

U.S. Department of Interior, Fish and Wildlife Service

RECORD OF DECISION

Establishment of a Nonessential Experimental Population of the Gray Wolf (*Canis lupus*) in Colorado

This Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 40 Code of Federal Regulations [CFR] 1505.2). The purpose of this ROD is to document the decision of the Service for the selection of an alternative to respond to the State of Colorado's request to implement a section 10(j) rule to establish a nonessential experimental population of the gray wolf (*Canis lupus*) in Colorado. This reintroduction effort is a result of Colorado Revised Statute (CRS) 33-2-105.8, passed on November 3, 2020, which directs the Colorado Parks and Wildlife (CPW) Commission to take the steps necessary to begin reintroductions of gray wolves to a portion of the species' historical range in Colorado by December 31, 2023. The alternatives considered have been fully described and evaluated in the September 2023 Final Environmental Impact Statement (EIS) for the project.

This ROD states the Service's decision and presents the rationale for its selection. This ROD summarizes the alternatives considered in the final EIS and addresses the measures the Service adopted to avoid or minimize environmental harm from implementation of the selected alternative.

Decision

Based on a review of the alternatives and their environmental consequences, as described in the final EIS, the Service intends to implement alternative 1 (the preferred alternative). The selected action will be implemented through issuance of a final nonessential experimental population rule (final 10(j) rule) of the Endangered Species Act of 1973 (ESA), as amended (16 United States Code [USC] 1531 et seq.). The Service determined through the process of developing the final 10(j) rule to apply the "nonessential" designation to the population of gray wolves that would be reintroduced to Colorado, and this ROD documents this decision.

Regulatory Authorities

The reintroduction of wolves to the State of Colorado is a State-led action that does not require the approval of the Service. The authority for the State to reintroduce the gray wolf comes from CRS 33-2-105.8 and the existing ESA Section 6 Cooperative Agreement Between the Service and CPW for the Conservation of Endangered and Threatened Fish or Wildlife (Section 6 Cooperative Agreement). Section 6 (b) of the ESA states that "*The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species.*"

The State of Colorado's Section 6 Cooperative Agreement, created in 1976 and reviewed and renewed annually by the Service, gives the State authority to establish programs for the conservation of federally threatened and endangered wildlife where the state has ". . . established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish or wildlife in the state which are deemed by the Secretary to be Endangered or Threatened and has

furnished a copy of such a program together with all pertinent details, information and data requested by the Secretary. . .”

The State of Colorado’s final Wolf Restoration and Management Plan (State Plan) is such a program under its Section 6 State Management Agreement. The ESA does not prohibit the State of Colorado from partnering with other states to capture gray wolves in states where they are not listed under the ESA and transport those wolves to Colorado for release. Once released, in the absence of a 10(j) rule, the wolves in Colorado would take on endangered federal status. If the 10(j) rule is in effect before Colorado reintroduces a population of gray wolves to the State, those wolves would be managed under the framework of the 10(j) rule.

Once the State of Colorado has completed the action of reintroducing the gray wolf under the authority of the Section 6 Cooperative Agreement, the Service has regulatory authority under the ESA to manage the conservation and recovery of federally listed threatened and endangered species, including creating rules and regulations and permitting legitimate activities that would otherwise be prohibited by federal law. As noted above, the State of Colorado has made a request to the Service to designate the gray wolf population that would be reintroduced to Colorado as experimental under section 10(j) of the ESA, as amended (16 USC 1531 et seq.). Development of a 10(j) rule, which is under the authority of the Service, is the action being evaluated by the Service and is considered a major federal action requiring review under NEPA. This environmental impact statement (EIS) has been prepared in accordance with NEPA and its implementing regulations (40 CFR 1500–1508).

