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17 **UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 NATURAL RESOURCES DEFENSE
20 COUNCIL, INC.,

21 Plaintiff,

22 v.

23 UNITED STATES DEPARTMENT OF THE
24 INTERIOR; UNITED STATES FISH AND
25 WILDLIFE SERVICE,

26 Defendants.

Case No. 21-cv-561

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Endangered Species Act,
Administrative Procedure Act)

1 **INTRODUCTION**

2 1. Plaintiff Natural Resources Defense Council (NRDC or “Plaintiff”)
3 challenges the United States Fish and Wildlife Service’s (the “Service”) decision to remove
4 the gray wolf (*Canis lupus*) from the list of threatened and endangered species.
5 Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*)
6 From the List of Endangered and Threatened Wildlife,” 85 Fed. Reg. 69,778 (Nov. 3, 2020)
7 (the “Delisting Rule” or the “Rule”).

8 2. Gray wolves are an iconic species nearly extirpated in the United States
9 through widespread predator control programs, and habitat and prey loss. Since the 1970s,
10 slowly and with the protection of the Endangered Species Act (ESA), wolves have begun
11 to recover. After repeated failed attempts to reduce or eliminate protections for wolves
12 over the last twenty years, the Service’s new Delisting Rule unlawfully removes
13 protections for gray wolves across the United States based on their recovery in one area –
14 the Great Lakes. This nationwide delisting would stop wolf recovery in its tracks,
15 particularly in areas where wolves have only begun to regain their historical footing.

16 3. According to the Service, there are about 4,200 wolves in the Great Lake
17 states of Minnesota, Michigan, and Wisconsin. However, these states have only committed
18 to maintaining half of that number (about 2,150).

19 4. Gray wolves are present, but not yet recovered, in several other geographic
20 areas, including the Pacific Coast, the Central Rockies, and other portions of the Midwest
21 and the Northeast.

22 5. There are only 54 wolves and seven established, breeding wolf pairs in the
23 Pacific Coast region of California and the western portions of Washington and Oregon
24 where wolves have been protected as endangered (“Pacific Coast wolves”).

25 6. Gray wolves have recently been identified in the Central Rockies (Utah,
26 Colorado), including six wolves observed in 2020 in an established pack in Colorado
27 (“Central Rockies wolves”).

28

1 13. Pursuant to section 11(g)(2) of the ESA, 16 U.S.C. § 1540(g)(2), NRDC
2 provided the Department of the Interior, the Secretary of the Interior, the Service, and the
3 Director of the Service with written notice of NRDC's intent to file this suit on November
4 23, 2020, more than sixty days prior to the commencement of this action. A copy of this
5 notice letter is attached as Exhibit A.

6 14. Defendants have not corrected their violations of law in response to NRDC's
7 written notice.

8 15. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) and 16 U.S.C.
9 § 1540(g)(3)(A) because a substantial portion of the events giving rise to NRDC's claims
10 occurred in this District. At least one established pack of gray wolves impacted by the Rule
11 resides in California, gray wolves are known to disperse to the state, this District has
12 suitable habitat for gray wolves, and this District is a part of the historical range of gray
13 wolves. The Service analyzed the status of gray wolves in California in the Rule, and the
14 Rule will affect the state of California's management of gray wolves. NRDC also has an
15 office and members in this District.

16 **INTRADISTRICT ASSIGNMENT**

17 16. This case is properly assigned to the San Francisco Division or the Oakland
18 Division under Civil L.R. 3-2(c) because NRDC's office is located in San Francisco County.

19 **PARTIES**

20 17. Plaintiff NRDC is a national, nonprofit environmental membership
21 organization whose purpose is to safeguard the Earth—its people, its plants and animals,
22 and the natural systems on which all life depends. NRDC was founded in 1970 and is
23 organized under the laws of the State of New York. NRDC is headquartered in New York,
24 NY, and maintains offices in other locations within the United States and abroad. NRDC
25 has hundreds of thousands of members nationwide, including many in this judicial
26 district. NRDC has long been active in efforts to protect endangered and threatened
27 species generally and gray wolves specifically.

28

1 18. NRDC members regularly observe, visit, study, work to protect, and delight
2 in the presence of gray wolves in the wild. NRDC members intend to continue doing so in
3 the future. NRDC members derive scientific, educational, recreational, conservation,
4 aesthetic, and other benefits from the existence of gray wolves in the wild. These interests
5 have been, are, and will be directly, adversely, and irreparably affected by Defendants'
6 violation of the law. These are actual, concrete injuries, traceable to Defendants' conduct
7 that would be redressed by the requested relief. Plaintiffs have no adequate remedy at
8 law. NRDC members will continue to be prejudiced by Defendants' unlawful actions until
9 and unless this Court provides the relief prayed for in this Complaint.

10 19. NRDC member Ellyn Wiens lives in Duluth, Minnesota. She has been keenly
11 interested in gray wolves ever since her grandparents introduced her to the outdoors and
12 wildlife, and she has now passed that same sense of appreciation on to her own
13 grandchildren. Wolves are her favorite wild animal, and it is important for her that they
14 have room to roam and to thrive. Ms. Wiens has always wanted to see a wolf in the wild
15 and hopes to see one from her own wooded home. She feels great excitement and joy
16 about the possibility of seeing a gray wolf on or around her property in the future. Her
17 neighbors in Minnesota have captured images of wolves on trail cameras, which gives her
18 great hope that she will soon experience one on her property. She has seen evidence of
19 wolves and learned more about them on visits to Isle Royale and Denali National Parks.
20 She stays informed on the status of wolves locally through a wildlife biologist friend and
21 has also enjoyed seeing wolves at zoos. Ms. Wiens has concerns about the negative
22 impacts of delisting, including state management of wolves, genetic inbreeding of small
23 wolf populations, and negative effects on wolf social dynamics.

24 20. NRDC member Matt Wilkin is a retired federal employee who worked for
25 the U.S. Forest Service and Bureau of Land Management who has been interested in
26 wolves for decades. Mr. Wilkin lives in Minnesota and has a family farm in Michigan's
27 Upper Peninsula. At his home in Minnesota, Mr. Wilkin has seen wolves and their tracks.
28 This past fall, he even heard and recorded multiple wolves howling to each other. Mr.

1 Wilkin enjoys seeing wolves and is always looking for them and other wildlife. He notes
2 that you don't soon forget when you've seen a wolf. Mr. Wilkin believes that science-based
3 principles should be applied to ensure wolves are protected but worries that after federal
4 delisting state-level wolf management policies will be relaxed because of influence by
5 hunters. He worries that some people will even exceed limits on their hunting permits. He
6 is concerned that this will drive wolves into remoter areas and will stop him from being
7 able to continue to observe wolves from his home.

8 21. NRDC member Diarmuid McGuire owns and operates the Green Springs
9 Inn in southern Oregon. Mr. McGuire feels deep satisfaction and gratification knowing
10 that wolves visit his property and frequent his neighbors' properties. Mr. McGuire feels an
11 emotional connection to wolves and values the role they play as a keystone species. His
12 business depends on visitors that come to the area because of its vibrant ecosystems. One
13 major draw is the Cascade-Siskiyou National Monument, which was designated for the
14 protection of biodiversity. Mr. McGuire's property is an inholding of the National
15 Monument. Mr. McGuire cares about wolves as a tangible symbol that he can use to
16 explain the abstract concept of biodiversity. He also loves wolves because of their active
17 role as predators that manage the elk population to keep the ecosystem healthy. When a
18 radio-collared wolf known as OR-7 was first tracked in the area about a decade ago, he
19 threw a welcome home party complete with "Welcome to the Green Springs" buttons
20 featuring a gray wolf. He did this to welcome gray wolves to the neighborhood, and to
21 show the community's support for their presence there. Since then, he has seen and
22 enjoyed, and continues to enjoy, the positive impacts that wolves have had on the local
23 ecosystems. He hopes to see or hear gray wolves on his property in the future. He also
24 kept informed of OR-7's movement into California and follows the multiple packs related
25 to OR-7 on both sides of the state line. Mr. McGuire worries that wolves could lose state
26 protections in the wake of federal delisting. He is concerned that the small number of
27 wolves in the area will be vulnerable after delisting and that they would be unable to
28

1 withstand hunting. He is worried that the loss of those wolves will reverse the positive
2 ecological benefits he has observed since their return to the landscape.

