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15 UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 DEFENDERS OF WILDLIFE, CENTER  
FOR BIOLOGICAL DIVERSITY, SIERRA  
18 CLUB, NATIONAL PARKS  
CONSERVATION ASSOCIATION,  
19 OREGON WILD, and HUMANE SOCIETY  
OF THE UNITED STATES,

20 Plaintiffs,

21 v.

22 U.S. FISH AND WILDLIFE SERVICE;  
DAVID BERNHARDT, U.S. Secretary of the  
23 Interior,

24 Defendants.

Case No. 3:21-cv-344

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

(Endangered Species Act, 16 U.S.C.  
§ 1531 *et seq.*; Administrative Procedure  
Act, 5 U.S.C. § 551 *et seq.*)

INTRODUCTION

1  
2 1. This case challenges the decision of the U.S. Fish and Wildlife Service (“FWS”)  
3 to delist almost all gray wolves in the lower-48 United States, despite significant threats to the  
4 wolves’ survival and their nascent recovery. “Endangered and Threatened Wildlife and Plants;  
5 Removal of the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife.”  
6 85 Fed. Reg. 69,778 (Nov. 3, 2020) (“Delisting Rule”).

7 2. Historically, gray wolves were present across nearly all of North America. For  
8 decades, however, gray wolves in the United States were subject to extensive and concerted  
9 extermination campaigns. Wolves were hunted, trapped, and poisoned – at times with the  
10 funding and approval of the FWS and its predecessor—until by 1967 there were fewer than  
11 1,000 gray wolves remaining, confined to a small area of northeastern Minnesota along with an  
12 isolated population on Isle Royale National Park in Lake Superior.

13 3. Gray wolves were among the first species to be listed by the Secretary of the  
14 Interior as endangered when, alarmed by the pace of species’ decline, Congress in 1973 enacted  
15 the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*—“the most comprehensive  
16 legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley*  
17 *Auth. v. Hill*, 437 U.S. 153, 180 (1978).

18 4. Under protection of the ESA from killing by humans, gray wolves began to  
19 reoccupy their native landscapes. As a top predator and a “keystone” species, the wolf’s return  
20 can help restore a more natural balance and support healthy ecosystems. In the northern  
21 Rockies, for instance, the reintroduction of wolves has improved the riparian vegetation along  
22 streams, as elk no longer overgraze trees and shrubs in valley bottoms. However, such beneficial  
23 impacts of the wolf’s return have been limited to date because wolf recovery is absent from a  
24 vast area of the species’ historic range that still offer suitable habitat, and even in many areas

1 where wolves are present, their populations are too small and tenuous to perform their full  
2 ecological role in our natural environment.

3 5. Nevertheless, FWS has for close to two decades attempted to remove ESA  
4 protections for gray wolves. Beginning in 2003, FWS has proposed a series of downlisting and  
5 delisting rules that federal courts have consistently rejected as unlawful. FWS has repeatedly  
6 sought to remove ESA protections from gray wolves by artificially dividing the population into  
7 smaller segments in order to declare that each one has recovered. Federal courts have struck  
8 down such rules for not only ignoring the vast amount of available wolf habitat still largely  
9 unoccupied, but also for purposefully leaving out “remnant” populations outside of the agency’s  
10 chosen delisting area. *See* 85 Fed. Reg. at 69,780–81, Table 1.

11 6. Plaintiffs in this case challenge FWS’s latest decision to eliminate all federal  
12 protections for gray wolves. Gray wolves still meet the ESA’s definition of an endangered  
13 species, one that is “in danger of extinction throughout all or a significant portion of its range.”  
14 16 U.S.C. § 1532(6). FWS once again attempts to justify delisting by myopically focusing on  
15 wolves in a particular, limited geography (in this case, the Midwest) in order to justify delisting  
16 across the entire country. In doing so, the final rule selectively combined populations, ignored  
17 available historical wolf habitat, and disregarded relatively new wolf populations outside the  
18 Midwest as “colonizers” unnecessary to the survival and recovery of wolves in the Midwest.  
19 FWS’s Delisting Rule does not satisfy the ESA requirements that FWS may delist only those  
20 species that are fully recovered and protected by adequate regulatory mechanisms. The Delisting  
21 Rule ignores the best available science, is arbitrary, capricious, an abuse of discretion, and  
22 contrary to law, and plaintiffs ask the Court to vacate and remand it.

JURISDICTION AND VENUE

7. Plaintiffs bring this action pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g), which waives federal defendants’ sovereign immunity. As required by 16 U.S.C. § 1540(g), plaintiffs provided federal defendants with notice of intent to sue on November 5, 2020 (attached as Exhibit A). This Court has jurisdiction over plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal question) and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201–02.

8. Venue is properly vested in this Court under 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3), as a number of the plaintiffs reside in this district, plaintiffs have members and offices in California, and many of the consequences of the federal defendants’ violations of the law giving rise to the claims occurred or will occur in this district.

INTRADISTRICT ASSIGNMENT

9. This case is properly assigned to the San Francisco Division or the Oakland Division under Civil L.R. 3-2(c) because many of the plaintiffs and their members are located in counties within those districts.