Alternatives Considered

The Service developed a range of alternatives, including alternative 1 (the preferred alternative), alternative 2, and a no-action alternative. As noted above, development of this 10(j) rule is a result of the citizen-initiated 2020 ballot measure in Colorado (Proposition 114) and the resulting CRS 33-2-105.8, which requires the CPW Commission to take the steps necessary to begin reintroductions of gray wolves to a portion of the species’ historical range by December 31, 2023. The alternatives selected were developed during internal scoping, during which the Service considered the types of regulatory frameworks, consistent with section 10 of the ESA, it may implement based on its federal authority under the ESA; federal priorities for management of gray wolf recovery; and the best available science. In addition, the selection of alternatives was based on information gained through the public scoping process and comments received from the public on the draft EIS. All proposed alternatives were considered, but not all were evaluated in detail in the EIS. The 16 additional alternatives, alternative elements, or alternative element themes were identified and not evaluated further because they were outside the Service’s legal authority or did not substantially meet the purpose of, and need for, the proposed action, including those that were not economically or technically practicable or feasible. Alternatives brought forward for detailed analysis in the EIS were alternative 1 (the preferred alternative), alternative 2, and the no-action alternative.

Alternative 1 (Preferred Alternative)

Alternative 1 is the preferred alternative. Under this alternative, the Service will approve a section 10(j) rule for the gray wolf population in Colorado, including any gray wolf living in, dispersing into, or reintroduced into the state, providing the Service and its designated agents management flexibility and providing for conservation of the species. Specifically, alternative 1 will:

1. Designate the population of gray wolves being introduced to Colorado by the State of Colorado as an experimental population under section 10(j) of the ESA.

The designation “experimental population” has its origin in a 1982 amendment to the ESA, which created section 10(j). The “experimental population” designation gives the Service more flexibility to manage endangered species by relaxing “take” prohibitions and consultation requirements under the ESA.

2. Establish an experimental population boundary to include the entire state of Colorado. Including the entire State in the experimental population boundary provides consistent regulatory management given that gray wolves may disperse long distances from the initial reintroduction sites. National Park and National Wildlife Refuge lands in Colorado would be included in the experimental population boundary; however, site-specific regulations may apply on some federal ownerships.
3. Define in the 10(j) rule the allowable take of gray wolves in response to the management activities in the Final Colorado Wolf Restoration and Management Plan (State Plan).

“Take” under the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect. Federal land management agencies may prohibit use of firearms or other methods of lethal take in national parks or national wildlife refuges. Any take or method of take on public lands must be consistent with the federal rules and regulations on those public lands. Provisions related to take that would be included in the section 10(j) rule can be found in table 2-1.

Table 2-1 Actions Permitted Under Alternative 1

Situation	Alternative Element
Listed status of wolves	Threatened
Take in self-defense	Any person may take a gray wolf in defense of the individual’s life or the life of another person.
Agency take of wolves determined to be a threat to human life and safety	The Service or designated agent(s) may promptly remove any wolf that the Service or designated agent(s) determines to be a threat to human life or safety.
Opportunistic harassment	Any person may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or designated agent(s) within seven days.

Situation	Alternative Element
Intentional harassment	After the Service or designated agent(s) have confirmed wolf activity on private lands, on a public land-grazing allotment, or on a Tribal reservation, the Service or designated agent(s) may issue a written take authorization valid for not longer than one year with appropriate conditions to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the take authorization. Intentional harassment must be reported to the Service or a designated agent within seven days.
Taking of wolves “in the act” of depredation on private land	Consistent with State or Tribal requirements, any landowner may take a gray wolf in the act of attacking livestock or working dogs on private land, provided the landowner provides evidence of livestock, stock animals, or working dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and the Service or designated agent(s) is able to confirm the livestock, stock animals, or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule.
Taking of wolves “in the act” of depredation on public land	Consistent with State or Tribal requirements, any livestock producer and public land permittee who is legally using public land under a valid federal land-use permit may take a gray wolf in the act of attacking livestock or working dogs legally present on public lands without prior written authorization. The Service or designated agent(s) must be able to confirm the livestock or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule. Any person legally present on public land may immediately take a wolf that is in the act of attacking the individual’s stock animal or working dog, provided conditions noted in “taking of wolves in the act on private land” are met. Any take or method of take on public lands must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.