3 22. NRDC member Gonzalo Rodriguez lives in San Francisco and is employed
4 by NRDC. Mr. Rodriguez has always been a nature and wildlife enthusiast. He first
5 became interested in gray wolves as a symbol of America after moving to this country
6 while growing up. His awareness of the species and the threats facing them increased
7 when he moved to the West Coast. Last year, Mr. Rodriguez saw wolves in the wild on a
8 trip to Yellowstone National Park. He went to the park with his fiancée with the hopes of
9 seeing wolves from a distance, but they had the good luck to spot the pitch-black alpha
10 male wolf from the Wapiti Lake Pack from only a few hundred yards away. More
11 members of the pack emerged as they watched, and Mr. Rodriguez was able to record
12 video of more than a dozen of the wolves howling. He also derived great pleasure in
13 watching them feed on a carcass and move through the snow into the forest line. Mr.
14 Rodriguez found the experience of watching wolves in the wild to be incredible and
15 unique. He also cherishes the fact that he was able to observe up close a pack that is
16 known to be reclusive. On that same trip, Mr. Rodriguez observed other packs, and he
17 plans to return to Yellowstone again with family in December 2021 to share the experience
18 of seeing wolves with them. Mr. Rodriguez also keeps informed about wolves in
19 California, and has been, and continues to be, particularly interested in learning about lone
20 wolves returning to the state. He feels great joy in learning about California's wolves and
21 plans this spring or summer, when conditions permit, to travel to the Lassen Pack's
22 territory in Northern California in order to see them and the effects they have on that
23 ecosystem. Mr. Rodriguez cares about and has experienced, and plans to continue to
24 recreate in, the coastal regions of California. Because of his passion for observing wolves in
25 the wild, Mr. Rodriguez hopes to see wolves return to those areas and looks forward to
26 traveling there for the purpose of experiencing wolves in his home state, if they return to
27 that area. In addition to recreational interests, Mr. Rodriguez feels a spiritual value in just
28 knowing that wolves are returning to their historical ecosystems and derives joy from that

1 26. The law’s “purposes . . . are to provide a means whereby the ecosystems
2 upon which endangered species and threatened species depend may be conserved, [and]
3 to provide a program for the conservation of such endangered species and threatened
4 species.” 16 U.S.C. § 1531(b). The ESA defines “conservation” as “the use of all methods
5 and procedures which are necessary to bring any endangered species or threatened
6 species to the point at which the measures provided pursuant to this chapter are no longer
7 necessary.” *Id.* § 1532(3).

8 27. To implement these purposes, the ESA directs that the “Secretary shall . . .
9 determine whether any species is an endangered or threatened species.” 16 U.S.C.
10 § 1533(a)(1). This determination must be made on the basis of five factors:

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

16 *Id.* The ESA “requires the [Service] to consider *each* of the [five] factors ‘to determine
17 whether any species is an endangered species or threatened species.’” *Crow Indian Tribe v.*
18 *United States*, 965 F.3d 662, 671 (9th Cir. 2020) (quoting 16 U.S.C. § 1533(a)(1)) (emphasis
19 added).

20 28. The Service must use the best available science to support this determination.
21 16 U.S.C. § 1533(b)(1)(A). The best available science requirement applies both to listing and
22 to delisting decisions.

23 29. The listing determination can only be done for “species.” The ESA defines
24 “species” to include “any subspecies of fish or wildlife or plants, and any distinct
25 population segment of any species of vertebrate fish or wildlife which interbreeds when
26 mature.” 16 U.S.C. § 1532(16).

27 30. Designation of a distinct population segment allows portions of a species
28 that are sufficiently significant and discrete to be considered independently for purposes

1 of their listing status. *See* 61 Fed. Reg. 4722, 4725 (Feb. 7, 1996) (“Distinct Population
2 Segment Policy”). Under the Service’s Distinct Population Segment Policy, a population
3 segment may be considered “discrete” if it “is markedly separated from other populations
4 of the same taxon as a consequence of physical, physiological, ecological, or behavioral
5 factors.” *Id.*

6 31. An endangered species is “any species which is in danger of extinction
7 throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6).

8 32. A threatened species is “any species which is likely to become an endangered
9 species within the foreseeable future throughout all or a significant portion of its range.”
10 *Id.* § 1532(20).

11 33. The Service defines “range” for the purpose of interpreting the statutory
12 definitions of threatened as endangered species as “the general geographical area within
13 which the species is currently found, including those areas used throughout all or part of
14 the species’ life cycle, *even if not used on a regular basis.*” 79 Fed. Reg. 37,578, 37,609 (July 1,
15 2014) (“Significant Portion of Its Range Policy”) (emphasis added); *see Ctr. for Biological*
16 *Diversity v. Zinke*, 900 F.3d 1053, 1067 (9th Cir. 2018) (affirming definition).

17 34. The Service must also consider the effects from the loss of a species’ historical
18 range when determining the species’ status. The Service’s Significant Portion of Its Range
19 Policy “is explicit that a species may be ‘endangered or threatened throughout all or a
20 significant portion of its current range *because* [a] loss of historical range is so substantial
21 that it undermines the viability of the species as it exists today.’” *Humane Soc’y of the U.S. v.*
22 *Zinke*, 865 F.3d 585, 605 (D.C. Cir. 2017) (quoting 79 Fed. Reg. at 37,584) (emphasis added
23 and alteration in original). This policy, therefore, “requires that [the Service] consider the
24 historical range of a species in evaluating other aspects of the agency’s listing decision,
25 including habitat degradation.” *Ctr. for Biological Diversity*, 900 F.3d at 1067 (citing *Humane*
26 *Soc’y*, 965 F.3d at 605-06).

27 35. Once a species is listed under the ESA, it receives a number of protections.
28 These include a prohibition on the “take” of any such species, 16 U.S.C. § 1538(a)(1)(B),

1 and a requirement that each federal agency “insure that any action authorized, funded, or
2 carried out by such agency . . . is not likely to jeopardize the continued existence of any
3 endangered species or threatened species,” *id.* § 1536(a)(2). The Service also “shall develop
4 and implement [recovery plans] for the conservation and survival of endangered species
5 and threatened species.” *Id.* § 1533(f)(1).

6 **II. THE GRAY WOLF IS A KEYSTONE SPECIES RECOVERING ONLY WITH THE** 7 **HELP OF FEDERAL PROTECTION**

8 36. The gray wolf (*Canis lupus*) is the largest wild member of the dog family,
9 with individual adult wolves weighing as much as 175 pounds.

10 37. Gray wolves are social animals that hunt in packs that can have as many as
11 20 or more wolves. Wolf pack territories can range in size up to 1,000 square miles.

12 38. Gray wolves are a keystone species, which means that their presence or
13 absence in a landscape has a top-down effect on the structure and function of entire
14 ecosystems. There is scientific evidence, for instance, that the reintroduction of gray
15 wolves to Yellowstone National Park impacted the populations of elk, beaver, bison,
16 aspen, cottonwoods, and willows.

17 39. Considerable genetic variations exist between populations of gray wolves
18 due to adaptations to different environments. The scientific term for a population of a
19 species with differences in appearance, behavior, and habitat is “ecotype.” Fish & Wildlife
20 Serv., Gray Wolf Biological Report 4 (2020) (the “Gray Wolf Biological Report” or
21 “Biological Report”).

22 40. For instance, gray wolves of the Great Lakes ecotype are smaller, adapted to
23 mixed-deciduous forests, and primarily prey on white-tailed deer, while gray wolves in a
24 different ecotype found in the Rocky Mountains are adapted to montane forests and prey
25 on larger mammals such as mule deer, elk, and moose.

26 41. There is also a “coastal ecotype” that is “genetically and morphologically
27 distinct, and display[s] distinct habitat and prey preferences, despite relatively close
28 proximity” to other wolves. *Id.*

1 42. The coastal rainforests of the Pacific Northwest are the suitable habitat for
2 coastal wolves, as opposed to the drier interior landscape favored by inland wolves.

