

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS-R6-ES-2022-0100; Cost code FF06E00000, Fund 223, WBS**

**FXES11130600000**

**RIN 1018–BG79**

**Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental  
Population of the Gray Wolf in the State of Colorado; Environmental Impact Statement**

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

**ACTION:** Notification of intent, announcement of public meetings, and request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969 to evaluate the potential environmental impacts of issuing a proposed rule requested by the State of Colorado for its reintroduction and management of the gray wolf (*Canis lupus*). As part

of the reintroduction and management planning process, the State has requested that the Service designate an experimental population under section 10(j) of the Endangered Species Act of 1973. We are considering promulgating a section 10(j) rule to address components of the gray wolf restoration and management plan being developed by the State of Colorado. The proposed rule would set forth regulations to manage reintroduced gray wolves in Colorado and potentially adjoining States to reduce potential impacts to stakeholders while ensuring reintroduction and management of wolves is consistent with Federal regulations. We invite input from other Federal and State agencies, Tribes, nongovernmental organizations, private-sector businesses, and members of the public on the scope of the EIS, alternatives to our proposed approaches for assisting in the reintroduction and management of the gray wolf in Colorado, and the pertinent issues that we should address in the EIS.

**DATES:** *Comment submission:* To ensure consideration of written comments, they must be received on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted online at <https://www.regulations.gov> (see **ADDRESSES**) must be received by 11:59 p.m. eastern time on the closing date.

*Public meetings:* We will hold public scoping open houses on August 2, 3, and 4, 2022. In addition, we will present a public webinar. Additional information regarding these scoping sessions, including the times, will be available on our website at <https://www.fws.gov/office/colorado-ecological-services-field-office>. Persons wishing to participate in the public scoping meetings who need special accommodations should contact Nicole Alt at (303) 236-4773 or [Colorado\\_wolf\\_10j@fws.gov](mailto:Colorado_wolf_10j@fws.gov) by July 27, 2022.

**ADDRESSES:** *Comment submission:* You may submit written comments by one of the following methods. Please do not submit comments by both methods.

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R6-ES-2022-0100.
- *U.S. mail:* Public 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.

Please note in your submission that your comments are in regard to the Service’s designation of an experimental population of gray wolves in Colorado and/or issuance of ESA section 10 permits. We will post all information received on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Availability of Comments** below for more information).

*Public meetings:* We will hold public scoping open houses on August 2, 3, and 4 in the communities of Craig, Silverthorne, and Gunnison, Colorado. Additional information regarding these scoping sessions, including the venues, will be available on our website at <https://www.fws.gov/office/colorado-ecological-services-field-office>. Comment forms will be provided for written comments.

In addition, we will present a public webinar. Information regarding registration for the webinar can be found at <https://www.fws.gov/office/colorado-ecological-services-field-office>.

**FOR FURTHER INFORMATION CONTACT:** Nicole Alt, Colorado Ecological Services Supervisor, by phone at 303–236–4773, or by email at [Colorado\\_wolf\\_10j@fws.gov](mailto:Colorado_wolf_10j@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside

the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Unregulated hunting and trapping and the widespread use of poisons resulted in the eradication of gray wolves across most of the species' historical range in the contiguous United States by the early to mid-1900s. Subspecies or regional populations of subspecies of the gray wolf were first listed under the Endangered Species Preservation Act of 1966 and the Endangered Species Act of 1969, predecessors of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.). For a complete regulatory history of wolves in the lower 48 United States through 2018, please see our 2020 final delisting rule (85 FR 69778, November 3, 2020), which went into effect on January 4, 2021. That rule removed Federal protections for wolves in the lower 48 United States, with the exception of the northern Rocky Mountains (NRM) wolf populations in Idaho, Montana, Wyoming, the eastern one-third of Oregon and Washington, and a small portion of north-central Utah, which were already delisted. The final delisting rule was vacated by court order on February 10, 2022 (*Defenders of Wildlife v. U.S. Fish & Wildlife Serv.*, No. 21-CV-00344-JSW, 2022 WL 499838 (N.D. Cal. Feb. 10, 2022)). With that court order, gray wolves outside the delisted NRM wolf population, including Colorado, were placed back under the protections of the ESA. Thus, any take (which includes activities to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of wolves without a permit or other authorization is prohibited by Federal law.