Situation	Alternative Element
<p>Additional taking by private citizens on their private land</p>	<p>At the Service’s or designated agents’ direction, the Service or designated agent may issue a repeated depredation written take authorization of limited duration (45 days or less) to a landowner or their employees to take up to a specified (by the Service or our designated agent) number of wolves on their private land if: (1) the landowner has had at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent within the last 30 days; and (2) the Service or designated agent has determined that repeatedly depredating wolves are routinely present on the private land and present a significant risk to the health and safety of livestock; and (3) the Service or designated agent has authorized lethal removal of wolves from that same private land. These authorizations may be terminated at any time once threats have been resolved or minimized. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p>
<p>Additional taking by grazing permittees on public land</p>	<p>At the Service’s or designated agent(s) direction, the Service or designated agent(s) may issue a repeated depredation written take authorization of limited duration (45 days or less) to a public land-grazing permittee to take repeatedly depredating wolves on that permittee’s active livestock grazing allotment if: (1) the grazing allotment has at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent(s) within the past 30 days, and (2) the Service or designated agent(s) has determined that repeatedly depredating wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock, and (3) the Service or designated agent(s) has authorized lethal removal of repeatedly depredating wolves from that same allotment. These authorizations may be terminated at any time once threats have been resolved or minimized. Any take or method of take on public land must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p>

Situation	Alternative Element
Agency take of wolves that repeatedly depredate livestock	The Service and designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of repeatedly depredating wolves. The Service or designated agent(s) would consider: (1) evidence of wounded livestock, working dogs, or other domestic animals, or remains of livestock, working dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that they were in the act of attacking livestock, working dogs, or other domestic animals; (2) the likelihood of additional wolf-caused losses or attacks may occur if no control action is taken; (3) evidence of unusual attractants or artificial or intentional feeding of wolves; and (4) evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.
Incidental take	Take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported to the Service or designated agent(s) within 24 hours (the Service will allow additional time if access to the site of the take is limited). Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.
Additional taking provisions for agency employees	Any employee or agent of the Service may take a wolf from the wild if such action is (1) for take related to the release, tracking, monitoring, recapture, and management for the experimental population; (2) to aid or euthanize sick, injured, or orphaned wolves; (3) to salvage a dead specimen that may be used for scientific study; (4) to aid in law enforcement investigations involving wolves; or (5) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or designated agents, to prevent them from passing on or teaching those traits to other wolves.
Tribal take to reduce impacts on wild ungulates	The Service has included an exception to allow nonlethal and lethal management of gray wolves that are having an unacceptable impact on ungulate herds or populations on Tribal lands. This exception requires a science-based proposal that must, at a minimum, include the following information: (1) the basis of ungulate population or herd management objectives; (2) data indicating that the ungulate herd is below management objectives; (3) what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population; (4) why wolf removal is a warranted solution to help restore the ungulate herd to management objectives; (5) the level and duration of wolf removal being proposed; (6) how ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and (7) demonstration that attempts were and are being made to address other identified major causes of ungulate herd or population declines or of Tribal government commitment to implement possible remedies or

Situation	Alternative Element
	<p>conservation measures in addition to wolf removal. The proposal must be subjected to both public and peer review prior to it being finalized and submitted to the Service for review. At least three independent peer reviewers with relevant expertise in the subject matter that are not staff of the Tribe submitting the proposal must be used to review the proposal. Upon Service review, and before wolf removals can be authorized, the Service will evaluate the information provided by the requesting Tribe and provide a written determination to the requesting Tribal game and fish agency on whether such actions are scientifically based and warranted.</p>

Alternative 2

Alternative 2 would establish an experimental population boundary dependent on, and separate from, the location of any existing population of gray wolves identified in Colorado. If an existing population is identified, the Service would issue a section 10(j) rule for the population of gray wolves to be reintroduced in the limited territory. Alternative 2 would:

1. Address the possibility that an existing population of gray wolves is identified in Colorado before the section 10(j) rule is finalized.