3 43. Recent genomic studies identified coastal ecotype wolves in Washington and
4 found that Washington and Oregon have distinct suitable habitats for both coastal and
5 inland wolves.

6 44. There are at least two packs of gray wolves, the Teanaway and Rogue packs,
7 with territories currently located primarily in habitat that has been found to be mostly
8 suitable for the coastal ecotype. Other wolves in the Pacific Coast may share ancestry with
9 these packs, including wolves in California descended from the Rogue pack in Oregon.

10 45. “Having robust populations of these different ecotypes improves the species’
11 ability to adapt to changing environmental conditions over time and to recolonize a
12 variety of suitable habitats.” *Id.* at 29.

13 **A. GRAY WOLVES WERE NEARLY DRIVEN EXTINCT IN THE LOWER 48**
14 **BY PREDATOR CONTROL PROGRAMS**

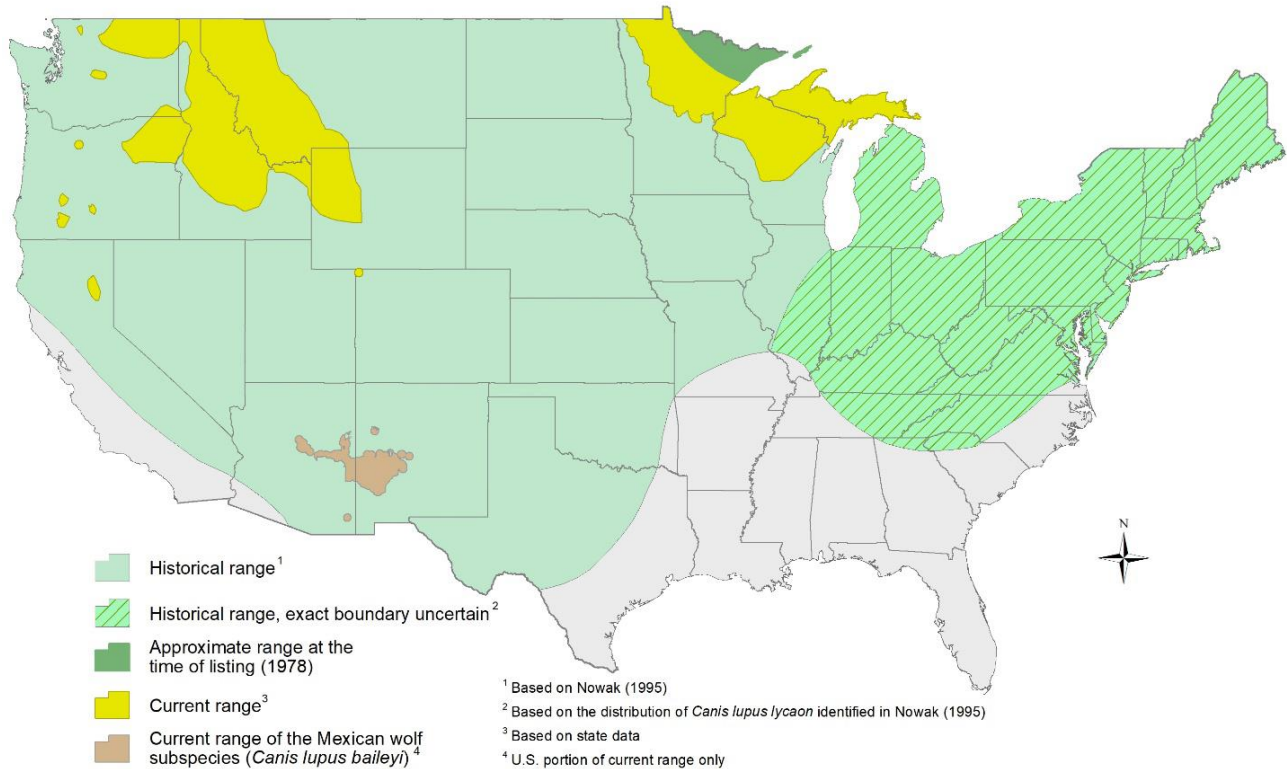
15 46. Gray wolves were once numerous across North America. Prior to European
16 settlement, there were hundreds of thousands of gray wolves in the West and thousands
17 more could be found throughout the Great Lakes and the Northeast.

18 47. Despite this historical abundance, gray wolves were driven almost to
19 extinction in the lower 48 through government-sponsored predator control programs,
20 unregulated hunting and trapping, and other human-caused mortalities. The federal and
21 state government played an active role in encouraging and carrying out these
22 extermination efforts, going as far back as the first congressionally passed bounty program
23 for wolves in 1817.

24 48. These eradication campaigns were relentlessly successful. By the 1930s,
25 wolves had been eliminated throughout the West. The only significant population of
26 wolves in the lower 48 by the middle of the twentieth century consisted of a thousand
27 wolves or less in the Great Lakes.

28

49. Gray wolves were also eliminated from almost all of their historical range due to this eradication program. Although the historical range for gray wolves covered most of the lower 48, at the time of nationwide gray wolf listing under the ESA, the species' range was limited to Northern Minnesota and Isle Royale National Park in Michigan. This map from the Gray Wolf Biological Report shows how the Service estimates the gray wolf's historical range.¹



50. The Service separately protects Mexican wolves (*Canis lupus baileyi*) as an endangered subspecies. 85 Fed. Reg. at 69,780; 50 C.F.R. § 17.11(h). Red wolves (*Canis rufus*) are recognized as a distinct species and are also protected as an endangered species. 85 Fed. Reg. at 69,786; 50 C.F.R. § 17.11(h).

¹ Plaintiff disputes the illustration of current range on this map. See *infra* ¶ 132.

1 **B. THE ESA HAS FACILITATED PROGRESS ON GRAY WOLF**
2 **RECOVERY**

3 51. Gray wolves were among the first species protected under federal
4 endangered species legislation in the 1960s. Wolves in the eastern United States first
5 received federal protection under a precursor to the ESA in 1967 when they were listed
6 under “Timber Wolf – *Canis lupus lycaon*.” 32 Fed. Reg. 4001, 4001 (Mar. 11, 1967). In 1973,
7 protections under that same law were extended to wolves in the Northern Rockies under
8 “Northern Rocky Mountain wolf – *Canis lupus irremotus*.” 38 Fed. Reg. 14,678, 14,678 (June
9 4, 1973). Both of those entities were then protected under the ESA shortly after its passage.
10 39 Fed. Reg. 1158, 1175 (Jan. 4, 1974).

11 52. In 1978, the Service shifted its approach to how gray wolves were listed
12 under the ESA. The Service “recognize[d] that the entire species *Canis lupus* is Endangered
13 or Threatened to the south of Canada,” and as a result determined that protecting gray
14 wolves would “be handled most conveniently by listing only the species name.” 43 Fed.
15 Reg. 9607, 9607 (Mar. 9, 1978). To implement this approach, the Service issued a
16 rulemaking where the gray wolf “group in Mexico and the 48 conterminous States of the
17 United States, other than Minnesota, [was] considered as one ‘species’, and the gray wolf
18 group in Minnesota [was] considered as another ‘species’.” *Id.* at 9610. Using these two
19 groupings, the Service listed the gray wolf as threatened in Minnesota and endangered
20 throughout the “48 conterminous states, other than Minnesota.” *Id.* at 9612.

21 53. Although the 1978 listing was done to protect the “entire species” nationally,
22 *id.* at 9607, the Service subsequently developed recovery plans for gray wolves only at the
23 regional level. The Service developed a recovery plan for the “Eastern Timber Wolf” in
24 1978 and revised that plan in 1992. The Service developed a recovery plan for Northern
25 Rockies wolves in 1980 and revised that plan in 1987. The third regional recovery plan was
26 for the Southwest in the area where wolves are now separately listed as the Mexican wolf
27 subspecies. Despite repeated requests, the Service has never developed a national recovery
28 plan for the gray wolf.