PARTIES

10. The plaintiffs in this action are:

A. Defenders of Wildlife, a non-profit membership organization dedicated to the protection of all native animals and plants in their natural communities, including our country’s most imperiled wildlife and habitat. Headquartered in Washington, D.C., Defenders has seven regional offices, with its California Regional Office located in Sacramento, California. Defenders has more than 1.8 million members and on-line activists across the nation. Over the last four decades, Defenders has played a leading role in the recovery of wolves across the country. Defenders supported the Service’s decision to list gray wolves as a single species under

1 the ESA in 1978. Defenders subsequently assisted with the restoration of gray wolves to the  
2 Rocky Mountains region and the desert southwest in the 1990s and hosted training workshops  
3 and annual interagency wolf management conferences for state, tribal, and federal agencies in  
4 that region from 1999 to 2013. In 1998, the organization created the Defenders of Wildlife  
5 Proactive Carnivore Conservation Fund, which assists ranchers and farmers with nonlethal,  
6 proactive information and methods that help reduce or prevent livestock losses to wolves. More  
7 recently, Defenders has worked to recover wolves in California, Oregon, Washington, and the  
8 southern Rocky Mountains. For example, Defenders' member Ryan Schwarz, a professor of  
9 biology at Ft. Lewis College in Durango, Colorado, has partnered with Defenders' staff in  
10 Colorado to conduct wolf field surveys and to evaluate the suitability of the landscape to support  
11 wolves. Defenders' member Gary Skiba is a retired Colorado Parks and Wildlife biologist, and  
12 he was the primary author of Colorado's wolf conservation plan, has participated in field surveys  
13 for wolves in Colorado, and has been active in the ongoing effort to restore wolves to the  
14 southern Rocky Mountains. Defenders submitted comments opposing the proposed gray wolf  
15 delisting.

16 B. Center for Biological Diversity, a non-profit environmental organization  
17 dedicated to the protection of native species and their habitats through science, policy, and  
18 environmental law. The Center is incorporated in California and headquartered in Tucson,  
19 Arizona, with field offices throughout the United States and Mexico, including in Oakland,  
20 California. The Center has more than 1.7 million members and on-line activists. The Center and  
21 its members are concerned with the conservation of imperiled species, including gray wolves,  
22 and with the effective implementation of the ESA. Center member and California resident  
23 Joshua Able is a professional wildlife photographer who often photographs wolves and has seen  
24

1 wolves in the region where he lives. Center staff member and Oregon resident Noah Greenwald  
2 has seen wolves in the wild and makes frequent visits to areas in the U.S. where wolves live,  
3 including western Oregon's Mt. Hood National Forest, with hopes of again viewing wolves. By  
4 submitting administrative petitions, filing lawsuits, and other advocacy, the Center works to  
5 ensure the survival and recovery of wolves across the lower-48 States, including the Great Lakes,  
6 Northeast, Pacific Northwest, Southern Rocky Mountains, and elsewhere. The Center submitted  
7 extensive comments on this proposed delisting rule and worked as part of a coalition that  
8 delivered over 1.5 million public comments to the Service opposing wolf delisting. Of those,  
9 650,000 comments came from members of the Center.

10 C. Sierra Club, a national nonprofit organization headquartered in Oakland,  
11 California, and with 67 chapters nationwide. Sierra Club has more than 834,000 members  
12 dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and  
13 promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting  
14 humanity to protect and restore the quality of the natural and human environment; and to using  
15 all lawful means to carry out these objectives. Susan Kane Ronning is a member of the Wildlife  
16 Committee of Sierra Club's Washington State Chapter. She grew up in eastern Washington and  
17 has property in Chelan, where the Wenatchee Pack used to roam. Ms. Ronning hikes,  
18 snowshoes, and spends considerable time in the mountains in Washington's Cascade Range, and  
19 has seen a wolf while hiking and hopes to see one again. Sierra Club member James Hines lives  
20 in Ventura, California, is passionate about wolves, and has repeatedly traveled to Yellowstone  
21 National Park and Denali National Park to see wolves. The Club's particular interest in this case  
22 and the issues which the case concerns stems from a longstanding commitment to the restoration  
23  
24

1 of healthy wolf populations throughout the United States. The Sierra Club submitted comments  
2 on the proposed gray wolf delisting.

3 D. Oregon Wild, a charitable, non-profit corporation headquartered in Portland,  
4 Oregon with approximately 20,000 members and supporters who share its mission to protect and  
5 restore Oregon’s wildlands, wildlife, and waters as an enduring legacy. Danielle Moser is a full-  
6 time staff and member of Oregon Wild who enjoys hiking in forests where wolves are known to  
7 live, such as the forests of eastern Oregon and Southern Oregon. Oregon Wild has a long history  
8 of advocacy at the state and federal level for gray wolf recovery in Oregon. Oregon Wild seeks  
9 to protect and restore wolf populations, wolf habitat, and wolf prey populations and seeks to  
10 reduce conflicts between wolves and humans. Oregon Wild submitted comments on the  
11 proposed gray wolf delisting.

