PETITION BEFORE THE SECRETARY OF THE INTERIOR

PETITION TO DESIGNATE A WESTERN GREAT LAKES DISTINCT POPULATION SEGMENT ("DPS") OF THE GRAY WOLF (*CANIS LUPUS*) AND REMOVE THAT DPS FROM THE LISTS OF THREATENED AND ENDANGERED SPECIES

SUBMITTED BY

PETITIONERS SPORTSMEN'S ALLIANCE FOUNDATION, MICHIGAN BEAR HUNTERS ASSOCIATION, UPPER PENINSULA BEAR HOUNDSMEN ASSOCIATION, AND WISCONSIN BEAR HUNTERS ASSOCIATION

JUNE 29, 2023

NOTICE OF PETITION

The Honorable Deb Haaland
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The Honorable Martha Williams
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*/s/ James H. Lister*_____
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Dated this 29th day of June 2023

* In preparing this petition, Petitioners consulted with Dr. M.A. Cronin to discuss and review the scientific evidence relating to the classification of gray wolves and their current status in the Lower 48 United States.

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Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Martha Williams
Director, U.S. Fish and Wildlife Service
1849 C Street NW
Washington, DC 20240

Re: Petition of the Sportsmen's Alliance Foundation to Designate a Western Great Lakes Distinct Population Segment ("DPS") of the Gray Wolf and Remove that DPS from the Lists of Threatened and Endangered Species

Dear Secretary Haaland:

The Sportsmen's Alliance Foundation, Michigan Bear Hunters Association, Upper Peninsula Bear Houndsmen Association, and Wisconsin Bear Hunters Association (collectively referred to as "Petitioners"), submit this petition to the Department of the Interior and the U.S. Fish & Wildlife Service ("the Service"), for species recognition and delisting under the Endangered Species Act ("ESA") and the Service's rules, 16 U.S.C. § 1533(b) and 50 C.F.R. § 424.14.[1]

Petitioners ask the Service to designate gray wolves located in Minnesota, Wisconsin, Michigan, and surrounding areas in neighboring states as the Western Great Lakes Distinct Population Segment ("WGL DPS"), with the boundaries to be identical to those previously established by the Service in prior rulemaking. 76 Fed. Reg. 81,670. Simultaneously, Petitioners request that the Service remove the WGL DPS from the ESA's lists of threatened and endangered species ("delist"). The proposed WGL DPS satisfies the criteria to be listed as a distinct population segment ("DPS") and is fully recovered, exceeding both the Service's

[1] Pursuant to 50 C.F.R. § 424.14(h)(ii), in evaluating this petition the Service considers the information set forth or cited to in the petition below. Additionally, the Service may consider "information readily available" to it which may help provide additional context or assist in the Service's evaluation of the petitioned action. As such, Petitioners urge the Service to also take into consideration the scientific evidence and data readily available through its own ongoing status review of *Canis lupus*. *See* U.S. Fish and Wildlife Service Statement on the Gray Wolf in the Lower-48 United States, Feb. 13, 2023 https://www.fws.gov/media/2023-usfws-gray-wolf-statement (last visited June 27, 2023).

recovery goals and the recovery goals for each of the individual States. Analysis of the ESA factors considered in the listing, down-listing, or delisting of a species provided in 16 U.S.C. § 1533(a) shows that the WGL wolves are not in danger of extinction, now or in the foreseeable future. Therefore, the Service should act to designate and remove the WGL DPS from the list of threatened and endangered species pursuant to 16 U.S.C. § 1533(c).

I. EXECUTIVE SUMMARY

The gray wolf, *Canis lupus*, is a success story in the conservation and recovery of species under the ESA. At the time the species was first listed for federal protections, originally in 1967 under the Endangered Species Preservation Act and subsequently again in 1978, when the Service revised protections for the gray wolf after the passage of the ESA, gray wolves had been eliminated from much of its historic range across the United States. The sole remaining populations of gray wolves in the Lower 48 United States were approximately 1,000 wolves in northeast Minnesota and a small isolated population on Isle Royale, Michigan.[2] Since then, gray wolf populations in the Lower 48 United States have more than quintupled in size, the species has established robust populations in Minnesota, Michigan, Wisconsin, and the northern Rocky Mountains, and gray wolves continue to expand across the Western United States.[3]

This petition specifically addresses gray wolves within the Western Great Lakes region of Minnesota, Michigan, Wisconsin, and surrounding areas in bordering states. Since receiving federal and state protections the Western Great Lakes gray wolves have thrived, exceeding federally established criteria for the recovery of the species for more than 25 consecutive years.

The Service recognizes the recovery of the WGL DPS. In 2020, the agency published a "Gray Wolf Biological Report: Information on the Species in the Lower 48 United States" (referred to henceforth as "USFWS 2020"). In the report, the Service comprehensively reviewed the best scientific evidence and data regarding the gray wolf's historic status and tracked the species' population and range since its listing under the ESA. The Service concluded in USFWS 2020 that wolf populations in Minnesota, the Upper Peninsula of Michigan, and Wisconsin have stabilized, that wolves there have access to high quality habitat with abundant prey, and that the species currently inhabits most, if not all, suitable habit within that region.[4]

The Service has successfully established in appellate courts that it is permissible and in accordance with the ESA to designate and delist a recovered DPS of an endangered or threatened species, whether or not delisting of the species as a whole is warranted. *See Humane Soc'y of United States v. Zinke*, 865 F.3d 585, 600 (D.C. Cir. 2017). Further, in litigation regarding multiple rulemakings delisting the WGL DPS since 2007, courts have accepted the Service's factual findings that the WGL DPS is fully recovered and constitutes a valid DPS in accordance

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2 U.S. Fish & Wildlife Service's Gray Wolf Biological Report: Information on the Species in the Lower 48 United States, October 13, 2020.

3 *Id.*

4 *Id.* at p. 28.

with the definition established in the Service's 1996 *DPS Policy.*[5] No court has ruled that the WGL DPS is not a recovered entity, but courts have still hesitated to affirm delisting, instead choosing to vacate prior rules delisting Western Great Lakes wolves out of concern for the effects those rules had on listed wolves outside of the WGL DPS.

In 2017 though, the U.S. Court of Appeals for the District of Columbia set forth a blueprint establishing the means to permissibly delist the WGL DPS in future rulemaking action. In *Humane Society of United States v. Zinke*, the Court of Appeals held the Service can delist DPS segments created from populations that are already listed threatened or endangered species, so long as in its DPS analysis the Service considers the non-DPS remnant of the listed species and provides a pathway to continue protecting the non-recovered remnant under the ESA.[6] So long as delisting the DPS will not create a situation resulting in the *de facto* delisting of the entire species because the remnant is no longer protectable under the ESA, and a separate issue regarding historical range is addressed, simultaneous recognition and delisting of a recovered DPS is permissible and appropriate.[7] Thus, the Court of Appeals established a roadmap for a future delisting of the WGL DPS.

Rather than following the path created by the Court in *Humane Society v. Zinke*, the Service issued a more ambitious rule in 2020 delisting the entirety of Lower 48 gray wolves from the ESA's endangered and threatened lists.[8] Although the available scientific evidence and data for wolf populations may support delisting the entirety of the species, once again a District Court vacated the delisting, holding that the Lower 48 delisting rule avoided consideration of remnant West Coast wolves by only considering core populations of Great Lakes wolves and Northern Rocky Mountains wolves.[9] An appeal of that decision is currently stayed while the Service completes a new status-review for gray wolves in the Lower 48 states and prepares a new proposed rule concerning the listing status of the species anticipated, to be released in February 2024.[10]

Considering the persistent challenges the Service has faced in judicial review concerning the delisting of gray wolves, Petitioners urge the Service to follow the more cautious, restrained approach towards delisting endorsed by the Court of Appeals' 2017 ruling in *Humane Society v. Zinke*. The WGL DPS this petition identifies is the same geographic area as the Western Great

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5 *Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act,* 61 Fed. Reg. 4,722-01, (Feb. 7, 1996) ("*DPS Policy"*).

6 *Humane Soc'y of United States v. Zinke*, 865 F.3d 585, 602 (D.C. Cir. 2017).

7 *Id.* at 603.

8 *Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife*, 85 Fed. Reg. 69,778-01 at 69,786 (Nov. 3, 2020) (referred to hereafter as the "2020 Lower 48 Rule") (since vacated in *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812, 830 (N.D. Cal. 2022)).

9 *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812, 824 (N.D. Cal. 2022).

10 *See* the Service's statement, https://www.fws.gov/media/2023-usfws-gray-wolf-statement (last visited June 27, 2023).

Lakes DPS that the Service previously designated for delisting in the 2011 WGL Rule that was the subject of that decision.[11] In addition to presenting evidence establishing that the WGL DPS remains fully recovered, this petition also addresses the remnant West Coast wolves and how that population remains a listable entity eligible for continued ESA protections.

Furthermore, concurrently with this petition, and to address remnant wolves in more detail, Petitioners also submit a separate petition addressing the remaining listed Lower 48 wolves outside of the WGL DPS. In that companion petition, Petitioners urge the Service to (a) recognize the entire remnant population as a listable entity with continued ESA protections and (b) recognize a West Coast Wolves DPS and down-list that population of remnant wolves from endangered to threatened. Petitioners urge the Service to consider these petitions jointly, as such a review will comprehensively address any questions as to the status of remnant wolves outside of the WGL DPS.

Adopting the approach urged by these two petitions will satisfy the procedural and analytical requirements described in *Humane Society v. Zinke* for a valid recognition and delisting of the Western Great Lakes wolves, allowing the Service to delist a population it has determined to be fully recovered for more than 20 years.

II. REGULATORY HISTORY, HISTORIC ABUNDANCE, AND THE RECOVERY OF WESTERN GREAT LAKES WOLVES

A. Introduction

The gray wolf has the scientific name *Canis lupus*, and is commonly referred to as the "gray wolf" or the "eastern timber wolf" for gray wolves located in the eastern United States. The gray wolf was originally listed as an endangered species under the Endangered Species Preservation Act in 1967. In 1978, after the passage of the ESA in 1973, the Service revised its protections for gray wolves.[12] Gray wolves within Minnesota were listed as threatened species, and gray wolves everywhere else within the Lower 48 United States were listed as endangered.

In accordance with 16 U.S.C. 1533(f), the Service was required to develop and implement a recovery plan for species listed under the ESA setting forth objective, measurable recovery criteria that once met should result in the delisting of the species. In 1978, the Service issued a recovery plan for the eastern timber wolf or eastern gray wolf, which was subsequently revised in 1992. This 1992 Wolf Recovery Plan remains the Service's current and controlling plan setting forth recovery criteria for the Western Great Lakes gray wolves.[13]

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[11] *Endangered and Threatened Wildlife and Plants; Revising the Listing of the Gray Wolf (Canis Lupus) in the Western Great Lakes; Final Rule*, 76 Fed. Reg. 81,666 at 81,668 (Dec. 28, 2011) (referred to hereafter as the "2011 WGL Rule") (Vacatur of the rule affirmed in *Humane Soc'y of United States v. Zinke*, 865 F.3d 585, 602 (D.C. Cir. 2017)).

[12] *See* 43 Fed. Reg. 9,607 (Mar. 9, 1978).

[13] The 1992 Wolf Recovery Plan is available for review on the Service's website at https://www.fws.gov/node/68397 (last visited June 27, 2023).

As will be established in this petition, gray wolves in the proposed WGL DPS have fully recovered. They are not likely to become extinct now or in the foreseeable future. First, following the implementation of the federal protections afforded to the species in 1967, the Minnesota gray wolf population steadily grew and began dispersing into neighboring states successfully leading to the repopulation of wolves in Michigan and Wisconsin. Western Great Lakes wolves have exceeded federal recovery criteria and the goals set forth in each state's individual recovery and wolf management plans for over twenty years. Population data and the best available scientific evidence establishes that the combined population of gray wolves in Minnesota, Wisconsin, and Michigan exceeded 4,000 wolves in 2022.[14] Second, an evaluation of the factors considered in listing or delisting species, 16 U.S.C. § 1533(a)(1), demonstrates that there are no existing trends or threats that project a potential decline in population threatening the continued sustainability of gray wolf populations. Finally, state wolf management plans for each of these three states express a commitment to continue to manage the population well above recovery thresholds.

