



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington DC, 20004



In Reply Refer To:
FWS/AES/DCC/BDFS/073807

Eric Sklar
President
California Fish and Game Commission
Post Office Box 944209
Sacramento, California 94244-2090

Dear Mr. Sklar,

We would like to thank the California Fish and Game Commission for submitting the letter of interest on July 15, 2019, commenting on the U.S. Fish and Wildlife Service's (Service) March 15, 2019, proposed rule to delist the gray wolf (84 FR 9648). We greatly appreciate the comments received from the California Fish and Game Commission on the proposed rule. The Service published a final rule delisting the gray wolf on November 3, 2020 (85 FR 69778).

Section 4(i) of the Endangered Species Act and our implementing regulations at 50 CFR 424.18(c) require the Service to provide written response to comments received from State agencies to justify adopting any final rules that are not consistent with the agency's comments. Thus, below we provide such comments and our response to those comments as presented in the final rule. The final rule, inclusive of our responses to State agency comments is available at: <https://www.govinfo.gov/content/pkg/FR-2020-11-03/pdf/2020-24171.pdf>.

Comment 52: The California Department of Fish and Wildlife expressed views concerning the added value of the Act's protections in deterring illegal take of wolves under California law. In addition, the California Fish and Game Commission questioned the completeness of our discussion of the role of public attitudes as it relates to human-caused mortality and recommended additional information for consideration.

Our Response: While the Service respects the belief that continued Federal protections would provide an additional deterrence to illegal take under existing California law, the Act requires the Service to make status determinations based on whether the species meets the definition of an endangered species or a threatened species because of the five statutory factors. Gray wolves have been illegally killed both with and without the protection of the Act (i.e., illegal under other State or Federal rules or regulations), and, although some researchers (Treves et al. 2017b) and most wildlife managers would agree that known illegal take is likely biased low, several studies have estimated that around 10 percent of the known population is illegally taken annually in the NRM (Smith et al. 2010, p. 625; Ausband et al. 2017a, p. 7), Michigan (O'Neil 2017, p. 214), and Wisconsin (Stenglein et al. 2018, p. 104). However, wolf populations remain robust and recovered in

these locations, and wolves continue to recolonize new areas of suitable habitat in the West Coast States and have begun to recolonize the central Rockies. Furthermore, it has been demonstrated that illegal take was greater during periods of Federal protections in Wisconsin compared to periods when the wolf was delisted (see Olson et al. 2014). Surveys also indicate that members of the public are more trusting of their State fish and wildlife agencies than their State or Federal Government (Manfredo et al. 2018, pp. 8, 58–68). Thus, they may be less inclined to illegally take a wolf, and be more accepting of wolves on the landscape, if they perceive that State management provides more options to mitigate conflicts. For further information, see **Our Responses to Comment 14**, as well as **Comment 19**. Also see “The Role of Public Attitudes” in the *Human-caused Mortality* section of this final rule.

Comment 63: The California Fish and Game Commission asserted that the proposed rule does not address the absence of gray wolf populations in most of the species’ historical range. They expressed concern that we interpret “range,” within the Act’s definitions of “endangered species” and “threatened species,” as current range. They stated that this creates a shifting baseline, discounts historical habitats in California and elsewhere, and ignores science and the law. Also, the Michigan Attorney General indicated that, as a result of the court opinion issued in *Desert Survivors v. U.S. Dep’t of the Interior*, 336 F. Supp. 3d 1131, 1137 (N.D. Cal. 2018), the SPR phrase in the Act’s definition of “endangered species” carries its ordinary meaning. Citing *Defenders of Wildlife v. Norton*, 239 F. Supp. 2d 9, 21 (D.D.C. 2002), the Michigan Attorney General asserted that the Service must explain its conclusion that an area in which a species can no longer live is not a significant portion of its range.