12 E. National Parks Conservation Association (“NPCA”), a non-profit organization  
13 whose mission is to enhance and protect the National Park System. Headquartered in  
14 Washington, D.C., NPCA has 27 regional and field offices throughout the country, including the  
15 Pacific Regional Field Office in Oakland, California. NPCA has over 1.3 million members and  
16 supporters. One such member is Colorado resident Jeffrey Davison, a retired Emergency  
17 Medical Technician, who enjoys observing wolves and signs of wolves (including howling and  
18 tracks) on his ranch on the Little Snake River in Northwest Colorado (nine miles from Dinosaur  
19 National Monument) and while hiking and hunting in the nearby area. Bart Melton is a  
20 Washington, D.C., resident and member/staff member of NPCA. Mr. Melton is concerned  
21 personally and professionally about the impact that removal of ESA protections will have on the  
22 health of gray wolf population in the lower-48 states. NPCA regularly advocates that protecting  
23 and restoring native wildlife, such as gray wolves, to national parks is essential to ensuring park  
24

1 ecosystems are maintained and restored. As part of a coalition of conservation organizations,  
2 NPCA submitted comments opposing the delisting challenged in this lawsuit.

3 F. The Humane Society of The United States (“HSUS”), the nation’s largest animal  
4 protection organization. Founded in 1954, HSUS is a non-profit organization headquartered in  
5 Washington D.C., with regional offices throughout the United States. On behalf of members and  
6 supporters nationwide, HSUS works to promote the humane treatment of all animals and the  
7 protection and recovery of threatened and endangered species and their habitats. In furtherance  
8 of this mission, HSUS has consistently advocated for gray wolves through participation in  
9 federal and state regulatory processes, legislative advocacy, litigation, and public outreach and  
10 education. HSUS submitted detailed comments opposing the delisting rule challenged in this  
11 lawsuit. HSUS has members, including Michigan resident Nancy Warren, who have visited,  
12 studied, worked, recreated on, or lived on lands that are home to gray wolves, and intend to  
13 continue doing so frequently and on an ongoing basis. Ms. Warren frequently views wolves and  
14 signs of their presence on her property in the Upper Peninsula, which she has placed in a  
15 perpetual conservation easement to preserve its quality as habitat, and where she has formed  
16 relationships with individual wolves whose unique howls and behaviors she has come to know.  
17 Ms. Warren frequently visits, and intends to continue visiting, wolf habitat in Michigan,  
18 Minnesota, Wisconsin, and other regions to recreate and view wolves in their natural habitat.  
19 During these trips, Ms. Warren has observed wild wolves in three U.S. states and Canada.

20 11. Plaintiffs have longstanding interests in the preservation and recovery of gray  
21 wolves nationwide because they and their members place a high value on wolves as a species  
22 and the presence of gray wolves is essential to the healthy functioning of the ecosystems in  
23 which they evolved. Plaintiffs and their members also value individual wolves and wolf packs  
24

1 and are harmed by the hunting and trapping seasons that will take place in the Midwest states.  
2 Plaintiffs actively seek to protect and recover the gray wolf through a wide array of actions  
3 including public education, scientific analysis, and advocacy intended to promote achievement of  
4 healthy ecosystems.

5 12. Members of each of the plaintiff conservation groups use public land in the  
6 southern Rocky Mountains, California, the Pacific Northwest, the Midwest, and the Northeast for  
7 recreational pursuits, including hiking, camping, backpacking, hunting, horseback riding, cross-  
8 country skiing, wildlife viewing, and aesthetic enjoyment. Members of the plaintiff groups work  
9 in industries, such as tourism, that depend on the opportunity to view wolves. Members of the  
10 plaintiff groups seek to view wolves and signs of wolf presence in the wild, and federal  
11 defendants' challenged action will reduce their opportunity to do so. Each plaintiff group has  
12 individual members, who have lived, visited, studied, worked, and/or recreated on lands that are  
13 home to the gray wolf, and they have specific intentions to continue to do so frequently and on  
14 an ongoing basis in the future.

15 13. The decision to eliminate ESA protections for gray wolves will cause ecological  
16 harm to the ecosystems throughout the nation where wolves are now found. The legal violations  
17 alleged in this complaint cause direct injury to the aesthetic, conservation, economic,  
18 recreational, scientific, educational, and wildlife preservation interests of the plaintiff  
19 organizations and their members.

20 14. Plaintiffs' aesthetic, conservation, economic, recreational, scientific, and  
21 educational interests have been, are being and, unless their requested relief is granted, will  
22 continue to be adversely and irreparably injured by federal defendants' failure to comply with  
23  
24

1 federal law. These are actual, concrete injuries, traceable to federal defendants’ conduct that  
2 would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

3 15. The federal defendants in this action are:

4 A. United States Fish and Wildlife Service, a federal agency within the Department  
5 of the Interior. FWS is responsible for administering the ESA with respect to terrestrial wildlife  
6 such as gray wolves.

7 B. David Bernhardt, the U.S. Secretary of the Interior, in his professional capacity.  
8 Secretary Bernhardt has supervisory responsibility over the United States Fish and Wildlife  
9 Service, including the administration of the ESA with regard to threatened and endangered  
10 terrestrial and freshwater plant and animal species.

11 BACKGROUND

12 A. The Endangered Species Act

13 16. Congress enacted the ESA in 1973 to “provide a program for the conservation of .  
14 . . endangered species and threatened species” and to “provide a means whereby the ecosystems  
15 upon which endangered species and threatened species depend may be conserved.” 16 U.S.C.  
16 § 1531(b). To receive full protections of the Act, a species must first be listed by the Secretary  
17 of the Interior as “endangered” or “threatened” pursuant to ESA Section 4. 16 U.S.C. § 1533.