1 54. Currently, the Service estimates there are over 6,000 gray wolves in the lower
2 48. Of these, approximately 4,200 wolves are in the Great Lakes, roughly 54 are in the
3 Pacific Coast, and is one pack in the Central Rockies, which had six wolves in 2020.
4 Compared to the low point of wolves before listing under the ESA, these numbers indicate
5 an increase in the population of the species. These gains demonstrate how the ESA's
6 protections can facilitate progress toward species recovery. But progress toward recovery
7 is not the same as recovery. The current population of gray wolves continues to be no
8 more than a tiny fraction of the historical number of gray wolves, and the species has only
9 recently begun to make tenuous returns to and remains particularly vulnerable in many
10 regions, including the Pacific Coast and Central Rockies.

11 **C. THE SERVICE HAS REPEATEDLY AND UNSUCCESSFULLY SOUGHT**
12 **TO REMOVE ESA PROTECTIONS FOR GRAY WOLVES**

13 55. Over the last two decades, the Service has made several attempts to delist
14 gray wolves.

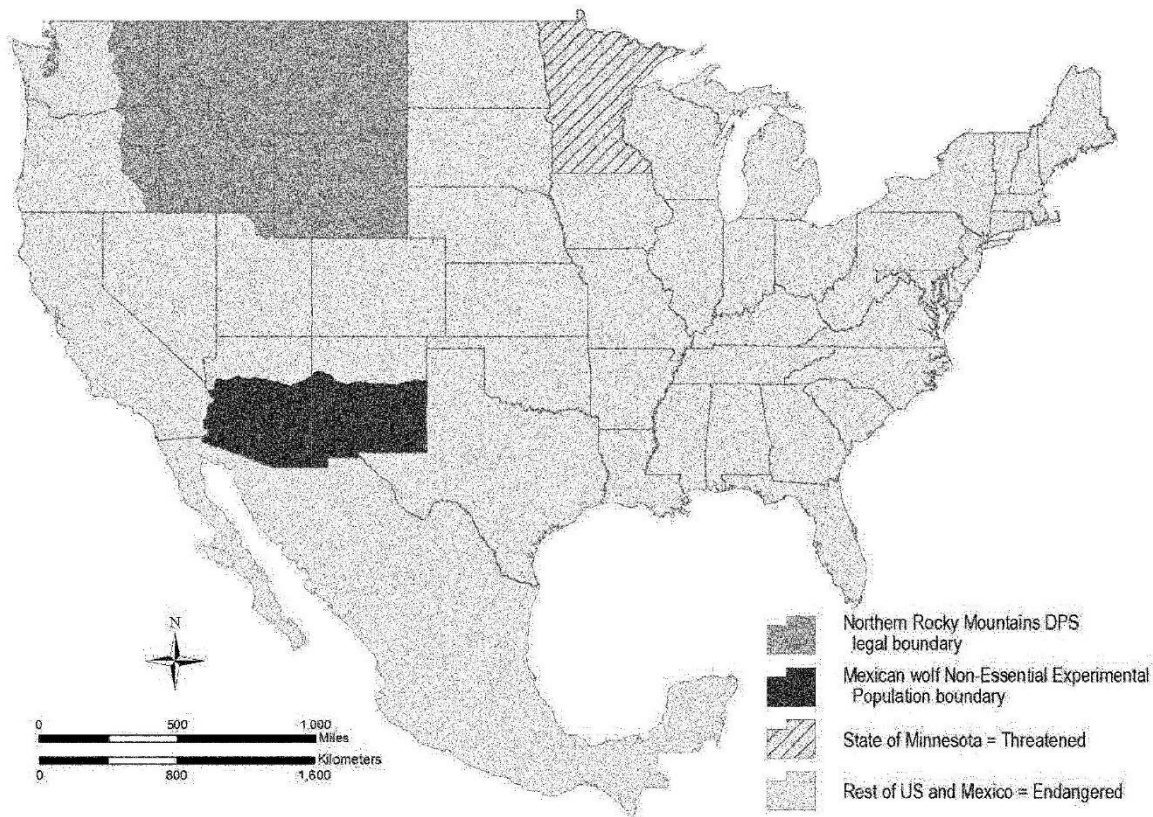
15 56. The Service's attempts to delist gray wolves have largely failed in the courts.
16 *See Defs. of Wildlife v. Sec'y, U.S. Dep't of the Interior*, 354 F. Supp. 2d 1156, 1174 (D. Or. 2005)
17 (vacating 2003 rule splitting gray wolves into four groups); *Nat'l Wildlife Fed'n v. Norton*,
18 386 F. Supp. 2d 553, 568 (D. Vt. 2005) (vacating 2003 rule splitting gray wolves into four
19 groups); *Humane Soc'y of U.S. v. Kempthorne*, 579 F. Supp. 2d 7, 21 (D.D.C. 2008) (vacating
20 2007 rule delisting Western Great Lakes distinct population segment); *Defs. of Wildlife v.*
21 *Hall*, 565 F. Supp. 2d 1160, 1178 (D. Mont. 2008) (issuing preliminary injunction against
22 2008 delisting of Northern Rocky Mountains distinct population segment); *Defs. of Wildlife*
23 *v. Salazar*, 729 F. Supp. 2d 1207, 1228 (D. Mont. 2010) (vacating 2010 rule delisting gray
24 wolves in the Northern Rockies except for Wyoming); *Humane Soc'y of U.S. v. Zinke*, 865
25 F.3d 585, 615 (D.C. Cir. 2017) (upholding vacatur of 2011 delisting of Western Great Lakes
26 distinct population segment).

27 57. In 2011, Congress passed an appropriations bill rider directing the Service to
28 reissue a rule to delist Northern Rockies wolves that a district court had previously

1 vacated and precluding initial judicial review of the new rule, and the Ninth Circuit
 2 upheld this provision. *See All. for the Wild Rockies v. Salazar*, 672 F.3d 1170, 1172, 1175
 3 (9th Cir. 2012). The Service later delisted gray wolves in Wyoming, and the Court of
 4 Appeals for the D.C. Circuit reversed a district court ruling vacating that rule. *See Defs. of*
 5 *Wildlife v. Zinke*, 849 F.3d 1077, 1093 (D.C. Cir. 2017).

6 58. In 2013, the Service also proposed the delisting of all gray wolves in the
 7 lower 48 outside of the two regions where they were then unprotected. *See* 78 Fed. Reg.
 8 35,664, 35,664 (June 13, 2013). The Service proposed to delist these wolves on the grounds
 9 that the then “currently listed *C. lupus* entity does not represent a valid listable entity
 10 under the” ESA. *Id.* at 35,718. This rule was never finalized.

11 59. Following these agency rules, congressional appropriations rider, and court
 12 rulings, gray wolves were protected as threatened in Minnesota, protected as the
 13 subspecies Mexican wolves in the Southwest, not protected in the Northern Rockies, and
 14 protected elsewhere in the lower 48 as endangered, as shown in the map below.



1 85 Fed. Reg. at 69,782.

2 **III. DELISTING GRAY WOLVES WILL IMPAIR SPECIES RECOVERY**

3 60. The Service proposed delisting gray wolves on March 15, 2019. *See* 84 Fed.
4 Reg. 9648 (Mar. 15, 2019) (“Proposed Rule”). In the Proposed Rule, the Service lumped
5 wolves in Minnesota and the lower 48 into what it called the “gray wolf entity” for
6 purposes of delisting. *Id.* at 9656. The Service used this arbitrarily combined “gray wolf
7 entity” to claim that gray wolves can be delisted across the country because of recovery
8 solely in the Great Lakes. *Id.* at 9683. NRDC submitted comments on July 15, 2019, noting
9 that combining disparate wolf populations for purposes of analysis is illogical and
10 impermissible, arguing that wolves remain endangered throughout a significant portion of
11 their range, and urging the Service to instead develop a national wolf recovery plan to set
12 recovery goals for wolves throughout the United States.

13 61. The Service then issued the Rule delisting wolves on November 3, 2020,
14 claiming that because wolves in the Great Lakes region have met certain recovery goals,
15 wolves across the country, including in the Pacific Coast and Central Rockies, can also be
16 delisted because they are not necessary for the Great Lakes population to survive. *See* 85
17 Fed. Reg. at 69,886 (concluding wolves outside the Great Lakes are “not necessary for the
18 recovered status of the combined listed entity”); *see also id.* at 69,893 (similar conclusion
19 for wolves outside the Great Lakes and Northern Rockies for the “lower 48 United States
20 entity”).