An existing population, as defined by the Service, may include wolves that are living in the state and wolves that naturally disperse into the state. A wolf population is at least two breeding pairs of wild wolves successfully raising at least two young each year (until December 31 of the year of their birth), for two consecutive years.

2. Allow the State of Colorado to obtain a permit issued by the Service, if necessary, under section 10(a)(1)(A) of the ESA that allows management flexibility for populations of federally listed threatened or endangered species while providing for conservation of the species as a whole.

The State could apply for a permit under section 10(a)(1)(A) of the ESA for management of the existing population on state and private land. Any section of 10(a)(1)(A) permit issued to the State would not apply to federal lands, and if an existing population of gray wolves is identified on federal lands before the section 10(j) rule is finalized, these wolves would be managed as an endangered species outside the 10(a)(1)(A) permit area.

3. Develop a section 10(j) rule for the remainder of the state in an area that is wholly separate geographically from the existing population.

Geographic boundaries for the 10(a)(1)(A) permit area would be delineated based on natural or human-made geographic features (i.e., mountain ranges, rivers) that encompass the range of the existing population to ensure that the existing, nonexperimental population is wholly separate geographically from the population of gray wolves that would be reintroduced by the State. If an existing population is not identified before a section 10(j) rule is issued, existing wolves living in or

naturally dispersing to Colorado before that time would be managed under the section 10(j) rule, and a separate section 10(a)(1)(A) permit would not be issued.

4. Define the allowable take of gray wolves in the area covered by the section 10(a)(1)(A) permit.

Section 10(a)(1)(A) of the ESA allows the Service to issue permits for the purposeful or direct take of federally listed species “for scientific purposes or to enhance the propagation or survival of the affected species.” The Service may issue several types of permits under section 10(a)(1)(A), depending on the proposed activity and the status of the affected species under the ESA. Types of permits include an Enhancement of Survival permit; a Candidate Conservation Agreement with Assurances; and a Research and Recovery permit. These permits are applied to existing populations, rather than to reintroduced or experimental populations. Provisions related to take that would be included in the section 10(j) rule can be found in table 2-2.

Table 2-2 Actions Permitted Under Alternative 2

Situation	Alternative Element
Listed status of wolves	Threatened within the experimental population boundary. Endangered in the area covered under the section 10(a)(1)(A) permit.
Consultation (per section 7)	Within the experimental population boundary, not required unless those actions are on lands of the National Park System or the National Wildlife Refuge System (16 USC §1539(j)(2)(C)(i)). Required in areas covered by the section 10(a)(1)(A) permit.
Take in self-defense	Any person may take a gray wolf in defense of the individual’s life or the life of another person.
Agency take of wolves determined to be a threat to human life and safety	The Service or designated agent(s) may promptly remove any wolf that the Service or designated agent(s) determines to be a threat to human life or safety.
Opportunistic harassment	Within the experimental population boundary, any person may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or designated agent(s) within seven days. Within the 10(a)(1)(A) permit area, opportunistic harassment may be authorized under a separate authority (section 10(a)(1)(A) of the ESA [16 USC §1539(a)(1)(A)]).

Situation	Alternative Element
Intentional harassment	<p>Within the experimental population boundary, after the Service or designated agent(s) have confirmed wolf activity on private lands, on a public land-grazing allotment, or on a Tribal reservation, the Service or designated agent(s) may issue a written take authorization valid for not longer than one year, with appropriate conditions, to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions specifically identified in the take authorization. Intentional harassment must be reported to the Service or a designated agent within seven days.</p> <p>Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
Taking of wolves “in the act” of depredation on private land	<p>Within the experimental population boundary, consistent with State or Tribal requirements, any landowner may take a gray wolf in the act of attacking livestock or working dogs on private land, provided the landowner provides evidence of livestock, stock animals, or working dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and the Service or designated agent(s) is able to confirm the livestock, stock animals, or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule.</p> <p>Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
Taking of wolves “in the act” of depredation on public land	<p>Within the experimental population boundary, consistent with State or Tribal requirements, any livestock producer and public land permittee who is legally using public land under a valid federal land-use permit may take a gray wolf in the act of attacking livestock or working dogs legally present on public lands without prior written authorization. The Service or designated agent(s) must be able to confirm the livestock or working dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve the physical evidence that the take was conducted according to this rule. Any person legally present on public land may immediately take a wolf that is in the act of attacking the individual’s stock animal or working dog, provided conditions noted in “taking of wolves in the act on private land” are met. Any take or method of take on public lands must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p> <p>Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>