18 17. The ESA defines “endangered species” as “any species which is in danger of  
19 extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). A  
20 “threatened species” is “any species which is likely to become an endangered species within the  
21 foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20).  
22 The term “species” is defined to include “any distinct population segment of any species of  
23 vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. § 1532(16). Under these  
24 definitions, the FWS can list or delist a distinct population segment (“DPS”) of a vertebrate

1 species, even when the species as a whole would not warrant such a listing or delisting action.  
2 The listing provisions are contained in Section 4 of the ESA—the section Congress labeled the  
3 “cornerstone of effective implementation” of the Act. S. Rep. No. 97-418, at 10 (1982).

4 18. In making decisions to list or delist a species, including a DPS, as “endangered”  
5 or “threatened,” the ESA requires the Secretary to “determine whether the species is an  
6 endangered species or a threatened species because of any of the following factors:

- 7 (A) the present or threatened destruction, modification, or curtailment of its habitat or  
8 range;
- 8 (B) overutilization for commercial, recreational, scientific, or educational purposes;
- 9 (C) disease or predation;
- 9 (D) the inadequacy of existing regulatory mechanisms; or
- 10 (E) other natural or manmade factors affecting its continued existence.

11 16 U.S.C. § 1533(a)(1). The Secretary must make these determinations “solely on the basis of  
12 the best scientific and commercial data available to him after conducting a review of the status of  
13 the species.” 16 U.S.C. § 1533(b)(1)(A).

14 19. Once a species is listed as “endangered” or “threatened” under the ESA, “all  
15 Federal departments and agencies shall seek to conserve endangered species and threatened  
16 species and shall utilize their authorities in furtherance of the purposes of [the ESA].” 16 U.S.C.  
17 § 1531(c).

18 B. Gray Wolves in the United States

19 20. The gray wolf (*Canis lupus*) is the largest wild member of the dog family  
20 (*Canidae*). Despite the name, the fur of a gray wolf can range from white to shades of gray to  
21 coal black. Gray wolves are territorial and social animals that exhibit group hunting and  
22 opportunistic scavenging behavior, normally living in packs of 7 or fewer animals.

23 21. Wolves primarily prey on medium and large mammals. Wolf populations are  
24 self-regulating, and their populations are generally limited by prey availability. Within the

1 United States, studies of gray wolves in Yellowstone National Park and elsewhere demonstrate  
2 that wolves' predations significantly shape their ecosystems, promoting biodiversity and overall  
3 ecosystem health.

4 22. Historically, gray wolves were the nation's most common large carnivore, with  
5 habitat generally thought to extend across nearly all of North America. Many Native American  
6 cultures revere gray wolves. With European settlement, however, "superstition and fears ... led  
7 to widespread persecution of wolves." 68 Fed. Reg. 15,804, 15,805 (Apr. 1, 2003). According  
8 to FWS, "wolves were hunted and killed with more passion and zeal than any other animal in  
9 U.S. history."<sup>1</sup> This hunting, together with an active eradication program sponsored and carried  
10 out by FWS and its predecessor agency, resulted in the extirpation of wolves from more than 95  
11 percent of their range in the lower-48 states.

12 23. Two subspecies of gray wolves were originally granted legal protection under the  
13 Endangered Species Preservation Act of 1966. 32 Fed. Reg. 4,001 (March 11, 1967) (*C. l.*  
14 *lycaon*); 38 Fed. Reg. 14,678 (June 4, 1973) (*C. l. irremotus*). In January 1974, those wolves  
15 were granted protection under the then current version of the ESA. 39 Fed. Reg. 1,171 (January  
16 4, 1974). Other subspecies of gray wolves were later granted protections under the ESA. 41  
17 Fed. Reg. 17,736 (April 28, 1976 (*C. l. baileyi*); 41 Fed. Reg. 24,064 (June 14, 1976 (*C. l.*  
18 *monstrabilis*). After recognizing the uncertain scientific validity of the subspecies  
19 classifications, the FWS in 1978 reclassified gray wolves as endangered at the species level  
20 throughout the contiguous United States, except for a population in Minnesota, which was listed  
21 as a threatened species. 43 Fed. Reg. 9,607 (Mar. 9, 1978).

22  
23 \_\_\_\_\_  
24 <sup>1</sup> U.S. Fish and Wildlife Service, Gray Wolf, March 2003, at 1 ("Gray Wolf Bio"),  
<https://www.fws.gov/northeast/graywolf/wolfbio.pdf> (last visited Jan. 8, 2021).

1           24.     Today, there are recovering wolf populations in the Midwest and the Northern  
2 Rocky Mountains; wolves are just beginning their recovery in the Pacific Northwest and  
3 California; and wolf habitat has been explored but largely unclaimed by wolves in states  
4 including Maine, Colorado, and Utah. Slowly, with the ESA's protections, nationwide wolf  
5 recovery has been forward. At the same time, the gray wolf exists on a fraction of its range and  
6 at population numbers well below historical levels.

7           25.     These early steps towards the recovery of gray wolves should be celebrated as an  
8 American success story. Yet rather than build on the documented progress, for close to twenty  
9 years, FWS has proposed stripping away protections and exposing wolves to severe new  
10 mortality threats, often relying on versions of a single, flawed legal theory: limited  
11 improvements in limited areas can justify widespread delisting. Federal courts have consistently  
12 rejected this approach as invalid.

