

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2011-0032]

[92220-1113-0000; ABC Code: C6]

RIN 1018-AX81

Endangered and Threatened Wildlife and Plants; Reissuance of Final Rule to Identify the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and to Revise the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On April 15, 2011, President Obama signed the Department of Defense and Full-Year Appropriations Act, 2011. A section of that Appropriations Act directs the

Secretary of the Interior to reissue within 60 days of enactment the final rule published on April 2, 2009, that identified the Northern Rocky Mountain population of gray wolf (*Canis lupus*) as a distinct population segment (DPS) and to revise the List of Endangered and Threatened Wildlife by removing most of the gray wolves in the DPS. This rule complies with that directive.

DATES: This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Helena, MT 59601; telephone (406) 449-5225.

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains, see <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>, or contact U.S. Fish and Wildlife Service, Montana Ecological Services Field Office (see **ADDRESSES**) or telephone (406) 449-5225. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2009, we, the U.S. Fish and Wildlife Service (Service), published a final rule to remove protections of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), from most of the concurrently designated northern Rocky Mountain (NRM) gray wolf Distinct Population Segment (DPS) (74 FR 15123). Additional background information on the NRM gray wolf population, including previous Federal actions, can be found in our April 2, 2009, final rule. The complete text of the April 2, 2009, publication in the **Federal Register** can be viewed online as part of the docket for this rulemaking at <http://www.regulations.gov>.

Lawsuits challenging our April 2, 2009, final rule were filed in U.S. District Court for the District of Montana and U.S. District Court for the District of Wyoming. On August 5, 2010, the U.S. District Court for the District of Montana vacated and set aside our 2009 delisting rule (*Defenders of Wildlife et al. v. Salazar et al.*, (729 F. Supp. 2d 1207 (D. Mont.)).

On April 15, 2011, President Obama signed Public Law 112–10—The Department of Defense and Full-Year Continuing Appropriations Act, 2011. Section 1713 of Public Law 112–10 requires: “Before the end of the 60-day period beginning on the date of enactment of this Act, the Secretary of the Interior shall reissue the final rule published on April 2, 2009 (74 Fed. Reg. 15123 *et seq.*), without regard to any other provision of statute or regulation that applies to issuance of such rule. Such reissuance (including this section) shall not be subject to judicial review and shall not abrogate or otherwise have any effect on the order and judgment issued by the United States District

Court for the District of Wyoming in Case Number 09–CV–118J and 09–CV–138J on November 18, 2010.”

This final rule implements that directive. The regulatory text of this final rule differs from that of the April 2, 2009, final regulation only to reflect the withdrawal of the April 2, 2009, delisting of the western Great Lakes distinct population segment of gray wolves (74 FR 15070) pursuant to terms of a settlement agreement approved by the District Court for the District of Columbia in *Humane Society of the United States v. Salazar*, 1:09–CV–1092–PLF (D.D.C), on July 1, 2009. The preamble to the 2009 final NRM rule was explicit that the regulatory language pertaining to the western Great Lakes DPS was not attributable to the NRM rule:

“Elsewhere in today’s **Federal Register**, we also identify the Western Great Lakes (WGL) DPS and removed the gray wolves in that DPS from the List of Endangered and Threatened Wildlife. As the Service is taking these regulatory actions with respect to the NRM DPS and WGL DPS at the same time, this final rule includes regulatory revisions under § 17.11(h) that reflect the removal of the protections of the Act for both the WGL DPS and most of the NRM DPS, and reflect that gray wolves in Wyoming, an SPR of the NRM DPS range, continue to be listed as an experimental population. However, only that portion of the revised gray wolf listing in § 17.11(h) that pertains to the NRM DPS is attributable to this final rule.” [74 FR at 15184]

Effects of the Rule

Gray wolves in Montana and Idaho, as well as portions of eastern Oregon, eastern Washington, and north-central Utah, are removed from the List of Endangered and Threatened Wildlife. Gray wolves in Wyoming remain on the List of Endangered and Threatened Wildlife and continue to be subject to the provisions of our experimental population regulations codified at 50 CFR 17.84(i) and (n).

Outside Wyoming, this rule will not affect the status of the gray wolf in the NRM under State laws or suspend any other legal protections provided by State law. This rule will not affect the gray wolf's Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Concurrent Proposed Rule

In the Proposed Rules section of today's **Federal Register**, we are also publishing a proposed rule that reevaluates the listing of the western Great Lakes population of gray wolves (*Canis lupus*) and proposes to revise it to conform to current statutory and policy requirements. The rule portions for 50 CFR 17.11(h) of this final rule and the proposed western Great Lakes rule are different because the final rule depicts the listing for the gray wolf as it stands today, based on the long history of rulemaking for this species, various judicial decisions, and the recent congressional action. The rule portion of the western Great Lakes rule reflects the listing for the gray wolf as we envision it should be

unless public comments on the proposed rule provide information that persuades us that the listing should be presented differently.

Effective Date

This rule is effective upon publication in the **Federal Register**. Section 1713 of Public Law 112–10, directs us to reissue, within 60 days of enactment, the final NRM rule published on April 2, 2009. Section 1713 also expressly provides that such reissuance is not subject to any other statute or regulation that applies to such a rule.

Administrative Procedure

This rulemaking implements section 1713 of Public Law 112–10, which expressly provides that the reissuance of this rule is not subject to any other provision of statute or regulation that applies to issuance of such a rule.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for “Wolf, gray” under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 [Amended]

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* * * * *							
Wolf, gray	<i>Canis lupus</i>	Holarctic	U.S.A., conterminous (lower 48) States, except: (1) Where listed as an experimental population below; (2) Minnesota; (3) MT, ID, WY (however, <i>see</i> experimental population designation below), eastern WA (that portion of WA east of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA east of the centerline of Highway 395 south of Mesa), eastern OR (portion of OR east of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR east of the centerline of Highway 95 south of Burns Junction), and north central UT (that portion of UT east of the centerline of Highway 84 and north of Highway 80). Mexico.	E	1, 6, 13, 15, 35	17.95 (a)	N/A
Do	do	do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)

Do	do	do	U.S.A. (portions of AZ, NM, and TX— see § 17.84(k))	XN	631	N/A	17.84(k)
Wolf, gray [Northern Rocky Mountain DPS]							
	<i>Canis lupus</i>	U.S.A. (MT, ID, WY, eastern WA, eastern OR, and north central UT)	U.S.A. (WY—see § 17.84(i) and (n))	XN	561, 562	N/A	17.84(i) 17.84(n)

* * * * *

3. Amend § 17.84 by:

- a. Revising paragraphs (i)(7)(i) and (ii) and removing paragraph (i)(7)(iii);
- b. Revising the first sentence of paragraph (n)(1); and
- c. Revising paragraphs (n)(9)(1) and (ii) and removing paragraph (n)(9)(iii).

The revisions read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(i) * * *

(7) * * *

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this paragraph (i)(7) will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would take on the status for wolves in the area in which it is found unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for

examination and genetic testing by the Service or Service-designated agency.

Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it may be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it may be returned to captivity or killed.

* * * * *

(n) * * *

(1) The gray wolves (wolf) identified in paragraph (n)(9)(i) of this section are a nonessential experimental population. * * *

* * * * *

(9) * * *

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this experimental area are considered nonessential experimental animals.

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Dated: April 26, 2011

Signed: Daniel M. Ashe

Acting Director, Fish and Wildlife Service

Billing Code 4310-55-P

~~[FR Doc. 2011-10860 Filed 05/04/2011 at 8:45 am; Publication Date: 05/05/2011]~~