

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35–T05–0383, to read as follows:

§ 100.35–T05–0383 Special Local Regulations for Marine Events; Patuxent River, Solomons, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Patuxent River within a line connecting the following positions: from latitude 38°19'45" N, longitude 076°28'06" W, thence to latitude 38°19'24" N, longitude 076°28'30" W, thence to latitude 38°18'32" N, longitude 076°28'14" W; and from latitude 38°17'38" N, longitude 076°27'26" W, thence to latitude 38°18'00" N, longitude 076°26'41" W, thence to latitude 38°18'59" N, longitude 076°27'20" W, located at Solomons, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the Chesapeake Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or

the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) All vessel traffic, not involved with the event, will be allowed to transit the regulated area and shall proceed in a northerly or southerly direction westward of the spectator area, taking action to avoid a close-quarters situation with spectators, until finally past and clear of the regulated area.

(4) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) Only participants and official patrol are allowed to enter the race course area.

(6) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area outside the race course and spectator areas at a safe speed and without loitering.

(7) *Designated Spectator Fleet Area.* The spectator fleet area is located within a line connecting the following positions: latitude 38°19'14" N, longitude 076°28'16" W, thence to latitude 38°18'00" N, longitude 076°27'26" W, thence to latitude 38°18'02" N, longitude 076°27'20" W, thence to latitude 38°19'16" N, longitude 076°28'10" W, thence to the point of origin at latitude 38°19'14" N, longitude 076°28'16" W. All coordinates reference Datum NAD 83.

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 10 a.m. until 6 p.m. on October 3, 2010.

Dated: May 20, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–13907 Filed 6–9–10; 8:45 am]

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

[Docket No. FWS–R5–ES–2010–0032; [92220–1111–0000–C5]]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List a Distinct Population Segment of the Gray Wolf in the Northeastern United States as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list a Distinct Population Segment (DPS) of the gray wolf (*Canis lupus*) in five northeastern States as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing a DPS of the gray wolf in Massachusetts, New York, Vermont, New Hampshire, and Maine may be warranted. Therefore, we will not initiate a further status review in response to this petition. However, we ask the public to submit to us at any time, any new information that becomes available concerning the presence of the gray wolf in the northeastern United States, particularly information to substantiate the presence of breeding pairs.

DATES: The finding announced in this document was made on June 10, 2010.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov>. Supporting scientific documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT:

Thomas Chapman, Field Supervisor, or Michael Amaral, Fish and Wildlife Supervisory Biologist, of the New England Field Office (see **ADDRESSES**), by telephone at 603–223–2541, or by facsimile to 603–223–0104. If you use a telecommunications device for the deaf (TDD), please call the Federal

Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the 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, 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 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.

We base this finding on information provided by the petitioner(s) and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). On an ongoing basis prior to receipt of the petition, we have had frequent contact with State wildlife biologists from the five-State area and believe that our files represent the best information available regarding the potential occurrence of wolves in the northeastern United States. Our process for making this 90-day finding under § 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition and in our files meets the “substantial information” threshold.

Petition History

On February 4, 2009, we received a petition, dated January 31, 2009, from Mr. John Glowa of South China, Maine (on behalf of himself and four other private citizens), requesting that we list a “Northeastern Gray Wolf Distinct Population Segment consisting of the States of New York, Vermont, New Hampshire, Maine, and Massachusetts.” The petition did not specify whether the DPS should be listed as endangered or threatened. The petitioners also

requested that we “regulate the commerce or taking, and treat as endangered species in the States of New York, Vermont, New Hampshire, Maine, and Massachusetts, coyotes (*Canis latrans*), coyote-gray wolf hybrids (*Canis latrans* × *Canis lupus*), eastern wolves (*Canis lycaon*), eastern wolf-gray wolf hybrids (*Canis lycaon* × *Canis lupus*), coyote-eastern wolf hybrids (*Canis latrans* × *Canis lycaon*), and coyote-eastern wolf/gray wolf hybrids (*Canis latrans* × *Canis lycaon* × *Canis lupus*) because of their close resemblance to the federally endangered and protected gray wolf.” In addition, the petitioners requested that we develop and implement a Northeastern Gray Wolf Recovery Plan. The request to regulate the commerce and taking of coyotes and wolf-like canids, and the request to develop a Northeastern Gray Wolf Recovery Plan, are not petitionable actions under the Act and will be addressed separately from this finding.