21 62. The Rule analyzes wolves in three different “configurations” for purposes of
22 delisting: (1) the threatened Minnesota and the endangered “44-state entity,” separately;
23 (2) a “combined listed entity” that lumps endangered and threatened areas together; and
24 (3) a “lower 48 United States entity” that lumps endangered and threatened areas with
25 the congressionally delisted Northern Rockies population. 85 Fed. Reg. at 69,784-85. The
26 first “configuration” consists of two different entities, resulting in a total of four analyzed
27 “entities.” *See id.* at 69,784-85. The Proposed Rule only considered the “combined listed
28

1 entity,” which the Service had then termed the “gray wolf entity.” *See* 84 Fed. Reg. at
2 9655-56.

3 63. According to the Service, this novel triple-configuration analysis is “a
4 conservative approach to delisting.” *Id.* at 69,784. “Rather than focus on gray wolf
5 [distinct population segments] and taxonomic units” – as required by section 4 of the
6 ESA – the Service “focus[ed] on the currently listed entities.” *Id.*

7 64. The Service uses the arbitrarily defined “combined listed entity” and “lower
8 48 United States entity” to support its contention that gray wolves can be delisted across
9 the country solely because of their status in three regions: the Eastern United States, where
10 wolves are recovering in the Great Lakes; the Northern Rockies, where gray wolves were
11 delisted by Congress and not because of recovery; and the Southwestern United States,
12 where Mexican wolves are separately listed as an endangered subspecies.

13 65. This three-region approach is based on three outdated recovery plans
14 originally developed between 1978 and 1982. The Service declares in the Rule that it has
15 “consistently focused on three areas” for recovery. *Id.* at 69,855. However, the Proposed
16 Rule did not include that justification and the Service never claims that an exclusive focus
17 on those three areas is justified by the best available science, as required by the ESA.
18 Indeed, the Service has previously considered additional areas for wolf recovery,
19 including specifically the Pacific Coast region.

20 66. For the first region, the Service declares that “the Great Lakes area” by itself
21 “contains sufficient wolf numbers and distribution to ensure the long-term survival of
22 gray wolves in the Eastern United States.” *Id.* at 69,791. The Service relies solely on the
23 outdated 1992 Eastern Timber Wolf Recovery Plan to support this contention.

24 67. When considering the status of wolves in the Eastern United States, the
25 Service failed to consider the potential for wolves to reestablish in the Northeast. *See id.* at
26 69,785-86 (describing scientific status of wolves in Northeast as “unresolved”). The District
27 of Vermont vacated a previous delisting rule for similarly combining wolves in the
28 Midwest and Northeast. *See Nat’l Wildlife Fed’n*, 386 F. Supp. 2d at 564-65.

1 68. After delisting, however, gray wolves face new threats from human-caused
2 mortality in the states in the Great Lakes region.

3 69. Under Wisconsin law, the state Department of Natural Resources (DNR) is
4 *required* to hold a wolf hunt starting on the first day of November and running until the
5 last day of February if wolves are delisted under federal and state endangered species
6 laws. *See* Wi. Stat. § 29.185(1m), (5) (commonly known as “Act 169”).

7 70. Under Minnesota law, if wolves are delisted, the state DNR “may prescribe
8 open seasons and restrictions for taking wolves but must provide opportunity for public
9 comment.” Minn. Stat. § 97B.645 subd. 9. The Minnesota DNR is currently updating its
10 wolf management plan, making any future protections or management actions in that state
11 uncertain. The Minnesota DNR also submitted a comment expressing concerns about the
12 nationwide status of gray wolves. *See* 85 Fed. Reg. at 69,861 (“The Minnesota Department
13 of Natural Resources stated that a blanket delisting of gray wolves across the United States
14 may not be warranted.”).

15 71. Michigan, another state that the Service relies on for the continued viability
16 of wolves in the Great Lakes, submitted a comment opposing the delisting rule as
17 unlawful. *See id.* at 69,860-61 (Michigan Attorney General objecting to the Service’s
18 “significant portion of its range” analysis and noting the Service’s threats analysis did not
19 fully cover the wolves’ current range).

20 72. The last time the Service delisted gray wolves in the Great Lakes in 2011,
21 Minnesota and Wisconsin each held three hunting seasons and Michigan held one hunting
22 season. Over 1,400 wolves were killed during these hunts. A court restored ESA
23 protections for these wolves in 2014.

24 73. For the second region, the Service states that wolves in the Northern Rockies
25 “have recovered and were delisted.” *Id.* at 69,792. This statement is incorrect. These wolves
26 were delisted *not* because they were recovered, but rather because of a congressional
27 appropriations bill that precluded initial judicial review. *See All. for the Wild Rockies*, 672
28 F.3d at 1172. Before this congressional intervention, a district court held that the Service’s

1 attempt to delist these wolves was “unlawful for failing to list and protect the entire”
2 distinct population segment and vacated the delisting. *Def. of Wildlife v. Salazar*, 729
3 F. Supp. 2d at 1228. The current number of Northern Rockies wolves is unclear because
4 Idaho and Montana are no longer required to conduct post-delisting monitoring. *See* 85
5 Fed. Reg. at 69,788.

6 74. The third region relies on a continued endangered listing of the Mexican
7 wolf as a subspecies, and the Service does not analyze this region in the Rule. *See id.* at
8 69,791.

9 75. The Service failed to analyze the status of gray wolves in other regions in
10 their current range, including in the Pacific Coast and Central Rockies.

11 76. The Service failed to analyze wolves in the Pacific Coast. Prior to the Rule,
12 the ESA protected gray wolves in California and the western portions of Oregon and
13 Washington as endangered, and there are at least 54 wolves in this area. These wolves
14 have moved up and down the coast reestablishing territory, relying on dispersal to gain a
15 footing in new areas. Many of the Pacific Coast wolves are of the distinct and discrete
16 coastal ecotype with differences in genetics, size, appearance, habitat, and prey selection
17 from inland wolves.

18 77. The first wolf pack with pups in Washington since the 1930s was confirmed
19 in July 2008. There are now 26 known wolf packs in the state, with five packs in the
20 western portion of the state where wolves had until the Rule been protected by the ESA.

21 78. The first modern count to document gray wolves in Oregon found 14 in 2009.
22 There are now approximately 158. The 2019 wolf count found only 17 known wolves in 3
23 packs in the western portion of the state where wolves had until the Rule been protected
24 by the ESA. One of these packs is the Rogue Pack, which was first recognized as a new
25 pack in the Cascade Mountains in 2014. This area is a suitable habitat for the gray wolf
26 coastal ecotype. The dominant male that established the pack, OR-7, is believed to have
27 died in 2020.

28

1 79. That same wolf, OR-7, was also the first wolf since the 1920s to be
2 documented in California when it crossed over into the state from Oregon in 2011. The
3 Shasta Pack was then identified as the first known breeding pack in California in 2015, and
4 was descended from coastal Oregon wolves. That pack had only a tenuous foothold, and it
5 disappeared by the next year. There is now a new pack in California, the Lassen Pack, with
6 documented pups in every year since 2017. This pack has a range of roughly 500 square
7 miles and had a minimum of 17 wolves as of last summer. Wolves also disperse significant
8 distances across California. For instance, researchers used radio-collar data to track a
9 daughter of OR-7 known as OR-54 for 8,712 miles as she moved from Oregon, throughout
10 California, and even into Nevada before she died last year.

11 80. Coastal wolves improve the genetic diversity of gray wolves by contributing
12 evolutionary uniqueness and adaptive potential. Coastal wolves also can have top-down
13 effects on ecosystems, regulating the abundance and health of other species in their
14 distinct environments.

15 81. The Service also failed to analyze the status of Central Rockies wolves
16 despite the recent reestablishment of at least one wolfpack, an upcoming state-led
17 reintroduction plan, and suitable habitat in that region.

