of the Wyoming Petition. Below we respond to each of the major assertions made in the Wyoming Petition, including the assertions of discreteness and significance of a potential DPS and the ESA's five listing factors.

Both the Wyoming Petition and our discussion of the information in our files references scientific information in the April 1, 2003, ''Final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the conterminous United States'' (68 FR 15804). Although this rule was vacated and enjoined by Oregon and Vermont Federal district courts, the scientific information discussed below, cited to the April 1, 2003, **Federal Register**, was not challenged in those courts. Therefore, we still view this document as a valid summary of our view of the science and a reliable summary of the information in our files. This 90-day finding is not a status assessment and does not constitute a status review under the ESA.

Distinct Population Segment

Pursuant to the ESA, we shall consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such an action may be warranted. Under our DPS policy, we must consider three factors in a decision regarding the establishment of a possible DPS, including—(1) discreteness of the population segment in relation to the remainder of the taxon (i.e. *Canis lupus*); (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the ESA's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened) (61 FR 4722, February 7, 1996). What follows is not a formal DPS analysis. Instead, our finding considers whether the petition states a reasonable case that the petitioned population may be a listable entity.

Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions—(1) It is markedly separated from other populations of the same taxon (i.e., *Canis lupus*) as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); and/or (2) 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) (''the inadequacy of existing regulatory mechanisms'') of the ESA (61 FR 4722, February 7, 1996). Below we discuss three arguments for discreteness put forward by the Wyoming Petition, including differences in management among populations in the United States and Canada, physiological differences among populations, and geographic and ecological factors separating populations.

Discreteness Information Provided by the Petitions—Management Differences Among the United States and Canada. The Wyoming Petition states that the northern Rocky Mountain gray wolf population in the United States and Canada are discrete from each other based on differences in exploitation and conservation status. The Wyoming Petition provides no citations in support of this assertion.

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations (68 FR 15804, April 1, 2003). On April 1, 2003, we published a **Federal Register** notice which stated, ''The Vertebrate Population Policy allows us to use international borders to delineate the

boundaries of a DPS even if the current distribution of the species extends across that border. Therefore, we will continue to use the United States—Canada border to mark the northern portions of the (DPS) * * * due to the difference in control of exploitation, conservation status, and regulatory mechanisms between the two countries. In general, wolf populations are more numerous and wide-ranging in Canada; therefore, wolves are not protected by Federal laws in Canada and are publicly trapped in most Canadian provinces'' (68 FR 15819, April 1, 2003). Wolves in Canada are publicly harvested and subject to very liberal defense of property take in most provinces (Pletscher *et al.* 1991; Mech and Boitani 2003; Bangs et al. 2004; Phillips *et al.* 2005).

Discreteness Information Provided by the Petitions—Physiological Differences. The Wyoming Petition asserts that the northern Rocky Mountain population of gray wolves also is markedly separated from other populations of the same taxon as a consequence of physiological (e.g., morphological) factors. The Wyoming Petition cites our 2003 **Federal Register** notice (68 FR 15804, April 1, 2003) and analyzes three of our sources (Brewster and Fritts 1994; Nowak 1994; Wayne et al. 1994) in support of its statements that the northern United States Rocky Mountain wolf population is significantly larger than other wolf populations in the United States.

Information in Our Files. As suggested by the Wyoming Petition, gray wolves in the northern Rocky Mountains differ physiologically from other United States wolf populations. The average male wolf in the northern Rockies weighs approximately 45 kilograms (kg) (100 pounds (lb)) (68 FR 15804, April 1, 2003). By contrast, the average male wolf in Wisconsin weighs 35 kg (77 lb) (Wisconsin Department of Natural Resources 1999; 68 FR 15804, April 1, 2003) and the average historic weights of wild Mexican wolves ranged from 25 to 49 kg (54 to 99 lb) (Young and Goldman 1944). According to Gipson *et al.* (2002), wolves of the Northern Rocky Mountains are slightly larger and contain greater numbers of individuals with black pelts than other wolf populations within the continental United States. Thus, this assertion is consistent with the information in our files.

