

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Delist the Gray Wolf (Canis lupus) in Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to delist the gray wolf (Canis lupus) in Nevada. We find that the petition and the available literature cited in the petition do not present substantial scientific or commercial information indicating that delisting may be warranted. We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to the gray wolf. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on December 9, 2005.

You may submit new information concerning this species for our consideration at any time.

ADDRESSES: Data, information, or questions concerning this petition or this 90-day finding should be sent to the Field Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502-7147. The petition finding and supporting information are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Nevada Fish and Wildlife Office (see ADDRESSES) (telephone: 775/861-6300; facsimile: 775/861-6301).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition. 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 this finding promptly in the Federal Register.

Our standard for substantial 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 information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the “substantial information” threshold.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner’s sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary.

Petition

On June 24, 2003, we received a petition, dated June 9, 2003, from the Nevada Division of Wildlife (now known as the Nevada Department of Wildlife) (NDOW or

petitioner) requesting that we delist wolves in Nevada. The NDOW petition states that the historic presence of wolves in Nevada was limited to transient, solitary individuals, Nevada does not contain suitable habitat to support wolf populations, and no viable populations of wolves ever existed in Nevada. The petition asserts that the 1978 listing of gray wolves as endangered in Nevada was in error (43 FR 9607, March 9, 1978), and that the 2003 reclassification of gray wolves as threatened in Nevada (68 FR 15804, April 1, 2003) was also in error. The petition also asserts that gray wolf recovery, as detailed within the Northern Rocky Mountain Recovery Plan (USFWS 1987) has been achieved, and wolves should be delisted.

We sent a letter to NDOW dated July 29, 2003, acknowledging receipt of their petition. We initially planned to address the June 30, 2003, delisting petition as part of the process to delist wolves due to recovery throughout the Western Distinct Population Segment (Western DPS), which included Nevada. See the Advance Notice of Proposed Rulemaking; Removing the Western Distinct Population Segment of Gray Wolf from the List of Endangered and Threatened Wildlife (68 FR 15879, April 1, 2003). However, the delisting process has been delayed due to court action (See Previous Federal Action section, below), and therefore, we are now addressing the subject petition. On May 4, 2005, we received a 60-day notice of intent to sue from the Attorney General, Nevada Department of Justice, regarding our failure to meet the statutory timeframes for making petition findings.

Biology and 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).

Previous Federal Action

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 17740), with its known range given as “Mexico, USA (Arizona, New Mexico, Texas).” On June 14, 1976 (41 FR 24064), the subspecies C. l. monstrabilis was listed as endangered (using the nonspecific 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 to eliminate problems with listing separate subspecies of the gray wolf and identifying relatively narrow geographic areas in which those subspecies are protected. In addition, critical habitat was designated in that rulemaking. In 50 CFR 17.95(a), we described 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. We also promulgated

special regulations under section 4(d) of the Act for operating a wolf management program in Minnesota at that time. The depredation control portion of the special regulation was later modified (50 FR 50793, December 12, 1985); these special regulations are found in 50 CFR 17.40(d)(2).

On November 22, 1994, we designated areas in Idaho, Montana, and Wyoming as nonessential experimental populations in order to initiate gray wolf reintroduction projects in central Idaho and the Greater Yellowstone Area (59 FR 60252; 59 FR 60266). On January 12, 1998, a nonessential experimental population was established for the Mexican gray wolf in portions of Arizona, New Mexico, and Texas (63 FR 1752). These experimental population designations also contain special regulations that govern take of wolves within these geographic areas (50 CFR 17.84(i), (k), and (n)).

In order to have the gray wolf's status under the Act match its recovery progress, we published a proposed rule (65 FR 43450) on July 13, 2000, to revise the listing of the gray wolf across most of the conterminous United States. The proposal included establishing four DPSs, and included recommended wording for three special regulations that would apply to those wolves proposed for reclassification to threatened status. The proposal also included delisting the gray wolf in parts or all of 30 States, including Nevada, because we believed that gray wolf restoration was not necessary and not feasible in those areas, or because the area was historic red wolf habitat.

On April 1, 2003, we published a final rule (68 FR 15804) revising the listing status of the gray wolf across most of the conterminous United States. As a result of comments received during the comment period and additional analysis on our part, several changes were made to the July 13, 2000, proposed rule. This included dividing

the previous listing of the species into three DPS's instead of four; reclassifying gray wolves in two of the DPS's from endangered to threatened; and including gray wolves in portions of the Eastern DPS and part of the Western DPS in special regulations under section 4(d) of the Act, thus allowing State and Tribal natural resource officials, under certain conditions, to "take" those wolves that were attacking domestic animals. The final rule also removed the gray wolf in parts or all of 16 States where historically it did not occur, rather than parts or all of 30 States, as proposed. In addition, on July 21, 2004, we proposed to delist all gray wolves in the 2003 Eastern Distinct Population Segment (69 FR 43664).