In its 2011 WGL Rule and 2020 Lower 48 Rule, the Service itself found that the population of Western Great Lakes wolves meets and exceeds all relevant recovery goals under the 1992 Wolf Recovery Plan. Likewise, in the 2011 WGL Rule, the Service found that Western Great Lakes constitute a valid distinct population segment. Although these two rules were ultimately judicially vacated, primarily due to concerns over a lack of consideration as to how delisting would affect remnant wolf populations outside of the Western Great Lakes, the rulings did not invalidate the Service's conclusions that the WGL DPS is recovered per its federal recovery criteria and can qualify as a valid DPS.

As support for this delisting petition, Petitioners incorporate by reference the Service's fact-findings from its prior 2011 WGL Rule and 2020 Lower 48 Rule. Additionally, Petitioners incorporate the Service's 2020 Biological Report for the species, which set forth the latest collection and analysis of scientific evidence and data regarding the taxonomy of gray wolves, their historic range and populations, and population trends from the listing of the species through to the reports publication in late 2020. The Service has not withdrawn the USFWS 2020 Report and it remains a valuable resource assessing the status of gray wolves, with this petition supplementing additional population data for the years since its publishing. Petitioners further incorporate Minnesota's 2023-2032 Wolf Management Plan, Michigan's 2022 Wolf Management Plan, and Wisconsin's 2022 Draft Wolf Management Plan, as well as Minnesota's 2022 Wolf Population Update, Wisconsin's 2021-2022 Gray Wolf Monitoring Report, and reports establishing Michigan's 2022 wolf survey population findings. Finally, the Service is presently undertaking a gray wolf status review, and the material generated in that effort is available to the Service and should be considered in the evaluation of this petition and its companion petition.

Bringing the data from the Service's 2020 rulemaking current to the present, Western Great Lakes wolf populations remain stable, persisting well above federal recovery and state management goals. They are not endangered, nor are they at risk of becoming endangered

[14] *See* Part II, Section C-D's discussion of the recovery and current abundance of WGL DPS gray wolves.

within the foreseeable future. Petitioners respectfully submit that the available information demonstrates that the WGL DPS is a valid, fully recovered DPS and that the Service should act to remove the WGL DPS from the list of threatened and endangered species pursuant to 16 U.S.C. § 1533(c). The petition complies with all requirements set forth in 50 C.F.R. § 424.14 (a)-(d).[15] As such Petitioners request the Service take the following action:

(a) acknowledge receipt of this petition within 30 days of its filing, as required by 50 C.F.R. § 424.14(f)(2);

(b) within 90-days find that designating a Western Great Lakes DPS and delisting that DPS "**may** be warranted," 50 C.F.R. § 424.14(h)(1), and proceed to make a 12-month finding assessing the petition, 50 C.F.R. § 424.14(f)(3);[16]

(c) issue a new proposed rulemaking seeking public comment on the designation and delisting of the WGL DPS; and

(d) issue a final delisting rule for the WGL DPS.

The Service should also address the companion petition which discusses wolves outside the proposed WGL DPS in greater detail than this petition.

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[15] In 2021, the Ninth Circuit Court of Appeals in *Friends of Animals v. Haaland*, ruled that pre-filing notice requirements in 50 C.F.R. § 424.14(b) and (c)(9) conflict with the plain language of the ESA creating procedural hurdles for petitioners contrary to the intent of the ESA. *Friends of Animals v. Haaland*, 997 F.3d 1010, 1017 (9th Cir. 2021). The **Ninth Circuit preempted the pre-file notice rule as being inconsistent with the statutory scheme of the ESA and overturned the Service's decision to deny a petition that did not comply with pre-filing notice requirements**. *Id.* As such, there is no requirement that Petitioners provide notice or proof of notice to the WGL DPS states before filing this petition with the Service.

[16] Petitioners need only establish that desilting **may** be warranted. The standard required for a petitioner to submit "substantial evidence" sufficient to establish that delisting may be warranted "is not a rigorous one…the standard in reviewing a petition to delist does not require conclusive evidence that delisting is warranted." *Buffalo Field Campaign v. Zinke*, 289 F. Supp. 3d 103, 106 (D.D.C. 2018). *See also Moden v. U.S. Fish & Wildlife Serv.*, 281 F. Supp. 2d 1193, 1203 (D. Or. 2003) (Petitioners need only provide enough evidence such that a "reasonable person could conclude that delisting may be warranted.").

This petition necessarily meets these requirements and provides sufficient evidence to establish that delisting may be warranted because the Service itself has already found three times that the Western Great Lakes wolves constitute a significant and discrete DPS and has determined as recently as 2020 that wolves in the Western Great Lakes exceed federal and state recovery goals. Although those prior rulemakings were ultimately vacated, the scientific evidence and data indicates wolf populations in the Western Great Lakes remain stable and continue to support the Service's prior conclusions and establish that delisting WGL DPS may be warranted.

B. Regulatory History Regarding the Western Great Lakes Wolves and Requested Action

Initial federal protections for gray wolves were implemented in 1967 and reclassified in 1978 after passage of the ESA, listing gray wolves as threatened within the State of Minnesota and endangered through the remainder of the Lower 48 United States. The listing predates the Service's 1996 establishment of a *DPS Policy*.[17]

In recognition of the recovery of Western Great Lakes wolves and in efforts to update ESA listings for the gray wolf so that they comport with the Service's current ESA policies and the ESA's statutory definitions, the Service has engaged in a series of multiple rulemakings from 2003 through 2020.[18] These rulemakings have primarily taken the form of efforts to replace the two tiers of listings for gray wolves as either endangered in the Lower 48 United States or threatened if located in Minnesota, and to instead reclassify gray wolves by designating regional DPS populations that comply with the 1996 *DPS Policy*, which reflect the geographic separation between populations of gray wolves and the different recovery status of those populations.

The Service first established a Western Great Lakes DPS consisting of Minnesota, Michigan, Wisconsin, and bordering areas in neighboring states through a 2007 Final Rule that simultaneously recognized and delisted the WGL DPS finding Western Great Lakes wolves were fully recovered.[19] That rule was judicially vacated by the District Court for the District of Columbia because the Court found that the text of the ESA was ambiguous as to whether simultaneous recognition and delisting of a DPS is permissible under the ESA. *Humane Soc. of U.S. v. Kempthorne*, 579 F. Supp. 2d 7, 18 (D.D.C. 2008). In response, and based upon a Department of the Interior Solicitor's Opinion issued on December 12, 2008, the Service reconsidered the ambiguity within the text of the ESA and interpreted the statute as allowing such simultaneous recognition and delisting of a DPS.[20] Accordingly, in December 2011, the Service once again published a final rule (the 2011 WGL Rule) recognizing and delisting the WGL DPS.[21]

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[17] *Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act,* 61 Fed. Reg. 4,722-01, (Feb. 7, 1996) ("*DPS Policy"*); *See* 2020 Lower 48 Rule, 85 Fed. Reg. at 69,783.

[18] The 2020 Lower 48 Rule includes a thorough discussion of Service's rulemaking efforts to update gray wolf ESA listings and Table 1 of the 2020 Lower 48 Rule provides a list of Key Federal Regulatory Actions pertaining to the Gray Wolf. *See* 2020 Lower 48 Rule, 85 Fed. Reg. at 69,780.

[19] 72 Fed. Reg. 6,051 (Feb. 8, 2007).

[20] *See* Solicitor, Department of the Interior, Memorandum M-37018, pp. 3-18, (Dec. 12, 2008) (Concluding that using a DPS to evaluate the Western Great Lakes population of gray wolves as a separate "species" under the ESA in order to continue to extend ESA protections to other gray wolves while delisting the recovered Western Great Lakes population was consistent with the language, goals, and policies of the ESA.) https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37018.pdf (last visited June 27, 2023).

[21] 2011 WGL Rule 76 Fed. Reg. 81,666.

Advocacy groups filed suit challenging, amongst other claims, the Service's assertion that the ESA permits the creation of a DPS from a species already listed under the ESA for the purposes of then simultaneously delisting that DPS as a recovered species. The Court of Appeals for the District of Columbia ultimately affirmed vacatur of the 2011 WGL Rule on other grounds,[22] but ruled that the ESA does allow simultaneous recognition and delisting of a DPS. The Court stated "the Service permissibly concluded that the Endangered Species Act allows the identification of a distinct population segment within an already-listed species, and further allows the assignment of a different conservation status to that segment if the statutory criteria for uplisting, downlisting, or delisting are met." [23] Thus, although the 2011 WGL Rule was vacated, the Court of Appeals held an action by the Service simultaneously recognizing and delisting a DPS from an already listed species is authorized by the text of the ESA.

Most recently the Service issued its latest rulemaking addressing the status of gray wolves in November 2020. Instead of continuing down the path of recognizing and delisting DPS segments, which the Court in *Humane Society v. Zinke* provided a road map for, the Service chose to delist all Lower 48 gray wolves.[24] Even so, the 2020 Lower 48 Rule necessarily and extensively addressed Western Great Lakes wolves as part of the Service's analysis of the recovery of the species as a whole. Again, the service concluded that Western Great Lakes wolves are fully recovered, meeting and exceeding the species' recovery criteria.[25] Ultimately, the U.S. District Court for the Northern District of California vacated the 2020 Lower 48 Rule, finding that the Service did not properly consider remnant populations such as West Coast wolves when concluding that core populations in the Great Lakes and the Northern Rocky Mountains were sufficiently recovered.[26] As a result, presently the 1978 ESA protections for gray wolves remain in place with two listings for gray wolves: 1) gray wolves in Minnesota are listed as threatened species and 2) gray wolves in the rest of the Lower 48 United States, excluding the Congressionally delisted Northern Rocky Mountain DPS, are listed as endangered species (Alaska is outside the Lower 48 and so wolves there have never been a part of the Lower 48 listing).

Given the Court of Appeals' ruling in *Humane Soc'y of United States v. Zinke*, the Service can establish a DPS from an already listed species in order to reclassify or remove the

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22 The Court of Appeals ruled that when creating a DPS to delist a recovered population of an endangered species, the Service must also consider the "remnant" of the species not included within that DPS. In the process of desilting a DPS, the Service cannot also de facto delist the entire species by creating a situation where the remnant no longer qualifies as a listable species under the ESA. Because the Service did not consider the remnant gray wolves not included within the WGL DPS in its 2011 WGL Rule, the Court of Appeals found the rule arbitrary and capricious. *Humane Soc'y of United States v. Zinke*, 865 F.3d 585, 602 (D.C. Cir. 2017).

23 *Humane Soc'y of United States v. Zinke*, 865 F.3d 585, 600 (D.C. Cir. 2017).

24 85 Fed. Reg. 69,778-01.

25 *Id.* at 69,889.

26 *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812 (N.D. Cal. 2022).

DPS from the ESA's threatened and endangered lists, so long as the created DPS meets the criteria for a valid DPS and the remnant of the species not included within the DPS will not automatically lose ESA protections due to the delisting.

One aspect of the history of efforts to delist Western Great Lakes wolves has been relatively uncontroversial – no court has criticized the Service for concluding that Western Great Lakes wolves are discrete from other gray wolves and significant to the taxon, and so qualify as a DPS. The Service's 1996 *DPS Policy* has opined that a valid DPS must be both discrete from the remainder of the species and significant to the species to which it belongs. *DPS Policy* at 61 Fed. Reg. 4,725. The Western Great Lakes population of gray wolves satisfy both these criteria. The WGL DPS is geographically distinct from western and rocky mountain gray wolves. Roughly 400 miles separate the WGL DPS from Northern Rocky Mountain wolves and there is no record of dispersal between those two populations. The WGL DPS is significant to the gray wolf species as a whole both in its proportion of the current population and for its status as the only established population in the eastern United States, a significant portion of the gray wolf's historic range. Furthermore, as will be discussed in both this petition and the companion petition addressing gray wolves outside of the WGL DPS, the remnant population of listed western gray wolves located in central Washington, central Oregon, northwestern California, and the population expanding naturally and by planned reintroduction into Colorado, will remain a listable species eligible for ESA protections if such protections are warranted.

C. Abundance and Recovery of WGL Gray Wolves

The Service's 2020 Gray Wolf Biological Report presents a detailed analysis tracking historic populations and the recovery of Great Lakes wolves from European settlement through 2020. Petitioners encourage the Service to refer back to USFWS 2020 as the collection of the best scientific evidence discussing the population trends and current abundance of gray wolves.[27] Petitioners summarize the Service's findings below and supplement these findings with additional population data made available in the two and a half years since publication of the USFWS 2020 Report.

