



DELIBERATIVE-DRAFT-DO NOT DISCLOSE



## USFWS INFORMATION MEMORANDUM

**DATE:** October 11, 2022

**TO:** Regional Director, Mountain-Prairie Region

**FROM:** Assistant Regional Director, Ecological Services, Mountain-Prairie Region

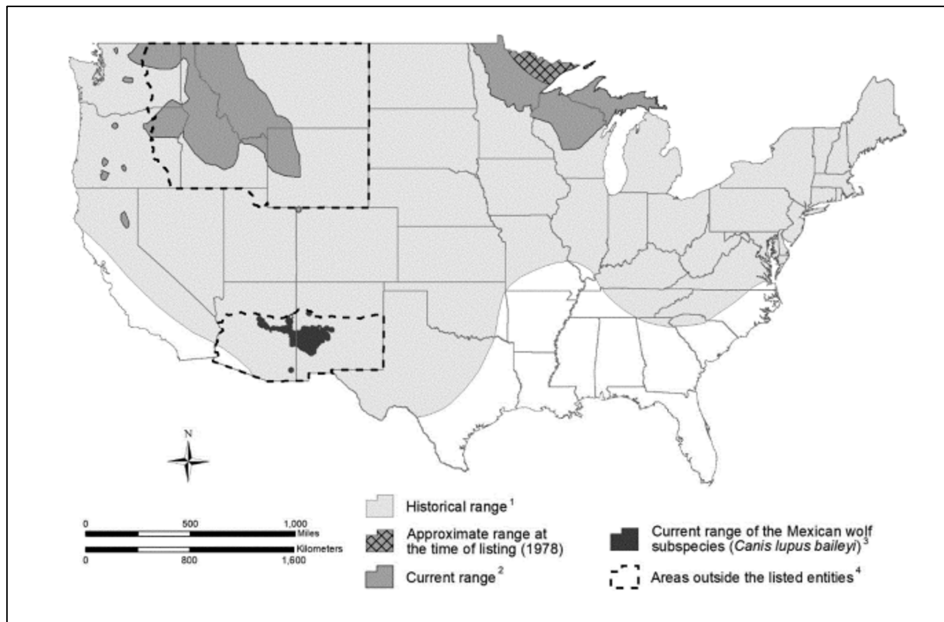
**SUBJECT:** FR04962– Proposed Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado

### I. KEY FACTS

At the request of Colorado Parks and Wildlife (CPW), the U.S. Fish and Wildlife Service (Service) has drafted a proposed rule to designate a nonessential experimental population of the federally endangered gray wolf (*Canis lupis*) in Colorado under section 10(j) of the Endangered Species Act (Act). Designating the nonessential experimental population would contribute to the conservation of the federally listed entity, the gray wolf in the lower-44 States. It would also help support CPW's voter-mandated gray wolf reintroduction program. We are also preparing a draft Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) regarding this proposed section 10(j) rule.

### II. BACKGROUND AND FWS POSITION

On November 3, 2020, Colorado voters approved Proposition 114, the Gray Wolf Reintroduction Initiative, now codified as Colorado Revised Statute 33-2-105.8. This State Statute directs the CPW Commission to take the steps necessary to reintroduce gray wolves west of the Continental Divide by December 31, 2023. On November 3, 2020, the Service published a final rule (85 FR 69778) to remove gray wolves from the list of Threatened and Endangered wildlife in those areas of the lower 48 States where they were federally listed, with the exception of the Mexican wolf subspecies found in New Mexico and Arizona (Figure 1). On February 10, 2022, the Service's rule delisting gray wolves was invalidated, which reinstated Federal protections for gray wolves in the lower-44 States under the Act (not including the Northern Rocky Mountains Distinct Population Segment) (Figure 1). As a result, the State of Colorado requested a rule to establish an experimental population to support their state-lead reintroduction efforts.



**Figure 1.** Map of the historical range and current range of the gray wolf (*Canis lupus*) in the lower 48 States. <sup>1</sup>Based on Nowak (1995); <sup>2</sup>Based on State data; <sup>3</sup>United States portion of the Mexican wolf's range only; <sup>4</sup>NRM DPS and Mexican wolf nonessential experimental population area boundaries that are not part of the federally listed entity, the gray wolf in the lower-44 States.

Under section 10(j) of the Act, the Service may designate a population of a listed species as experimental if it will be released into suitable natural habitat outside the species' current range. There is currently a single known pack of gray wolves in Colorado. The state receives regular reports of sightings and investigates these reports. The known pack raised pups last year and there is no evidence of breeding this year. At the end of 2021, eight gray wolves occupied Colorado, but they do not meet the definition of a gray wolf population, which is defined as two breeding pairs that successfully raise at least two pups for two consecutive years. Therefore, we do not consider any gray wolves currently found in Colorado to constitute a population, and the gray wolves to be reintroduced into Colorado will be geographically separate from the delisted portion of the NRM population or any other extant wolf populations. Although the State statute specifies that gray wolf reintroduction efforts will be confined to portions of Colorado west of the Continental Divide, the proposed nonessential experimental population area is the entire State of Colorado, in order to extend management flexibility to other areas of the state where gray wolf dispersal may occur.