On January 31, 2005, and August 19, 2005, the U.S. District Courts in Oregon and Vermont, respectively, concluded that the 2003 final reclassification rule violated the Act. The Courts' rulings invalidated the April 2003 changes to the Act listing for the gray wolf. Therefore, the USFWS currently considers the gray wolf to have the status that existed prior to the 2003 reclassification. Gray wolves in Minnesota are classified as threatened, as a result of a 1978 reclassification. Gray wolves in the remaining 47 conterminous States, including Nevada, are endangered, except where they are listed as part of an Experimental Population for reintroduction purposes (throughout Wyoming and in portions of Montana, Idaho, Arizona, New Mexico, and Texas). The 1994, 1998, and 2005 Experimental Population Regulations (under section 10(j) of the Act) remain in effect for the Experimental Populations in the west and southwest. The special regulations enacted under section 4(d) of the Act that apply to Minnesota wolves remain in effect. The 2003 special regulations enacted under section 4(d) of the Act are not being implemented, because they were enjoined by the U.S.

District Court.

We have received several petitions during the past decade requesting consideration to delist the gray wolf in all or part of the 48 conterminous States. We subsequently published findings that these petitions did not present substantial information that delisting gray wolves in all or part of the conterminous 48 United States was warranted (54 FR 16380, April 24, 1989; 55 FR 49656, November 30, 1990; 63 FR 55839, October 19, 1998). We also received petitions from Defenders of Wildlife to list gray wolf DPSs in the southern Rocky Mountains, northern California - southern Oregon, and western Washington, and to grant endangered status to gray wolves in those DPSs. Because wolves were already protected as endangered in those areas, we took no action on these petitions. In addition, we have received petitions from the Minnesota Conservation Federation and from Lawrence Krak, a Wisconsin resident, to delist the gray wolf in Minnesota, Michigan, and Wisconsin; our 12-month findings on these petitions concluded that delisting was warranted and were made in our 2004 proposed rule (69 FR 43664, July 21, 2004). On October 26, 2005, we published a finding responding to petitions to delist the gray wolf in the Northern Rocky Mountains from Friends of Northern Yellowstone Elk Herd and the State of Wyoming (70 FR 61770). We have responded by initiating a status review for the northern Rocky Mountain population of gray wolves to determine if it may qualify as a DPS and whether delisting may be warranted.

Review of the Petition

The NDOW petition requests that wolves in the State of Nevada should be delisted on one of three basis: 1) that it was listed in error; 2) it is a DPS that is neither threatened nor endangered; and 3) wolves in Nevada are part of a recovered Rocky Mountain population of gray wolves. The factors for listing, delisting, or reclassifying a species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) extinction, (2) recovery, or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

The petition provides a substantial and comprehensive presentation of the historic range and occurrences of wolves in Nevada. The information in the petition confirms that wolves, whether in packs or solitary transient individuals, historically existed in Nevada. Therefore, since wolves historically occurred in Nevada there is no basis to conclude that listing in Nevada was in error.

The petitioner has also indicated that wolves in the State of Nevada should be delisted due to recovery. Such action would be appropriate if the gray wolves in Nevada: 1) qualify as a DPS that is neither endangered nor threatened, or 2) are part of a larger listed entity that is neither threatened nor endangered.

To implement the measures prescribed by the Act and its Congressional guidance, we developed a joint policy with the National Marine Fisheries Service that addresses the recognition of DPSs of vertebrate species for potential listing and delisting actions (61 FR 4722, February 7, 1996).

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These elements are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. The elements are: (1) discreteness of the population segment in relation to the remainder of the taxon; (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 Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?). A systematic application of the above elements is appropriate, with discreteness criteria applied first, followed by significance analysis. If we determine that a population segment is discrete and significant, we then evaluate it for endangered or threatened status based on the Act's standards.

Discreteness refers to the isolation of a population from other members of the species and we evaluate this based on specific criteria. 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 as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. (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.

The NDOW petition discusses discreteness in relation to historical occurrence in Nevada. The petition indicates that the source areas of wolves that

historically occurred in Nevada include Idaho, northern California, and Oregon. The petition notes that at the California-Nevada border, the Sierra-Nevada range creates a rain shadow causing arid conditions in the Great Basin (Houghton et al. 1975). The petition notes that those arid conditions reduce the quality of wolf habitat at the Nevada border, and that the arid conditions of the Great Basin occurring in the southeast corner of Oregon along the Oregon-Nevada border would not have functioned as suitable wolf habitat.