13           26.     In 2003, FWS issued a final rule that created three new wolf DPSs and downlisted  
14 two of them. The courts invalidated FWS's attempt because the agency assessed only the status  
15 of core populations in portions of the new DPSs and did not apply the statutory listing factors  
16 outside of those areas. *See Defenders of Wildlife v. Norton*, 354 F. Supp. 2d 1156, 1170–72 (D.  
17 Or. 2005) and *Nat'l Wildlife Fed'n v. Norton*, 386 F. Supp. 2d 553, 564–65 (D. Vt. 2005).

18           27.     Variations on this approach—drawing a narrow DPS while ignoring the broader  
19 population and the wider habitat availability—were repeated by FWS with almost clockwork  
20 regularity in 2007, 2008, 2009, and 2011. These attempts were challenged by wolf advocates—  
21 including plaintiffs here—and routinely rejected by the courts. *See Humane Soc'y of the United*  
22 *States v. Kempthorne*, 579 F. Supp. 2d (D.D.C. 2008) (vacating rule); *Defenders of Wildlife v.*  
23 *Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008) (enjoining rule); *Humane Soc'y of the United States*

1 *v. Salazar*, No. 09-1092-PLF (D.D.C. 2009) (settlement vacating rule); *Defenders of Wildlife v.*  
2 *Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010) (vacating rule); *Humane Soc’y of the United*  
3 *States v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. 2014) (vacating rule), *aff’d* 865 F.3d 585 (D.C. Cir.  
4 2017).

5 28. FWS delisted the Northern Rocky Mountains DPS of gray wolves, with the  
6 exception of wolves in Wyoming, in 2011, as directed by Congress, Public Law 112-10, § 1713.  
7 Wyoming wolves were delisted in 2017. *Defenders of Wildlife v. Zinke*, 849 F.3d 1077 (D.C.  
8 Cir. 2017).

9 C. 2020 Delisting Rule

10 29. In March 2019, the FWS proposed eliminating ESA protections for the gray wolf  
11 throughout the contiguous United States, except for a small population of Mexican gray wolves  
12 (*C. l. baileyi*) in Arizona and New Mexico. 84 Fed. Reg. 9,648 (Mar. 15, 2019). Over 1.5  
13 million comments on the proposal were ultimately received, an outpouring that may have led the  
14 FWS to extend the public comment period by an additional two months and hold an  
15 informational open house and public hearing on the proposal.

16 30. Numerous members of Congress and more than 100 scientists signed letters of  
17 opposition while top government officials in California, Oregon, and Washington all spoke out  
18 against the proposed rule. A scientific peer review commissioned by FWS provided sharp  
19 criticism of the proposal, with several of the scientists opposing the rule as falling short of the  
20 best available science. Summary Report of Independent Peer Reviews for the U.S. Fish and  
21 Wildlife Service Gray Wolf Delisting Review (May 2019).

22 31. The peer review report included the comments of one eminent scientist who found  
23 that the FWS failed to “provide coherent factual support or logical explanation for the agency’s  
24 conclusions,” bemoaned the “lack of detail and rigor in the treatment of genetic issues,” and

1 faulted the “extreme oversimplification” of wolf genetics. Summary Report, App. C, Reviewer  
2 2—Dr. Charles (Carlos) Carroll at 5–7. Other independent peer reviewers were similarly critical.  
3 Reviewer 4—Dr. Adrian Treves at 1, 9–21 (“the proposed rule does not address human-caused  
4 mortality or habitat suitability adequately”); Reviewer 5—Dr. Daniel R. MacNulty at 5 (“I found  
5 no scientific information in the Proposed Rule or Draft Biological Report supportive of the  
6 Service’s interpretation that western listed wolves are not discrete from wolves in Minnesota,  
7 Wisconsin, and Michigan.”);

8 32. Nevertheless, on November 3, 2020, FWS moved forward with its plans and  
9 issued its Final Rule delisting the gray wolf. 85 Fed. Reg. 69,844 (Nov. 3, 2020). The Delisting  
10 Rule became effective on January 4, 2021.

11 33. For any delisting, FWS’s analysis must include the already-listed entity. Yet  
12 FWS considered the Minnesota and the lower-48 populations together and delisted “the gray  
13 wolf entity,” claiming “neither of the listed entities is a DPS.” 85 Fed. Reg. at 69,784.

14 34. Furthermore, similar to its prior failed delisting efforts, FWS limited its focus to  
15 the wolf populations in the Midwest, ignoring habitat in the southern Rockies and Northeast  
16 altogether and dismissing the gray wolf populations in the Pacific Northwest as unimportant to  
17 wolf recovery.

18 35. As emphasized by one of the FWS peer reviewers, the assumption that the loss of  
19 all gray wolf populations outside the Great Lakes region would not threaten the listed entity  
20 relies on faulty science. Summary Report, App. C, Reviewer 2—Dr. Charles (Carlos) Carroll at  
21 8–9, 16.

22 36. Compounding its errors, the Delisting Rule rests on population targets set out in  
23 the Service’s 1992 Recovery Plan for the Eastern Timber Wolf to conclude that recovery has  
24

1 been achieved. As with the Delisting Rule itself, the plan is concentrated on the status of wolves  
2 in the Midwest, specifically Minnesota. First approved in 1978 and last updated over 25 years  
3 ago, the plan does not account for the best available science and is entirely unsuitable for  
4 assessing wolf recovery in 2020, a quarter-century later.