Situation	Alternative Element
<p>Additional taking by private citizens on private land</p>	<p>Within the experimental population boundary, at the Service’s or designated agents’ direction, the Service or designated agent may issue a repeated depredation written take authorization of limited duration (45 days or less) to a landowner or their employees to take up to a specified (by the Service or designated agent) number of wolves on private land if: (1) the landowner has had at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent within the last 30 days; and (2) the Service or designated agent has determined that repeatedly depredating wolves are routinely present on the private land and present a significant risk to the health and safety of livestock; and (3) the Service or designated agent has authorized lethal removal of wolves from that same private land. These authorizations may be terminated at any time once threats have been resolved or minimized. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p> <p>Within the 10(a)(1)(A) area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
<p>Additional taking by grazing permittees on public land</p>	<p>Within the experimental population boundary, at the Service’s or designated agent(s) direction, the Service or designated agent(s) may issue a repeated depredation written take authorization of limited duration (45 days or less) to a public land-grazing permittee to take repeatedly depredating wolves on that permittee’s active livestock grazing allotment if: (1) the grazing allotment has at least one depredation by wolves on livestock that has been confirmed by the Service or designated agent(s) within the past 30 days, and (2) the Service or designated agent(s) has determined that repeatedly depredating wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock, and (3) the Service or designated agent(s) has authorized lethal removal of repeatedly depredating wolves from that same allotment. These authorizations may be terminated at any time once threats have been resolved or minimized. Any take or method of take on public land must be consistent with the rules and regulations on those public lands. Any lethal or injurious take must be reported to the Service or a designated agent within 24 hours. The Service will allow a reasonable extension of the time limit if access to the site is limited.</p> <p>Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>

Situation	Alternative Element
<p>Agency take of wolves that repeatedly depredate livestock</p>	<p>Within the experimental population boundary, the Service and designated agent(s) may carry out harassment, nonlethal control measures, relocation, placement in captivity, or lethal control of repeatedly depredating wolves. The Service or designated agent(s) would consider: (1) evidence of wounded livestock, working dogs, or other domestic animals, or remains of livestock, working dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that they were in the act of attacking livestock, working dogs, or other domestic animals; (2) the likelihood of additional wolf-caused losses or attacks may occur if no control action is taken; (3) evidence of unusual attractants or artificial or intentional feeding of wolves; and (4) evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.</p> <p>Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>
<p>Incidental take</p>	<p>Within the experimental population boundary, take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported to the Service or designated agent within 24 hours (the Service may allow additional time if access to the site of the take is limited). Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.</p> <p>Within the 10(a)(1)(A) permit area, no incidental take would be permitted.</p>
<p>Additional taking provisions for agency employees</p>	<p>Within the experimental population boundary, any employee or agent of the Service may take a wolf from the wild if such action is (1) for take related to the release, tracking, monitoring, recapture, and management for the experimental population; (2) to aid or euthanize sick, injured, or orphaned wolves; (3) to salvage a dead specimen that may be used for scientific study; (4) to aid in law enforcement investigations involving wolves; or (5) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or designated agents, to prevent them from passing on or teaching those traits to other wolves.</p> <p>For areas covered under the 10(a)(1)(A) permit, the following forms of take may occur: (1) for scientific purposes; (2) to aid or euthanize sick, injured, or orphaned wolves; (3) to salvage a dead specimen that may be used for scientific study; (4) to aid in law enforcement investigations involving wolves; and (5) to remove wolves with abnormal physical or behavioral characteristics, as determined by the Service or designated agents, to prevent them from passing on or teaching those traits to other wolves.</p>

