

**List of Subjects in 40 CFR Part 799**

Environmental protection, Chemicals, Hazardous substances, Health, Reporting and recordkeeping requirements.

Dated: September 8, 2010.

**Stephen A. Owens,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

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

[Docket No. FWS-R3-ES-2010-0062; 92220-1113-0000-C6]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To Delist the Gray Wolf in Minnesota, Wisconsin, Michigan, and the Western Great Lakes**

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

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 90-day finding on petitions to remove (delist) the gray wolf in the western Great Lakes from the List of Endangered and Threatened Wildlife (List) established under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions present substantial scientific or commercial information indicating that removing the gray wolf in Minnesota, Wisconsin, and Michigan from the List may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if delisting in Minnesota, Wisconsin, and Michigan is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the gray wolf in Minnesota, Wisconsin, and Michigan. Based on the status review, we will issue a 12-month finding on the petitions, which will address whether any of the petitioned actions are warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before November 15, 2010. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below),

the deadline for submitting an electronic comment is 12:00 Midnight, Eastern Standard Time on this date.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is [FWS-R3-ES-2010-0062]. Check the box that reads "Open for Comment/ Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R3-ES-2010-0062, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203. We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Request for Information** section below for more details).

After the date specified in **DATES**, you must submit information directly to the Regional Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

**FOR FURTHER INFORMATION CONTACT:**

Laura Ragan, Endangered Species Listing Coordinator, Midwest Regional Office, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota, 55111, by telephone (612-713-5350), or by facsimile (612-713-5292). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Request for Information**

When we make a finding that a petition to remove (delist) a species from the List of Endangered and Threatened Wildlife presents substantial information that the petitioned action may be warranted, we are required to promptly commence a review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the gray wolf in Minnesota, Wisconsin, and Michigan from governmental agencies, Native American Tribes, the scientific community, industry, and any other

interested parties. We seek information on:

- (1) The species' biology, range, and population trends, including:
    - (a) Habitat requirements for feeding, breeding, and sheltering;
    - (b) Genetics and taxonomy;
    - (c) Historical and current range including distribution patterns;
    - (d) Historical and current population levels, and current and projected trends; and
    - (e) Past and ongoing conservation measures for the species, its habitat or both.
  - (2) The factors that are the basis for making a delisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:
    - (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
    - (b) Overutilization for commercial, recreational, scientific, or educational purposes;
    - (c) Disease or predation;
    - (d) The inadequacy of existing regulatory mechanisms; or
    - (e) Other natural or manmade factors affecting its continued existence.
  - (3) Current or planned activities in the western Great Lakes region and their possible impacts on the wolf and its habitat;
  - (4) Information concerning the adequacy of the recovery criteria described in the 1992 Recovery Plan for the Eastern Timber Wolf;
  - (5) The extent and adequacy of Federal, State, and tribal protection and management that would be provided to the wolf in the western Great Lakes region as a delisted species;
  - (6) Whether gray wolves in Minnesota alone; or in Minnesota and Wisconsin combined; or in Minnesota, Wisconsin, and Michigan combined constitute distinct population segments or entities that which may be removed from the List of Endangered and Threatened Wildlife under the Act; and
  - (7) Information or data regarding the taxonomy of wolves in the western Great Lakes region.
- Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.
- Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or

threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and supporting documentation that we received and used in preparing this finding is available for you to review at <http://www.regulations.gov>, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) 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. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

#### Petition History

On March 15, 2010, we received a petition from the Minnesota Department of Natural Resources (MNDNR) requesting that the gray wolf in Minnesota be removed from the lists of

endangered or threatened species under the Act. In an April 16, 2010, letter to the MNDNR, we responded that we received the petition and provided an explanation of the petition process. On April 26, 2010, we received a petition from the Wisconsin Department of Natural Resources (WDNR) requesting that the gray wolf in Minnesota and Wisconsin be removed from the lists of endangered or threatened species under the Act. In a May 14, 2010 letter, to the WDNR, we responded that we received the petition and provided an explanation of the petition process. On April 26, 2010, we received a petition from the U.S. Sportsmen’s Alliance, representing five other organizations, requesting that gray wolves in the Great Lakes area be removed from the lists of endangered or threatened species under the Act. In a May 28, 2010, letter to the U.S. Sportsmen’s Alliance, we responded that we received the petition and provided an explanation of the petition process. On June 17, 2010, we received a petition from Safari Club International, Safari Club International Foundation and the National Rifle Association of America requesting that wolves of the western Great Lakes be removed from the list of endangered and threatened species. In a June 30, 2010, letter to the Safari Club International we responded that we received the petition and provided an explanation of the petition process.