Our Response: We describe our interpretation of range and our rationale for this interpretation in detail in our SPR policy, which is legally binding (79 FR 37578; July 1, 2014). Per that policy, we interpret the term “range” in the Act’s definitions of “endangered species” and “threatened species” to be the general geographical area occupied by the species at the time the U.S. Fish and Wildlife Service or National Marine Fisheries Service makes a status determination under section 4 of the Act (79 FR 37578, July 1, 2014, p. 37583). In other words, we interpret “range” in these definitions to be the current range. Three recent court rulings have upheld our interpretation (see **Our Response to Comment 37**).

We assume the Michigan Attorney General’s statement that “the Service must explain its conclusion that an area in which a species can no longer live is not a significant portion of its range” refers to our conclusion that a species’ unoccupied historical range cannot be a significant portion of its range. The cited case, *Defenders of Wildlife v. Norton*, pre-dates our SPR policy, which interprets the term “range” in the Act’s definitions of “endangered species” and “threatened species” as current range. Based on that interpretation, if a portion of historical range is not occupied, then it is not part of the species “range” (i.e., current range) and thus cannot be a portion (significant or not) of that range. In response to several comments related to our interpretation of “range,” we have clarified our definition and treatment of range in this final rule (see *Definition and Treatment of Range*).

Comment 64: The California Fish and Game Commission indicated that establishing and maintaining robust gray wolf populations in suitable habitat across the species' historical range can help ensure long-term survival of the species and recovery success. They expressed concern that, if the species is delisted, populations could potentially stop growing or even decline due to hunting and lethal management.

Our Response: We agree that broadly distributed, robust populations help ensure the long-term survival of a species. Gray wolves have recovered in two broad regions of their historical range in the lower 48 United States (the Great Lakes States and the NRM region), and the Mexican wolf will remain listed in a third broad region. In the Great Lakes and the NRM, wolves occur as large metapopulations distributed in suitable habitat across several States. Based on an analysis of the best available data, we have determined that none of the gray wolf entities evaluated in this rule are in danger of extinction, or likely to become so in the foreseeable future, throughout all or a significant portion of its range (see **Determination of Species Status**). Although we acknowledge that human-caused mortality is likely to increase post-delisting as some States with viable gray wolf populations begin to manage wolves under the guidance of their State management plans, it is unlikely that moderate increases in human-caused mortality will cause dramatic declines in wolf populations across the gray wolf entities evaluated in this rule (see **Our Response to Comment 16**).

Comment 65: The California Fish and Game Commission asserted that Federal policy should reflect a greater commitment to active gray wolf recovery efforts, identifying and protecting critical habitat and movement corridors, maintaining a population level consistent with ecosystem functionality, and implementing innovative policy and guidance to reduce lethal control as a management strategy.

Our Response: We have been strongly committed to gray wolf recovery since the 1970s. As a result of our commitment and the commitment and recovery efforts of our State, Federal, and Tribal partners, the gray wolf entities evaluated in this rule do not meet the Act's definition of an endangered species or of a threatened species. Therefore, we are removing the currently listed *C. lupus* entities from the List. (See **Our Responses to Comments 44 and 42**).

Comment 69: The California Fish and Game Commission and several other commenters opined that much of the recovery analysis in the proposed rule is based on an outdated recovery plan using outdated science. They stated that the recovery criteria on which the rule is based do not factor in the best available science and, therefore, neither does any analysis in the rule that is based on the recovery criteria.

Our Response: Our determination is based on analysis of the best available information regarding the threats to, and viability of, the gray wolf entities evaluated in this rule. Recovery plans and recovery criteria are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. They are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. We use recovery criteria in concert with the best scientific and commercial data available at the time of the delisting determination, to determine whether threats have been minimized sufficiently and populations have

achieved long-term viability to determine whether a species meets the Act's definition of an endangered species or of a threatened species and, therefore, can be reclassified from endangered to threatened or delisted.

We appreciate the comments received from the California Fish and Game Commission on the proposed rule and value our positive working relationship with State agencies. If you have any questions, please contact me at (202) 208-4646.

Sincerely,

Assistant Director for
Ecological Services

cc: Paul Souza, Pacific Southwest Regional Director