Situation	Alternative Element
<p>Tribal take to reduce impacts on wild ungulates</p>	<p>Within the experimental population boundary, the Service has included an exception to allow nonlethal and lethal management of gray wolves that are having an unacceptable impact on ungulate herds or populations on Tribal lands. This exception requires a science-based proposal that must, at a minimum, include the following information: (1) the basis of ungulate population or herd management objectives; (2) data indicating that the ungulate herd is below management objectives; (3) what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population; (4) why wolf removal is a warranted solution to help restore the ungulate herd to management objectives; (5) the level and duration of wolf removal being proposed; (6) how ungulate population response to wolf removal will be measured and control actions adjusted for effectiveness; and (7) demonstration that attempts were and are being made to address other identified major causes of ungulate herd or population declines or of Tribal government commitment to implement possible remedies or conservation measures in addition to wolf removal. The proposal must be subjected to both public and peer review prior to it being finalized and submitted to the Service for review. At least three independent peer reviewers with relevant expertise in the subject matter that are not staff of the Tribe submitting the proposal must be used to review the proposal. Upon Service review, and before wolf removals can be authorized, the Service will evaluate the information provided by the requesting Tribe and provide a written determination to the requesting Tribal game and fish agency on whether such actions are scientifically based and warranted. Within the 10(a)(1)(A) permit area, no lethal take would be permitted; only nonlethal take would be allowed.</p>

No-Action Alternative

Under the no-action alternative, the Service would not issue a section 10(j) rule or other federal regulatory framework consistent with section 10 of the ESA. An experimental population boundary would not be created in Colorado, and after the State-lead reintroduction, the gray wolf would be considered endangered throughout the state. The specific actions allowed under the no-action alternative are show in table 2-3.

Table 2-3 Actions Permitted Under the No-Action Alternative

Situation	Alternative Element
Consultation (per section 7)	Federal agencies are required to consult with the Service for any project or action they authorize, fund, or carry out that may affect federally listed endangered gray wolves in Colorado.
Listed status of wolves	Endangered
Take in self-defense	Any person may take a gray wolf in defense of the individual’s life or the life of another person.
Agency take of wolves determined to be a threat to human life and safety	The Service or designated agent(s) may promptly remove any wolf that the Service or designated agent(s) determines to be a threat to human life or safety.
Opportunistic harassment	May be authorized under a separate authority (section 10(a)(1)(A) of the ESA [16 USC §1539(a)(1)(A)]).
Intentional harassment	No lethal or injurious nonlethal take would be permitted.
Taking of wolves “in the act” of depredation on private land	No lethal or injurious nonlethal take would be permitted.
Taking of wolves “in the act” of depredation on public land	No lethal or injurious nonlethal take would be permitted.
Additional taking by private citizens on private land	No lethal or injurious nonlethal take would be permitted.
Additional taking by grazing permittees on public land	No lethal or injurious nonlethal take would be permitted.
Agency take of wolves that repeatedly depredate livestock	No lethal or injurious nonlethal take would be permitted.
Incidental take	Incidental take could be permitted or exempted under other ESA authorities.
Additional taking provisions for agency employees	No lethal or injurious nonlethal take would be permitted.

Environmentally Preferred Alternative

The Service has identified alternative 1 as the environmentally preferred alternative for implementing the proposed action. Alternative 1 would provide a consistent federal regulatory framework and take provisions across the state for managing gray wolves that would be reintroduced by the State and gray wolves living in or naturally dispersing to Colorado. This alternative would provide the management flexibility within the experimental population boundary, which would include the entire state, while allowing for the conservation of the species. Management flexibility would be provided statewide because although gray wolves would be

reintroduced on the Western Slope in accordance with CRS 33-2-105.8, wolves can disperse long distances and may eventually occur throughout the state. Alternative 1 would not result in damage to the biological or physical environment from its implementation. See section 2.4.2 of the final EIS for additional details on alternative 1.