This information should be read with the analysis of the ESA listing factors (discussed in Part II, Section D below) to evaluate the current biological recovery status of the Western Great Lakes wolves.

[27] Additionally, within the 2020 Lower 48 Rule itself the Service also presented its findings for the historical range and abundance of gray wolves, current population trends for gray wolves, and the recovery of wolves in Minnesota, Michigan, and Wisconsin at 85 Fed. Reg. 69,787 through 69,792. The Judicial decision vacating the rule did not contest or dismiss the Service's factfinding regarding recovery of the species in these states.

1. Distribution and Abundance of WGL DPS Wolves as of the Service's 2020 Lower 48 Rule

Historically, the gray wolf's range spanned throughout most of North America prior to European settlement.[28] Within the Great Lakes, historical estimates approximate that 4,000 to 8,000 wolves existed in Minnesota, 3,000 to 5,000 wolves existed in Wisconsin, and up to 6,000 wolves lived in Michigan.[29] Due primarily to habitat loss, human conflict, and the intentional take of wolves through state-sponsored trapping and bounties, most of the gray wolf population in the Lower 48 states was eliminated by the 1960s with the only significant Lower 48 population occurring in northern Minnesota, with less than 1,000 individuals.[30] Gray wolves were extirpated in Wisconsin by 1960 and while the species was not fully extirpated in Michigan, by 1973 the population of the species within the state was limited to six individuals within the upper peninsula and an isolated population on Isle Royale.[31] In 1978, when the Service reclassified several gray wolf subspecies listings into a Lower 48 and Minnesota gray wolf listing under the ESA, the only gray wolves present in the Lower 48 states were populations in northeastern Minnesota, Isle Royale, Michigan, and a small number of breeding wolves that had begun dispersing into Wisconsin.[32] Since 1978, the population of gray wolves within the WGL DPS steadily grew and has since stabilized as gray wolves approach their carrying capacity and maximum occupancy of suitable habitat in these states.[33]

Gray Wolves in Minnesota

In Minnesota, the range and population of gray wolves within the state had persistent annual growth from the 1978 listing through to the 1997-1998 winter season. At that time, approximately 2,445 wolves in 385 packs existed over a contiguous range of 33,971 square miles in the State, more than doubling the size and range of the population recorded in the 1978 winter survey.[34] Following 1998, growth of Minnesota's gray wolf population slowed and has since remained relatively stable. The population reached an apex of 3,020 wolves during the 2003-04 winter season. In the three winters when gray wolves were federally delisted (2012-14), gray wolf populations ranged between approximately 2,200 to 2,400 individuals before slowly increasing to an estimated overwinter population of 2,655 in 2017-18. Similarly, the growth of the species' range within the state slowed, having reached and remained at an estimated

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28 USFWS 2020 at p. 9.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.* at pp. 12-13.

33 For an easily reviewable collection of population data for the WGL DPS, we recommend review of Appendix 1 to USFWS 2020 where the Service created a table tracking annual minimum winter wolf populations for Minnesota, Wisconsin, and Michigan from 1976 through winter 2018-2019.

34 USFWS 2020 at pp. 20-21.

contiguous range of 36,718 square miles since 2013. The Service concluded from this data that since 1998 "there has been no statistically significant change in Minnesota's wolf population" and "over the past 15 or more years [2005-20], the population size and range have remained stable as most of the suitable habitat [in Minnesota] has been occupied."[35] Further, the Service found that "wolves have successfully colonized most, perhaps all, suitable habitat in Minnesota."[36]

Gray Wolves in Wisconsin

Wisconsin's Department of Natural Resources began monitoring and tracking wolf populations within the state beginning in 1979. Initially, population growth within the state was relatively slow following the 1978 ESA reclassification. However, by the late 1980s the population began displaying consistent annual growth increasing until 2012 when the species had a minimum population of 815 wolves.[37] Between 2012 and 2014, when wolves were federally delisted, Wisconsin authorized an annual hunting season in the State and managed the population such that it had a population of 746 wolves in 2014.[38] Federal relisting (by judicial decision) occurred in 2014. The population then grew for several more years before stabilizing. Populations from 2017 to 2019 remained practically identical with minimum counts of wolves ranging from 905 to 925 individuals.[39] Furthermore, because until 2020 the Wisconsin DNR used minimum counts focused on wolf packs for its population surveys, the Service concluded that these population figures likely undercounted the total number of wolves within the state.[40] In addition to the increase in population, the total range for gray wolves in Wisconsin grew from a range of essentially zero square miles in the 1960s to over 28,000 square miles in 2021, roughly a third of the State.[41]

Gray Wolves in Michigan

Gray wolf recovery was first documented in the Upper Peninsula of Michigan ("UP") in the late 1980s. The Michigan Department of Natural Resources completes annual winter surveys of the gray wolf population in the UP. Michigan's annual surveys indicate that gray wolf populations in the UP rapidly grew at a rate over 25% until 2000 before annual growth slowed to

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35 *Id.*

36 *Id.* at p. 27.

37 *Id.* at p. 22.

38 *Id.*

39 *Id.*

40 *Id.* at p. 22.

41 Wisconsin's 2022 Gray Wolf Monitoring Report, p. 21, https://widnr.widen.net/s/nlrl7tzdw5/wisconsin_gray_wolf_report_2022 (last visited June 27, 2023).

10.1% from 2001 through 2010.[42] By 2011, the population of gray wolves in the UP reached 687 estimated individuals and populations have remained stable since then with a population of 695 wolves in 2020.[43] From 2011 through 2020 the 95% confidence intervals for the annual wolf populations estimates consistently overlapped, ranging from 615 to 695 animals, indicating that the gray wolf has likely reached its carrying capacity within the UP.[44] While gray wolves demonstrated significant recovery in the UP, at the time of the Service's 2020 Lower 48 Rule only a few occasional dispersers had been recorded in the state's Lower Peninsula. There is no record of a breeding population establishing itself in Michigan's Lower Peninsula.[45]

2. Distribution and Abundance of Wolves in the WGL DPS since the 2020 Lower 48 Rule

In the two and a half years since the Service issued its 2020 Lower 48 Rule, gray wolf populations within the WGL DPS have remained stable, even accounting for the period of time from November 3, 2020 through February 10, 2022 when the species was federally delisted. The most recent 2022 population data from the states identified 2,691 wolves in Minnesota, 631 wolves in Michigan, and 972 wolves in Wisconsin.[46] These populations well exceed federal recovery goals of a minimum Minnesota population of 1,400 wolves and a minimum combined population of 100 wolves in Michigan and Wisconsin.

Minnesota's Department of Natural Resources reported in 2022 that the wolves' territory, winter pack size, and overall winter population continues to remain stable at levels consistent with estimates occurring since Minnesota began annual population surveys in 2012.[47] Minnesota estimated a 2021-2022 mid-winter wolf population of 2,691 wolves with a 90% confidence interval (creating a range of 2,173 to 3,240 wolves).[48] The confidence interval was nearly identical to that of the 2020-2021 estimate, indicating that population level did not meaningfully change between 2021 and 2022.[49]

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42 USFWS 2020, pp. 23-24.

43 *Id*.

44 Michigan 2022 Wolf Management Plan, pp. 19, available https://www.michigan.gov/-/media/Project/Websites/dnr/Documents/WLD/Mgt/Wolf/wolf_management_plan.pdf?rev=4f3ba01505314dbd9fab85dac0711e19 (last visited June 27, 2023).

45 *Id.*

46 *See* Minnesota Wolf Population Update 2022; Article discussing Michigan DNR's release of 2022 wolf population survey data https://www.sooeveningnews.com/story/news/environment/2023/02/04/michigan-dnr-releases-2022-wolf-population-survey/69867222007/ (last visited June 27, 2023); and Wisconsin's 2022 Gray Wolf Monitoring Report.

47 Minnesota Wolf Population Update 2020, at pp. 4-6.

48 *Id.* at 6.

49 *Id.*

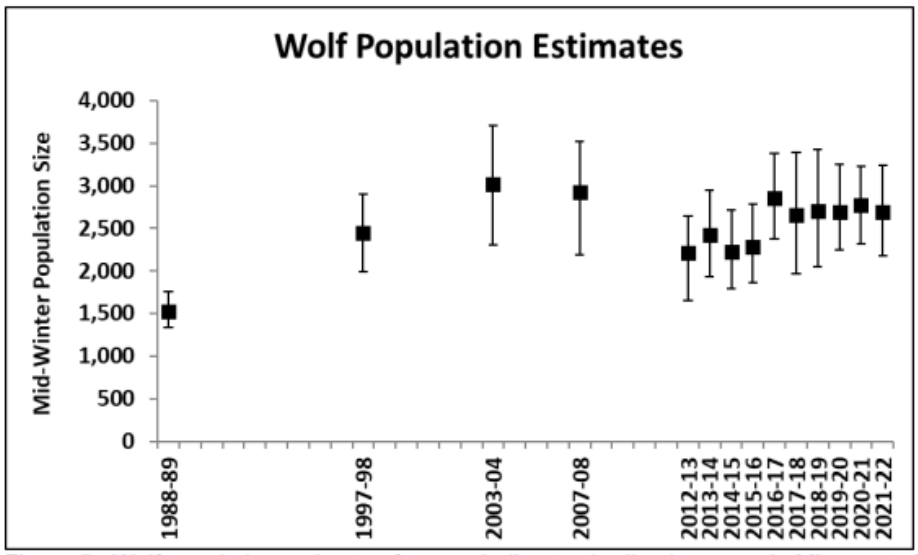

Figure 5. Wolf population estimates from periodic standardized surveys in Minnesota from winter 1988-89 to 2021-22.

Additionally, since the Service's 2020 Lower 48 Rule Minnesota released a new 2023-2032 Wolf Management Plan.[50] Within that plan, Minnesota's Department of Natural Resources notes that the population of gray wolves in Minnesota has not dropped below 1,600 since the late 1980s, has now stabilized at approximately 2,700 wolves, and that wolves likely occupy all larger patches of suitable habitat in the state.[51]

Wisconsin annually releases wolf monitoring reports that provide an estimated winter population for the species. In 2020, Wisconsin began using a scaled occupancy model to calculate estimated populations of winter wolves in the state instead of its prior annual minimum count methodology. This methodology accounts for wolves that were potentially undetected under the former minimum count methodology and was tested over there years which confirmed population estimates under the minimum count methodology were within the confidence interval for population estimates under the scaled occupancy model. Wisconsin reported respective populations of 1,195 wolves and 1,126 wolves in 2020 and 2021.[52] In 2022, Wisconsin reported a population of 972 wolves with a 95% confidence interval (providing a range of 812-1,193 wolves).[53] The population slightly declined due to the State holding a hunting season in 2021 for the first time in Wisconsin since 2014, which resulted in the take of 218 wolves. Even with increased mortality due to the hunting season, wolf populations in Wisconsin remain well above

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50 Minnesota Wolf Management Plan 2023-2032, available for review at https://www.dnr.state.mn.us/wolves/wolf-plan.html (last visited June 27, 2023).

51 Minnesota 2023 Wolf Management Plan, p. 28.

52 Wisconsin's 2022 Gray Wolf Monitoring Report, p. 22.

53 *Id.* at p. 4.

federal recovery criteria and the State's wolf management goal of maintaining a population of 350 wolves.[54]

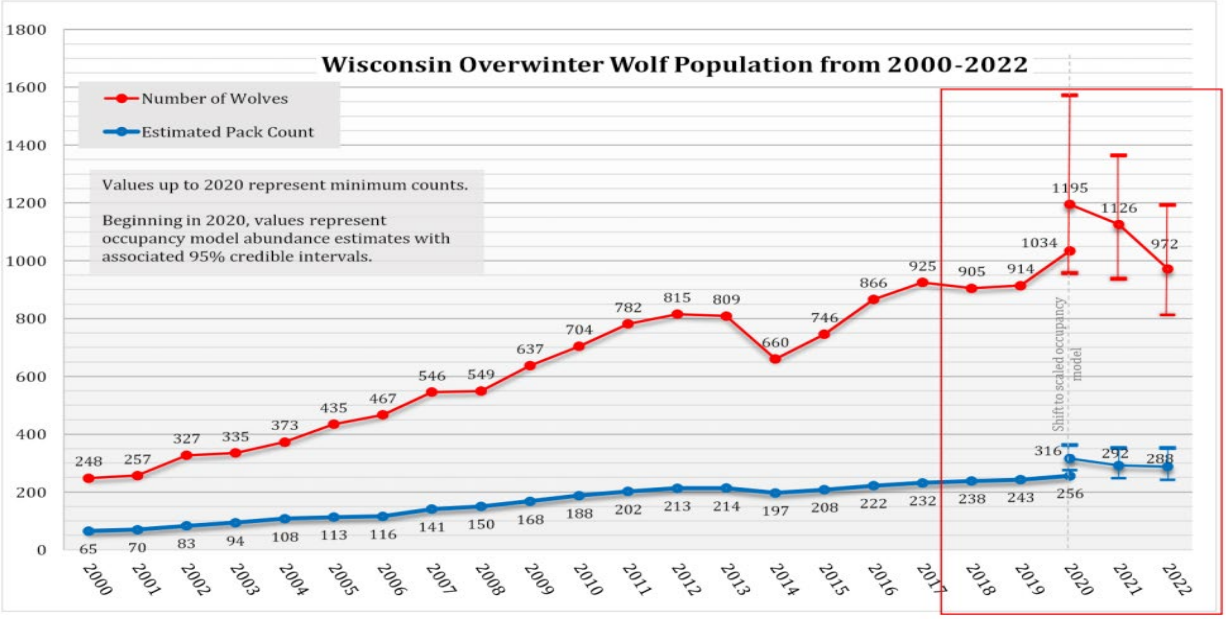

Figure 9. Changes in Wisconsin overwinter gray wolf population 2000-2022.