The petition clearly identified itself as such and included the identification information of the petitioner required at 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter to Mr. Glowa dated February 24, 2009. This finding addresses the petition to list a Northeastern DPS of the gray wolf (*Canis lupus*).

Previous Federal Actions

In 1974, we listed two subspecies of gray wolf as endangered: The Northern Rocky Mountain (NRM) gray wolf (*C. l. irremotus*) and the eastern timber wolf (*C. l. lycaon*) in the Great Lakes region (39 FR 1158, January 4, 1974). We listed a third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*), as endangered on April 28, 1976 (41 FR 17736), in Mexico and the southwestern United States. On June 14, 1976 (41 FR 24062), we listed the Texas gray wolf subspecies (*C. l. monstabilis*) as endangered in Texas and Mexico.

In 1978, we listed the gray wolf species, *Canis lupus*, as endangered throughout the lower 48 States, except for a threatened listing in Minnesota (43 FR 9607, March 9, 1978). Recovery efforts that followed were most successful in the species’ core areas in the Northern Rocky Mountains and the Western Great Lakes. In 2000, we proposed to revise this species listing into four DPSs: the Western Great Lakes, Western, Northeastern, and Southwestern DPSs (65 FR 43450, July 13, 2000). We also proposed to downlist all but the Southwestern DPS to threatened status based on recovery in the core areas within the Western and Western Great Lakes DPSs.

In a 2003 final rule (68 FR 15804, April 1, 2003), we found that listing a Northeastern DPS of the gray wolf was not warranted because the available data and public comments did not show any breeding population in the Northeast. In addition, there was scientific uncertainty about the species of wolf that occurred in this region historically, as well as uncertainty regarding the taxonomic identity of the wolves indigenous to nearby areas in Ontario and Quebec, Canada. This issue is under continuing study. We, therefore, combined the wolf range in the Northeast with the Western Great Lakes DPS and called it the Eastern DPS. The 2003 final rule downlisted the Eastern DPS and a Western DPS to threatened based on wolf recovery in the core population areas. The 2003 rule also listed a Southwestern DPS as endangered.

Plaintiffs in Oregon opposed to the downlistings challenged the 2003 rule that reclassified these DPSs from the endangered lower 48 population. The District Court in Oregon held that the 2003 rule violated the Act, in part because it created the new threatened DPSs without analyzing the threats to any wolves outside their core recovery areas (*Defenders of Wildlife v. Secretary*, 354 F. Supp.2d 1156, 1171–72 (D. Ore. 2005)). Plaintiffs in Vermont also challenged the 2003 rule, and the District Court there likewise stated that the rule failed to analyze the threats outside the core areas (*National Wildlife Federation v. Norton*, 386 F. Supp.2d 553, 565 (D. Vt. 2005)). The Vermont court also rejected the biological basis of the Eastern DPS because the 2003 rule suggested that, based on the best information available at that time, any wolves in the Northeast, and those in Eastern Canada, were a different population from wolves in the Midwest.

Because the two courts vacated the 2003 rule, the endangered listing throughout the lower 48 States (and threatened in Minnesota) was reinstated. Neither court addressed the question whether a Northeastern DPS could ever be designated with that region’s “low to non-existent” population of wolves (*Defenders of Wildlife*, 354 F. Supp.2d at 1173; *National Wildlife Federation*, 386 F. Supp.2d at 565). As suggested by the two courts, we have since described core populations in smaller Western Great Lakes and Northern Rocky Mountains DPSs that may be recovered (74 FR 15070, 15123; April 2, 2009). Those findings have been challenged. Except for the threatened listing in Minnesota; where listed as an experimental population; and where

delisted due to recovery in Montana, Idaho, portions of eastern Washington, portions of eastern Oregon, and portions of north-central Utah, wolves in the lower 48 States' range, including the Northeast, currently remain listed as endangered (50 CFR 17.11(h)).