In comparison, alternative 2 would offer limited management flexibility to the Service and its designated agents within the 10(a)(1)(A) permit area. The limited options for wolf management in the 10(a)(1)(A) permit area would not meet the purpose of the action, which is to promote the conservation of the species while reducing the regulatory burden. In addition, the Service developed alternative 2 to address the potential for an existing population of gray wolves to be identified in Colorado before the finalization of the section 10(j) rule. Gray wolves known to occur in Colorado as of the publication of the final EIS do not meet the Service's definition of a population (see section 2.4.3 of the final EIS), and it is not possible for existing wolves in Colorado to meet this definition prior to finalization of the section 10(j) rule in December 2023. Therefore, implementation of alternative 2 is not needed to manage take of an existing population of wolves separately from the population that would be reintroduced by the State of Colorado.

In the short term, alternative 2 would have allowed wolves to reach population targets faster than alternative 1 due to the lower risk of human-caused wolf mortality within the 10(a)(1)(A) permit area as a result of a narrower definition of take. However, the long-term impact of alternative 2 on the conservation and recovery of gray wolves would have been identical to alternative 1, but without the regulatory flexibility available on a statewide basis. Alternative 2 may have decreased social tolerance for wolves, which may have led to increased wolf-human conflict. Like alternative 1, the Service does not expect any features of alternative 2 to damage the biological or physical environment.

Similarly, the no-action alternative would not offer management flexibility in any part of the state of Colorado and would not meet the purpose and need of the proposed action (see sections 1.2 and 1.3 of the final EIS). Because the Service and its designated agents would not have the ability to implement take of wolves to address conflicts, the no-action alternative could have short- and long-term, adverse effects on Tribal resources, socioeconomic resources, and environmental justice population groups of concern. In the short term, wolf population growth would be faster under the no-action alternative than under alternative 1 or alternative 2 due to the restrictions on take under the no-action alternative. However, the long-term impact of the no-action alternative on the conservation and recovery of gray wolves would be identical to the two action alternatives because wolf population growth would decrease as wolf population density approaches the statewide ecological carrying capacity. The no-action alternative is likely to result in the lowest social tolerance for wolves in Colorado because the lack of management flexibility reduces options for mitigating wolf-human conflict. Lower social tolerance for wolves would be detrimental to the long-term conservation of the species. Similar to alternatives 1, the Service does not foresee any features of the no-action alternative that would result in damage to the biological or physical environment.

Rationale for Decision

Alternative 1, the preferred alternative, is consistent with national policy and the Service's statutory mission. The proposed action addresses a request from the State of Colorado to designate a gray wolf population that would be reintroduced into Colorado as a nonessential experimental population under section 10(j) of the ESA. The Service intends to select alternative 1 for implementation

because it will result in an experimental population designation that supports the long-term conservation and recovery of the gray wolf. Under alternative 1, the listed status of wolves under the section 10(j) rule will be threatened. Designation of the experimental population as nonessential will relax take prohibitions and consultation requirements under the ESA, such that allowable take will include non-injurious, nonlethal conflict minimization practices, potentially injurious hazing techniques, translocation, and lethal take. Collectively, the features of alternative 1 will result in an experimental designation of the gray wolf in Colorado that provides the necessary tools to address and resolve conflicts when and where they occur.

Alternative 1 Compared to Alternative 2

The Service selected alternative 1 over alternative 2 for the reasons identified above (see “Environmentally Preferred Alternative”). Alternative 2 would require regulation of take under separate federal regulatory tools for an identified existing population and the population of wolves that would be reintroduced to the state. Under the Service’s definition of a wolf population, it is no longer possible for an existing population to be identified in the State of Colorado prior to when the section 10(j) rule will be finalized in December 2023. Upon finalization of the section 10(j) rule, alternative 1 will forgo permitting under section 10(a)(1)(A) within the State of Colorado, unlike alternative 2, which would remain contingent on this permitting. Alternative 1 is preferred because the experimental population boundary will include the entire state of Colorado, allowing for consistent regulatory practices and more efficient conflict resolution. Under alternative 2, if an existing population is discovered, this designated and limited portion of Colorado would require a State-issued 10(a)(1)(A) permit allowing for the purposeful or direct take of the gray wolf population, which would also include more limited take provisions. In this case, take provisions specified under the section 10(j) rule would apply to the area wholly separate geographically from the existing population. The Service considers its ability and the ability of its designated agents to respond to conflict situations through the take of a gray wolf as a necessary feature of managing a top predator, and this feature is retained across the state only under alternative 1.