The wolves' total range in Wisconsin now spans more than 28,000 square miles.[55] However, its range has not significantly expanded since 2015, which, in addition to the increasing total population of wolves, indicates that suitable habitat for wolves in the State may already be occupied and future geographic expansion of the species' range in Wisconsin unlikely.[56] Overall population trends since the 2020 Lower 48 Rule were relatively stable in 2020 and 2021 with a slight decline due to the introduction of a gray wolf hunting season in 2021. Wisconsin reports that recent studies predict overall wolf population in Wisconsin, without harvest, could ultimately stabilize at around 1,242 wolves, a figure which the species was nearing prior to the 2021 hunt.[57]

Michigan's Department of Natural Resources releases winter population surveys for gray wolves in the UP every other year.[58] In 2022, Michigan issued its most recent survey results

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[54] Wisconsin Draft Wolf Management Plan, p. 72. Wisconsin's Draft Wolf Management Plan is available at: https://dnr.wisconsin.gov/topic/wildlifehabitat/wolfmanagementplan (last visited June 27, 2023).

[55] Wisconsin's 2022 Gray Wolf Monitoring Report, p. 21. *See also* Wisconsin Draft Wolf Management Plan at p. 5.

[56] Wisconsin Draft Wolf Management Plan, p. 48.

[57] *Id.* at p. 54.

[58] These surveys exclude the gray wolf population on Isle Royale which is federally managed.

finding a total population of 631 wolves with a range of error of 49 wolves.[59] The results from this survey continues to evidence that gray wolf populations are stable in the UP, remaining within a population range of 618 to 695 individuals in every survey since 2011 and thus demonstrating the species is approaching its carrying capacity in the UP.[60] [61]

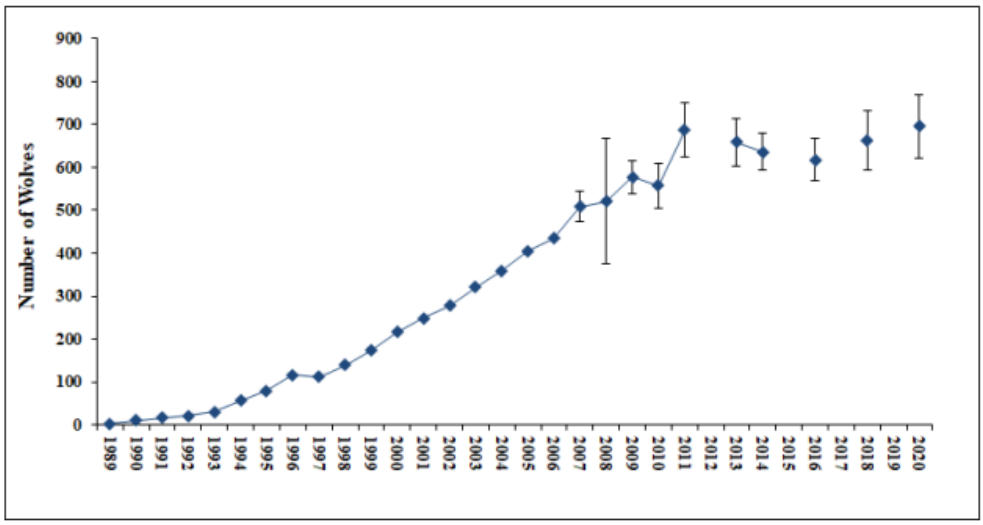

Figure 4.1. Minimum winter estimates of the number of wolves in Michigan's Upper Peninsula (excluding Isle Royale), 1989-2020. Prior to 2007, the entire Upper Peninsula was searched; starting in 2007, a stratified sampling plan was used. Error bars represent the 95% confidence limits on survey estimates from 2007-2020.

3. Gray Wolves in Bordering States Comprising the Remainder of the WGL DPS

Gray wolves in the Western Great Lakes have fully established sustained populations in the states of Minnesota, Wisconsin, and Michigan. Although sustained populations of gray wolves have not yet spread to other states in the WGL region, as the species has recovered, sightings of lone dispersing wolves have occurred in bordering states. Outside of these established populations, North Dakota is the state with the most sightings of gray wolves. The Service reports that since 2000, there have been 27 verified sightings of dispersing wolves within the state and 45 unverified reports.[62] North Dakota's Department of Game and Fish reports that,

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[59] https://www.sooeveningnews.com/story/news/environment/2023/02/04/michigan-dnr-releases-2022-wolf-population-survey/69867222007/

[60] *Id. See also* Michigan 2022 Wolf Management Plan, p. 19. A carrying capacity of a little over 700 wolves in the UP also coincides with prior studies that predicted a carrying capacity for a combined Wisconsin and Michigan wolf population to be roughly 1,300 species split approximately in half between the states. *See* Wisconsin Draft Wolf Management Plan, p. 54.

[61] The chart below is incorporated from page 19 of Michigan's 2022 Wolf Management Plan, the latest population survey results from 2022 are not included.

[62] USFWS 2020, p. 26.

although suitable habitat for the species could exist in the State, sightings of the species is rare and there is no evidence of a known breeding population within North Dakota.[63]

Outside of North Dakota, a smaller number of observed dispersals have occurred in South Dakota, Iowa, and Illinois. Over the past twenty years, 13 sightings of gray wolves have been confirmed dispersing into South Dakota.[64] South Dakota reports that the state "does not have a resident gray wolf population" and that these reported sightings are transient animals dispersing from the Great Lakes Region or from the Northern Rocky Mountain DPS in the western edges of the State.[65] In Iowa, the State's Department of Natural Resources reports that in addition to federal ESA protections, the species is protected by state law as it is currently classified as a furbearing species with a continuous closed season.[66] Iowa's DNR further concludes, though there is some habitat available that is conducive to wolves, it is not likely that wolves will begin to visit Iowa often or in high numbers, though the state expects lone dispersers to occasionally enter the state from Minnesota or Wisconsin.[67] Since 2012, only 8 confirmed wolf sightings have occurred in Iowa and just 24 unconfirmed sightings have been reported.[68] DNA evidence from some of these confirmed sightings indicates that the dispersing wolves are linked to the Great Lakes populations. Again, there is no evidence that a breeding population has established itself in Iowa at this time.[69] In Illinois, there have been a total of 11 confirmed gray wolf sightings in the state since 2002.[70] The Illinois Department of Natural Resources, however, is unaware of any self-sustaining populations or packs currently residing within the State.[71] The most recent sighting of a gray wolf in Illinois occurred eight years ago in February 2015 with no confirmed presence of wolves in the state since then.[72] Within Ohio, wolves remain extirpated with no confirmed sightings.

Other States beyond those referenced above, report only a handful of sightings between them without any evidence of a sustained population or breeding pair. Within the past 20 years,

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63 https://gf.nd.gov/wildlife/id/carnivores/wolf (last visited on June 27, 2023).

64 USFWS 2020, p. 26.

65 https://gfp.sd.gov/wolf/ (last visited on June 27, 2023).

66 Iowa Department of Natural Resources, Trends in Iowa Wildlife Populations and Harvest 2021-2022, p. 217 (September 2022) available at: https://www.iowadnr.gov/Portals/idnr/uploads/Hunting/trends/logbook_2022.pdf (last visited June 27, 2023).

67 *Id.* at p. 218.

68 *Id.* at p. 220.

69 *Id.* at p. 219.

70 https://www.wildlifeillinois.org/gallery/mammals/very-rare-visitors/gray-wolf/ (last visited on June 27, 2023).

71 *Id.*

72 *Id.*

a single wolf is confirmed to have entered Indiana after having originated in Wisconsin.[73] Since the species was extirpated in Kansas in the early 1900s there have been two confirmed instances of wolves entering the state, once in 2012 and a second time in 2017.[74] Missouri and Nebraska report only occasional sightings of dispersing wolves and consider the species presently extirpated.[75]

4. Western Great Lakes Wolves Surpass all Federal Recovery Goals

The Service's 1992 East Timber Wolf Recovery Plan establishes the federal recovery criteria for gray wolves in the Eastern United States, including the Western Great Lakes wolves. The objective recovery criteria are:

> At least two viable populations within the 48 United States satisfying the following conditions must exist: (1) the Minnesota population must be stable or growing, and its continued survival be assured, and (2) a second population outside of Minnesota and Isle Royale must be re-established, having at least 100 wolves in late winter if located within 100 miles of the Minnesota wolf population, or having at least 200 wolves if located beyond that distance. These population levels must be maintained for five consecutive years before delisting can occur. A Wisconsin-Michigan population of 100 wolves is considered to be a viable second population, because continued immigration of Minnesota wolves will supplement it demographically and genetically for the foreseeable future.[76]

The 1992 Recovery Plan further clarified its expectations for the Minnesota gray wolf population by setting forth a goal for the Minnesota population to reach a total between 1,251 and 1,400 animals.[77] It is undisputable that the Western Great Lakes wolves meet these criteria. In its 2020 Lower 48 Rule, the Service found that "Wolves in the Great Lakes area greatly exceed the recovery criteria (USFWS 1992, pp. 24-26) for (1) a secure wolf population in Minnesota, and (2) a second population outside Minnesota and Isle Royale consisting of 100 wolves within 100 mi (160 km) of Minnesota for 5 successive years."[78]

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[73] USFWS 2020, p. 26, *see also* https://www.in.gov/dnr/fish-and-wildlife/wildlife-resources/animals/gray-wolf/#:~:text=Although%20historic%20records%20are%20scarce,has%20been%20confirmed%20in%20Indiana (last visited June 27, 2023).

[74] https://ksoutdoors.com/Wildlife-Habitats/Wildlife-Sightings (last visited on June 27, 2023).

[75] https://mdc.mo.gov/discover-nature/field-guide/gray-wolf ; and https://outdoornebraska.gov/learn/nebraska-wildlife/nebraska-animals/mammals/gray-wolf/#:~:text=The%20total%20population%20of%20Gray,in%20Nebraska%20could%20support%20wolves. (last visited on June 27, 2023).

[76] 1992 Wolf Recovery Plan, p. 4.

[77] *Id.* at p. 28.

[78] 85 Fed. Reg. 69,791.

Since the species' original listing, the population of Minnesota wolves has substantially grown into a population of more than 2,500 individuals. Further, for more than 30 years the Minnesota population has exceeded the recovery goal of a population of at least 1,400 wolves beginning with the 1988-89 winter season.[79] Minnesota's Department of Natural Resource estimates 498 wolf packs exist in the State.[80] The species' occupied range is estimated to cover approximately one third of the state, likely encompassing all suitable habitat in Minnesota.[81] The continued survival of the Minnesota gray wolf is assured, especially considering the State's commitment to continue managing gray wolves at a population well above 1,400 animals.[82]

The combined gray wolf population of Wisconsin and Michigan has established itself as a viable second population outside of Minnesota. The combined population of the Wisconsin and UP wolves has exceeded 100 individuals every year since 1993-94, well beyond the five consecutive year requirement in the 1992 Wolf Recovery Plan.[83] In fact, the populations in Wisconsin or Michigan have now both individually exceeded 100 animals for 26 consecutive years beginning in 1998-97.[84] The best available scientific evidence proves that wolves in Minnesota, Wisconsin, and Michigan satisfy the federal criteria for recovery.