18 82. Even more recently than along the Pacific Coast, gray wolves have begun to
19 reestablish territory in the Central Rockies. The first wolf pack in Colorado in over 70 years
20 was spotted in 2019 and confirmed last year with at least six wolves. The origin of these
21 wolves has yet to be determined. Although the pack has persisted for at least a year, DNA
22 samples show that the adult wolves are likely siblings or closely related. This lack of
23 genetic diversity creates a risk of inbreeding for this pack.

24 83. Colorado voters also approved a ballot initiative in fall 2020 to reintroduce
25 wolves to the western slope of the Rockies. To implement this ballot initiative, the
26 Colorado Department of Parks and Wildlife will develop a plan to reintroduce wolves by
27 the end of 2023.

28

1 84. There are no established wolves in Utah because under state law, the state
2 would “request immediate removal” of any wolf in a part of the state where they were
3 protected as endangered and managed wolves to “prevent the establishment of a viable
4 pack in all areas of the state where the wolf is not listed as threatened or endangered.”
5 Utah Code § 23-29-201.

6 85. Gray wolves would face other new threats after delisting. States and tribes
7 have been limited in their ability to use lethal methods to control wolves that attack
8 livestock where the gray wolf is listed as endangered. After delisting, though, this practice
9 is likely to increase.

10 86. Gray wolves will also face potential threats to their genetic diversity.
11 Currently, dispersing wolves play a role in reducing genetic threats such as from
12 inbreeding. The ESA’s protections create habitat connectivity for gray wolves, allowing
13 wolves to move from one area of suitable habitat to another. Delisting gray wolves will
14 reduce habitat connectivity and therefore decrease the ability of wolves to disperse.
15 Despite this decrease in connectivity and the resulting reduction in dispersal rates, the
16 Service still relies on wolf dispersal to minimize genetic threats to wolves.

17 87. Another threat to gray wolf packs after losing ESA protections is the negative
18 effect of the loss of individual wolves, particularly if the loss is one of a pack’s breeding
19 pair, on wolf social structure. This impact can extend beyond an individual pack by
20 reducing dispersal, recruitment, or even population growth. These effects are often
21 magnified for wolves in packs in recently reestablished territory. The wolfpacks in
22 California and the Central Rockies have only become established in the last few years.

23 88. On January 20, 2021, the Rule was included on a list of agency actions to be
24 reviewed under the Executive Order titled “Protecting Public Health and the Environment
25 and Restoring Science to Tackle the Climate Crisis.” The Rule has not been rescinded, and
26 Interior and the Service have yet to take any other actions as part of this review.

27 89. Relying on purported recovery in the Great Lakes and in the Northern
28 Rockies, the Service extrapolates without providing a scientific rationale to declare wolves

1 recovered nationally. At no point does the Rule address recovery of wolves in the Pacific
2 Coast, the Central Rockies, or any other part of their range.

3 **CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**

5 **(Violation of Endangered Species Act –**
6 **Unlawful Analysis of Non-ESA Eligible Entities)**

7 90. Plaintiff hereby realleges and incorporates Paragraphs 1 through 89.

8 91. The ESA defines endangered species as “any species which is in danger of
9 extinction throughout all or a significant portion of its range” and threatened species as
10 “any species which is likely to become an endangered species within the foreseeable future
11 throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6), (20). The ESA then
12 defines “species” to include “any subspecies of fish or wildlife or plants, and any distinct
13 population segment of any species of vertebrate fish or wildlife which interbreeds when
14 mature.” *Id.* § 1532(16).

15 92. Despite this statutory framework, the Rule analyzes wolves as four different
16 “entities” in three different “configurations” for purposes of delisting. 85 Fed. Reg. at
17 69,784-85. This approach violates the ESA’s mandate that a delisting analysis must be of a
18 species, subspecies, or distinct population segment. *See* 16 U.S.C. §§ 1532(16), 1533(a)(1),
19 (c)(2). The four different entities presented in three configurations are none of these.

20 93. By analyzing the status of entities other than ESA-eligible units, the Service
21 arbitrarily “relied on factors which Congress has not intended it to consider.” *Motor Vehicle*
22 *Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

23 94. To justify combining the Minnesota and 44-state entities, the Service claims
24 that the two entities are not “discrete.” *See* 85 Fed. Reg. at 69,784-85. This is wrong:
25 although Minnesota wolves may not be discrete from wolves in Michigan and Wisconsin,
26 they are discrete from wolves on the Pacific Coast. *See, e.g., id.* at 69,784 (describing Pacific
27 Coast wolves as descending from Northern Rockies and Canadian wolves). Recent
28

1 genomic studies found that Pacific Coast wolves are distinct, and independent peer
2 reviewers explained these studies to the Service.

3 95. The Service's justification thus "runs counter to the evidence before the
4 agency." *State Farm*, 463 U.S. at 43.

5 96. Courts have previously rejected rules where the Service only analyzed the
6 status of wolves in "core areas" of wolf population while lumping together or ignoring
7 surrounding low-population areas. *See Defs. of Wildlife*, 354 F. Supp. 2d at 1172 (finding the
8 Service applied the Distinct Population Segment Policy in a manner that was "inconsistent
9 with the statute" (quoting *Mines v. Sullivan*, 981 F.2d 1068, 1070 (9th Cir. 1992))); *Nat'l*
10 *Wildlife Fed'n*, 386 F. Supp. 2d at 565 (same).

11 97. The Service takes the same error to the extreme here: it lumps together core
12 populations of Great Lakes and Northern Rockies wolves with wolves in low-population
13 areas across the lower 48 to form and delist the "lower 48 United States entity," 85 Fed.
14 Reg. at 69,893.

15 98. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
16 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
17 § 706(2).

18 SECOND CLAIM FOR RELIEF

19 (Violation of Endangered Species Act— 20 Failure to Analyze Status of Pacific Coast Wolves)

21 99. Plaintiff hereby realleges and incorporates Paragraphs 1 through 98.

22 100. The Rule claims that Pacific Coast wolves are simply an extension of the
23 Northern Rockies distinct population segment, denigrating Pacific Coast wolves as mere
24 "colonizing wolves" whose small numbers make their presence unnecessary for wolf
25 recovery in the "lower 48 United States." *See* 85 Fed. Reg. at 69,789, 69,886.

26 101. The Service earlier determined that Northern Rockies wolves were discrete
27 from Pacific Coast wolves, *see* 73 Fed. Reg. 10,514, 10,518-19 (Feb. 27, 2008); 74 Fed. Reg.
28

1 15,123, 15,128-29 (Apr. 2, 2009), to justify creating the Northern Rockies distinct population
2 segment that excludes Pacific Coast wolves.

3 102. Now, the agency claims that Pacific Coast wolves “are *not* discrete from
4 wolves in the delisted [Northern Rockies] portion of the gray wolf taxon,” 85 Fed. Reg. at
5 69,783-84 (citing 78 Fed. Reg. at 35,707-13) (emphasis added), and therefore they *cannot*
6 constitute a distinct population segment that would warrant protection.

7 103. That the Service changed its policy position without providing “a reasoned
8 explanation . . . for disregarding facts and circumstances that underlay . . . the prior
9 policy” is arbitrary and capricious. *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d
10 956, 966 (9th Cir. 2015) (en banc) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502,
11 515-16 (2009)).

12 104. The Service’s decision to graft Pacific Coast wolves onto an already delisted
13 segment violates the law by committing the same fault the D.C. Circuit described in
14 *Humane Society of the U.S. v. Zinke* – creating a distinct population segment in order to
15 delist one group, leaving out less populated surrounding areas, and then attempting to
16 delist the “remnant” population. 865 F.3d at 601-03. The Pacific Coast wolves must not be
17 treated as “a leftover group that becomes an orphan to the law,” *id.* at 603, because of the
18 agency’s earlier Northern Rockies distinct population segment designation. “Such a
19 statutory dodge is the essence of arbitrary-and-capricious and ill-reasoned agency action.”
20 *Id.*

21 105. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
22 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
23 § 706(2).

