

Colorado Gray Wolf Section 10(j) Rulemaking Proposed Rule and Environmental Impact Statement

Winter 2023

Fish and Wildlife Service
U.S. Department of the Interior



YOU'RE INVITED!

Dear friend,

Thank you for your continued interest in the planning process for the section 10(j) rulemaking process related to the State of Colorado's reintroduction of gray wolves to Colorado. In the summer of 2022, the U.S. Fish and Wildlife Service (the Service) published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Colorado Gray Wolf 10(j) Rulemaking and held a series of public scoping meetings to gather your input on the alternatives and resource areas that should be considered in the EIS. At the same time, the Service has been developing the proposed rule on which the analysis in the draft EIS is based. This newsletter and public comment period addresses both the proposed rule and draft EIS.

In February 2023, the Service released the proposed rule for establishment of a nonessential experimental population of the gray wolf in Colorado and the draft EIS for the rulemaking for public review and comment. The Service is preparing the proposed rule and draft EIS in response to a request from the State of Colorado following passage of Proposition 114 in 2020 (codified as Colorado Revised Statute 33-2-105.8). The rulemaking would develop a section 10(j) rule under the Endangered Species Act (ESA) that would provide the Service and its designated agents management flexibility for an experimental population of gray wolves that would be reintroduced to Colorado. The proposed rule aims to reduce potential conflicts between wolves, livestock producers, and other stakeholders while increasing the likelihood that the state's reintroduction effort benefits conservation of the species.

The Service's rulemaking is separate from the state's plan to reintroduce gray wolves to a portion of the species' historic range in Colorado. Colorado Parks and Wildlife is continuing to conduct public outreach efforts through a series of separate meetings focused on the state's plan to reintroduce and manage the gray wolf in Colorado. The Service's planning effort is focused solely on the rulemaking process and not the reintroduction effort. For more information on the rulemaking process, please visit: <https://www.fws.gov/coloradowolf>. For information on the state's public outreach efforts which are also currently ongoing, please visit: <https://engagecpw.org/hub-page/wolf-engagement>.

Information about the proposed rule and the draft EIS is included in this newsletter. We encourage you to review this information and submit your comments and questions. You can provide comments until April 18, 2023, for both the proposed rule and draft EIS online: <https://www.regulations.gov>, search for Docket No. FWS-R6-ES-2022-0100. Other ways to comment and more detailed instructions are listed on [page 5](#) of this newsletter.

The Service is holding a series of public meetings during the public review period for the proposed rule and draft EIS, both in-person and virtually. We encourage you to participate if you are able. Your comments and input are vital to our planning and environmental review process. We look forward to hearing from you!

Sincerely,

Nicole Alt

Colorado Ecological Services Supervisor
U.S. Fish and Wildlife Service



PUBLIC MEETINGS

IN PERSON

The Service will hold three in-person public meetings from **5:30 pm – 7:30 pm MT**. Meetings will include a short presentation followed by an open house to provide attendees opportunities to ask questions, converse with Service staff, and submit comments on the proposed rule and draft EIS. Public meetings will be held in the following locations:

- **Tuesday March 14:**
 - Grand Junction, CO
Grand Junction Convention Center
- **Wednesday March 15:**
 - Craig, CO
Moffat County Pavilion
- **Thursday March 16:**
 - Walden, CO
Wattenberg Center

VIRTUAL PUBLIC MEETING

A virtual public meeting will also be held on **March 22, 5:30 pm MT**. The meeting will begin with a short presentation followed by time for questions and answers. Please register for the virtual public meeting at bit.ly/COgraywolf.



BACKGROUND INFORMATION

Gray Wolves in Colorado

Historically, gray wolves occurred across Colorado in all the state's major habitat types, preying on native ungulate species such as bison, elk, and deer. When overhunting from European settlers reduced these ungulate populations, wolves increasingly began to prey on domestic livestock. Unregulated hunting and trapping, as well as the widespread use of poisons, resulted in the eradication of gray wolves across Colorado and most of the species' historical range in the lower 48 states by the early to mid-1900s. The last known wolf in Colorado at this time was killed in Conejos County in 1945.

In 1995 and 1996, gray wolves were reintroduced in the Northern Rocky Mountains region under the Service's regional wolf recovery program. For a complete history of the regulatory management of wolves in the lower 48 states through 2018, please see the Service's 2020 final delisting rule, published in the Federal Register [85 FR 69778]. As this population has recovered, dispersing wolves have been documented in Colorado. Most of these dispersing wolves have been confirmed through limited sightings, and there are no indications that they have remained in the state until recently. In 2021, the first wild-born pups were documented in Colorado. Currently, there is one documented group of wolves in Colorado, and there was no evidence of breeding in this group in 2022.