D. Analysis of the ESA Factors Supports a Finding that Western Great Lakes Wolves are Recovered and the WGL DPS Should be Delisted

The Service extensively considered the ESA factors affecting gray wolves in its recent 2020 Lower 48 Rule. *See* 85 Fed. Reg. 69,793. While the 2020 Lower 48 Rule assessed the recovery and status of the species as a whole in the lower 48 United States, the Service's framework for considering these factors assessed the effects on different core populations, including an analysis of these ESA factors for Western Great Lakes wolves. In the 2020 Lower 48 Rule, the Service expressly considered the current and anticipated future impacts on Great Lakes wolves from human-caused mortality including depredation, regulated hunting, and illegal "take",[85] public opinion and attitudes towards gray wolves,[86] the availability of suitable habitat and sustainable prey,[87] disease and parasites,[88] and the post-delisting management and regulatory mechanisms in place for the species.[89] This same analysis remains applicable in the

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79 USFWS 2020, Appendix 1.

80 Minnesota Wolf Management Plan, pp. 11 and 28; Minnesota 2022 Wolf Population Update p. 6.

81 *Id.*

82 Minnesota Wolf Management Plan, p. 31.

83 USFWS 2020, Appendix 1.

84 *Id.*

85 85 Fed. Reg. 69,796 and 69,813.

86 85 Fed. Reg. 69,811.

87 85 Fed. Reg. 69,813 – 69,816.

88 85 Fed. Reg. 69,818

89 85 Fed. Reg 69,825 – 69,835.

consideration of this petition to designate and delist the WGL DPS. As such, petitioners incorporate by reference the Service's prior findings.

1. Significant amounts of connected, suitable habitat exist and a sustainable population source of prey remains available within the Western Great Lakes supporting delisting of the proposed DPS

Gray wolves are habitat generalists that can survive in a wide array of environments. A number of different studies and the Service's 1992 Revised Recovery Plan have analyzed the factors that best allow for identification of suitable wolf habitat. In its 2020 Lower 48 Rule, the Service concluded that suitable habitat within the Great Lakes can be identified by considering four factors: road density, human density, prey availability, and the physical size of the area.[90]

Within the proposed WGL DPS, the majority of suitable habitat for grey wolves is already occupied. The Service and Minnesota's DNR both conclude that "essentially all suitable habitat in Minnesota is now occupied, range expansion has slowed, and the wolf population within the State has stabilized."[91] Likewise, wolves in Wisconsin have recolonized all areas within the state that were predicted to have low, medium, or high probability of occupancy.[92] Large areas of suitable or potentially suitable habitat that is currently unoccupied do remain in Michigan's UP and the northern regions of Michigan's Lower Peninsula.[93] Studies estimate that this available territory could support a population ranging between roughly 150 to 550 wolves with habitat in the UP more likely to be occupied than Lower Peninsula, where habitat is more often comprised of smaller patches of private lands intermixed with agricultural areas.[94]

Between currently occupied range and the available territory within Michigan, the total range capable of sustaining wolves within these three states exceeds 68,000 square miles.[95] This large territory of available habitat for gray wolves well exceeds the criteria set forth in the 1992 Recovery Plan which held that 10,000 square miles of contiguous territory was necessary to sustain a viable isolated gray wolf population.[96]

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90 85 Fed Reg. 69,814.

91 85 Fed. Reg. 69,814; Minnesota 2023 Wolf Management Plan, pg. 28.

92 85 Fed. Reg. 69,814.

93 *Id.*

94 *Id.*

95 Current occupied wolf range is estimated to be 28,561 square miles in Minnesota (Minnesota 2022 Wolf Management Plan p. 11) and 28,493 miles in Wisconsin (Wisconsin Draft 2022 Wolf Management Plan, p. 5). Wolves are known to occur throughout Michigan's Upper Peninsula and models estimate roughly 11,000 square miles of suitable habitat is available in the UP and studies estimate an additional 3,000 miles of unoccupied suitable habitat exists in the northern Lower Peninsula. (Michigan 2022 Wolf Management Plan, p. 18; 85 Fed. Reg. 69,814).

96 85 Fed. Reg. 69,814.

Prey availability within this territory is generally high with viable, sustained sources of prey populations. Within the Western Great Lakes, gray wolves primarily prey upon white-tailed deer.[97] Though white-tail deer populations have fluctuated within the Great Lakes area, they have consistently been present at relatively high densities with high availability.[98] Models predicting deer populations estimate that deer populations within Minnesota mostly increased throughout the state in 2022 with the overall population around one million animals.[99] Wisconsin's DNR reports an estimated post-hunt deer population for 2022 of over 1.6 million animals.[100] Deer populations within Michigan in 2022 and 2023 were estimated to approach 2 million individuals.[101] Additionally, all three State's wolf management plans identify the importance of managing deer populations to maintain viable, primary prey sources for wolves.

Neither limited habitat, nor prey availability create a risk of extinction for gray wolves in the Western Great Lakes currently or within the foreseeable future. As such, these factors weigh in favor of delisting wolves.

2. Disease and parasites do not present a risk at the population-level to the continued health and sustainability of wolf populations in the WGL DPS

A wide range of diseases or parasites can affect gray wolves, but although some disease can result temporary impacts on the species, "most of them seldom have long-term, population-level effects."[102] The Service has found that because the species is very adaptable and resilient to changes in social structure, "wolf populations can rapidly overcome severe disruptions such as pervasive human-caused mortality or disease."[103] All states within the WGL DPS with current wolf populations have corresponding disease-monitoring programs to assess potential threats and take disease into consideration in monitoring and managing the species' recovery.[104] A thorough discussion of diseases and parasites afflicting gray wolf populations is included in the Service's 2020 Lower 48 Delisting Rule, Wisconsin's 2023 Draft Wolf Management Plan, and Michigan's 2022 Wolf Management Plan.[105]

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97 *Id.*

98 *Id.*

99 Minnesota DNR, "Monitoring Population Trends of White-Tailed Deer in Minnesota – 2022" https://files.dnr.state.mn.us/wildlife/deer/reports/popmodel/popmodel_2022.pdf?20230627-21 ; https://www.deerfriendly.com/deer/minnesota (last visited June 27, 2023).

100 https://apps.dnr.wi.gov/deermetrics/DeerStats.aspx?R=2 (last visited June 27, 2023).

101 https://www.deerfriendly.com/deer/michigan (last visited June 27, 2023).

102 85 Fed. Reg, 69,818.

103 USFWS 2020, p. 7.

104 85 Fed. Reg. 69,818

105 85 Fed. Reg. 69,818; Wisconsin Draft Wolf Management Plan, pp. 91-94; Michigan 2022 Wolf Management Plan pp. 43-45.

Diseases and parasites effecting gray wolves include, amongst others, canine parvovirus, canine distemper virus, Lyme disease, mange, rabies, and heartworm.[106] Canine parvovirus ("CPV") is widespread and has been detected in most, if not all, populations of North American wolves.[107] CPV can impact pup survival rates and slow population growths, however, after CPV became endemic in wolf populations in Minnesota the population appears to have developed greater immunity allowing wolves to withstand severe effects from the disease.[108] Studies of wolves in Wisconsin and Michigan also show that while CPV can and does impact wolf populations, it only has temporary effects on larger populations.[109] Similarly, canine distemper virus can have effects reducing the survivorship of pups and evidence indicates that exposure to wolves in Wisconsin has occurred, but continued growth and the stability of the overall population of wolves in Wisconsin and other regions affected by canine distemper virus indicates that "while distemper may cause population-level decreases in the short term, it is not likely a significant cause of mortality over longer periods."[110] Lyme disease appears to be relatively pervasive amongst wolves, over 65% of wolves in Wisconsin were found to have exposure in a 2016 study, but clinical symptoms have not been reported in wolves and it is not considered to be a factor affecting wolf populations.[111] Rabies has the potential to affect wolves, but has not been detected in wolf populations in the Western Great Lakes region.[112] Finally, sarcoptic mange is a highly contagious disease that can reduce pup survivability and may have previously been a factor in minor declines or the slowing of population growth in the Great Lakes, but evidence indicates that infestations of mange do not normally become chronic and wolves often naturally overcome these infestations.[113]

Although gray wolves can be afflicted with a number of diseases that impact isolated populations or reduce survivability rates, these diseases have shown to be either temporary in their effects or non-impactful at the population wide level of wolves in the Western Great Lakes. This conclusion is reinforced by the continued population growth shown by wolves in Minnesota, Michigan, and Wisconsin prior to stabilizing as these populations met their carrying capacity. At the time of this petition, there is no evidence to suggest that risks from disease or predation will result in a higher mortality to wolves that would create a threat of extinction presently or in the foreseeable future. As such, any risks associated with disease and predation do not rise to the level of preventing delisting of the WGL DPS.

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106 *Id.*

107 85 Fed. Reg. 69,818.

108 *Id.*

109 *Id.*

110 *Id.*

111 *Id.*

112 Wisconsin Draft Wolf Management Plan, p. 93.

113 85 Fed. Reg. 69,819

3. Impacts to wolf populations from human-caused mortality do not present a risk to the continued survival of the species in the WGL DPS due to strong regulatory management and the States' commitment to maintaining independently viable populations of gray wolves, well above recovery criteria. State regulatory mechanisms are more than adequate

The main sources of human-caused mortality that impact gray wolf populations are lethal depredation control, regulated public harvest, and illegal or accidental killings through poaching, mistaken identity, or vehicle strikes. Delisting the species is not anticipated to result in an increase in take due to illegal or accidental killings; such mortalities are expected to either decrease or remain at current levels, which have had minimal impacts on wolf abundance or distribution in the region.[114] If the species is delisted, mortalities arising from legal depredation or through newly authorized hunting seasons will likely increase, but would continue to be controlled by each State's wolf management plans which all commit to maintaining populations well above federal recovery criteria.[115] Further, as is discussed in the Service's biological report, gray wolves' high reproductive rates and their ability to disperse and inhabit a variety of habitat types allows overall wolf populations to withstand relatively high rates of human caused mortality.[116]

In Minnesota, lethal control of depredating wolves has previously been authorized due to the species threatened status and section 4(d) of the ESA. Despite mortalities related to such lethal measures the wolf population in the State has continued to grow or held at stable levels.[117] During times when wolves were delisted within the Western Great Lakes, Wisconsin and Michigan have also authorized the use of lethal measures when necessary to manage the species for depredation conflicts. "During the times that lethal control of depredating wolves was authorized in Wisconsin and Michigan, there was no evidence of resulting adverse impacts to the maintenance of a viable wolf population in those States."[118] Post-delisting, it is likely that all three states would authorize lethal measures consistent with their wolf management plans for depredation control, with mortality anticipated to occur at similar levels to times when such control was previously authorized, which did not result in significant decreases in overall population.[119]

Like depredation control, once wolves are delisted it is also possible, if not probable, that these three states could establish legal recreational hunting seasons for gray wolves. While such authorized harvest of the species will result in some decrease to the overall population of wolves,

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114 85 Fed. Reg. 69,796.

115 *Id.*

116 USFWS 2020 pp. 8-9.

117 85 Fed. Reg. 69,796.

118 *Id.*

119 *Id.*

prior instances of hunting when wolves were delisted demonstrated that the States continued to maintain gray wolves at population levels above recovery criteria and sufficient for the continued sustained viability of the species. The regulatory mechanisms and management plans set forth by each state, as discussed below, establish commitments from Minnesota, Michigan, and Wisconsin to continue to regulate human-caused mortality so that it will not reduce the wolf population below recovery levels.