Discreteness Information Provided in the Petitions—Physical and Ecological Factors. The Wyoming Petition asserts that the northern Rocky Mountain population of gray wolves is markedly separated from other wolf populations as a consequence of physical (geographic) and ecological factors. The Wyoming Petition cites to a sizable collection of literature (68 FR 15804, April 1, 2003; Mech 1989; Mech *et al.* 1988; Oakleaf et al. 2003; Thiel 1985; USFWS 1987, 1994; USFWS et al. 2003, 2004, 2005) suggesting that a broad region of unsuitable habitats surrounding the established northern Rocky Mountain population constitutes a significant physical separation that effectively isolates this population from distant, potentially suitable habitats.

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations (68 FR 15804, April 1, 2003). On April 1, 2003, we published a **Federal Register** notice which stated, ''To date, we have no evidence that any wolves from any of [the United States wolf populations] have dispersed [into other United States wolf populations], although we expect such dispersals to occur. The current gray wolf populations * * * are separated from [other] gray wolf populations * * * by large areas that are not occupied by breeding populations of resident wild gray wolves. Although small numbers of dispersing individual gray wolves have been seen in some of these unoccupied areas, and it is possible that individual dispersing wolves can completely cross some of these gaps between occupied areas and may therefore join another wolf population, we believe that the existing geographic isolation of wolf populations * * * far exceeds the Vertebrate Population Policy's criterion for discreteness'' (68 FR 15818, April 1, 2003). Based on suitable habitat modeling (Oakleaf *et al.* 2005; Carroll *et al.* in prep.), genetic analysis (Forbes and Boyd 1997; Boyd and Pletscher 1999), and known wolf distribution and movement patterns (Bangs *et al.* 1996, 1998; Pletscher *et al.* 1991, 1998; Phillips *et al.* 2005; USFWS *et al.* 1994, 2003, 2004, 2005), wolves in the northern Rocky Mountains appear discrete from other United States wolf populations.

Significance

If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon (i.e., *Canis lupus*) to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following—(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 the 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; and/or (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4722, February 7, 1996). The Wyoming Petition only presented information suggesting the loss of the northern Rocky Mountain gray wolf population would represent a significant loss in the range of the taxon. Below we discuss only this assertion.

Information Provided in the Petitions on Significance. The Wyoming Petition suggests that the loss of the northern Rocky Mountain wolf population would create a significant gap in the taxon's range as this is one of only two self-sustaining, viable populations of gray wolves in the United States. The Wyoming Petition provides no citations in support of this assertion.

Information in Our Files. The USFWS concurs with the assertion that the loss of this population would represent a significant gap in the range of the taxon. On April 1, 2003, we published a **Federal Register** notice which stated that the loss of any of the three wolf populations in the conterminous States ''would clearly produce huge gaps in current gray wolf distribution in the 48 States'' (68 FR 15819). Given historic occupancy of the conterminous States and the portion of the historic range the conterminous States represent, recovery of wolves in the lower 48 has long been viewed as important to the taxon (U.S. Department of the Interior 1974; 39 FR 1171, January 4, 1974; 43 FR 9607, March 9, 1978; Mech and Boitani 2003).

Although this 90-day finding has determined that the petition and other readily available information in our files present a reasonable case that the northern Rocky Mountain population of gray wolves may be both discrete from other wolf populations and significant to the taxon, this finding expresses no final agency view (1) as to the ultimate issue of whether this population qualifies as a DPS; nor (2) where to draw the boundaries of a potential DPS.

Conservation Status

What follows is not a formal status review under the ESA. Our finding considers only whether the petition and information in our files presents a reasonable case that the petitioned action may be warranted. Section 4 of the ESA of 1973 and regulations promulgated to implement the listing provisions of the ESA (50 CFR Part 424)

set forth the procedures for listing, reclassifying, and delisting species under the Federal list of endangered and threatened species. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available demonstrates that the species is no longer endangered or threatened because of—(1) extinction; (2) recovery; or (3) error in the original data used for classification of the species. The analysis for a delisting due to recovery must be based on the five factors outlined in section 4(a)(1) of the ESA, including—(1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petitions on Factor A. The Wyoming Petition's discussion of Factor A cites to and quotes from the April 1, 2003 **Federal Register** notice (68 FR 15804). The Wyoming Petition suggests that public lands and ungulate prey base remain secure in suitable habitat. Regarding secure habitat in the northwestern Montana, Central Idaho, and Greater Yellowstone Area recovery zones, the 2003 **Federal Register** notice read, ''These areas of potential wolf habitat are secure and no foreseeable habitat-related threats prevent them from supporting a wolf population that exceeds recovery levels'' (68 FR 15845, April 1, 2003). Regarding ungulates, the 2003 **Federal Register** notice read, ''The States of Montana, Idaho, and Wyoming have managed resident ungulate populations for decades and maintained them at densities that would support a recovered wolf population. There is no foreseeable condition that would cause a decline in ungulate populations significant enough to affect a recovered wolf population'' (68 FR 15845, April 1, 2003). The Wyoming Petition's discussion of this issue concludes with the suggestion that the analysis of foreseeable impacts to habitat done by the USFWS in 2003 remains valid in 2005.