In an April 1, 2003, petition to list a Northeastern gray wolf DPS, the Defenders of Wildlife and the Sierra Club (and others) concurred with the determination in our 2003 final rule regarding the absence of a breeding population (Defenders of Wildlife *et al.* 2003). Their petition stated "Since no wolves have formed packs or established territories over the course of the past few decades in the northeast region, there is little reason to believe that they will do so in the future." In regard to the 2003 Defenders *et al.* petition, the Service responded that the absence of a wolf population in the Northeast precluded us from designating that entity as a DPS (J. Geiger, FWS *in litt.* Sept. 12, 2003).

Species Information

The biology and ecology of the gray wolf has been widely reported in the scientific literature (*e.g.*, Carbyn *et al.* 1995; Wydeven *et al.* 2009), in Service recovery plans (*e.g.*, Recovery Plan for the Eastern Timber Wolf (Service 1992)), and in previous proposed and final rules (*e.g.*, 68 FR 15804, April 1, 2003; 71 FR 15266, March 27, 2006; and 74 FR 15123, April 2, 2009). In brief, gray wolves are the largest wild members of the Canidae, or dog family. Adults can range from 18 to 80 kilograms (40–175 pounds), depending on sex and geographic locale. In North America, wolves are primarily predators of large mammals, such as moose (*Alces alces*), white-tailed deer (*Odocoileus virginianus*), and beaver (*Castor canadensis*). Wolves are social animals, normally living in packs of 2 to 12 animals, but occasionally pack sizes of greater than 20 animals are reported (68 FR 15805).

Distribution and Taxonomy

The gray wolf historically occurred across most of North America, Europe, and Asia. The only areas of the coterminous United States that apparently lacked gray wolf populations since the last glacial period are parts of California and portions of the southern and eastern United States (an area occupied by the red wolf, *C. rufus*). The identity of the precolonial wolf species that inhabited the northeastern United States has recently been called into question because there is some evidence that indicates that contemporary wolves in southeastern Ontario and

southeastern Quebec (and some historical wolf specimens from the northeastern United States) are genetically more closely related to the red wolf than the gray wolf (Wilson *et al.* 2000; Wilson *et al.* 2003; Grewal *et al.* 2004; Kyle *et al.* 2006; and Kyle *et al.* 2008).

Status of the Species

It is widely accepted that wolves became extirpated from the northeastern United States by the year 1900 (Young and Goldman 1944 in Carbyn *et al.* 1995; Nowak 2002; Villemure and Jolicoeur 2004). As noted above, from 2000 to 2003, the Service reviewed the existing status of the wolf in the northeastern United States and found no reliable evidence of breeding pairs or wolves that had established territories. The petition lists information on eight wolves or wolf-like canids killed in the northeastern United States over a 40-year period from 1968 to 2007, and one additional animal in southern Quebec Province, Canada. The species' identity and the origin of several of the animals remain uncertain, and available genetic data indicate that two of the wolves were likely the result of a domestic breeding. The 2002 occurrence of a wolf killed in southern Quebec Province was noted as the first confirmed record of a wolf south of the St. Lawrence River in over 100 years (Villemure and Jolicoeur 2004). The Service finds that this is strong evidence that wolf breeding pairs have not become established in southern Quebec Province, a forested and mixed agricultural landscape contiguous with forested habitats in Maine and New Hampshire. Statements by the petitioners that in 2005, "wildlife workers" were monitoring a wolf pack 20 miles north of the Vermont border in Quebec could not be verified (Struhsacker, NWF *in litt.* 2008), and no further reports of wolves in that area are known to the Service (USFWS unpublished data).

The petition provides an accounting of individual dead wolves and wolf-like canids. It also includes information that potential source populations of wolves occur north of the St. Lawrence River in Quebec and Ontario, Canada, from which wolves could disperse to the five-State area. The Service concurs that source populations of wolves do occur within the recorded dispersal capability of a wolf. However, the petition and our files do not include information sufficient to conclude that wolves may have formed breeding pairs in the five-State area.

Distinct Population Segment Analysis

Section 3 of the Act defines "species" as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" is not recognized in the scientific literature. Therefore, the Service and the National Marine Fisheries Service adopted a joint policy for recognizing DPSs under the Act (DPS Policy; 61 FR 4722) on February 7, 1996. The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment may be considered a DPS: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

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 (an organism or group of organisms) as a consequence of physical, physiological, ecological, or behavioral factors; 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 § 4(a)(1)(D) of the Act (*i.e.*, inadequate regulatory mechanisms).