In its analysis within 2020 Lower 48 Rule, the Service discussed the prior state management plans for these three states and concluded:

> The State wolf-management plans currently in place for Minnesota, Wisconsin, and Michigan will maintain viable wolf populations in each State. Each of those plans contains management goals that will maintain healthy populations of wolves in the State by establishing a minimum population threshold of 1,600 in Minnesota, 250 in Wisconsin, and 200 in Michigan, and each State intends to manage for numbers above these levels. Furthermore, both the Wisconsin and Michigan Wolf Management Plans are designed to manage and ensure the existence of wolf populations in the States as if they are isolated populations and are not dependent upon immigration of wolves from an adjacent State or Canada, while still maintaining connections to those other populations. This approach provides strong assurances that wolves in Wisconsin and Michigan will remain a viable component of the wolf population in the Great Lakes area and the lower 48 United States. Each of the three Great Lakes States has a longstanding history of leadership in wolf conservation. All of the State management plans provide a high level of assurance of the persistence of healthy wolf populations and demonstrate the States' commitment to wolf conservation.
>
> Furthermore, when federally delisted, wolves in Minnesota, Wisconsin, and Michigan will continue to receive protection from human-caused mortality by State laws and regulations. Wolves are protected as game species in each of those States, and lethal take is prohibited without a permit, license, or authorization, except under a few limited situations (as described under the management plans above). Each of the three States will consider population-management measures, including public hunting and trapping, after Federal delisting. However, regardless of the methods used to manage wolves, each State has committed to maintaining wolf populations at levels that ensure healthy wolf populations will remain.[120]

The U.S. District Court for the Northern District of California affirmed the Service's conclusion that these State management plans are adequate to sustain recovered Western Great Lakes wolf populations after delisting.[121]

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120 2020 Lower 48 Rule, 85 Fed. Reg. 69,842.

121 *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812, 830 (N.D. Cal. 2022):

Since the 2020 Lower 48 Rule, Minnesota, Michigan, and Wisconsin have all updated, or are in the process of updating, their individual State Wolf Management plans. Minnesota and Michigan's new final management plans and Wisconsin's draft wolf management plan all maintain or increase the States' population goals in managing wolves, elevating the States' objectives for managing a sustainable wolf population. Thus, these new management plans with elevated protections will continue to ensure the sustained viability of gray wolf populations in the region, even with potential increases in human-caused mortality after delisting from hunting or lethal depredation control.

Minnesota's Wolf Management Plan governs the State's management of wolves within Minnesota from 2023 through 2032. As is required by Minnesota law, the objectives of the plan commit to maintaining a resilient and connected wolf population that ensures the long-term survival of the species in Minnesota. Minnesota Statute 97B. 646(a). The most notable change from the prior version in the 2023 Management Plan is an update significantly increasing Minnesota's population objectives for wolves within the state. The new plan seeks to maintain a population of wolves ranging between 2,200 and 3,000 animals, a large increase from the prior management objective of 1,600 wolves and well above the federal recovery goals for eastern gray wolves.[122]

The management plan makes no commitment to establishing a hunting season for gray wolves and represents the State will not make such a decision until after the species is delisted. State law requires Minnesota's Department of Natural Resources to provide an opportunity for

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> The Final Rule shows that the Service did analyze these issues and reached a different conclusion than Plaintiffs regarding the adequacy of the state plans. For example, the Service acknowledged that hunting seasons would likely lead to an initial reduction in wolf population; however, the Service concluded that deliberate reductions in population size through harvest would be unlikely to bring the population below the recovery thresholds. In reaching this conclusion, the Service considered evidence showing that wolf populations in the Great Lakes has continued to increase despite human-caused mortality. The Service also reviewed data from previous public harvests in the Great Lakes during periods when wolves were delisted showing that the wolf population recovered after the end of the harvest. Additionally, the Service cited evidence of state regulators monitoring and adjusting harvest quotas in the past as evidence that the state was capable of monitoring and reducing quotas if wolf populations fall below threshold levels. Accordingly, the Service's conclusion about the adequacy of regulatory mechanisms was rational. Plaintiffs' disagreement with the Service's conclusions on these points does not render the Service's conclusion arbitrary and capricious. For these reasons, the Service's conclusion that state management plans in the Great Lakes states would adequately protect gray wolves after delisting was not arbitrary and capricious.

(internal citations omitted.).

[122] Minnesota Wolf Management Plan, p. 31. The plan does not establish 3,000 wolves as a population ceiling Minnesota will seek to enforce. If wolf levels exceed that figure the State will consider additional public input over depredation and other concerns related to gray wolf management.

public comment and review prior to opening a wolf season. Minnesota Statues, Sect. 97B.645, subd. 9. Appendix 2 to the management plan does establish the factors that will be considered and the process in place for any ultimate decision regarding the creation of a hunting season. If a harvest is eventually authorized, all hunting seasons will be regulated and monitored by Minnesota's DNR consistent with the Management Plan's population objectives. Finally, Minnesota will establish hunting seasons through responsive management, amending and modifying season regulations each year based off populations trends, geographic distribution and considerations, and the prior season's results.[123] The State will not authorize any hunting if the population drops below 1,600 wolves.

Michigan updated its Wolf Management Plan in 2022, continuing its principal objective of maintaining "a viable Michigan wolf population above a level that would warrant its classification as threatened or endangered."[124] The management plan defines a viable population as one exceeding the criteria used in the Service's 1992 Wolf Recovery Plan and Michigan's own recovery criteria. As such, the management plan sets forth a minimum winter population criterion for the state of at least 200 wolves.[125] Michigan further recognizes that "the wolf population should be a self-sustaining and genetically diverse population with an abundance greater than 200 individuals, that maintains connectivity with wolf populations in neighboring states and Canada while fulfilling its ecological goal."[126] Like Minnesota, this minimum population count is "not a target population size" and the plan does not establish any upper-limit for the population of wolves in the State.

Since 2009, gray wolves have been removed from Michigan's state threatened and endangered species list and are now classified as a game animal under the management of Michigan's Department of Natural Resources. In its management plan, however, Michigan commits to continuing to regularly monitor the population and health of gray wolves, as well as maintaining suitable populations of prey and areas of habitat for the species. Furthermore, when depredation efforts may be warranted in response to predation on livestock or other domestic animals, Michigan's DNR will only authorize lethal responses when non-lethal methods have proven to be ineffective or infeasible.[127] Lastly, although Michigan's DNR has authority to establish a hunting season for game species, the plan declines to make any determinations on a hunting season for gray wolves while the species remains federally listed under the ESA. The plan does make clear that before establishing any hunting season, the State must first consult with native tribes and the public. Further, any harvest must be conducted with "biologically

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123 *Id.* at pp. 48-51.

124 Michigan 2022 Wolf Management Plan, p. 21. Michigan's plan does not address wolves within Isle Royale National Park which will remain managed by the Service.

125 *Id.* at p.*23*.

126 *Id*.

127 *Id.* at p. 63.

sustainable methods" and should avoid politically and socially unacceptable methods of take such as poisoning, baiting, or aerial shooting.[128]

Finally, Wisconsin is in the process of updating the Wolf Management Plan that was in place at the time of the Service's 2020 Lower 48 Rule. Wisconsin's Department of Natural Resources published a draft Wisconsin Wolf Management Plan in late 2022 and anticipates finalizing that plan in October of this year. The draft plan would have one significant change in how Wisconsin proposes to manage wolves in the State. Currently, Wisconsin sets a minimum population goal of 250 animals and has a numerical population target of 350 wolves.[129] In the draft 2022 plan, Wisconsin keeps in place the minimum population goal of 250 individuals, still well exceeding the population goal in federal recovery plans for a combined population with Michigan of 100 wolves. However, instead of managing wolf populations to meet a numerical goal of 350 individuals, a goal which critics argue creates a ceiling the State used to artificially limit gray wolf populations, Wisconsin will adopt adaptive wildlife management objectives.[130]

Under this method, Wisconsin will manage wolves to "ensure a healthy and sustainable wolf population to fulfil its ecological role" by creating population goals and regulations for each of six wolf management zones in the State that are tailored to the data trends, conditions, and concerns in each of those regions. When existing conditions in a management zone are satisfactory or trending positively, management activities continue as they are or with minor modifications. If conditions or progress are unsatisfactory, the State can act to take steps in the individual zone for improvements. Under this plan, Wisconsin's DNR intends to shift management strategies from focusing on recovery of the species to now sustaining the population using tools such as annual year-round monitoring, managing sustainable prey populations, enforcing state laws prohibiting illegal killing of wolves, and managing the population to avoid any actions or mitigate any issues that could result in the wolf population approaching the minimum population level of 250 animals.[131]

Wisconsin law currently requires the Department of Natural Resources to implement a wolf hunting season if the species is delisted federally, but the DNR retains discretion to establish quotas and limit licenses for managing the species. WI Stat. §29.185(1m). The 2022 Draft Management Plan provides that any wolf hunting season must be regulated in a way that ensures the sustainable continuation of the population above the established minimum thresholds and that any harvest targets will be established on a zone-by-zone basis in consideration of those regional population trends and objectives.[132]

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128 *Id.* at p. 71.

129 Wisconsin Draft Wolf Management Plan, p. 22. *See also* 2020 Lower 48 Rule, 85 Fed. Reg. 69,829.

130 Wisconsin Draft Wolf Management Plan, pp. 97-98.

131 *Id.* at pp. 111-115.

132 *Id.* at p. 123.

The Service should find that the regulatory mechanisms in these states will limit potential impacts from human-caused mortality and ensure the survival of the WGL DPS post-delisting. While hunting will be permitted in at least Wisconsin if delisted, each state continues to direct its agencies to monitor and independently manage their wolf populations at levels well exceeding federal recovery criteria. As was the case in its 2020 Lower 48 Rule, each state's management plans provide high levels of assurance of the persistence of healthy populations and demonstrate a commitment to the maintenance of sustainable populations while maintaining connections to gray wolves in the other states and in Canada. Thus, there is not a present threat of extinction or a threat within the foreseeable future to gray wolves in these states due to human-caused mortality or a lack of regulatory protections.

4. Gray wolves within the WGL DPS are not threatened with extinction due to the contraction of the species historic range

Finally, in its review the WGL DPS's status for delisting, the Service must also take into consideration what risks the loss of the gray wolves' historic range may have on the current population. In the decision vacating the Service's 2020 Lower 48 Rule, the Northern District of California held that the Service did not adequately assess impacts arising from the loss of up to 95% of the species' historic range.[133] The Service's consideration of human-caused mortality, largely the cause of the reduction in the gray wolves' historic habitat, and its conclusion that the historic bounty and eradication programs no longer presents a threat to the species in its current range was an insufficient analysis.[134] The Court held that the Service must also address the possible enduring consequences and threats the significant loss of historical range itself may have on the species.

The recovery of wolves, both across the Lower 48 United States and within the Western Great Lakes, has successfully established independent, sustained, populations such that the loss of historic habitat does not present a threat to the species. Though the range of WGL DPS is smaller than the species' historic range, which stretched across much of North America, the current range of Western Great Lakes wolves spans more than 65,000 square miles.[135] The loss of historic habitat does not leave the WGL DPS in danger of extinction now or in the foreseeable future. As established above, each of Minnesota, Wisconsin, and Michigan's management plans are designed to maintain gray wolf populations in their states well above federal recovery criteria and to ensure the continued viability of the population as if the wolves were isolated from wolf populations in other states.

Even if one of these states reversed their stated plan of maintaining wolf populations above minimum recovery criteria and instead allowed for unregulated hunting of wolves,

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133 *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812, 829 (N.D. Cal. 2022).

134 *Id.*

135 *See* n. 95.

populations within these other states would remain viable and sustained. Nor has the loss of historic habitat created a situation where a singular event or outbreak of disease is likely to threaten the WGL DPS as a whole. Both Michigan and Wisconsin's management plans address diseases found in the region impacting wolves and conclude that despite exposure, disease is unlikely to affect the long-term stability of these populations.[136] Further, the Service concluded in its 2020 Biological Report that wolf populations rapidly overcome severe disruptions such as human-caused mortality or disease.[137] "Established wolf populations are remarkably resilient so long as food supply (a function of both prey density and prey vulnerability) is adequate and human-caused mortality is not too high."[138]

In circumstances where the loss of historic range results in a compact, geographic population of wolves, isolated from other members of the species, then that remaining population could be vulnerable to singular events such as disease or natural disaster or management decisions that could significantly impact the continued survival of the species. But that is not the case here. The wolves' range within the Western Great Lakes is large and varied enough that the species is not at risk of elimination through one catastrophic event. As mentioned, the current range of the WGL DPS is significant, covering more than 65,000 miles across three states. Additionally, the range of gray wolves within the Lower 48 has continued to significantly increased since the establishment of federal protections in the 1970s. This is not a situation where surviving species today have been constrained to the a few isolated regions in their historic range. The species' significant expansion over the past 50 years demonstrates that the loss of historic range is a minimal threat to gray wolves based on its successful recovery.