All of the petitions clearly identified themselves as such and included the requisite identification information from the petitioner, as required by 50 CFR 424.14(a). This finding addresses the four petitions.

#### Previous Federal Actions

The eastern timber wolf (*Canis lupus lycaon*) was listed as endangered in Minnesota and Michigan, and the northern Rocky Mountain wolf (*C. l. irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (USDI 1974). A third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), was listed as endangered on April 28, 1976, (41 FR 17736) with its known range given as “Mexico, USA (Arizona, New Mexico, Texas).” On June 14, 1976, (41 FR 240624) the subspecies *C. l. monstabilis* was listed as endangered (under the misleading common name “Gray wolf”), and its range was described as “Texas, New Mexico, Mexico.”

On March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*Canis lupus*) as endangered throughout the

conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened. In addition, critical habitat was designated in that rulemaking. In 50 CFR 17.95(a), we describe Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3 (delineated in 50 CFR 17.40(d)(1)) as critical habitat. At that time we also developed special regulations under section 4(d) of the Act for managing wolves in Minnesota. The depredation control portion of the special regulation was later modified (50 FR 50792; December 12, 1985); these special regulations are found in 50 CFR 17.40(d)(2).

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we identified three distinct population segments (DPS) for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Gray wolves in the Southwestern DPS retained their previous endangered or experimental population status. The three existing gray wolf experimental population designations were not affected by the April 1, 2003, final rule. We removed gray wolves from the lists of threatened and endangered wildlife in all or parts of 16 southern and eastern States where the species historically did not occur. We also established a new special rule under section 4(d) of the Act for the threatened Western DPS to increase our ability to effectively manage wolf-human conflicts outside the two experimental population areas in the Western DPS. In addition, we established a second section 4(d) rule that applied provisions similar to those previously in effect in Minnesota to most of the Eastern DPS. These two special rules were codified in 50 CFR 17.40(n) and (o), respectively.

On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife v. Secretary, U.S. Dep’t of the Interior*, 354 F.Supp.2d 1156 (D.Or. 2005); *National Wildlife Fed’n v. Norton*, 386 F.Supp.2d 553 (D.Vt. 2005)). The Courts’ rulings invalidated the revisions to the gray wolf listing. Therefore, the status of gray wolves outside of Minnesota and outside of areas designated as nonessential experimental populations reverted back to endangered (as had been the case prior to the 2003

reclassification). The courts also invalidated the associated special regulations.

On March 27, 2006, we published a proposal (71 FR 15266–15305) to identify a Western Great Lakes (WGL) DPS of the gray wolf, to remove the WGL DPS from the protections of the Act, to remove designated critical habitat for the gray wolf in Minnesota and Michigan, and to remove special regulations for the gray wolf in Minnesota. The proposal was followed by a 90-day comment period, during which we held four public hearings on the proposal.

On February 8, 2007, we published a final rule identifying a WGL DPS of the gray wolf, removing the WGL DPS from the protections of the Act, removing designated critical habitat for the gray wolf in Minnesota and Michigan, and removing special regulations for the gray wolf in Minnesota (72 FR 6052).

On April 16, 2007, four parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's February 8, 2007 (72 FR 6052), identification and delisting of the WGL DPS. The plaintiffs argued that the Service may not identify a DPS within a broader pre-existing listed entity for the purpose of delisting the DPS. Based on this argument, on September 29, 2008, the U.S. District Court for the District of Columbia remanded and vacated the February 8, 2007, WGL DPS final rule (72 FR 6052). The court found that the Service had made that decision based on its interpretation that the plain meaning of the Act authorizes the Service to identify and delist a DPS within an already-listed entity. The court disagreed, and concluded that the Act is ambiguous as to whether the Service has this authority. The court accordingly remanded the final rule so that the Service could provide a reasoned explanation of how its interpretation is consistent with the text, structure, legislative history, judicial interpretations, and policy objectives of the Act (*Humane Society of the United States v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008)).