On July 21, 2022, we published our notice of intent to prepare an EIS for the proposed rulemaking. The NEPA analysis will provide a decision tool to either develop a section 10(j) rule or pursue other alternatives to meet CPW's stated goal of reintroducing northern gray wolves to Colorado. Having regulatory flexibility to address conflicts would be an integral tool to support wolf reintroduction, conservation, and recovery. Gray wolves in the lower-44 States

are currently listed under the Act as an endangered species, so management flexibility to respond to conflict would be unavailable without a 10(j) rule or other permits from the Service.

### III. POSITION OF AFFECTED STAKEHOLDERS/PUBLIC LANDS AFFECTED

As with most of our actions for the gray wolf, this proposed rule would be controversial and of interest to a variety of stakeholders and the public. Many Federal and State agencies, local government officials, non-governmental organizations, agricultural producer groups, and landowners are interested in the development of CPW's wolf management plan and are likely to closely track its development, the draft rule, and the NEPA process. The State of Colorado has invested in a robust public participation process for development of its gray wolf management plan including seeking input from many stakeholder groups for the past year.

Several states including Arizona, New Mexico, and Utah have expressed concern over Colorado's reintroduction of gray wolves and potentially dispersing wolves from Colorado. Five states are participating as cooperating agencies (Arizona, Colorado, New Mexico, Utah and Wyoming) in the NEPA process.

Colorado Governor Jared Polis is very supportive of and personally engaged in wolf reintroductions. Local government officials and other stakeholders in the counties west of the Continental Divide have expressed concerns regarding wolf reintroduction and are especially concerned about the potential for domestic livestock depredation and negative effects on big game populations. Both Colorado Senators are tracking our progress and are interested in our support of the state reintroduction. Multiple counties and other local government agencies are participating as cooperating agencies in the NEPA process.

The Service is committed to informing and coordinating on the proposed section 10(j) rule with local Tribes, including the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe. ~~The Ute Tribe in Utah is concerned about wolves reaching their lands.~~ Informal consultation with these Tribes is ongoing, and formal consultation will take place in conjunction with this proposed rulemaking and NEPA process. Tribes outside of Colorado ~~are concerned about fully protected wolves entering their lands, and~~ have inquired about the ~~need for tribal management plans and the resources they have need to prepare them.~~ ~~rulemaking and w~~We are providing an informal webinar ~~for tribes~~ in early October.

We anticipate that some non-governmental organizations and the public, while generally supportive of reintroducing wolves to Colorado, may express concerns about possible management actions for the species. They may have an unfavorable view of section 10(j) rule provisions that potentially authorize lethal take of wolves to manage conflicts.

### IV. DISCUSSION

The State of Colorado is leading the reintroduction effort of gray wolves in Colorado. Gray wolves in Colorado are currently federally listed as endangered under the Act. The State of Colorado specifically requested that we develop a section 10(j) rule for gray wolves in Colorado to support their reintroduction program. Section 10(j) of the Act provides for the reintroduction of listed species and provides regulatory flexibility for these reintroduced populations. We are developing a proposed section 10(j) rule that would further the conservation of the gray wolf in

**Commented [NJ1]:** The Ute Tribe is outside Colorado. Therefore, we recommend that they are included at the end of the paragraph with other tribes outside Colorado.

**Commented [NJ2]:** We recommend saying "coordination" as opposed to "informal consultation." As a heads up, in R2 we now only use "consultation" to mean formal or government-to-government consultation. For all other interactions we use the term "coordination." We think this new approach will avoid any confusion about "consultation," which tribes generally understand to mean government-to-government consultation, despite any modifiers.

the lower-44 States. It would also provide increased management flexibility if CPW and affected Tribes develop management plans that are consistent with the rule. Integrating state and tribal management commitments in the rule proactively to build consistency between the rule and future management plans is key to address the uncertainty surrounding future Federal or state-led management of wolves in Colorado.

## V. TIMELINE AND NEXT STEPS

We continue to coordinate extensively with CPW to ensure that their draft management plan, our proposed section 10(j) rule and draft EIS are prepared collaboratively, within the constraints of the Act and other Federal regulations. Under Colorado Revised Statute 33-2-105.8, the CPW Commission must finalize the reintroduction and management plan by December 31, 2023, and wolf reintroductions must occur by that same date. The Department of the Interior and the Service have committed to completing the final section 10(j) rule by December 31, 2023. To meet this commitment, completion of the proposed and final rule and supporting NEPA analyses must occur quickly to allow time for publication of the proposed rule and the review and incorporation of public comments in the final rule by December 31, 2023. Major milestones in our anticipated timeline are summarized below in Table 1.

**Table 1.** Summary of anticipated dates and milestones for the establishment of a nonessential experimental population of the gray wolf in Colorado.

Anticipated Date	Anticipated Milestone
October 14, 2022	Briefing for the Director
Late October 2022	Region 6 transmits proposed rule to HQ
Early November 2022	Director's Review and Surname
Late November to December 2022	Departmental Review and Surname
Early January 2023	Publish Draft EIS and Proposed 10(j) Rule
March 2023	Public Comment Period Closes
March 2023 to August 2023	Address Public Comments. Update Documents.
October 2023	Publish Final EIS
November 2023	Sign the Record of Decision and publish the Final 10(j) Rule
December 2023	Final 10(j) rule effective

Prepared by: Nicole Alt, Supervisor, Ecological Services, Colorado Field Office

☒ FYI or ☐ Requested by: [name]

DELIBERATIVE-DRAFT-DO NOT DISCLOSE

☐ Prepared for a meeting:

Does this involve, directly or tangentially, any Director's Office recusals? ☐ Yes ☒ No

If yes, please identify: