

BILLING CODE: 4310-55

U.S. DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. XXXXX]

[FXES11130900000C2-123-FF09E32000]

RIN 1018-AY00

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Gray Wolf (*Canis lupus*) from the List of Threatened and Endangered Wildlife and Maintain Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTIONS: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS) evaluated the classification status of gray wolves (*Canis lupus*) currently listed in the contiguous United States and Mexico under the Endangered Species Act of 1973, as amended (Act). Based on our evaluation we propose to remove the gray wolf from the List of Threatened and Endangered Wildlife but to maintain endangered status for the Mexican wolf by listing it as a subspecies (*Canis lupus baileyi*). We propose these actions because the best available scientific and commercial information indicates that the currently listed entity is not a valid species under the Act and that the Mexican wolf (*C. l. baileyi*) is an endangered subspecies.

In addition, we recognize recent taxonomic information indicating that the formally listed gray wolf subspecies, *Canis lupus lycaon*, which occurs in southeastern Canada and historically occurred in the northeastern United States and portions of the upper Midwest (eastern and western Great Lakes regions) United States should be elevated to the full species *Canis lycaon*. This proposed rule also constitutes the completion of a status review for gray wolves in the Pacific Northwest initiated on May 5, 2011.

Finally, this proposed rule replaces our May 5, 2011 proposed action to remove protections for *C. lupus* in all or portions of 29 eastern states (76 FR 26086).

DATES: *Comment submission:* We will accept comments received or postmarked on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearings: We must receive requests for public hearings, in writing, at the address shown in the FOR FURTHER INFORMATION CONTACT section by **[INSERT 45 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**.

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

(1) Electronically: Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Enter Keyword or ID box, enter [Docket ID], which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to “Open” to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of <http://regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [Docket ID]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, Virginia 22203. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: [Insert name], [insert number].

Direct all questions or requests for additional information to: GRAY WOLF

QUESTIONS, U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document contains a proposed rule to remove the current listing for gray wolf, *Canis lupus*, from the List of Threatened and Endangered Wildlife (List) and add an endangered listing for the Mexican wolf, *Canis lupus baileyi*. The evaluations that are included in this proposed rule are summarized in Table 1.

Table 1. Summary of proposed rule analyses and results

Unit of Assessment	Description	Valid Listable Entity?	Determination
<i>C. lupus</i>	current listed entity - all or portions of 42 States and Mexico	no	Delist
<i>C. lupus</i>	species - rangewide	yes	Listing not warranted
<i>C. l. nubilus</i>	subspecies - rangewide	yes	Listing not warranted
<i>C. l. occidentalis</i>	subspecies - rangewide	yes	Listing not warranted
<i>C. l. baileyi</i>	subspecies - rangewide	yes	List as endangered

<i>C. lupus</i> in Pacific Northwest	Western Washington, Western Oregon, and Northern California	no	Not a listable entity
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Purpose of the Regulatory Action

This proposed rulemaking is intended to ensure the List of Endangered and Threatened Wildlife reflects the most current scientific and commercial information with respect to the status of *C. lupus* and any subspecies and potential distinct population segments of *C. lupus* in the contiguous United States. After a thorough evaluation of the best available science we have determined that, with the exception of Mexican wolves (from here on referred to by the scientific name, *Canis lupus baileyi*), *C. lupus* and *C. lupus* subspecies in the contiguous United States do not warrant listing under the Act. This evaluation was based on new data that has become available since the original listing, including new information on *C. lupus* taxonomy (Chambers *et al.* 2012 and Rutledge *et al.* 2012). *Canis lupus baileyi* continues to warrant endangered status under the Act.

Major Provision of the Regulatory Action

This proposed action is authorized by the Act. We are proposing to amend § 17.11(h), subchapter B of chapter I, title 50 of the Code of Federal Regulations by removing the entry for “Wolf, gray” under MAMMALS in the List of Endangered and Threatened Wildlife and adding an entry for “Wolf, Mexican” in alphabetic order.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our proposed actions.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of the final determination. Accordingly, the final decision may differ from this proposal.

Previous Federal Actions

Gray wolves were originally listed as subspecies or as regional populations of subspecies in the contiguous United States and Mexico. In 1967, we listed *C. l. lycaon* in the Great Lakes region (32 FR 4001, March 11, 1967), and in 1973 we listed *C. l. irremotus* in the northern Rocky Mountains (38 FR 14678, June 4, 1973). Both listings were promulgated under the Endangered Species Conservation Act of 1969; subsequently, on January 4, 1974, these subspecies were listed under the Endangered Species Act of 1973 (39 FR 1171). We listed a third gray wolf subspecies, *C. l. baileyi*, as endangered on April 28, 1976 (41 FR 17736), in the southwestern United States and Mexico. On June 14, 1976 (41 FR 24064), we listed a fourth gray wolf subspecies, *C. l. monstrabilis*, as endangered in Texas and Mexico.

In 1978, we published a rule (43 FR 9607, March 9, 1978) reclassifying the gray wolf as an endangered population at the species level (*C. lupus*) throughout the contiguous United States and Mexico, except for the Minnesota gray wolf population, which was classified as threatened. At that time, we considered the gray wolf group in Minnesota to be a listable entity under the Act, and we considered the gray wolf group in Mexico and the 48 contiguous States other than Minnesota to be another listable entity (43 FR 9607 and 9610, respectively, March 9, 1978). The separate subspecies listings thus were subsumed into the listings for the gray wolf in Minnesota and the gray wolf in the rest of the contiguous United States and Mexico. In that 1978 rule, we also identified critical habitat in Michigan and Minnesota and promulgated special regulations under section 4(d) of the Act for operating a wolf management program in Minnesota. The special regulation was later modified (50 FR 50793, December 12, 1985).

The 1978 reclassification was undertaken to “most conveniently” handle a listing that needed to be revised because of changes in our understanding of gray wolf taxonomy, and in recognition of the fact that individual wolves sometimes cross subspecific boundaries. In addition, we sought to clarify that the gray wolf was only listed south of the Canadian border. However, the 1978 rule also stipulated that “biological subspecies would continue to be maintained and dealt with as separate entities” (43 FR 9609), and offered “the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs” (43 FR 9610, March 9, 1978). Accordingly, we implemented three gray wolf recovery programs in the following regions of the country: the Western Great Lakes (Minnesota, Michigan, and Wisconsin, administered by the Service’s Great Lakes, Big

Rivers Region), the Northern Rocky Mountains (Idaho, Montana, and Wyoming, administered by the Service's Mountain-Prairie Region and Pacific Region), and the Southwest (Arizona, New Mexico, Texas, Oklahoma, Mexico, administered by the Service's Southwest Region). Recovery plans were developed in each of these areas (the northern Rocky Mountains in 1980, revised in 1987; the Great Lakes in 1978, revised in 1992; and the Southwest in 1982, the revision of which is now underway) to establish and prioritize recovery criteria and actions appropriate to the unique local circumstances of the gray wolf. A separate recovery effort for gray wolves formerly listed as *C. l. monstrabilis* was not undertaken because this subspecies was subsumed with *C. l. baileyi* and thus addressed as part of the recovery plan for the Southwest.

Between 2003 and 2009 we published several rules revising the 1978 contiguous United States and Mexico listing for *C. lupus* in an attempt to recognize the biological recovery of gray wolves in the northern Rocky Mountain and western Great Lakes populations but leave the gray wolf in the southwestern United States and Mexico listed as endangered (except for the nonessential experimental population in Arizona and New Mexico) (68 FR 15804, April 1, 2003; 72 FR 6052, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15070 and 74 FR 15123, April 2, 2009). However, each of these revisions was challenged in court. As a result of court orders (*Defenders of Wildlife, et al. v. Norton, et al.*, 354 F.Supp.2d 1156 (D. Or. 2005); *National Wildlife Federation, et al. v. Norton, et al.*, 386 F.Supp.2d 553 (D. Vt. 2005); *Defenders of Wildlife, et al. v. Hall, et al.*, 565 F.Supp.2d 1160 (D. Mont. 2008); *Defenders of Wildlife, et al. v. Salazar, et al.*, 729 F.Supp.2d 1207 (D. Mont. 2010); *Humane Society of the United States v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008)) and, in one case, a

settlement agreement (*Humane Society of the United States v. Salazar*, 1:09-CV-1092-PLF (D.D.C.)), by the spring of 2010 the listing for *C. lupus* in 50 CFR 17.11 remained unchanged from the reclassification that occurred in 1978 except for the addition of the three experimental populations (Yellowstone Experimental Population Area (59 FR 60252, November 22, 1994), Central Idaho Experimental Population Area (59 FR 60266, November 22, 1994), and the Mexican Wolf Experimental Population Area (63 FR 1752, January 12, 1998)). For additional information on these Federal Actions and their associated litigation history refer to the relevant associated rules (68 FR 15804, April 1, 2003; 72 FR 6052, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15070; and 74 FR 15123, April 2, 2009) or the Previous Federal Actions sections of our recent gray wolf actions (76 FR 61782, October 5, 2011; 76 FR 81666, December 28, 2011; 77 FR 55530, September 10, 2012).

In the northern Rocky Mountains, on May 5, 2011, we published a final rule that implemented Section 1713 of Public Law 112–10, reinstating our April 2, 2009, delisting rule which identified the Northern Rocky Mountain (NRM) population of gray wolf as a distinct population segment (DPS) and, with the exception of Wyoming, removed gray wolves in the DPS from the List (76 FR 25590). Although gray wolves in Wyoming were not included in the May 5, 2011, final delisting, we have since finalized the removal of gray wolves in Wyoming from the List (77 FR 55530, September 10, 2012).

In the western Great Lakes, on May 5, 2011, we also published a proposed rule to revise the List for *C. lupus* in the eastern United States (76 FR 26086). This proposal included (1) revising the 1978 listing of the Minnesota population of gray wolves, identifying it as the Western Great Lakes (WGL) DPS (the DPS includes all of

Minnesota, Wisconsin, and Michigan and portions of the adjacent states), and removing that WGL DPS from the List, and (2) revising the range of the gray wolf (the species *C. lupus*) by removing all or parts of 29 eastern states that we recognized were not part of the historical range of the gray wolf.

On December 28, 2011, we published a final rule that revised the listing of the Minnesota population of gray wolves, identified it as part of the WGL DPS, and removed the DPS from the List (76 FR 81666). We also notified the public that we had separated our determination on the delisting of the WGL DPS from the determination on our proposal regarding all or portions of the 29 eastern States we considered to be outside the historical range of the gray wolf and stated that a subsequent decision would be made for the rest of the eastern United States.

In the southwest, On August 11, 2009, we received a petition from the Center for Biological Diversity requesting that we list the Mexican wolf as an endangered subspecies or DPS and designate critical habitat under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that we list the Mexican wolf as an endangered subspecies and designate critical habitat under the Act. On October 9, 2012, we published a 12-month finding in the Federal Register stating that because all individuals that constitute the petitioned entity already receive the protections of the Act, the petitioned action was not warranted at that time (77 FR 61375).

As a result of the actions described above, the current *C. lupus* listed entity now includes all or portions of 42 States (Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Kansas, Kentucky, Louisiana, Massachusetts,

Maryland, Maine, Missouri, Mississippi, North Carolina, Nebraska, New Hampshire, New Jersey, Nevada, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont and West Virginia; those portions of Arizona, New Mexico, and Texas not included in the experimental population, and portions of Iowa, Indiana, Illinois, North Dakota, Ohio, Oregon, South Dakota, Utah, and Washington), and Mexico (Figure 1).