If a population segment is found to be discrete under one or more of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the 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; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The definition of a "population" is central to our analysis under the DPS policy. Our regulations define a "population" as a "group of fish or wildlife * * * in common spatial arrangement that interbreed when

mature” (50 CFR 17.3). We have refined that definition in experimental wolf reintroduction rules to mean “at least two breeding pairs of gray wolves that each successfully raise at least two young” annually for 2 consecutive years (59 FR 60252, 60266; November 22, 1994).

Under the Act, an experimental population must be “wholly separate geographically from nonexperimental populations of the same species” (16 U.S.C. 1539(j)(1)). Opponents of wolf reintroduction in Yellowstone National Park have argued that releasing an experimental population would violate this separation requirement because individual wolves sometimes disperse to Yellowstone from natural populations to the north. The Court of Appeals rejected this argument: “by definition lone dispersers do not constitute a population or even part of a population, since they are not ‘in common spatial arrangement’ sufficient to interbreed with other members of a population” (*Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224, 1234 (10th Cir. 2000)). This decision followed another Court of Appeals holding that, despite “sporadic sightings of isolated indigenous wolves in the release area, lone wolves, or ‘dispersers,’ do not constitute a population” under the Act (*U.S. v. McKittrick*, 142 F.3d 1170, 1175 (9th Cir. 1998), cert. denied, 525 U.S. 1072 (1999)). Thus, the courts have upheld the Service’s interpretation that pairs must breed in order to have a “population.”

The petition provides an account of individual wolves and wolf-like canids dispersing into the petitioned DPS area, as occurs in Yellowstone National Park. However, the petition does not provide information suggesting that dispersing wolves may be interbreeding. Nor do we have any information in our files indicating that dispersing wolves may be interbreeding. While the occurrence of dispersing wolves raises the theoretical possibility that a population could exist, it does not constitute substantial information that a population may actually exist. That is, it is not the amount of information that would lead a reasonable person to conclude that a population (*i.e.*, at least two breeding pairs of gray wolves that each successfully raise at least two young annually for 2 consecutive years) may exist. Because we do not have substantial information that any “population” of the gray wolf may exist in the Northeast, we lack substantial information that there may be a discrete population in the Northeast. Because we find that there is not substantial information that a discrete gray wolf

population may exist in the Northeast, we do not evaluate whether such a population could be significant, and could be endangered or threatened.

Finding

We have reviewed the petition and supporting information provided with the petition, as well as information in our files. Based on this review, we find that the petition and information in our files do not present substantial information indicating that listing a gray wolf DPS in the States of Massachusetts, New York, Vermont, New Hampshire, and Maine as threatened or endangered may be warranted. If you wish to provide information regarding the Northeast DPS of gray wolf, you may submit your information or materials to the Field Supervisor/Listing Coordinator, New England Field Office (*see ADDRESSES*), at any time.

As explained above in the Previous Federal Actions section, any wolf found in the Northeast is still classified as endangered under the lower 48 United States listing. Therefore, should one or more wolves disperse into the Northeast from Canada, the protections of the Act would apply.

References Cited

A complete list of all references cited in this document is available on the Internet at <http://www.regulations.gov> and upon request, from the New England Field Office (*see FOR FURTHER INFORMATION CONTACT*).

Author

The primary author of this notice is Michael Amaral, Supervisory Fish and Wildlife Biologist, (*see ADDRESSES*). Martin Miller, Chief, Division of Threatened and Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, also contributed to this finding.

Authority

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

Dated: May 12, 2010.

Daniel M. Ashe,

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

[FR Doc. 2010–13882 Filed 6–9–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS-R9-MB-2010-0040]
[91200-1231-9BPP-L2]

RIN 1018-AX06

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2010–11 Hunting Season; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2010–11 hunting season. This supplement to the proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, and provides Flyway Council recommendations resulting from their March meetings.

DATES: You must submit comments on the proposed regulatory alternatives for the 2010–11 duck hunting seasons by June 25, 2010. Following subsequent **Federal Register** documents, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2010, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2010.

The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 23 and 24, 2010, and for late-season migratory bird hunting and the 2011 spring/summer migratory bird subsistence seasons in Alaska on July 28 and 29, 2010. All meetings will commence at approximately 8:30 a.m.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on docket number FWS-R9-MB-2010-0040.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-NB-2010-0040; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://>