On December 11, 2008, we published a final rule reinstating protections for the gray wolf in the western Great Lakes and northern Rocky Mountains pursuant to court-orders (73 FR 75356).

On April 2, 2009, we published a final rule identifying the western Great Lakes populations of gray wolves as a DPS, revising the List of Endangered and Threatened Wildlife by removing the DPS from that list, removing designated critical habitat for the gray wolf in Minnesota and Michigan, and removing

special regulations for the gray wolf in Minnesota (74 FR 15070). That final rule addressed the narrow issue objectionable to the court and was otherwise substantially the same as the 2007 vacated rule. We did not seek additional public comment on the 2009 final rule.

On June 15, 2009, five parties filed a complaint against the Department and the Service alleging that we violated the Endangered Species Act, the Administrative Procedure Act (APA), and the Court's Remand Order by publishing the 2009 final rule. *The Humane Society, et al. v. Salazar*, 09–cv–1092 (D.D.C. 2009). On that same day, the plaintiffs also filed a motion for preliminary injunction alleging that we violated the notice and comment requirement of the APA, the Endangered Species Act's requirement that we consider the best available science, and the court's remand order by publishing the 2009 final rule. We conceded that we erred by publishing the 2009 final rule without providing for notice and comment as required by APA (5 U.S.C. 553). On July 2, 2009, a settlement agreement between the parties was signed by the court, remanding and vacating the 2009 final rule.

On September 16, 2009, we published a final rule reinstating protections for the gray wolf in the western Great Lakes pursuant to the settlement agreement and court-order (74 FR 47483).

#### *Species Information*

For a discussion of the biology and ecology of gray wolves and general recovery planning efforts, see the proposed WGL wolf rule published on March 27, 2006, (71 FR 15266–15305), also available on <http://www.fws.gov/midwest/wolf/>.

#### *Defining a Species Under the Act*

Section 3(16) of the Act defines "species" to include "any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature" (16 U.S.C. 1532 (16)). Our implementing regulations at 50 CFR 424.02 provide further guidance for determining whether a particular taxon or population is a species or subspecies for the purposes of the Act: "The Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group" (50 CFR 424.11).

To interpret and implement the distinct vertebrate population segment (DPS) provisions of the Act and Congressional guidance, the Service and

the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments* (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS. Similarly, these three elements are applied for additions to and removals from the List of Endangered and Threatened Wildlife and Plants. These elements are: (1) The discreteness of a population in relation to the remainder of the species to which it belongs, (2) the significance of the population segment to the species to which it belongs, and, if these first two criteria are met, (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification.

#### **Discreteness**

Under our DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); 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) of the Act (61 FR 4722).

#### **Significance**

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity (see Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete

population. However, the DPS policy describes four possible classes of information that provide evidence of a discrete population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy, this consideration of the population segment's significance may include, but is not limited to, the following:

- (1) Persistence of the discrete population segment in an ecological setting unusual or unique to 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.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

#### *Information Provided in the Petitions Regarding the "Species" Requested for Delisting*

##### Wolves in Minnesota

The petition from the Minnesota DNR requests removing the "Minnesota wolf species" from the protections of the Act. The petition presents the following information.

In 1978, the Service issued a final rule reclassifying "the gray wolf in the United States and Mexico" and determining critical habitat for the species of gray wolf in Michigan and Minnesota (43 FR 9607). The rule stated, "(t)he reclassification is considered to accurately express the current status of the gray wolf, based solely on an evaluation of the best available biological data."