5 CLAIMS FOR RELIEF

6 FIRST CLAIM FOR RELIEF

7 Violation of the Endangered Species Act:  
8 Failure to Apply Listing Factors to Entire Gray Wolf Population

9 37. ESA Section 4(a) sets forth a five-factor test for determining whether a species is  
10 threatened or endangered, 16 U.S.C. § 1533(a)(1)(A)–(E).

11 38. On the basis of these factors, for delisting, FWS must determine whether a species  
12 has recovered and no longer meets the listing factors. The delisting evaluation must include  
13 rational consideration of the relevant species that was originally listed.

14 39. In this instance, the relevant “species” are the Minnesota and lower-48 states’  
15 wolf populations. *See* 43 Fed. Reg. 9,607 (listing wolves in Minnesota as threatened and wolves  
16 in the lower-48 U.S. states and Mexico as endangered).

17 40. FWS’s analysis of the Section 4(a) factors focused nearly exclusively on the wolf  
18 population in Minnesota, Michigan, and Wisconsin. FWS analyzed some of the factors for  
19 wolves in Washington, Oregon, and California, but only to determine how those populations  
20 affected wolves in the Midwest.

21 41. Consequently, large portions of the lower-48 gray wolf population will lose ESA  
22 protections despite the FWS’s failure to assess the status of those wolves under the statutory  
23 listing factors.

1           42.     FWS also noted that while it believed that “neither of the two gray wolf listed  
2 entities constitute valid listable entities,” 84 Fed. Reg. at 9,686, it did not act solely on that basis  
3 in the Delisting Rule. “Instead, [FWS] elected to consider whether the gray wolves within the  
4 currently listed entities meet the definition of a threatened or an endangered species, in this case  
5 whether they are recovered.” 85 Fed. Reg. at 69,844. Nevertheless, FWS’s determination that  
6 the gray wolf listed entities do not constitute valid listable entities was arbitrary.

7           43.     Moreover, FWS justified its incomplete assessment of the threats facing wolves in  
8 Washington, Oregon, and California on the erroneous grounds that wolves in these states are an  
9 extension of the wolf population in the delisted Northern Rocky Mountains DPS. 85 Fed. Reg.  
10 at 69,843. Those wolves are not part of the Northern Rocky Mountains DPS, and FWS did not  
11 attempt to modify the Northern Rocky Mountains DPS to include them. FWS cannot rationally  
12 dismiss threats to these wolves on the basis that they originated from a DPS that no longer  
13 encompasses them.

14           44.     In addition, FWS failed to utilize the best available science to assess the stability,  
15 genetic health, taxonomic status, and habitat of the listed wolf population across the lower-48  
16 states, including a failure to adequately assess the minimum viable population and effective  
17 population sizes necessary to ensure long-term genetic viability.

18           45.     FWS further departed from the best available science by relying on a decades-old  
19 recovery plan that is based heavily on wolf numbers in the Midwest, magnifying the agency’s  
20 failure to adequately consider the status of wolves elsewhere. Such a plan does not provide the  
21 “objective and measurable criteria” to support delisting outside of the plan’s geographic scope.  
22 16 U.S.C. § 1533(f)(1)(B)(i)–(iii).

1 46. FWS’s failure to adequately apply the ESA factors to the entire listed wolf  
2 population in the Delisting Rule and its reliance on an outdated and inadequate recovery plan  
3 violates the ESA, ignores the best available science, and is arbitrary, capricious, an abuse of  
4 discretion, and otherwise contrary to law. 16 U.S.C. § 1533; 5 U.S.C. § 706.

5 SECOND CLAIM FOR RELIEF

6 Violation of the Endangered Species Act:  
7 Failure to Assess Gray Wolves’ Status Within Significant Portions of Their Current Range

8 47. The ESA defines endangered and threatened species as “any species which is in  
9 danger of extinction or is likely to become an endangered species within the foreseeable future  
10 throughout all or a significant portion of its range[.]” 16 U.S.C. § 1532(6), (20). The ESA does  
11 not define the phrase “significant portion of its range,” although the FWS now interprets the term  
12 to include only “current” range. *See* 79 Fed. Reg. 37,578 (July 1, 2014).

13 48. FWS dismissed threats to wolves in significant portions of their range by  
14 improperly constricting its definition of “current range.” FWS has acknowledged documented  
15 wolves in Vermont, Massachusetts, New York, Indiana, Illinois, Iowa, Missouri, North Dakota,  
16 South Dakota, Nebraska, Kansas, Colorado, Utah, Arizona, and Nevada over the last twenty  
17 years. 85 Fed. Reg. at 69,789. Independent reviews have documented wolves in many more  
18 states.

19 49. FWS, however, did not consider these areas to be part of the gray wolf’s current  
20 range because they exist outside of established wolf packs or breeding pairs in the Midwest and  
21 Pacific Northwest.

22 50. Limiting current range in such a way is not consistent with the FWS’s own policy  
23 that defines range to encompass the “general geographical area within which the species is  
24

1 currently found, including those areas used throughout all or part of the species' life cycle, *even*  
2 *if not used on a regular basis.*" 79 Fed. Reg. at 37,583 (emphasis added).