Prior to the reintroduction of wolves into the NRM in 1995 and 1996, the last known wolf in Colorado was killed in Conejos County in 1945. Since wolves were reintroduced into the NRM populations in 1995 and 1996, an increasing number of dispersing wolves have been documented in Colorado. The first confirmed wolf in Colorado in modern times was struck and killed by a vehicle near Idaho Springs in 2004. Although four additional lone wolves have been confirmed in Colorado since 2004, no resident packs were documented in the State until 2019. In January 2020, Colorado Parks and Wildlife (CPW) field personnel followed up on sighting reports from the public and confirmed at least six wolves traveling together in extreme northwest Colorado. This group was down to a single individual later that year and, at present, there is no indication that any wolf or wolves remain in this northwest corner of the State. Separately, in north-central Colorado, a disperser from Wyoming was first documented during summer 2019 and paired up with another wolf during winter 2020. This pair produced offspring in spring 2021, becoming the first documented reproductively active pack in Colorado in recent history. By the end of 2021, this pack contained the only known wolves in the State, comprising eight individuals. No evidence of reproduction in this pack has been documented in 2022.

In November 2020, Proposition 114, now Colorado Revised Statute 33-2-105.8, was approved by Colorado voters. The statute requires the CPW Commission to develop a plan to restore and manage gray wolves and take the steps necessary to reintroduce gray wolves west of the Continental Divide no later than December 31, 2023. The statute also requires CPW to assist livestock producers in preventing and resolving wolf conflicts with livestock. Since the status of gray wolves under the ESA is currently endangered, they are federally protected throughout the State of Colorado. Subsequent to the adoption of Colorado Revised Statute 33-2-105.8, CPW

requested that the Service develop a rule under section 10(j) of the ESA to provide increased management flexibility for the species.

While reintroduction programs for species listed under the ESA typically are spearheaded by the Federal Government, Colorado Revised Statute 33-2-105.8 is unique in that the reintroduction and restoration effort of a federally listed species is citizen-directed and State-led. However, the Service has the authority to designate an experimental population under section 10(j) of the ESA if the species will be released into suitable natural habitat outside the species' current range (but within its probable historic range). The Service must determine whether experimental populations are essential or nonessential to the continued existence of an endangered or threatened species. A section 10(j) designated population is treated as threatened under the ESA and provides the Service the discretion to enact management restrictions, protective measures, or other special management concerns of the population. In our 1994 EIS for the reintroduction of gray wolves to Yellowstone National Park and Central Idaho, we defined a wolf population as follows: "A wolf population is at least 2 breeding pairs of wild wolves successfully raising at least 2 young each year (until December 31 of the year of their birth), for 2 consecutive years in an experimental area."

In response to the request by CPW, we are now considering a proposed rule, consistent with section 10 of the ESA, at the request of the State of Colorado for the reintroduction and management of gray wolves in part of the species' historical range in Colorado. The section 10(j) rule would address components of the gray wolf restoration and management plan developed by the State of Colorado. The rule would reduce potential impacts to stakeholders while ensuring that reintroduction and management of wolves is likely to be successful and benefit conservation of the species as a whole.

## **Need for Agency Action**

Currently, the Service lists the gray wolf as endangered. To facilitate reintroduction efforts, the State of Colorado requested that the Service designate wolves in Colorado as an experimental population under section 10(j) of the ESA. This designation would reduce the regulatory impact of reintroducing a federally listed species in a specific geographic area (within a proposed boundary), contributing to the species' conservation. The EIS will evaluate the use of the section 10(j) rulemaking process or other section 10 actions to support the State of Colorado's reintroduction.

## **NEPA Analysis of ESA Section 10 Actions**

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321–4347) requires Federal agencies to undertake an assessment of environmental effects of any proposed action prior to making a final decision and implementing the decision. NEPA also established the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Service has regulatory authority under the ESA to manage the conservation and recovery of federally listed species, including creating rules and regulations and permitting legitimate activities that would otherwise be prohibited by the ESA. Development of an ESA section 10(j) rule or issuance of a section 10(a)(1)(A) permit are Federal actions requiring review under NEPA.