As stated in Minnesota's March 15, 2010, petition, the Service in 1978 issued a final rule that listed the gray wolf population in Minnesota as threatened and treated the gray wolf in Minnesota as another "species" separate from the gray wolf species that was listed as endangered in the other conterminous 48 States and Mexico (43 FR 9607, March 9, 1978). The 1978 final rule states, "as defined in section 3 of the Act, the term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in

common spatial arrangement that interbreed when mature. For purposes of this rulemaking, the gray wolf (*Canis lupus*) group in Mexico and the 48 coterminous States of the United States, other than Minnesota, is being considered as one 'species', and the gray wolf group in Minnesota is being considered as another 'species.'" (43 FR 9610).

The 1978 rule stated that this determination was "based solely on an evaluation of the best available biological data." \* \* \* The only major population of the gray wolf remaining anywhere in the 48 conterminous States is in northern Minnesota." *Id.* at 9607 & 9610–11.

##### Wolves in Minnesota and Wisconsin

The petition from the Wisconsin DNR requests removing the "Minnesota wolf species," which occurs in Minnesota and Wisconsin, from the protections of the Act. The petition presents the following information.

Gray wolves moved from Minnesota to Wisconsin and Michigan, and are now established in those states. Minnesota gray wolves settled into eastern Pine County along the border with Wisconsin in 1974–1975 (Mech and Nowak 1981, pp. 408–409) and soon spread eastward into Wisconsin. Movements of wolves from Minnesota into Wisconsin and Michigan continued to be documented into the 1990s (Mech et al. 1995; Wydeven 1994). More recent genetic analysis also demonstrates that the wolves currently in Wisconsin and Michigan are genetically similar to wolves in Minnesota (Wheeldon 2009; Fain et al. 2010).

##### Wolves in Minnesota, Wisconsin, and Michigan

The petition from the U.S. Sportsmen's Alliance requests removing gray wolves in Minnesota, Wisconsin, and Michigan from the protections of the Act. In the alternative, they request removing gray wolves within the somewhat broader boundaries of the Western Great Lakes Distinct Population Segment (DPS), as identified in the 2007 and 2009 final rules (72 FR 6052, February 8, 2007; 74 FR 15070, April 2, 2009) that were later vacated. The petition references information provided in the petitions from Minnesota and Wisconsin and in the 2007 and 2009 final rules.

We find that the four petitions provide substantial information that the wolf in Minnesota alone; in Minnesota and Wisconsin combined; in Minnesota, Wisconsin, and Michigan; and in the western Great Lakes area, may be considered as a "species" under the Act.

In the 12-month finding, we will fully analyze whether gray wolves in those areas constitute "species" under the Act, and whether they are a threatened species or endangered species under the Act.

#### **Evaluation of Information for This Finding**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered species or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species. We may remove a threatened species or endangered species from the Act's protections according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

- (1) The species is extinct;
- (2) The species has recovered and is no longer endangered or threatened; or
- (3) The original scientific data used at the time the species was classified were in error.

In making this 90-day finding, we evaluated whether information regarding the reduction of threats to the gray wolf in Minnesota, Wisconsin, Michigan, and the western Great Lakes area as a whole as presented in the petitions and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted.

We reviewed the relevant five factors extensively in previous delisting decisions for the gray wolf in an area previously identified as the WGL DPS, which includes Minnesota, Wisconsin, and Michigan (71 FR 15266, March 27, 2006; 74 FR 15070, April 2, 2009). Our files have no information to indicate there has been a significant change since those previous analyses in how these factors affect wolves in the western Great Lakes area. We find that the information provided in the petition, as

