

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R6-ES-2016-0106;  
4500030114]

RIN 1018-BB78

**Endangered and Threatened Wildlife and Plants; Proposed Rule for the North American Wolverine**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reopening the comment period on our February 4, 2013, proposed rule to list the distinct population segment of wolverine (*Gulo gulo luscus*) occurring in the contiguous United States as threatened, under the Endangered Species Act of 1973, as amended (Act). The District Court for the District of Montana vacated our August 13, 2014, withdrawal of our proposed rule to list the distinct population segment of the North American wolverine as threatened under the Act, which effectively returns the process to the stage of the proposed listing rule we published in 2013. We will initiate a new status review of the North American wolverine, to determine whether this distinct population segment meets the definition of an endangered or threatened species under the Act. We request new information regarding the North American wolverine to inform this status review. We may also reopen the comment period should we receive significant new information as a result of this document.

**DATES:** In order to fully consider and incorporate public comment, the Service requests submittal of comments by close of business November 17, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:**

*Document availability:* You may obtain copies of the proposed rule and supporting documents on the internet at <https://www.fws.gov/mountain-prairie/es/wolverine.php> or at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0107 or by mail from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that

the docket number for background information on this species is different from the docket number for the submission of comments, which is provided in the headings of this document and also in the following paragraphs:

*Written Comments:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the proposed listing rule by searching for Docket No. FWS-R6-ES-2016-0106, which is the docket number for this document and any further documents that may be published related to this rulemaking action.

(2) *By hard copy:* Submit comments on the proposed listing rule by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R6-ES-2016-0106; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Jodi Bush, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office, 585 Shepard Way, Helena, MT 59601, by telephone (406) 449-5225). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Background***Species Information*

Please refer to the February 4, 2013, proposed listing rule at 78 FR 7864 for information about the wolverine's taxonomy; life history; requirements for habitat, space, and food; densities; status in Canada and Alaska; geographic range delineation complexities; distribution; and habitat relationships and distribution. Please also refer to our December 14, 2010, 12-month petition finding (75 FR 78030) and our February 4, 2013, proposed rule to list the North American wolverine (78 FR 7864) for a detailed evaluation of the wolverine under our distinct population segment (DPS) policy, which published in the **Federal Register** on February 7, 1996 (61 FR 4722).

*Previous Federal Actions*

Please refer to the proposed listing rule for the wolverine (78 FR 7864; February 4, 2013) for a detailed description of previous Federal actions concerning the wolverine prior to 2013. On February 4, 2013, we published a proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened, under the Act, with a proposed rule under section 4(d) of the Act that outlines the prohibitions necessary and advisable for the conservation of the wolverine (78 FR 7864). We also published a February 4, 2013, proposed rule to establish a nonessential experimental population (NEP) area for the North American wolverine in the Southern Rocky Mountains of Colorado, northern New Mexico, and southern Wyoming (78 FR 7890). On October 31, 2013, we reopened the comment period on the proposed listing rule for an additional 30 days (78 FR 65248).

Following publication of the 2013 proposed rules, there was scientific disagreement and debate about the interpretation of the habitat requirements for wolverines and the available climate change information used to determine the extent of threats to the DPS. Based on this substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, on February 5, 2014 (79 FR 6874), we announced a 6-month extension of the final determination of whether to list the wolverine DPS as a threatened species. We also reopened the comment period on the proposed rule to list the contiguous U.S. DPS of the North American wolverine for 90 days.

On August 13, 2014, we withdrew the proposed rule to list the DPS of the North American wolverine as a threatened species under the Act (79 FR 47522). This withdrawal was based on our conclusion that the factors affecting the DPS as identified in the proposed rule were not as significant as believed at the time of the proposed rule's publication in 2013. As a result, we also withdrew our associated proposed rule under section 4(d) of the Act contained in the proposed listing rule and withdrew the proposed NEP designation under section 10(j) of the Act for the southern Rocky Mountains.

In October 2014, three complaints were filed in the District Court for the District of Montana by Defenders of Wildlife, WildEarth Guardians, Center for Biological Diversity, and other organizations challenging the withdrawal of the proposal to list the North American wolverine DPS.

Numerous parties intervened in the litigation. These three cases were consolidated, and on April 4, 2016, the court issued a decision. As a result of the court order, the August 13, 2014, withdrawal was vacated and remanded to the Service for further consideration consistent with the order.

In effect, the court's action returns the process to the proposed rule stage, and the status of the wolverine under the Act has effectively reverted to that of a proposed species for the purposes of consultation under section 7 of the Act. Therefore, this document notifies the public that we are reopening the comment period on the February 4, 2013, proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened, under the Act (78 FR 7864). We also announce that we will be initiating an entirely new status review of the North American wolverine, to determine whether this DPS meets the definition of an endangered or threatened species under the Act, or whether the species is not warranted for listing. Any listing determination we make must be made based on the best available information. We invite the public to comment on the proposed rule, and we request new information regarding the North American wolverine that has become available since the publication of the proposed rule to inform this status review.

#### Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened that was published in the **Federal Register** on February 4, 2013 (78 FR 7864). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures or efforts for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and

possible impacts of these activities on this species.

(5) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether and how the wolverine may benefit from such a designation; whether there are threats to the species from human activity, the degree to which it can be expected to increase due to a critical habitat designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on the amount and distribution of wolverine habitat, including den sites.

(7) Specific information on the impacts of small population size and genetic diversity on the wolverine.

(8) Information on the projected and reasonably likely impacts of climate change on the wolverine and its habitat, including the loss of snowpack and impacts to wolverine denning habitat.

(9) Additional provisions the Service may wish to consider to conserve, recover, and manage the proposed DPS of the North American wolverine occurring in the contiguous United States.

If you submitted comments or information on the proposed rule (78 FR 7864) during the initial comment periods from February 4, 2013, to May 6, 2013, from October 31, 2013 to December 2, 2013, or from February 4, 2014, to May 6, 2014, please do not resubmit them. Any such comments are incorporated as part of the public record of this rulemaking proceeding, and we will fully consider them in the preparation of our final determination. Our final determination will take into consideration all written comments and any additional information we receive during all comment periods. The final decision may differ from the proposed rule, based on our review of all information received during this rulemaking proceeding. If we receive significant new scientific information, we may need to reopen the public comment period so that the public can comment on the new information.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you

submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R6-ES-2016-0106, and supporting documentation we used in preparing the proposed rule will be available for public inspection on the internet at <https://www.fws.gov/mountain-prairie/es/wolverine.php> or at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0107, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0107, or by mail from the Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that the 2012 docket has documents and other information related to the proposed rule, as well as the comments received and the proposed rule itself, and the 2016 docket is the correct docket for submission of comments.

#### Authors

The primary authors of this notice are the staff members of the Mountain Prairie Regional Office, U.S. Fish and Wildlife Service.

#### Authority

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

Dated: September 19, 2016.

#### Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

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