Furthermore, even though Western Great Lakes wolves occupy a smaller percentage of their historic range within the United States, that population remains connected to much larger metapopulations of gray wolves in Canada. The population of gray wolves in Ontario and Manitoba, the two Canadian Providences bordering Minnesota, Wisconsin, and Michigan have an estimated total wolf population of 12,000 to 16,000 animals.[139] Wolves regularly disperse to and from the WGL DPS and Canadian wolf populations, with the WGL DPS functioning as part of much larger Great Lakes and eastern Canada wolf population.[140] Even if a chain of events were to occur where the loss of the species' historic range in the United States left it vulnerable within the WGL DPS, wolves from the much larger Canadian population would continue to operate as a source population sustaining Western Great Lakes wolves. The loss of the species'

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136 Michigan 2022 Wolf Management Plan, pp. 34 and 44; Wisconsin 2022 Draft Management Plan, p. 91.

137 USFWS 2020, p. 7.

138 *Id.*

139 *Id.* at p. 27.

140 *Id.*

historic range does not create a threat now or in the foreseeable future of extinction and should not prevent delisting of the WGL DPS.

5. Conclusion – The factors considered in ESA listing decisions weigh in favor of delisting the WGL DPS

As the Service found in 2020, the ESA factors continue to demonstrate that wolves in the WGL DPS are recovered and are not currently threatened with extinction nor expected to become threatened of extinction within the foreseeable future. There is no risk to the species from habitat loss, prey availability, or disease and predation. While human-caused mortality will have an impact on the overall population of wolves in the WGL DPS, each state has committed to maintaining viable populations well above federal recovery criteria. These management plans and state regulations will limit the impact of human-caused mortality, preventing it from threatening the extinction of the species. Therefore, both in accordance with the federal recovery criteria and the ESA listing factors, the gray wolf in the Western Great Lakes has recovered, is not at risk of extinction within the foreseeable future, and should be delisted from the ESA.

III. THE WESTERN GREAT LAKES WOLVES ARE A VALID DPS DISCRETE FROM AND SIGNIFICANT TO THE SPECIES AS A WHOLE

In accordance with the ESA, the Service lists or delists species, subspecies, or distinct population segments of species as their status warrants. 16 U.S.C. § 1532(16). The Service interprets and implements the DPS provisions of the ESA in accordance with its 1996 *DPS Policy*. Under that policy, to comprise a DPS the petitioned population must be: 1) discrete in relation to the remainder of the species; and 2) significant to the species to which the proposed DPS belongs.[141] In its prior rulemakings, the Service has consistently found that wolves within the Western Great Lakes satisfy both these criteria.

Petitioners incorporate by reference and encourage the Service to refer back to its thorough analysis of the WGL DPS's discreteness and significance to the species as a whole in its 2011 WGL Rule. Although the 2011 WGL Rule was ultimately vacated because the Service did not take into consideration the impact delisting may have on wolves outside the Western Great Lakes, and because of a separate historical range issue discussed by Petitioners above, the Service's finding that the WGL DPS is both discrete and significant to the species was not invalidated. The same geographic barriers and political boundaries that established the WGL DPS's discreteness in 2011 remain in place today. Likewise, the significance of Western Great Lakes wolves both as the only population of gray wolves in the eastern United States and as a significant proportion of the overall population of Lower 48 gray wolves remains true today.

As mentioned earlier, Petitioners request the Service establish the geographical area for the Western Great Lakes DPS in accordance with that proposed by the Service in its 2011 WGL Rule. The proposed DPS from the Service's 2011 WGL Rule is pictured in the figure below and consists of the entirety of Minnesota, Michigan, and Wisconsin, the portions of Iowa, Illinois,

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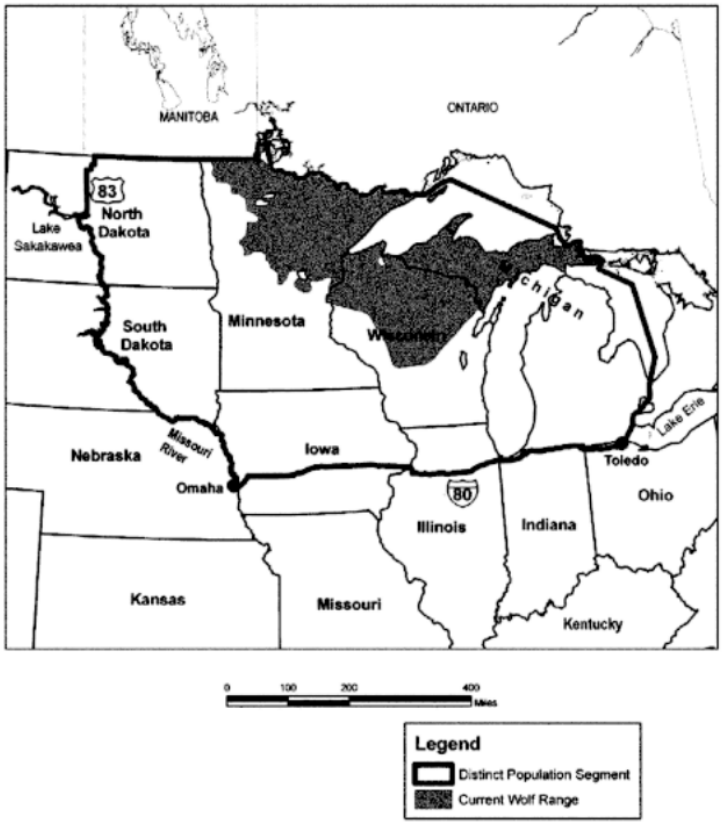
[141] 1996 *DPS Policy*, 61 Fed. Reg 4,725.

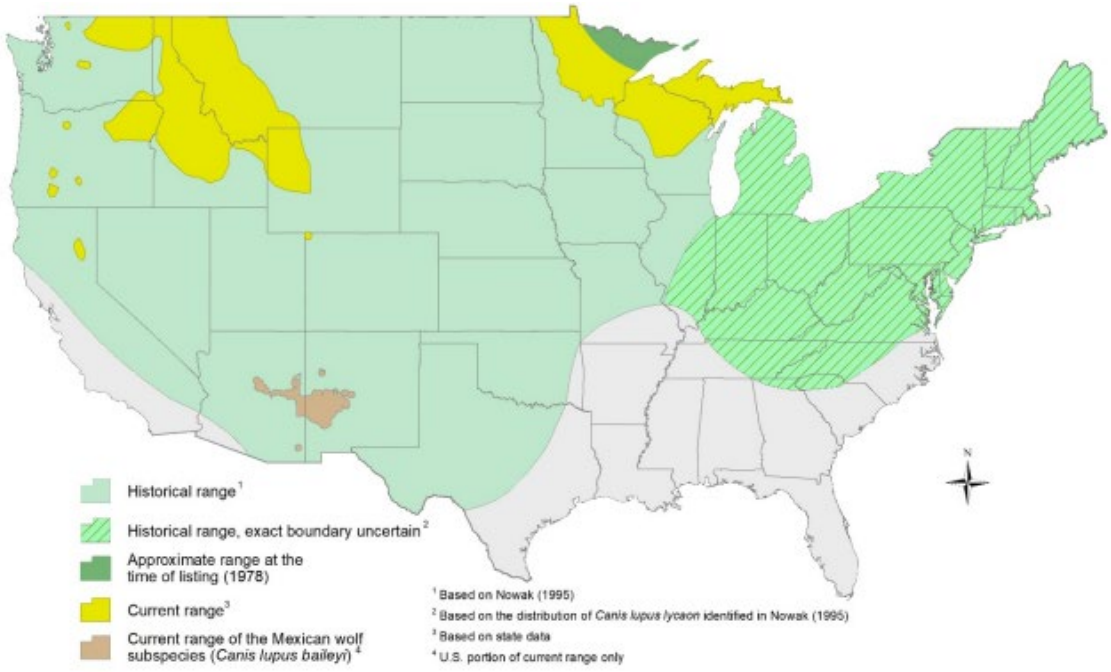
and Indiana north of the centerline of Interstate Highway 80, the portion of Ohio north of the centerline of Interstate Highway 80 and west of the Maumee River at Toledo, the portion of South Dakota north and east of the Missouri River, and the portion of North Dakota north and east of the Missouri River upstream to Lake Sakakawea and east of the centerline of Highway 83 from Lake Sakakawea to the Canadian border.[142] The boundaries of this DPS includes all known populations of wolves within the Western Great Lakes region and habitat within surrounding states to account for potential dispersal from the WGL DPS if wolves further expand into suitable habitat bordering the current range.[143]

Figure 1. Western Great Lakes Distinct Population Segment



142 2011 WGL Rule, 76 Fed. Reg. 81,670.

143 A map of the known historical and present range of the gray wolf in the Lower 48 United States from the Service's 2020 Gray Wolf Biological Report, p. 10, is included below.



A. The WGL DPS is Discrete from the Remainder of Gray Wolves in the United States

A population segment is discrete if it is: 1) markedly separated from other populations of the same species due to physical, physiological, ecological, or behavioral factors; or 2) it is delineated by governmental boundaries that establish differences in regulatory mechanisms or management of the species and its habitat.[144] The WGL DPS is markedly separate from all other populations of the taxon in the United States and while the population is connected to Canadian populations of gray wolves, the international boundary has created significant differences of protection and management of those populations.

Besides the Western Great Lakes wolves, there are no known gray wolf populations in the Eastern United States at the time of this petition.[145] While rare sightings of lone wolves have reportedly occurred in the northeastern United States, there is no evidence of established wolf populations. Further, the source population of those lone wolves is likely eastern packs in Canada; no evidence exists of wolves from the WGL DPS dispersing to that region.[146] The nearest population of gray wolves to the WGL DPS is the Northern Rocky Mountain DPS.

The Service's most recent status review of the wolf, its 2020 Biological Report, concluded that wolves in the western United States and Great Lakes wolves exist in two separate

144 *1996 DPS Policy*, 61 Fed. Reg. 4,725.

145 USFWS 2020, p. 25.

146 *Id.*

and ecologically diverse areas.[147] Approximately 400 miles separate the far western border of the proposed WGL DPS and known wolves within the Northern Rocky Mountain DPS and closer to 600 miles of separation exists between Minnesota wolves and NRM DPS packs.[148] Additionally, the habitat between Minnesota and eastern Montana and Wyoming is primarily unsuitable "with only scattered islands of possibly suitable habitat" existing between the populations.[149] Although it is possible that a wolf could traverse that distance while dispersing from the NRM DPS, to the best of Petitioners' knowledge, no evidence exists showing that such a dispersal has ever occurred.[150] Furthermore, even if occasional intermixing did happen, that would not preclude discreteness. The DPS criteria do not require complete isolation in order to establish discreteness; a limited interchange between population segments is permissible.[151]

Wolves in the WGL DPS are connected to and regularly intermix with larger populations of gray wolves in Canada. The Service reported in 2020 that the Great Lakes wolves are connected to large populations of an estimated 12,000 to 14,000 wolves in the bordering Canadian Provinces of Ontario and Manitoba and have been documented dispersing into these provinces.[152] Gray wolves in Canada are not protected under Canada's analog to the ESA, the Species at Risk Act ("SARA"), and protections for the species in Canada are minimal due to the wolves' abundance. Reportedly over 50,000 gray wolves exist in Canada across 80% of the species historic range.[153] Both Ontario and Manitoba permit hunting of the species. Manitoba's authorizes a wolf hunting season from August 29 through March 31 open to any hunter in possession of a big game license for the calendar year.[154] Ontario similarly, authorizes a hunting season from September 15 through March 31 with all hunters eligible to purchase up to two wolf tags per year.[155]

Clear differences exist in the regulatory mechanisms and overall conservation status of Canadian gray wolves and gray wolves in the WGL DPS. Even after delisting the WGL DPS States will continue to monitor and manage gray wolves in accordance with the State and Federal

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147 *Id.* at p. 29.

148 76 Fed. Reg. 81,671.

149 *Id.*

150 *Id.*

151 61 Fed. Reg. at 4,724.

152 USFWS 2020, p. 27.

153 https://www.canada.ca/en/environment-climate-change/services/convention-international-trade-endangered-species/non-detriment-findings/grey-wolf.html (last visited June 27, 2023).

154 https://www.gov.mb.ca/nrnd/fish-wildlife/pubs/fish_wildlife/huntingguide.pdf (last visited June 27, 2023).

155 https://www.ontario.ca/document/ontario-hunting-regulations-summary/wolf-and-coyote#section-0 (last visited June 27, 2023).

recovery goals in a manner that further emphasizes the difference in regulatory scheme established by the international border dividing Canadian wolves and the WGL DPS. As such, the Service should again conclude that the WGL DPS remains discrete from other gray wolves.