well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted in light of one or more of the five factors described in section 4(a)(1) of the Act.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range:* The wolf population in the western Great Lakes area currently occupies all suitable habitat identified for recovery in this area in the 1978 and 1992 Recovery Plans and most of the potentially suitable habitat in the States of Minnesota, Wisconsin, and Michigan. Unsuitable habitat, and the small fragmented areas of suitable habitat away from these core areas, are areas where viable wolf populations are unlikely to develop and persist. Although they may have been historical habitat, many of these areas are no longer suitable for wolves, and none of them are important to meet the biological needs of the species.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes:* No wolves have been legally removed from the wild for educational purposes in recent years. Wolves that have been used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons, and this is not likely to change as a result of Federal delisting. We do not expect taking for educational purposes to constitute any threat to wolf populations in the western Great Lakes area for the foreseeable future. See Factor E for a discussion of taking of gray wolves by Native Americans for religious, spiritual, or traditional cultural purposes. See the Depredation Control Programs sections under Factor D for discussion of other past, current, and potential future forms of intentional and accidental take by humans, including depredation control, public safety, and under public harvest. While public harvest may include recreational harvest, public harvest may also serve as a management tool, so it is discussed in Factor D. Taking wolves for scientific or educational purposes in the western Great Lakes area may not be regulated or closely monitored in the future, but the threat to wolves in Minnesota, Wisconsin, and Michigan will not be significant to the long-term viability of the wolf population in the western Great Lakes area. The potential limited commercial and recreational harvest that may occur will be regulated by State or Tribal conservation agencies and is discussed under Factor D.

*C. Disease or Predation:* Several diseases have had noticeable impacts on wolf population growth in the Great

Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s and has been implicated in the decline in the mid-1980s of the isolated Isle Royale wolf population in Michigan, and in attenuating wolf population growth in Minnesota (Mech in litt. 2006). Sarcoptic mange has affected wolf recovery in Michigan's Upper Peninsula and in Wisconsin over the last 12 years, and it is recognized as a continuing issue. Despite these and other diseases and parasites, the overall trend for wolf populations in the Western Great Lakes area continues to be upward. Wolf management plans for Minnesota, Michigan, and Wisconsin include disease-monitoring components that we expect will identify future disease and parasite problems in time to allow corrective action to avoid a significant decline in overall population viability.

The high reproductive potential of wolves allows wolf populations to withstand relatively high mortality rates, including human-caused mortality. The principle of compensatory mortality is believed to occur in wolf populations. This means that human-caused mortality is not simply added to "natural" mortality, but rather replaces a portion of it. For example, some of the wolves that are killed during depredation control actions would have otherwise died during that year from disease, intraspecific strife, or starvation. Thus, the addition of intentional killing of wolves to a wolf population will reduce the mortality rates from other causes on the population. Based on 19 studies by other wolf researchers, Fuller *et al.* (2003, pp. 182–186) concludes that human-caused mortality can replace about 70 percent of other forms of mortality.

Fuller *et al.* (2003, p. 182 Table 6.8) has summarized the work of various researchers in estimating mortality rates, especially human harvest, that would result in wolf population stability or decline. They provide a number of human-caused and total mortality rate estimates and the observed population effects in wolf populations in the United States and Canada. While variability is apparent, in general, wolf populations increased if their total average annual mortality was 30 percent or less, and populations decreased if their total average annual mortality was 40 percent or more. Four of the cited studies

showed wolf population stability or increases with human-caused mortality rates of 24 to 30 percent. The clear conclusion is that a wolf population with high pup productivity—the normal situation in a wolf population—can withstand levels of overall and of human-caused mortality without suffering a long-term decline in numbers.

The wolf populations in Minnesota, Wisconsin, and Michigan will stop growing when they have saturated the suitable habitat and are curtailed in less suitable areas by natural mortality (disease, starvation, and intraspecific aggression), depredation management, incidental mortality (*e.g.*, road kill), illegal killing, and other means. At that time, we should expect to see population declines in some years followed by short-term increases in other years, resulting from fluctuations in birth and mortality rates. Adequate wolf monitoring programs, however, as described in the Michigan, Wisconsin, and Minnesota wolf management plans are likely to identify high mortality rates or low birth rates that warrant corrective action by the management agencies. The goals of all three State wolf management plans are to maintain wolf populations consistent with or above the objectives in the Federal Eastern Timberwolf Recovery Plan to ensure long-term, viable wolf populations. The State management plans recommend a minimum wolf population of 1,600 in Minnesota, 350 in Wisconsin, and 200 in Michigan.