Information in Our Files. Although our 2003 analysis described threats to habitat and range for a downlisting, a situation where many of the protections of the ESA would have remained in place, many of the same principles apply to delisting. According to Oakleaf et al. (2005) and Carroll et al. (in prep), public lands and ungulate prey base in northern Rocky Mountain wolf habitat appear largely secure. Thus, the USFWS finds that the petition's discussion of Factor A presents substantial scientific and commercial information indicating that delisting the species may be warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petitions on Factor B. The Wyoming Petition's discussion of Factor B cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003). The Wyoming Petition suggests that commercial, recreational, scientific, and educational take of wolves, their pelts, or other parts is believed to be rare. The Wyoming Petition notes that such utilization will be controlled by State regulatory mechanisms described in State wolf management plans for Idaho, Montana, and Wyoming (70 FR 1289, January 6, 2005). The Wyoming Petition goes on to say that in National Parks, post-delisting removal of wolves for commercial, recreational, and educational purposes will be prohibited and post-delisting utilization for scientific purposes will also be extremely rare (U.S.C. 16, Chapter 1, Sub Chapter V, Sect. 26). Finally, the Wyoming Petition notes that National Park non-lethal utilization of wolves will be limited in order to minimize impacts to wolves.

Information in Our Files. Although commercial, recreational, scientific, and educational take has been rare since listing and is likely to continue to be rare (68 FR 15804, April 1, 2003), adequate State plans are necessary to regulate this issue post-delisting (Bangs *et al.* 1998, 2004, 2005). To date, only the States of Idaho and Montana have approved management plans for gray wolves (70 FR 1289, January 6, 2005). The USFWS has concerns with portions of Wyoming's State law and wolf management plan relating to this factor (USFWS Administrative Record 2004). This issue is discussed further under Factor D.

C. Disease or Predation

Information Provided in the Petitions on Disease. The Wyoming Petition's discussion of disease cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003). The Wyoming Petition suggests that although parvovirus, canine distemper, mange, and brucellosis have all been documented in wolves, none appear to be a significant factor affecting wolf population dynamics in the northern Rocky Mountains (USFWS 1994 as in 68 FR 15804, April 1, 2003; Johnson 1992a, 1992b as in 68 FR 15804, April 1, 2003). The Wyoming Petition notes that disease and parasite occurrence require diligent monitoring and appropriate follow up for the foreseeable future (Brand *et al.* 1995 as in 68 FR 15804, April 1, 2003).

Information in Our Files. As of 2003, disease did not appear to be having significant impacts on wolf population dynamics (68 FR 15804, April 1, 2003). However, a recent outbreak of mange has caused wolf mortality and reproductive failure in several packs in the Greater Yellowstone Area and is under investigation (Jimenez *et al.* in prep.). While we view the information presented in the Petition as substantial, additional evaluation of this issue is necessary.

Information Provided in the Petitions on Natural Predation. The Wyoming Petition's discussion of predation by other wildlife cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003). The Wyoming Petition suggests that predation by other wildlife occasionally occurs (Mech and Nelson 1989 as in 68 FR 15804, April 1, 2003), but is not believed to be a significant mortality source (68 FR 15804, April 1, 2003).

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations (68 FR 15804, April 1, 2003). No wild animals habitually prey on gray wolves. Wolves are occasionally killed by prey that they are attacking (Mech and Nelson 1989), but those instances are rare. Wolf conflicts with mountain lions, grizzly bears, and black bears rarely result in the death of either species. Predation by other wildlife does not appear to have significant impacts on wolf population dynamics (Bangs *et al.* 1998; Smith *et al.* in prep.; USFWS *et al.* 2005).