24 **THIRD CLAIM FOR RELIEF**

25 **(Violation of Endangered Species Act –** 26 **Failure to Consider Species Status Through a Significant Portion of Its Range)**

27 106. Plaintiff hereby realleges and incorporates Paragraphs 1 through 105.
28

1 107. The Service failed to analyze whether the gray wolf is endangered or
2 threatened throughout a “significant portion of its range,” as required by the ESA. 16
3 U.S.C. § 1532(6), (20). The Rule states that the Service

4 assessed ‘significance’ based on whether *portions of the range contribute*
5 *meaningfully to the resiliency, redundancy, or representation of the gray wolf entity being*
6 *evaluated* without prescribing a specific ‘threshold.’ This approach is substantively
7 different from the way we defined ‘significance’ in our [Significant Portion of Its
8 Range Policy] and, therefore, different from the approach evaluated and
9 overturned by the courts.

8 85 Fed. Reg. at 69,854 (emphasis added).

9 108. Using that definition, the Service determined that Pacific Coast and Central
10 Rockies wolves “may be at greater risk from human-caused mortality or from factors
11 related to small numbers of individuals. However, wolves in these portions are not
12 meaningful to the redundancy or resiliency of the 44-State entity because they occur in
13 small numbers and include relatively few breeding pairs.” *Id.* at 69,885; *see also id.* at 69,889
14 (same conclusion for “combined listed entity”); *id.* at 69,892-93 (similar conclusion for
15 “lower 48 United States entity”). The Service does not consider any other areas where gray
16 wolves are listed, including where wolves have been repeatedly sighted, to determine
17 whether these areas may constitute a “significant portion of its range.”

18 109. The Rule’s conclusions about Central Rockies wolves also lack a “rational
19 connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43
20 (quotation marks omitted).

21 110. There are currently wolves in Colorado, including an established wolfpack.

22 111. The Service acknowledged in the Rule that “[a]dditional populations of
23 wolves in Colorado *would add to the resiliency and redundancy* of gray wolves in the lower 48
24 United States.” 85 Fed. Reg. at 69,866 (emphasis added). Yet the Service still concluded
25 Central Rockies wolves are “not meaningful to resiliency or redundancy because they
26 contain few wolves, or few or no breeding pairs.” *Id.* at 69,892.

27 112. By this circular logic, the Service acknowledges that a larger population of
28 wolves in the Central Rockies where there is suitable habitat for a significant number of

1 wolves would add to the wolves' resiliency and redundancy; however, because wolves
 2 have not yet recovered enough in that habitat, the agency entirely ignores these wolves for
 3 purposes of the ESA threats analysis. And one reason that wolves are not recovering in the
 4 Central Rockies is that Utah is actively preventing it, showing an "inadequacy of existing
 5 regulatory mechanisms" in that state. 16 U.S.C. § 1533(a)(1)(D).

6 113. Removing ESA protections for Central Rockies wolves before they can
 7 occupy this suitable habitat and contribute to the resiliency and redundancy of the species,
 8 and in turn its likelihood of survival, is an impediment to species recovery.

9 114. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
 10 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
 11 § 706(2).

12 **FOURTH CLAIM FOR RELIEF**

13 **(Violation of Endangered Species Act –** 14 **Failure to Comply with Significant Portion of Its Range Policy)**

15 115. Plaintiff hereby realleges and incorporates Paragraphs 1 through 114.

16 116. The Rule impermissibly applies the term "significant portion of its range" to
 17 require a threat to wolves' viability throughout each of the four defined entities. *See* 85
 18 Fed. Reg. at 69,881 (Minnesota entity); *id.* at 69,884 (44-state entity); *id.* at 69,888 (combined
 19 listed entity); *id.* at 69,892 (lower 48 United States entity).

20 117. This decision violates the ESA's requirement to determine whether a species
 21 is endangered throughout all *or a significant portion* of its range. Without considering this
 22 question, the agency "entirely failed to consider an important aspect of the problem." *State*
 23 *Farm*, 463 U.S. at 43.

24 118. The Service has failed to give meaning to both "all of its range" and "a
 25 significant portion of its range." Caselaw requires both. The "significant portion of its
 26 range" language is rendered "illusory" where the Service requires the "significant
 27 portion" to be "so important that, without the members in *that* portion, the species would
 28 be endangered or threatened throughout *all* of its range." *Desert Survivors v. U.S. Dep't of*

1 *the Interior*, 321 F. Supp. 3d 1011, 1072-73 (N.D. Cal. 2018) (emphasis added) (quoting *Ctr.*
 2 *for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 956 (D. Ariz. 2017)); *see also* *Defenders of*
 3 *Wildlife v. Norton*, 258 F.3d 1136, 1141-42 (9th Cir. 2001) (noting that in “reading ‘all’ and ‘a
 4 significant portion of its range’ as functional equivalents,” the agency made an
 5 “unacceptable” error in its statutory construction by rendering a significant statutory
 6 phrase redundant).

7 119. In the Rule, the Service has once again interpreted “significant” in a way that
 8 renders consideration of endangerment throughout a “significant portion of its range”
 9 illusory. The Service finds that while wolves outside of the Great Lakes and Northern
 10 Rockies populations may be threatened by human-caused mortality, the populations
 11 outside these regions are not “significant.” But in each of the portions the Service analyzes,
 12 including the Pacific Coast, Central Rockies, and Northeast, the agency determines that the
 13 wolf populations are not significant *because* they do not add “resiliency, redundancy, or
 14 representation” to the whole of each entity the Service defined and analyzed in the Rule –
 15 i.e., they are not necessary for the species’ viability. Putting aside the lack of scientific basis
 16 for those claims, this interpretation fails to give meaning to both sides of the “or” by
 17 defining a portion’s significance in terms of the entire entity’s viability. Such an
 18 interpretation renders the phrase “significant portion of its range” superfluous and is thus
 19 arbitrary.

20 120. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
 21 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
 22 § 706(2).

23 FIFTH CLAIM FOR RELIEF

24 (Violation of Endangered Species Act – 25 Failure to Use Best Available Science in Range Analysis)

26 121. Plaintiff hereby realleges and incorporates Paragraphs 1 through 120.

27 122. The Rule’s conclusion that Pacific Coast wolves are “not biologically
 28 ‘significant’” and are not “significant to the combined listed entity in terms of its

1 resiliency, redundancy, or representation,” 85 Fed. Reg. at 69,889, is unsupported by the
2 best available science. Where the Service reaches a “conclusion” to delist a species
3 “without scientific basis, this conclusion is arbitrary and capricious.” *Crow Indian Tribe*, 965
4 F.3d at 679 (ruling the Service failed to use best available science for Yellowstone grizzly
5 bear delisting).

6 123. Here, the Service’s conclusion conflicts with its own finding in the 2020 Gray
7 Wolf Biological Report that there are wolves of a “coastal ecotype” that are “genetically
8 and morphologically distinct, and display distinct habitat and prey preferences” from
9 inland wolves, like those in the Northern Rockies, “despite relatively close proximity.”
10 Gray Wolf Biological Report at 4-5. It also departs from the Service’s 2008 finding that
11 Pacific Coast wolves are discrete. 73 Fed. Reg. at 10,519.

12 124. The best available science, including recent genomic studies that scientific
13 peer reviewers identified and explained to the Service, shows that there are predominately
14 coastal ecotype wolves and distinct suitable habitat for those wolves in the Pacific Coast.

15 125. The Service “cannot ignore available biological information,” *Ctr. for*
16 *Biological Diversity*, 900 F.3d at 1060 (quoting *Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir.
17 1988)), and its decision lacks a “rational connection between the facts found and the choice
18 made,” *State Farm*, 463 U.S. at 43 (quotation marks omitted).

19 126. Another reason the Service gives for why Pacific Coast wolves are not
20 discrete from Northern Rockies wolves is that “there is little separation between occupied
21 wolf habitat in the” Northern Rockies “and suitable habitat in western Washington,
22 western Oregon, and northern California.” 85 Fed. Reg. at 69,784. But in the Biological
23 Report, the Service found that “[f]actors such as habitat type and prey specialization have
24 been shown to influence genetic structuring, leading to measurable differentiation *even*
25 *between areas with no physical barriers to dispersal.*” Gray Wolf Biological Report at 4
26 (emphasis added). Genetic differences are “driven more strongly by climate and ecological
27 factors” than by “isolation by distance.” *Id.* The Pacific Coast has a distinct climate and
28 ecology from interior areas of the West.