The petition also discusses the other surrounding States and regions along Nevada's eastern and southern border, and states that they do not seem to have been good sources for wolf ingress. The petition states that Utah historically had wolves (Barnes 1922; Durrant 1952) in low densities, but the entire western extreme of the State is primarily a salt flat within the lakebed of historic Lake Bonneville and is largely devoid of ungulate species. The petition also states that on Nevada's southern border, southern California and Arizona are within the Mojave Desert region, and it is well established that wolves were generally absent from arid deserts (Young and Goldman 1944; Hall and Kelson 1959; Mech 1970).

We agree that large expanses of arid habitat, with little cover or adequate prey base, could serve as potential barriers to discourage wolf dispersal; however, none of the features described in the petition are unique to, or terminate discretely at, the Nevada State border. For example, the Great Basin comprises a large geographic area in western North America, including parts of the States of Oregon, California, Nevada, Utah, and Idaho. Historic Lake Bonneville is known to have extended across much of the eastern portion of the Great Basin, including parts of the States of Nevada, Utah,

and Idaho. The Mojave Desert includes parts of the States of Nevada, California, and Arizona. In all these cases, these geographic areas discussed in the petition extend well beyond the State of Nevada to encompass much larger areas. These geographic areas are not encompassed within the State of Nevada nor do they correspond to the Nevada State boundaries. Since the petition did not present substantial information that the wolves in Nevada are a discrete population, we do not need to further evaluate whether this entity represents a DPS.

The petition also states that the gray wolf in Nevada is neither endangered nor threatened due to the fact that wolves within the Western DPS have achieved the Northern Rocky Mountain Recovery Plan (Service 1987) objectives, and should therefore be delisted. We agree that the biological recovery objectives as described in the Recovery Plan for gray wolves in the northern Rocky Mountains have been achieved. The area covered by the Northern Rocky Mountain Recovery Plan would have been incorporated within the Western DPS, which also included Nevada. However, as noted under previous Federal Actions, the Western DPS was vacated by recent court rulings, and a delistable entity is no longer in place for the northern Rocky Mountain wolf population.

Finding

Our evaluation of the petition indicates that in general, the petition provides a substantial assessment of the historic distribution and occurrence of wolves in Nevada. The information in the petition confirms that wolves, whether in packs or solitary

transient individuals, historically existed in Nevada. Thus, the petition does not provide substantial information that wolves were listed in error in Nevada.

The petition states that the inclusion of Nevada within the now vacated Western DPS was erroneous, and requests the delisting of Nevada alone without providing information on how the borders of the State of Nevada would function as ecological or physical factors to delimit wolves in Nevada as an entity that would be discrete from the rest of the taxon. The petition does not identify a discrete entity that qualifies as a DPS and therefore can not be evaluated for delisting. Also, as discussed in the DPS policy, recognition of political boundaries such as State lines is inappropriate for establishing the discreteness of a DPS (61 FR 4723-4724).

The petition also states that wolves in Nevada are neither endangered nor threatened because the northern Rocky Mountain populations have achieved their recovery objectives. We agree that the wolf populations in the northern Rocky Mountain area have achieved their biological recovery objectives. However, as noted under “Previous Federal Actions,” the Western DPS was vacated by recent court rulings, and a delistable entity is no longer in place for the northern Rocky Mountain wolf population. The NDOW petition did not provide substantial information to delineate that the Nevada wolves are part of any delistable entity.

We have reviewed the petition to delist the gray wolf in Nevada and the literature cited in the petition that was available to us. After this review, we find that there is no substantial scientific information in the petition to demonstrate that the gray wolf did not historically occur in the State of Nevada and was listed in error, that wolves in the State of Nevada are a delistable entity, or that the Nevada gray wolf is

part of a larger population that could at present be delisted. Although a non-substantial finding does not initiate a formal a status review for these species, we encourage additional information gathering and research to increase our understanding of the status of these species.

If you wish to provide information regarding the gray wolf, you may submit your information or materials to the State Supervisor, Nevada Fish and Wildlife Office (see ADDRESSES).

References Cited

A complete list of all references cited herein is available, upon request, from the Nevada Fish and Wildlife Office (see ADDRESSES).

Author

The primary author of this notice is staff of the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (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: November 22, 2005

Signed: Matt Hogan

Acting Director, Fish and Wildlife Service

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