Consistent with CEQ guidance for implementing NEPA, we intend to complete an EIS to consider approaches in response to CPW's request for regulatory tools in reintroducing and managing the endangered gray wolf, specifically when it leads to the reintroduction of gray wolves to Colorado. The EIS will address the potential environmental impacts of a range of

reasonable alternatives (including rules and/or permits) under section 10 of the ESA. The potential environmental impacts assessed in the EIS would include the effects on gray wolves from management measures; effects on other environmental resources such as other federally listed species and cultural and Tribal resources; potential socioeconomic effects, including impacts on economic activities such as tourism and agriculture; and effects on a range of other resources identified through internal and external scoping. We will address our compliance with other applicable authorities in our NEPA review.

### **Responsibilities to Tribes**

The Service has unique responsibilities to Tribes, including under the National Historic Preservation Act (16 U.S.C. 470 et seq.); the American Indian Religious Freedom Act (42 U.S.C. 1996); Native American Grave Protection and Repatriation Act (25 U.S.C. 3001); Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.); Joint Secretarial Order 3403, Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021); Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the ESA (June 5, 1997); Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996); and the Service's Native American Policy. We apply the term "Tribal" or "Tribe(s)" generally to federally recognized Tribes and Alaska Native Tribal entities.

The Service will separately consult with Tribes on the proposals set forth in this document. We will also ensure that those Tribes wishing to engage directly in the NEPA process will have the opportunity to do so. As part of this process, we will protect the confidential nature



of any consultations and other communications we have with Tribes, to the extent permitted by the Freedom of Information Act and other laws.

### **Possible Actions**

We are considering various approaches for responding to the State of Colorado's request in its effort to reintroduce and manage gray wolves in Colorado. These regulatory approaches would address the Service's issuance of a new rule under section 10(j) of the ESA, and potentially establish an assurance agreement and permit under section 10(a)(1)(A) of the ESA for an existing population, as defined above, of gray wolves in Colorado. These approaches may be considered separately or in any combination, and the EIS may consider the effects from each approach and/or combined approaches.

Under the no-action alternative, the Service would not promulgate a section 10(j) rule and not issue a section 10(a)(1)(A) permit. CPW would reintroduce gray wolves to Colorado without a section 10(j) rule or an assurance agreement and section 10(a)(1)(A) permit. Under this alternative, management of gray wolves in Colorado would be subject to section 6 of the ESA and the prohibitions under section 9 of the ESA. Thus, the Service would not develop a rule or issue a permit that would provide the State with additional management flexibility.

### **Solicitation of Comments**

In accordance with NEPA, we are conducting a public scoping process to invite input on the range of alternatives and issues to be addressed during the preparation of the EIS. Scoping is an early and open process for determining the scope of issues to be addressed and identifying issues that should be considered in selecting an alternative for implementation. To that end,

during the scoping process, we are inviting input from other interested government agencies, Native American Tribes, the scientific community, industry, nongovernmental organizations, members of the public, and other interested parties. We solicit input on the following issues:

(1) The regulatory approaches we are considering for managing reintroduced gray wolves in Colorado.

(2) Other approaches, or combinations of approaches, we should consider with respect to managing reintroduced gray wolves, including potential management actions in adjoining States.

(3) Specific requirements for NEPA analyses related to the proposed action and alternative approaches.

(4) Considerations for evaluating the significance of impacts on gray wolves and other affected resources, such as other listed or sensitive wildlife and plant species, cultural resources, and socioeconomic resources or activities.

(5) Information regarding other resources that may be affected by the proposed action.

(6) Considerations for evaluating the interactions between affected natural resources.

(7) The potential costs to comply with the actions under consideration, including those that would be borne by the Federal Government and private sectors.

(8) Considerations for evaluating the significance of impacts on species, locations, or other resources of religious or cultural significance for Tribes and impacts to cultural values from the actions being considered.

(9) Considerations for evaluating climate change effects to gray wolves and other affected resources.

(10) How to integrate existing guidance and plans, such as the Colorado wolf management plan (under development), into the proposed regulatory framework.

## **Availability of Comments**

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may ask request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## **Authority**

The authorities for this action are sections 4, 6, and 10 of the ESA.

**Anna Muñoz,**

*Acting Regional Director,*

*U.S. Fish and Wildlife Service.*