1 1075, 1090-91 (9th Cir. 2015) (quoting *TVA v. Hill*, 437 U.S. at 187); *Ctr. for Biological*
2 *Diversity v. Zinke*, 900 F.3d at 1073 (quoting *Ariz. Cattle Growers' Ass'n v. Salazar*, 606 F.3d
3 1160, 1167 (9th Cir. 2010)).

4 132. Here, the Service excluded large portions of range currently known to be
5 used by wolves. *See* 85 Fed. Reg. at 69,786 (excluding areas used by dispersing wolves
6 from the consideration of current range). Wolves are known to be present far beyond the
7 areas where the Service performed its section 4(a) threats analysis. The Rule acknowledges
8 that wolves have recently been found in numerous states across the West, Midwest, and
9 Northeast. *See* 85 Fed. Reg. at 69,789. These areas, which include the Northeast, meet the
10 regulatory definition of “range” under the Significant Portion of Its Range Policy. And
11 they are used as “part of the species’ life cycle,” 79 Fed. Reg. at 37,609, through dispersal.
12 “[D]ispersal” is a behavior that involves wolves leaving “their natal pack to locate social
13 openings in existing packs or find a mate and form a new pack.” Gray Wolf Biological
14 Report at 7.

15 133. Dispersal is a critical part of wolf behavior contributing to viability in the
16 United States, as the Service acknowledges. 85 Fed. Reg. at 69,820 (“An important factor
17 for maintaining genetic diversity can be connectivity or effective dispersal between
18 populations or subpopulations.”). Defining current range in a way that excludes these
19 areas is arbitrary because it contradicts the agency’s own evidence. *See State Farm*, 463 U.S.
20 at 43.

21 134. The Service therefore ignores the extinction risk to wolves in portions of their
22 current range. According to the Rule, the “risk of human-caused mortality . . . tends to be
23 highest for dispersing animals.” 85 Fed. Reg. at 69,794; *see also id.* at 69,789 n.3 (noting
24 wolves in large, continuous, high quality habitat have a “greater evolutionary potential
25 and resilience to stochastic events” than wolves in smaller, more isolated habitats). The
26 Service even “acknowledge[s] that both the West Coast States and central Rocky
27 Mountains portions of the combined listed entity may be at greater risk from human-
28 caused mortality or from factors related to small numbers of individuals.” *Id.* at 69,889; *see*

1 *also id.* at 69,885 (same conclusion for 44-state entity); *id.* at 69,892 (similar conclusion for
2 lower 48 United States entity).

3 135. Even though the Service finds these wolves “may be in danger of extinction
4 or likely to become so in the foreseeable future,” *id.* at 69,885, 69,889, 69,893 – which is the
5 core of the statutory definitions for an endangered or threatened species, 16 U.S.C.
6 § 1532(6), (20) – the Service ignores this threat because, according to the agency, these
7 wolves are not “significant under any reasonable definition of that term,” 85 Fed. Reg. at
8 69,885, 69,889, 69,893.

9 136. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
10 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
11 § 706(2).

12 SEVENTH CLAIM FOR RELIEF

13 (Violation of Endangered Species Act – 14 Failure to Consider Impacts from Loss of Historical Range)

15 137. Plaintiff hereby realleges and incorporates Paragraphs 1 through 136.

16 138. The Service also fails to analyze the impact of lost historical range for gray
17 wolves, in violation of the ESA and the Service’s Significant Portion of Its Range Policy.
18 Although it is permissible for the Service to define the term “range” to mean “current
19 range” for the purposes of the definitions of threatened and endangered species, the
20 Service cannot ignore the impact of lost historical range on a species’ status. *See Humane*
21 *Soc’y v. Zinke*, 865 F.3d at 606-07; *Ctr. for Biological Diversity v. Zinke*, 900 F.3d at 1066-67.

22 139. According to the Service’s Significant Portion of Its Range Policy, a species
23 may be “endangered or threatened throughout all or a significant portion of its current
24 range because [the] loss of historical range is so substantial that it undermines the viability
25 of the species as it exists today.” 79 Fed. Reg. at 37,584. The Service “must also consider the
26 causes of that loss of historical range. If the causes of the loss are still continuing, then that
27 loss is also relevant as evidence of the effects of an ongoing threat.” *Id.*

28

1 140. Instead of analyzing the impacts of lost historical range, the Service claims
2 that it “take[s] into account the effect [of] lost historical range . . . through [the] analysis of
3 the five factors described in section 4(a)(1) of the Act.” 85 Fed. Reg. at 69,793. However, at
4 no point does the Service ever actually describe how it considered the effect of lost range
5 or whether the causes of that loss are ongoing. This approach is insufficient.

6 141. In failing to consider the effects of lost historical range or if the causes of that
7 loss are ongoing, the Service “entirely failed to consider an important aspect of the
8 problem.” *State Farm*, 463 U.S. at 43.

9 142. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
10 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
11 § 706(2).

12 EIGHTH CLAIM FOR RELIEF

13 (Violation of Endangered Species Act and Administrative Procedure Act – 14 Failure to Provide Fair Notice of Alternative Analysis)

15 143. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 142.

16 144. The Rule includes a novel analysis that combines all gray wolves in the lower
17 48 into one entity for the purpose of delisting – including Northern Rockies wolves that
18 are not currently protected as endangered – that was not included in the Proposed Rule.
19 *See* 85 Fed. Reg. at 69,784 (listing this entity separately from “the approach in [the]
20 proposed rule”). This new analysis is arbitrary and capricious because it is not one that
21 “interested parties reasonably could have anticipated in the final rulemaking from the
22 proposed rule.” *Empire Health Found. for Valley Hosp. Med. Ctr. v. Azar*, 958 F.3d 873, 882
23 (9th Cir. 2020) (quotation marks omitted). It is, therefore, not a “logical outgrowth of the
24 notice and comments received.” *Id.* (quotation marks omitted).

25 145. As a part of this new alternative analysis, the Rule devotes significant ink to
26 the status and management of wolves in geographic areas that were not covered, or were
27 only covered in passing, by the Proposed Rule. *See generally* 85 Fed. Reg. at 69,797-807
28 (human-caused mortality in Idaho, Montana, and Wyoming); *id.* at 69,816 (suitable habitat

1 and prey availability in the Northern Rockies); *id.* at 69,822-25 (management in the delisted
2 Northern Rockies). This new information in turn serves as the foundation for the Service’s
3 finding about the status of wolves in the “lower 48 United States entity,” a new creation of
4 the Rule. *Id.* at 69,893.

5 146. Commenters, including scientific peer reviewers, did not have notice that the
6 Service would be examining the recovery status of Northern Rockies wolves or that the
7 Service would create a new “lower 48 United States entity.” Because the Service included
8 this information and entity for the first time in the Rule, that rule is not a logical outgrowth
9 of the Proposed Rule. *See NRDC v. EPA*, 279 F.3d 1180, 1186 (9th Cir. 2002).

10 147. Therefore, the Rule is arbitrary, capricious, and not in accordance with law
11 and should be set aside under the ESA and the APA. 16 U.S.C. §§ 1533, 1540(g); 5 U.S.C.
12 § 706(2).

13 **PRAYER FOR RELIEF**

14 Plaintiffs respectfully request that the Court:

- 15 (1) Declare that Interior and the Service acted arbitrarily, capriciously, and
16 contrary to ESA and its implementing regulations and in violation of the APA in issuing
17 the November 3, 2020 Rule;
- 18 (2) Hold unlawful and vacate the November 3, 2020 Rule;
- 19 (3) Issue injunctive relief as necessary to prevent the implementation of the Rule;
- 20 (4) Award Plaintiff its reasonable fees, costs, and expenses, including attorneys’
21 fees; and
- 22 (5) Grant Plaintiff such further and additional relief as the Court may deem just
23 and proper.

24 DATED this 25th day of January, 2021.

25 Respectfully submitted,

26 /s/ Claire Woods

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