Information Provided in the Petitions on Human Predation. The Wyoming Petition's discussion of human predation cites to and quotes from the final wolf downlisting rule for a discussion of this issue up to 2003 (68 FR 15804, April 1, 2003). The Wyoming Petition notes that since the 2003 analysis, 27 wolves were killed in 2003 throughout the northern Rocky Mountain region from human causes other than control actions (USFWS *et al.* 2004) and that, in 2004, 54 wolves were killed from human causes other than control actions (USFWS *et al.* 2005). However, the Wyoming Petition suggests the total number of wolves killed are not preventing the population

from increasing; in fact, wolf populations have increased from 663 individuals in 2002, to 761 in 2003, to 835 in 2004 (USFWS *et al.* 2003, 2004, 2005). Finally, the Wyoming Petition notes that legal harvest by hunters will be regulated under State laws, as described in the State management plans for gray wolves.

Information in Our Files. Adequate State management is necessary to regulate this issue post-delisting (Bangs *et al.* 2004, 2005). To date, only the States of Idaho and Montana have approved management plans for gray wolves (70 FR 1289, January 6, 2005). The USFWS has concerns with portions of Wyoming's State law and wolf management plan relating to this factor (USFWS Administrative Record 2004). This issue is discussed further under Factor D.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petitions on Factor D. The Wyoming Petition asserts that the regulatory mechanisms currently provided in Wyoming Statute 23–1–304 and the Wyoming Gray Wolf Management Plan (2003) are sufficient to reasonably assure Wyoming's share of the population will remain recovered into the foreseeable future. The Wyoming Petition suggests that—(1) the Wyoming management plan can be implemented within existing authorities (State Attorney General in litt. 2003); (2) the USFWS has overstated risks associated with the initial classification of gray wolves as a ''predatory animal''; and (3) the Commission will reclassify wolves as ''trophy game'' if necessary.

Information in Our Files. Based on our review of the State management plans, peer review comments, and the State's responses to those comments, USFWS has determined that both the Montana and Idaho wolf management plans are adequate to maintain their share and distribution of the tri-State wolf population above recovery levels (70 FR 1289, January 6, 2005). However, we have concerns with portions of Wyoming's State law and wolf management plan (USFWS Administrative Record 2004). The USFWS has determined that, for the Wyoming statute and its State plan to constitute an adequate regulatory mechanism, in lieu of listing under the ESA, they must satisfy three conditions. First, Wyoming's predatory animal status for wolves must be changed (Steve Williams, USFWS, in litt. 2004). Second, to constitute an adequate regulatory mechanism, Wyoming State law and plan must clearly commit to managing for at least 15 wolf packs in the State (Williams, USFWS, in litt. 2004). Finally, the Wyoming definition of a ''pack'' should be consistent among the three States and be biologically based (Williams, USFWS, in litt. 2004).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petitions on Factor E. The Wyoming Petition's discussion of Factor E cites to and quotes from the final wolf downlisting rule (68 FR 15804, April 1, 2003), noting that ''the primary determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based on the conflicts between human activities and wolves, concern with the perceived danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding threats to pets, the conviction that the species should never be a target of sport hunting or trapping, and wolf traditions of Native American tribes.''

Information in Our Files. This assertion is consistent with the information in our files and previous USFWS determinations. Public support for wolf recovery will be the primary determinant of the long-term status of gray wolf populations in the United States (68 FR 15804, April 1, 2003). As noted in the 2003 **Federal Register** notice, ''national support is evident for wolf recovery in the northern U.S. Rocky Mountains. With the continued help of private conservation organizations, States, and tribes, we can continue to foster public support to maintain viable populations in * * * the West'' (68 FR 15804, April 1, 2003; Bangs *et al.* 2004).

Finding

Based on the information presented in the petitions and information in our files, it is reasonable to infer that the gray wolf population in the northern Rocky Mountains appears to have experienced a significant recovery in terms of current population numbers and distribution. At the end of 2004, 835 wolves existed in 110 packs in the northern Rocky Mountains (68 FR 15804, April 1, 2003; USFWS *et al.* 2005). Sixty-six of these packs met our definition of a breeding pair. USFWS determined that a minimum of 30 or more breeding pairs of wolves, comprising 300 or more individuals in a metapopulation with some genetic exchange between subpopulations, with an equitable distribution among the 3 States for at least 3 successive years, constitutes a viable and recovered wolf population (USFWS *et al.* 1994; 68 FR 15804, April 1, 2003). This criterion was met at the end of 2002 and has been surpassed every year since (68 FR 15804, April 1, 2003; USFWS *et al.* 2003, 2004, 2005).