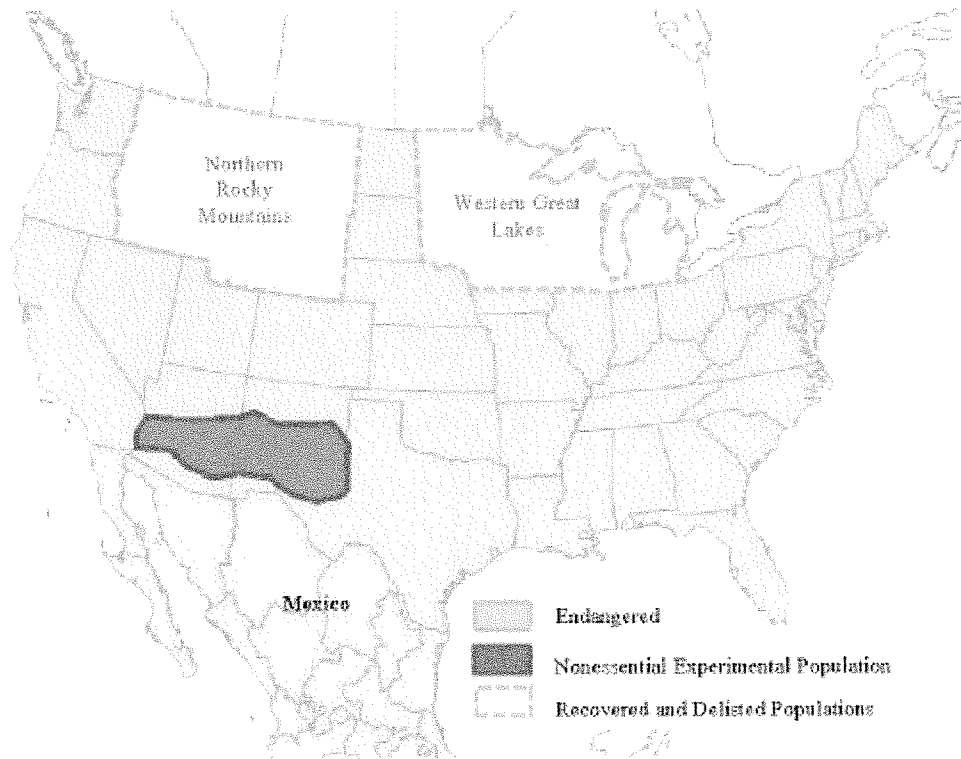


Figure 1: Current legal status of *Canis lupus* under the Act. All map lines are approximations see 50 CFR 17.11 and 17.84(k) for exact boundaries.

On February 29, 2012, we concluded a 5-year review of the *C. lupus* listed entity, recommending that the entity currently described on the List should be revised to reflect the distribution and status of *C. lupus* populations in the contiguous United States and Mexico by removing all areas currently included in the Code of Federal Regulations (CFR) range except where there is a valid species, subspecies, or DPS that is threatened or endangered.

National Wolf Strategy

We first described our national wolf strategy in our May 5, 2011, proposed rule to revise the List for the gray wolf in the eastern United States (76 FR 26086). This strategy was intended to: (1) Lay out a cohesive and coherent approach to addressing wolf conservation needs, including protection and management, in accordance with the Act's statutory framework; (2) ensure that actions taken for one wolf population do not cause unintended consequences for other populations; and (3) be explicit about the role of historical range in the conservation of extant wolf populations.

The strategy is based on three precepts. First, to qualify for listing, wolf entities must conform to the Act's definition of "species," whether as taxonomic species or subspecies or as DPSs. Second, the strategy promotes the continued representation of all substantially unique genetic lineages of gray wolves found historically in the contiguous United States. Third, wolf conservation under the Act is concerned with reducing extinction risk to imperiled species, subspecies, or valid DPSs. The May 5, 2011, proposed rule further stated that our strategy focused on conservation of four extant gray

wolf populations: (1) The western Great Lakes (WGL) population, (2) the northern Rocky Mountains (NRM) population, (3) the southwestern population of Mexican wolves, and (3) a potential population of gray wolves in the Pacific Northwest.

All of our actions to date are consistent with this focus. As stated above (see **Previous Federal Actions**), we published final rules delisting the NRM DPS, except for Wyoming, on May 5, 2011 (76 FR 25590), and the WGL DPS on December 28, 2011 (76 FR 81666). On September 10, 2012, we published a final rule delisting the Wyoming portion of the NRM DPS (77 FR 55530).