B. Both the range and population of the WGL DPS makes its significant to the species in the Lower 48 United States

There is no question that the WGL DPS is significant to gray wolves within the contiguous United States. The 1996 *DPS Policy* establishes that the significance of a DPS can be established through consideration of many factors, including but not limited to: 1) persistence of the DPS in an ecological setting unique or unusual for the taxon; 2) evidence that the loss of the DPS would result in a significant gap in the range of the taxon; 3) evidence that the DPS represents the only surviving occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or 4) evidence that the DPS segment differs markedly from other populations of the species in genetic characteristics.[156] The WGL DPS qualifies as significant at minimum through the second listed factor. The loss of the proposed WGL DPS would result in a significant gap in both the gray wolves' current and historic range.

Based on the most recent population estimates, gray wolves within the WGL DPS number just under 4,300 animals. That population accounts for roughly 70 percent of the population of the species in the Lower 48 United States (including NRM DPS wolves). Necessarily, a loss of the WGL DPS, which comports more than two thirds of the overall population of Lower 48 wolves, would be significant to gray wolves as a whole.

Furthermore, as has been discussed, the WGL DPS is the only known established population of gray wolves east of the Rocky Mountains. The species' historic range included not only the western United States and the Great Lakes, it also extended throughout the eastern and north eastern United States.[157] A loss of the WGL DPS would create a significant gap in the species' present and historic range.[158]

Based on the best available scientific evidence and data, the WGL DPS is both discrete from and significant to gray wolves in the Lower 48 United States. As such, Western Great Lakes wolves validly meets the Service's criteria to be established as a DPS. The final element in a DPS analysis is the consideration of the DPS's status with regards to the requested action, i.e., the listing or delisting of the DPS. Petitioners fully establish the recovery of the WGL DPS gray wolves in Part II of this petition. Thus, the Service should recognize and delist the WGL DPS of gray wolves. As is further explained in Part IV of this petition, delisting the WGL DPS

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156 61 Fed. Reg. 4,725.

157 *See* the map of the species known historic and present-day range included above on p. 31.

158 76 Fed. Reg. 81,672.

follows the road map to permissible delisting of the species as set forth by the D.C. Court of Appeals in *Humane Society v. Zinke*.

IV. DELISTING THE WGL DPS WILL NOT ELIMINATE PROTECTIONS FOR THE REMNANT POPULATION OF LISTED GRAY WOLVES

In a companion petition, Petitioners address in detail the Service's ability to continue to protect currently-listed wolves outside the Western Great Lakes under the ESA, following the recognition and delisting of a WGL DPS. The following discussion summarizes the discussion in that companion petition.

Historically, the Service's efforts to delist WGL DPS wolves have been vacated by courts because the delisting efforts have been either paired with or resulted in the elimination of protections for "remnant" listed gray wolves outside of the WGL DPS. *See* Part II, Section B above and Petitioners' concurrently filed companion petition. In *Humane Society v. Zinke* though, the D.C. Court of Appeals conclusively established that the Service can simultaneously recognize and delist a DPS of a species protected under the ESA, so long as the Service appropriately deals with the remnant.[159] The Service cannot create and delist a DPS of a protected species without consideration as to whether that delisting will also result in the de facto delisting and loss of protections for the remnant population of the species. Implicit in the Court's analysis is the conclusion that if delisting the WGL DPS will not *per se* result in the remnant gray wolf population losing eligibility for protections under the ESA, then the Service has the authority to create and delist a valid DPS of Western Great Lakes wolves as a recovered population.[160]

Petitioners' companion petition, submitted concurrently with this petition to recognize and delist the WGL DPS, focuses wholly upon the remnant of listed gray wolves and their status following delisting of the WGL DPS. The Companion petition proposes to continue ESA protections for remnant wolves, i.e. wolves in the original Lower 48 gray wolf listing and outside the WGL DPS proposed for delisting and the previously delisted NRM DPS. As such, the Petitioners urge the Service to consider these petitions simultaneously as delisting the WGL DPS necessarily requires consideration of the non-DPS remnant of listed wolves. However, Petitioners summarize in brief below the remnant population's continued eligibility for ESA protections.

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159 *Humane Soc'y of United States v. Zinke*, 865 F.3d 585, 600 (D.C. Cir. 2017).

160 The Ninth Circuit also endorses this conclusion in *Crow Indian Tribe v. United States*, holding that when the Service delists a DPS from a protected species it must determine that "a sufficiently distinct and protectable remnant population" remains and that delisting the DPS will not result in the remnant becoming a non-viable population ineligible for protections under the ESA. The Service need not proceed through a full analysis of the ESA's Section 4 listing factors for the remnant, but the Service must determine that the remnant remains eligible for continued listing under the ESA if warranted. *Crow Indian Tribe v. United States*, 965 F.3d 662, 678 (9th Cir. 2020).

First, when choosing to recognize and delist a DPS from an already listed species, the Service's actions do not alter the protected status of the remnant population. In litigation regarding a 2003 Rule by the Service attempting to create and down-list DPS's of gray wolves, the U.S. District Court for the District of Vermont rejected the Service's position that it cannot create a "non-DPS remnant" population that is listed under the ESA.[161] In *National Wildlife Federation v. Norton*, the Court stated, "[n]owhere in the ESA is the Secretary prevented from creating a 'non-DPS remnant' designation, especially when the remnant area was already listed as endangered. In fact, the Secretary's determination that she is forbidden to create 'non-DPS remnant' areas conflicts with the purpose of the ESA."[162]

No other court has analyzed and rejected the holding in *National Wildlife Federation v. Norton* that the Service can designate "non-DPS remnant" populations that continue to receive ESA protections from species that are already listed under the Act.[163] However, in subsequent delisting actions the Service has declined to utilize the option referenced by the Vermont Court. The circumstances here warrant continuing protections for remnant wolves in the original Lower 48 wolf listing through a non-DPS remnant listing. Wolves in the Great Lakes are fully recovered. The only remnant population of listed wolves that currently exists is in the Western United States in Washington, Oregon, California, and Colorado. Sporadic sightings of gray wolves have occurred in other states, but no known breeding populations have been established. Delisting the WGL DPS and designating all other listed gray wolves as a "non-DPS remnant" with continued legal protections under the ESA protects the species as a whole, allowing for the continued recovery and dispersal of the species into unoccupied suitable habitat while recognizing the successful recovery of gray wolves in the Western Great Lakes.

Furthermore, delisting the WGL DPS will not practically impair further recovery of a protected non-DPS gray wolf remnant because, as mentioned above in Part III – Section A, the WGL DPS is discrete from other U.S. wolf populations. The large distance and unsuitable habitat separating Western Great Lakes wolves from recovering populations of West Coast wolves prevents any regular or anticipated intermixing or dispersal. Therefore, delisting the WGL DPS does not impede the recovery of remnant West Coast wolves by creating a risk of potentially limiting a source population.

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161 *Nat'l Wildlife Fed'n v. Norton*, 386 F. Supp. 2d 553, 564 (D. Vt. 2005).

162 *Id.*

163 Admittedly, the Service has not generally acted upon the *National Wildlife Federation* Court's ruling in preserving protections for non-DPS remnant populations and Appellate Courts have not opined on this means of delisting species. The *National Wildlife Federation* ruling, however, is consistent with both the text and purposes of the ESA and is best suited to allow the Service to delist recovered populations of endangered or threatened species while continuing to protect recovering regions. *See* Part II. of Petitioners' Companion Petition addressing Remnant Gray Wolves.

Alternatively, even if the Service does not continue a "non-DPS remnant" listing under the original Lower 48 listing, delisting the WGL DPS will not result in the elimination of protections for the remnant population because the remnant West Coast Wolves satisfy the criteria to be listed as a DPS if ESA protections are warranted. Likewise, delisting the WGL DPS will not impact the planned reintroduction of gray wolves into Colorado because Colorado intend to reintroduce wolves into the State which the Service will recognize as a 10(j) experimental population, separate from the current listing of gray wolves.

West Coast wolves reside in central and western Washington, Oregon, Northern California, and Colorado. These wolves are discrete from the WGL DPS. Previously, in its 2009 Rule (74 Fed. Reg. 15,123) delisting the Northern Rocky Mountain DPS ("NRM DPS"), the Service also concluded that West Coast wolves are discrete and separate from NRM wolves. In subsequent status reviews the Service changed its position finding that West Coast wolves and wolves within the NRM DPS are not geographically separated. However, in the litigation overturning the Service's 2020 Lower 48 Rule, the U.S. District Court for the Northern District of California held that the Service failed to consider and provide a reasoned explanation addressing the science that supports findings that west coast wolves are discrete from NRM wolves due to genetic, physiological, behavioral, and ecological factors.[164] As is further discussed in the companion petition, West Coast Wolves are discrete from NRM wolves as a consequence of other factors beyond physical separation from the NRM wolves.[165]

Further, in addition to these factors, the political boundaries dividing West Coast Wolves and the NRM DPS also create discreteness between the two populations because of the significant differences in the available regulatory mechanisms for management of the population and differing conservation status in their recovery. The NRM DPS was federally delisted by an Act of Congress with wolves in those areas are managed by the States. Within Montana, Idaho, and Wyoming, the core population of the NRM DPS wolves, the states allow annual hunting of the species. Comparatively, West Coast Wolves in Washington, Oregon, California, and Colorado are federally protected with intentional take of the species illegal under both federal and state law. Additionally, the conservation status of the species on either side of the politically delineated boundary is different. NRM DPS wolves are recovered and occupying most suitable habitat within the DPS. West Coast Wolves are in an earlier stage of recovery with population trending upwards, but with the species also continuing to disperse and fill unoccupied suitable habitat. The Service can also find West Coast Wolves discrete based upon these criteria.[166]

Finally, West Coast Wolves are significant to the species as a whole based upon their persistence in a unique or unusual ecological setting for the taxon and because the loss of West

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164 *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 584 F. Supp. 3d 812, 825 (N.D. Cal. 2022).

165 *See* Part IV, Section 1(a) of Petitioners' Companion Petition addressing Remnant Gray Wolves.

166 *See* Part IV, Section 1(b) in Petitioners' Companion Petition addressing Remnant Gray Wolves.

Coast Wolves would create a significant gap in the range of the taxon as the only population currently residing within the species historic range west of the Rocky Mountains.[167]

West Coast Wolves, therefore, are listable entities and will not be *de facto* stripped of protections by the delisting of the WGL DPS. As such, the species will not be removed from the ESA as a result of "balkanization" arising from the removal of the WGL DPS. And, as mentioned before, delisting the WGL DPS will not impact the population or recovery of remnant wolves because it does not serve as a source population intermixing or dispersing either with West Coast wolves or into states in the northeastern U.S. Any potential down-listing or eventual delisting of protections for remnant wolves will arise due to that population's own status, not as a necessary result of delisting the WGL DPS. Therefore, in accordance with the guiding roadmap provided by the D.C. Court of Appeals in *Humane Society v. Zinke*, the Service can, and should, validly recognize and simultaneously delist the Western Great Lakes DPS.

V. CONCLUSION

The "best scientific and commercial information" available supports delisting the WGL DPS under the ESA. The Western Great Lakes population exceeds all relevant recovery criteria in the 1992 Wolf Recovery Plan and has continuously exceeded those measures for more than 20 years. The WGL DPS is discrete, significant, and fully recovered. The Service has repeatedly reached these same conclusions over the past 15 years and the science and data continues to support these facts. Finally, delisting the WGL DPS will not result in a *de facto* delisting of West Coast Wolves, which remain a valid, listable population entitled to ESA protections if warranted. As such, this petition more than establishes that the recognition and delisting of a Western Great Lakes DPS "may be warranted."

Respectfully submitted,

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[167] *See* Part IV, Section 2 in Petitioners' Companion Petition addressing Remnant Gray Wolves.

APPENDIX—REFERENCES

In accordance with 50 C.F.R. § 424.14(c)(6), within the footnotes of this petition, Petitioners have included links to electronic copies of the documents and materials available online that are cited to and relied upon in this Petition. Additionally, when filing this petition electronically, Petitioners will include a sharefile link to electronic copies of the remaining documents and materials not easily accessible online. The file size of those materials is too large to include within this petition as a single document. Finally, as a courtesy, Petitioners will also provide the Service with a mailed paper copy of this petition and its companion petition including print copies of those documents not available online.