3 51. The delisting rule is also virtually silent on wolves and wolf habitat in Colorado,  
4 Utah, and the northeast United States. The lack of established wolf packs in Colorado, Utah, and  
5 New Mexico is used as an excuse to avoid consideration of suitable wolf habitat there. Colorado  
6 alone could support a population of more than 1,000 wolves, based on prior habitat modeling.

7 52. FWS arbitrarily assessed whether portions of the gray wolf's range are  
8 "significant," 16 U.S.C. § 1532(6), repeating a circular definition of "significant" that has  
9 already been rejected by courts and is contrary to the ESA's conservation purpose. *Id.* §1531(b).

10 53. Under FWS's policy for interpreting "significant portion of [the] range" ("SPR  
11 Policy"), listing a species based on threats in a significant portion of its range would be  
12 considered warranted only if three conditions were satisfied: (1) the species was neither  
13 endangered nor threatened throughout all of its range; (2) the portion's contribution to the  
14 viability of the species was so important that, without the members in that portion, the species  
15 would be endangered or threatened throughout all of its range; and (3) the species was  
16 endangered or threatened in that portion of its range. 79 Fed. Reg. 37,578.

17 54. The courts rejected FWS's SPR position as "illusory," because "if a portion of a  
18 species' range is so vital that its loss would render the entire species endangered or threatened,  
19 and the species is endangered or threatened in that portion, then the entire species is necessarily  
20 endangered or threatened. *Threats that render a species endangered or threatened in such a*  
21 *vital portion of its range should necessarily be imputed to the species overall.*" *Center for*  
22 *Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 956 (D. Ariz. 2017) (emphasis added);  
23 *Desert Survivors v. U.S. Dep't of Interior*, 321 F. Supp. 3d 1011 (N.D. Cal. 2018). The district  
24

1 court in *Desert Survivors* vacated the “significant portion” element of the SPR Policy  
2 nationwide. 336 F. Supp. 3d 1131, 1134–37 (N.D. Cal. 2018).

3 55. Although FWS asserted in the Delisting Rule that its approach was “substantively  
4 different” from the way the agency defined “significance” in its vacated SPR policy, there is no  
5 material substantive difference and any distinction in its reasoning is legally inconsequential.  
6 85 Fed. Reg. at 69,854.

7 56. FWS maintained in the Delisting Rule that, for each of the combinations of wolf  
8 populations considered “these portions are not ‘significant’ under any reasonable definition of  
9 that term because they are not biologically meaningful to the [listed] entity in terms of its  
10 resiliency, redundancy, or representation.” *Id.* at 69,882, 69,885, 69,888, 69,889, 69,892,  
11 69,893.

12 57. As a result of its flawed logic, FWS determined that there are no significant  
13 portions of the gray wolf’s range because the single gray wolf population that resides in the three  
14 Western Great Lakes states—Minnesota, Michigan, and Wisconsin—is neither threatened nor  
15 endangered. This disregard for the status of wolves that are found in northeastern and western  
16 states ignores the specific command of Congress to consider other, “significant” portions of the  
17 species’ range. As courts have found, such an interpretation renders the statutory language mere  
18 surplusage.

19 58. Similarly, FWS dismissed wolves on the West Coast because only a small number  
20 of animals currently live there and characterized the Pacific wolves as “colonizing wolves” from  
21 the Northern Rocky Mountains whose presence is unnecessary for wolf recovery. Yet when the  
22 Northern Rocky Mountain DPS was carved from the lower-48 listing, FWS found that it was  
23 discrete from any wolves that could repopulate the west coast states due to the stretches of  
24

1 unsuitable habitat between them. 73 Fed. Reg. 10,518, 10,519 (Feb. 27, 2008). Reversing itself,  
2 FWS now claims, without adequate justification, that the Pacific wolves are not distinct and not  
3 “significant.” In fact, the best available science shows that wolf populations on the West Coast  
4 and elsewhere constitute significant portions of the gray wolf’s range where wolves remain  
5 threatened with extinction.

6 59. FWS’s failure to adequately consider whether wolves are threatened or  
7 endangered throughout a significant portion of their range in the Delisting Rule violates the ESA,  
8 ignores the best available science, and is arbitrary, capricious, an abuse of discretion, and  
9 otherwise contrary to law. 16 U.S.C. §§ 1532, 1533; 5 U.S.C. § 706.

10 THIRD CLAIM FOR RELIEF

11 Violation of the Endangered Species Act:  
12 Failure to Adequately Consider Existing Management by States

13 60. FWS must determine whether the lower-48 gray wolf entity remains endangered  
14 or threatened because of any of five factors, including “the inadequacy of existing regulatory  
15 mechanisms” and the “overutilization” from, *inter alia*, commercial and recreational purposes.  
16 U.S.C. § 1533(a)(1)(B)&(D).

17 61. If delisting is finalized, each individual state would handle wolf management.  
18 While there are states that have welcomed wolves, some are overtly hostile to wolf recovery,  
19 some will regulate as game animals and allow hunting and trapping, and some simply have no  
20 plans at all.

21 62. The majority of states within the lower-48 have no protections in place for gray  
22 wolves; including states that have a wolf presence like Indiana, Kentucky, Massachusetts, Maine,  
23 Missouri, Ohio, Utah, and Vermont. *See* 78 Fed. Reg. at 35,675.