We have completed our evaluation of the status of gray wolves currently occupying portions of the Pacific Northwest and our assessment to determine if they qualify for Listing under the Act is presented in this proposed rule. The status of the southwestern population (*i.e.*, *C. l. baileyi*) was reviewed pursuant to our 90-day finding on two listing petitions (75 FR 46894, August 4, 2010). We published a not warranted 12-month finding on October 9, 2012 (77 FR 61375). However, in that finding we stated that we could not, consistent with the requirements of the Act, take any action that would remove the protections accruing to the southwestern population under the existing *C. lupus* listing without first determining whether the southwestern population warranted listing separately as a subspecies or a DPS, and, if so, putting a separate listing in place (77 FR 61377, October 9, 2012). Therefore, because we are now proposing to remove protections for the current *C. lupus* listed entity it is necessary for us to reconsider listing the southwestern population as a subspecies or DPS, and we present our analysis and determination in this proposed rule.

Our national wolf strategy also addresses the two other wolf taxa that fall within the range described for *C. lupus* in the 1978 listing, the eastern wolf (*C. lycaon*) and the red wolf (*Canis rufus*). Consistent with our current understanding of *C. lycaon* taxonomy and the historical range of *C. lupus*, our proposal to remove the current *C. lupus* entity from the List addresses the error of continuing to include all or parts of 29 eastern states in the current *C. lupus* listing. For a complete discussion of this issue see **Taxonomy** section below. With respect to the status of *C. lycaon*, our analysis is ongoing (see *C. lycaon* section below). With regard to *C. rufus*, red wolves currently are listed as endangered where found (32 FR 4001, March 11, 1967); the red wolf listing is not affected by this proposal and recovery efforts for red wolves will continue as warranted (Red Wolf Recovery and Species Survival Plan; Service 1990).

Approach for this Proposed Rule

In this proposed rule we consider whether and to what extent gray wolves should be listed in the contiguous United States and Mexico. Our analysis begins with an evaluation of the current *C. lupus* listed entity (Figure 1), with a focus on current taxonomic information and statutory and policy requirements under the Act. Consistent with our 5-year review, we conclude that the current *C. lupus* listed entity is not a valid species under the Act and now propose to remove this entity from the List (see Evaluation of the Current *C. lupus* Listed Entity). However, our 5-year review further recommends that we consider whether there are any valid species, subspecies, or DPSs of gray wolf that are threatened or endangered in the contiguous United States and Mexico.

Thus, in this rule we consider whether the current *C. lupus* listed entity is part of a valid species, or includes, any valid species, subspecies, or DPSs of gray wolf that warrant protections under the Act. Because we are considering whether protections need to remain in place for any of the gray wolves that are included in the current *C. lupus* listed entity, we are focusing our evaluation on valid listable entities (*i.e.*, *C. lupus* and subspecies and potential DPSs of *C. lupus*) with ranges that are at least partially within the contiguous United States or Mexico. In this rule we also consider recent scientific information with respect to eastern wolf taxonomy. See **Taxonomy** section for detailed discussions of the subspecies we evaluate and the Service's position on eastern wolf taxonomy.

Species Information

Biology and Ecology

The biology and ecology of the gray wolf has been widely described in the scientific literature (*e.g.*, Mech 1970, Mech and Boitani 2003), in Service recovery plans (*e.g.*, Northern Rocky Mountain Recovery Plan (Service 1987) and Recovery Plan for the Eastern Timber Wolf (Service 1992)), and in previous proposed and final rules (*e.g.*, 68 FR 15804, April 1, 2003; 71 FR 15266, March 27, 2006; 74 FR 15123, April 2, 2009; 75 FR 46894, August 4, 2010; and 76 FR 81666, December 28, 2011). Gray wolves are the largest wild members of the Canidae, or dog family, with adults ranging from 18 to 80 kilograms (kg) (40 to 175 pounds (lbs)), depending on sex and geographic locale (Mech