Colorado Restoration and Management Plan

On November 3, 2020, Colorado voters approved Proposition 114 (codified as Colorado Revised Statute 33-2-105.8), a citizen-initiated ballot measure requiring the Colorado Parks and Wildlife (CPW) Commission to take the steps necessary to begin reintroductions of gray wolves to a portion of the species' historical range in Colorado by December 31, 2023. As part of the reintroduction process, CPW requested the Service designate the gray wolf population that would be reintroduced to Colorado as experimental under section 10(j) of the ESA. Designating the population as experimental would allow the Service to tailor ESA protections for the population to provide management flexibility and better address stakeholder concerns.

While reintroduction programs for species listed under the ESA typically are led by the federal government, Colorado Revised Statute 33-2-105.8 is different in that the reintroduction and management effort for gray wolves is citizen-directed and state-led. While this effort is not led by the Service, the Service has the authority to designate a population as an experimental population under section 10(j) of the ESA if this population will be released into suitable natural habitat outside the species' current range (but within its probable historic range) and is wholly separate geographically from nonexperimental populations of the species. A section 10(j) designated population of an endangered species is treated as threatened under the ESA, which allows the Service to enact management restrictions, protective measures, or other special management considerations for the population that provides for management flexibility for the reintroduced population.

The Service has developed a proposed section 10(j) rule which is currently available for public comment as noted below. The proposed rule addresses components of the state's Draft Wolf Restoration and Management Plan, released for public review on December 9 and available online at: <https://cpw.state.co.us/learn/Pages/CON-Wolf-Management.aspx>. Parallel to the development of the proposed rule, the Service also prepared a draft EIS that evaluates establishing a section 10(j) rule to provide increased management flexibility for the gray wolf population that would be reintroduced to Colorado.





SECTION 10(J) RULEMAKING PROCESS

In response to the request from the State of Colorado, the Service is proposing to establish a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Establishment of this NEP will provide for allowable, legal, purposeful, and incidental taking of the gray wolf within a defined NEP area while concurrently providing for the conservation of the species. The geographic boundaries of the NEP would include the State of Colorado.

The Service is seeking comments on this proposal (see [page 5](#) for information on how to submit a comment). The comment period is 60 days after publication in the Federal Register. We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. A final rule is expected to be published in fall of 2023.

When submitting a comment on the proposed rule, please consider the following topics:

- The proposed geographic boundary of the NEP;
- Information pertaining to the conservation status of gray wolves and how it relates to the proposed reintroduction and rulemaking efforts;
- The adequacy of the proposed regulations for the NEP;
- Management flexibilities that could be added to the final rule to address expanding gray wolf populations; and
- Whether to allow legal management of gray wolves that are having a significant impact to ungulate populations, similar to the provisions in the 2005 final rule that established a northern Rocky Mountains (NRM) gray wolf NEP (70 FR 1286, January 6, 2005).

NEPA PROCESS

The Service is preparing the EIS in accordance with the National Environmental Policy Act (NEPA), which requires federal agencies to assess the potential environmental effects of any proposed action being undertaken, permitted, or funded by the agency. The draft EIS evaluated the impacts of the proposed rule on Species of Special Concern: Wolves, Species of Special Concern: Other Species of Special Concern, Other Wildlife Species, Tribal Cultural Resources, Socioeconomics, and Environmental Justice (see Chapter 4 of the draft EIS for the analysis of impacts to these resources). Important upcoming milestones in the NEPA process, including opportunities for public review and comment, are included on [page 5](#).

When submitting a comment on the draft EIS, please consider the following topics:

- Additional issues or data that should be considered in the existing environment or impacts analyses;
- Other approaches, if any, that should be considered to assess environmental impacts to resources analyzed in the draft EIS;
- Additional cumulative projects that should be considered; and
- Other alternatives or alternative elements.





ELEMENTS OF THE SECTION 10(J) RULE/ ALTERNATIVES

The proposed rule would allow the Service and its designated agents to take gray wolves under specific circumstances. The Service or its designated agents could, in addition, authorize landowners, public land permittees, or their agents to take wolves under the following provisions:

- Intentional harassment following confirmed wolf activity on private lands, a public land-grazing allotment, or on a Tribal reservation
- Taking of wolves “in the act” of depredation on private land
- Taking of wolves “in the act” of depredation on public land
- Additional limited written take authorizations for private citizens on their private land
- Additional limited written take authorizations for grazing permittees on public land
- Incidental take

See the proposed rule for more information regarding these provisions and the circumstances under which they could be applied.