Despite human-caused mortalities of wolves in Minnesota, Wisconsin, and Michigan, these wolf populations have continued to increase in both numbers and range. As long as other mortality factors do not increase significantly and monitoring is adequate to document, and if necessary counteract, the effects of excessive human-caused mortality should that occur, the Minnesota–Wisconsin–Michigan wolf population will not decline to nonviable levels in the foreseeable future as a result of human-caused killing or other forms of predation.

*D. The Inadequacy of Existing Regulatory Mechanisms:* The wolf management plans currently in place for Minnesota, Wisconsin, and Michigan will be more than sufficient to retain viable wolf populations in each State, and even for three completely isolated wolf populations. These State plans provide a very high level of assurance that wolf populations in these three States will not decline to nonviable levels in the foreseeable future. While these State plans recognize there may be a need to control or even reduce wolf

populations at some future time, none of the plans include a public harvest of wolves.

Wolves in Minnesota, Wisconsin, and Michigan would continue to receive protection from general human persecution by State laws and regulations. Michigan met the criteria established in their management plan for State delisting and in April 2009 removed gray wolves from the State's threatened and endangered species list and amended the Wildlife Conservation Order to grant "protected animal" status to the gray wolf in the State (Roell 2009, pers. comm.). That status "prohibit[s] take, establish[es] penalties and restitution for violations of the Order, and detail[s] conditions under which lethal depredation control measures could be implemented" (Humphries in litt. 2004). Since 2004 wolves have been listed as a "protected wild animal" by the WI DNR, allowing no lethal take unless special authorization is requested from the WI DNR (Wydeven *et al.* 2009c). Following Federal delisting, Wisconsin will fully implement that "protected wild animal" status for the species, including protections that provide for fines of \$1,000 to \$2,000 for unlawful hunting. Minnesota DNR will consider population management measures, including public hunting and trapping, but this will not occur sooner than 5 years after a Federal delisting and will maintain a wolf population of at least 1600 animals (MN DNR 2001, p. 2). In the meantime, wolves in Zone A could be legally taken in Minnesota only for depredation management or public safety (MN DNR 2001, pp. 3–4). Since the wolf management plan was completed in 2001, MN DNR has fully staffed its conservation officer corps in the State's wolf range (Stark 2009a, pers. comm.).

Additionally, although to our knowledge no Tribes have completed wolf management plans at this time, based on communications with Tribes and Tribal organizations, federally-delisted wolves are very likely to be

adequately protected on Tribal lands. In addition, on the basis of information received from other Federal land management agencies in Minnesota, Wisconsin, and Michigan, we expect National Forests, units of the National Park System, military bases, and National Wildlife Refuges will provide protections to gray wolves after delisting that will match, and in some cases will exceed, the protections provided by State wolf management plans and State protective regulations.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence:* The information contained within the petitions and our files conclude that other natural or manmade factors may not be threats sufficient to cause the wolves in the western Great Lakes area to warrant listing; this includes taking of wolves by Native Americans for religious, spiritual, or traditional cultural purposes, public attitudes toward the gray wolf, and coyote hybridization. If requested by the Tribes, multiribal natural resource agencies, or the States, the Service or other appropriate Federal agencies will work with these parties to help determine if a harvestable surplus exists, and if so, to assist in devising reasonable and appropriate methods and levels of harvest for delisted wolves for traditional cultural purposes. We conclude that the small number of wolves that may be taken by Native Americans will not be a significant threat to the viability of the population.

#### **Finding**

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petitions present substantial scientific or commercial information indicating that delisting the gray wolf in Minnesota, Wisconsin, Michigan, or the western Great Lakes area as a whole may be warranted. This finding is based on information provided under all five factors.

Because we have found that the petitions present substantial

information indicating that delisting the gray wolf in Minnesota, Wisconsin, Michigan, or the western Great Lakes area as a whole may be warranted, we are initiating a status review to determine whether delisting the gray wolf in those States and the surrounding region under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

#### **References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Midwest Regional Office (*see FOR FURTHER INFORMATION CONTACT*).

#### **Author**

The primary authors of this notice are the staff members of the Midwest Regional Office (*see FOR FURTHER INFORMATION CONTACT*).

#### **Authority**

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

Dated: August 19, 2010.

#### **Wendi Weber,**

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

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