On the whole, we find that the Wyoming petition presents substantial scientific and commercial information indicating that the northern Rocky Mountain gray wolf population may qualify as a DPS and that this potential DPS may warrant delisting. Beyond substantial population and distributional information indicating the northern Rocky Mountain gray wolf population has met its biological recovery goals, the Wyoming petition presented substantial information regarding several of the five factors outlined in section 4(a)(1) of the ESA. The Friends petition failed to present a case for delisting that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Although only one of these petitions presented substantial information, we have considered the collective weight of evidence and are initiating a 12-month status review. Although our January 2003 determination that Wyoming's regulatory mechanisms are inadequate is still valid, we will fully evaluate this issue in the status review and welcome improvements to Wyoming's Statutes and the Wyoming Gray Wolf Management Plan made within the 12-month status review time period.

Information Solicited

When we make a finding that substantial scientific and commercial information is presented to indicate that delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on the northern Rocky Mountain population of gray wolves. We request any additional data, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the northern Rocky Mountain population of gray wolves. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat including the adequacy of regulatory mechanisms. If you wish to comment or

provide information, you may submit your comments and materials concerning this finding to the Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed above under **ADDRESSES**.

References Cited

A complete list of all references cited herein is available upon request from the Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2005.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–21344 Filed 10–25–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 051017269–5269–01; I.D. 100705C]

RIN 0648–AT54

Fisheries of the Exclusive Economic Zone Off Alaska; Cape Sarichef Research Restriction Area Opening for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to open the Cape Sarichef Research Restriction Area in the Bering Sea and Aleutian Islands Management Area (BSAI) to directed fishing for groundfish using trawl, pot, and hook-and-line gear from March 15, 2006, through March 31, 2006. Because NMFS' Alaska Fisheries Science Center (AFSC) will not conduct research in this area in 2006, closure of the Cape Sarichef Research Restriction Area is not needed. This action is intended to relieve an unnecessary restriction on groundfish fisheries and allow the optimum utilization of fishery resources, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule also would remove the regulations for the Cape Sarichef Research Restriction Area, as well as regulations for the Chiniak Gully Research Area because both research projects have ended.

DATES: Comments on this proposed rule must be received by November 25, 2005.

ADDRESSES: Send written comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.
- E-mail: *0648–at54–Sarichef@noaa.gov*. Include in the subject line the following document identifier: Cape Sarichef RIN 0648-AT54. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Fax: 907–586–7557.
- Mail: P.O. Box 21668, Juneau, AK 99802–1668.

Copies of the regulatory impact review (RIR), prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) are managed by NMFS under the Fishery Management Plans (FMPs) for Groundfish of the BSAI and Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background and Need for Action

In October 2002, the Council adopted a regulatory amendment to implement a seasonal closure to directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in a portion of the waters off Cape Sarichef just north of Unimak Pass in the Aleutians (68 FR 11004, March 7, 2003). The purpose of that action was to support an AFSC research project testing the hypothesis that commercial trawl fishing imposed localized depletion on stocks of Pacific cod. The results of the research project had the potential to provide information on the impacts of fishing on Pacific cod stocks, and on Steller sea lion forage resources. That research was scheduled to occur in each of four consecutive years (2003 through 2006) between March 15 and March 31. The closure of this area to pot, hook-and-line, and trawl gear users is applicable through March 31, 2006.

In June 2005, AFSC staff reported to the Council that their research results over the first three years were so unambiguous and consistent that they were ending the study one year earlier than originally planned. The results of the Cape Sarichef study are available on the Internet at *www.afsc.noaa.gov/Quarterly/amj2005/divrptsREFM6.htm*. Because the study would not be conducted in 2006, AFSC staff indicated that the special closure of the study area for March 15–31, 2006, would not be needed. The Council recommended and NMFS is proposing to remove the closure specified in § 679.22(a)(11). Maintaining the closure in 2006 would