The alternatives analyzed in the draft EIS were based on the provisions of the proposed rule, with Alternative 1 (the preferred alternative) representing the proposed rule. The three alternatives are outlined to the right.



No-Action Alternative

Under the no-action alternative, the Service would not issue a section 10(j) rule or other federal regulatory framework consistent with section 10 of the ESA. An experimental population boundary would not be created in Colorado, and the gray wolf would be considered federally endangered throughout the state. No management flexibility would be provided to the Service and its designated agents. Under the no-action alternative, the State of Colorado would still take the steps necessary to begin reintroductions of gray wolves on the Western Slope by December 31, 2023, in accordance with Colorado Revised Statute 33-2-105.8. The no-action alternative provides a benchmark that enables decisionmakers to compare the potential environmental effects of the action alternatives with conditions that are likely to occur in the absence of the proposed action.

Alternative 1 (Preferred Alternative)

Alternative 1 would provide the Service and its designated agents management flexibility and further conservation of the species by approving a section 10(j) rule for the gray wolf population in Colorado, including any gray wolf living in, dispersing into, or reintroduced to the state.

The Service would designate the population of gray wolves that would be reintroduced to Colorado as an experimental population under section 10(j) of the ESA. The Service would establish an experimental population boundary to include the entire state of Colorado, which would outline the geographic area to which the section 10(j) rule would apply. National Park and National Wildlife Refuge lands in Colorado would be included in the experimental population boundary. However, site-specific regulations may apply on some federal lands. The section 10(j) rule would define the allowable take of gray wolves consistent with management activities proposed in the State Plan.

Alternative 2

Alternative 2 would provide the Service and its designated agents management flexibility and further conservation of the species by approving a section 10(j) rule for the gray wolf population that would be reintroduced in a limited territory and issuing a permit under section 10(a)(1)(A) for an existing gray wolf population, should one be identified before the section 10(j) rule is finalized, outside the designated experimental population boundary in the state.

Section 10(a)(1)(A) authorizes the Service to issue permits to further conserve the species. A section 10(a)(1)(A) permit allows less management flexibility for populations of federally listed threatened or endangered species while providing for conservation of the species as a whole. A section 10(a)(1)(A) permit is applied to existing populations, rather than reintroduced or experimental, populations.

If an existing population is not identified before a section 10(j) rule is issued, existing wolves living in or naturally dispersing to Colorado before that time would be managed under the section 10(j) rule; a separate section 10(a)(1)(A) permit would not be issued following promulgation of the section 10(j) rule.

The geographic boundaries for the 10(a)(1)(A) permit area would be delineated based on natural or human-made geographic features (i.e., mountain ranges, rivers, interstates) that encompass the range of the existing population to ensure that the existing, nonexperimental population is wholly separate geographically from the population of gray wolves that would be reintroduced by the State.



HOW TO COMMENT



Submit comments on the draft EIS or proposed rule online at <https://www.regulations.gov>.

Follow the instructions for submitting comments to Docket No. FWS-R6-ES-2022-0100.



Mail or hand-deliver written comments on the draft EIS or proposed rule to:

**Comments Processing,
Attn: FWS-R6-ES-2022-0100;
U.S. Fish and Wildlife Service,
MS: PRB/3W, 5275 Leesburg Pike,
Falls Church, VA 22041-3803**

The 60-day public comment period on the draft EIS and the proposed rule starts Friday, February 17 and ends on Tuesday, April 18, 2023.



2023 SCHEDULE

FEBRUARY 2023	Proposed rule and draft EIS released
FEBRUARY 17 TO APRIL 18	Public comment period
MARCH 14-16	In person public meetings
MARCH 22	Virtual public meeting
SUMMER 2023	Review public comments and develop final rule and EIS summary
LATE FALL 2023	Release of final rule and EIS

For further information, please visit <https://www.fws.gov/office/colorado-ecological-services-field-office/colorado-gray-wolf-updates>.



Note: Comments will not be accepted by fax or any other way than those specified above. Please also note that your entire comment—including personal identifying information such as your address, phone number, and e-mail address—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments submitted by individuals or organizations on behalf of other individuals or organizations will not be accepted.