1           63. Other states seek to actively prevent recovery of the species. For example, Utah  
2 requires state wildlife officials to capture and kill any wolf that comes into the state to prevent  
3 the establishment of a viable wolf pack. Utah Code § 23-29-201. South Dakota in 2013 passed  
4 legislation designating wolves in the eastern half of the state as “varmints” that can be shot on  
5 sight. S.D. Codified Laws § 41-1-1. A number of states with wolves within their borders have  
6 classified wolves as furbearers or game animals and would likely allow regulated hunting and  
7 trapping and livestock predation control upon removal of federal protections, including Iowa,  
8 Kansas, Michigan, Minnesota, Nevada, North Dakota, Oregon, South Dakota, and Washington.  
9 Wisconsin is required to have a wolf hunting season under state statute. Wis. Stat. § 29.185(1m).

10           64. Several of these states have committed to managing wolves for an aggressive  
11 population decline following delisting, on the basis of inadequate and out-of-date management  
12 plans that do not reflect the best available science regarding the super-additive effects of hunting  
13 mortality on wolf populations or the population sizes necessary to maintain wolves’ genetic  
14 viability over the short and long term. FWS failed to adequately assess the deficiencies of these  
15 plans and the resulting threats that wolves will face post-delisting under such plans.

16           65. FWS also failed to adequately review state wolf management plans in  
17 Washington, Oregon, and California. *See* 85 Fed. Reg. at 69,835–37. California and Oregon  
18 only recently adopted wolf management plans, and their effectiveness is uncertain.  
19 Washington’s state wolf management plan has been controversial, has led to multiple years of  
20 state lethal control actions, and threatens to preclude permanent recovery.

21           66. FWS’s failure to fully consider the inadequacy of existing regulatory mechanisms  
22 and overutilization for commercial and recreational purposes in the Delisting Rule violates the  
23  
24

1 ESA, ignores the best available science, and is arbitrary, capricious, an abuse of discretion, and  
2 otherwise contrary to law. 16 U.S.C. § 1533; 5 U.S.C. § 706.

3 FOURTH CLAIM FOR RELIEF

4 Violation of the Endangered Species Act:  
5 Failure to Consider Gray Wolves Lost Historical Range

6 67. FWS must determine whether the lower-48 gray wolf entity remains endangered  
7 or threatened because of any of five factors, including “the present or threatened destruction,  
8 modification, or curtailment of its habitat or range.” 16 U.S.C. § 1533(a)(1)(A).

9 68. It is recognized that “gray wolves have been extirpated from most of the southern  
10 portions of their historical North American range,” with undisputed estimates that “95% of the  
11 gray wolf’s historical range has disappeared.” *Humane Soc’y v. Zinke*, 865 F.3d at 606.

12 69. FWS failed to analyze the impact of that loss of historical range on the survival of  
13 the gray wolves as a whole or in various segments.

14 70. FWS’s delisting rule discussed historical range and abundance of gray wolves (85  
15 Fed. Reg. at 69,786 and Figure 2) and contained a section entitled historical context (85 Fed.  
16 Reg. at 69,792). Yet FWS omitted lost historical range in its actual delisting analysis. *Id.* at  
17 69,853 (“In other words, we interpret ‘range’ in these definitions to be current range, i.e., range  
18 at the time of our analysis.”). This omission is particularly problematic with respect to areas in  
19 the Northeast as there is no analysis at all of how that lost range affects the viability of wolf  
20 populations in other areas.

21 71. FWS’s failure to consider the existing destruction and curtailment of the gray  
22 wolves’ historical habitat in the Delisting Rule violates the ESA, ignores the best available  
23 science, and is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law.  
24 16 U.S.C. § 1533; 5 U.S.C. § 706.

FIFTH CLAIM FOR RELIEF

Violation of the Endangered Species Act and the Administrative Procedure Act:  
Denial of Petition to Designate Distinct Population Segments

72. In 2018, plaintiffs Center for Biological Diversity and Humane Society of the United States submitted to FWS a Petition to Maintain Protections for Gray Wolves (*Canis lupus*) in the Lower-48 States as Endangered or Threatened “Distinct Population Segments” Under the Endangered Species Act (December 17, 2018).

73. In the Delisting Rule, FWS denied the petition without rational justification, summarily and unjustifiably finding that it did not present substantial scientific or commercial information indicating that the petitioned actions were warranted. 85 Fed. Reg. at 69,778, 69,878–79.

74. FWS’s denial violates the ESA, ignores the best available science, and is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law. 16 U.S.C. § 1533; 5 U.S.C. §§ 706; 555(e).

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

- (A) Declare that FWS violated the ESA and its implementing regulations in promulgating the 2020 Delisting Rule;
- (B) Hold unlawful and vacate the 2020 Delisting Rule;
- (C) Reinstate FWS’s prior rule affording ESA protections for gray wolves in the lower-48 states;
- (D) Award plaintiffs their reasonable fees, costs, and expenses, including attorneys’ fees; and

1 (E) Grant plaintiffs such further and additional relief as the Court may deem just and  
2 proper.

3 DATED this 14th day of January, 2021.

4 Respectfully submitted,

5 *s/ Kristen L. Boyles*

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8 *[Pro Hac Vice Application Pending]*

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