Alternatives 1 and 2 would have similar short- and long-term impacts on wolf numbers and distribution in parts of the state where the section 10(j) rule is approved. Under alternative 2, wolf density may be higher in the short term in the 10(a)(1)(A) permit area because lethal control would not be authorized under the permit. In the long term under alternative 2, wolves would naturally disperse from the 10(a)(1)(A) permit area and colonize suitable habitat in the experimental population boundary with sufficient prey and minimal social conflicts with humans and other wolves. In the long term, the wolf population is expected to increase at rates similar to the management approach of alternative 1. Similar to alternative 1, wolf habitat and connectivity would not be affected because there would continue to be natural emigration and immigration from neighboring packs in the northern Rocky Mountains under alternative 2.

In summary, the Service concludes that alternative 1 offers more management flexibility to respond to conflicts and local community needs. The key difference between the alternatives is the listed status of the wolves—the species would remain endangered in an area covered under the section 10(a)(1)(A) permit but threatened within the experimental population boundary. While alternatives 1 and 2 are anticipated to have comparable conservation benefits, alternative 1 has been identified as a more cohesive approach to the authorization and management of conflict.

Alternative 1 Compared to the No-Action Alternative

Under the no-action alternative, all ESA protections would apply to the gray wolf population, and it would remain listed as endangered. There would be no state or federal authority for lethal control except in the event of self-defense. All other scenarios, such as depredation on private or public land, would not allow for lethal or injurious nonlethal take. Illegal killing is expected to be higher under the no-action alternative than under the action alternatives based on studies completed elsewhere, particularly in the short term after wolves are reintroduced when there is uncertainty about the potential adverse impacts on local land users. The no-action alternative would be the most beneficial from a purely biological standpoint, but it would greatly limit authorized take by the Service and its designated agents. In summary, the take provisions in the 10(j) rule are valuable tools for agency management flexibility and to promote social tolerance for gray wolves within local communities, making alternative 1 the preferred alternative.

Alternative 2 Compared to the No-Action Alternative

Alternative 2 would provide more management flexibility for the population of gray wolves that would be reintroduced by the State of Colorado, compared to the no-action alternative. Under the no-action alternative, gray wolves would remain listed as endangered under the ESA, whereas under alternative 2 wolves would be managed as endangered in the 10(a)(1)(A) permitted areas and managed as threatened inside the experimental population boundary. Alternative 2 would function similar to no-action alternative in 10(a)(1)(A) permitted areas.

Summary

Based on these findings and considerations, the Service is selecting alternative 1 for implementation. The designation of a nonessential experimental population under alternative 1 aligns with the State's request. Under the section 10(j) rule, establishment of the nonessential experimental population will allow for the taking of gray wolves in response to the management activities in the State Plan. Alternative 1 will widen the scope of authority for federal or state agencies and Tribes to exercise control in managing conflict.

Monitoring or Enforcement Program

The Service, in partnership with CPW, will monitor progress in implementing the final 10(j) rule in support of the long-term conservation and recovery of the gray wolf in Colorado. CPW plans to use radio transmitters, remote cameras, and surveys of roads and trails to document wolf signs, and other monitoring techniques to document wolf reproductive success, abundance, and distribution in Colorado post-release. CPW will summarize this information in an annual report that describes wolf conservation and management activities that occurred in Colorado each calendar or biological year to evaluate progress toward achieving the State of Colorado's downlisting and recovery criteria. The annual report will be due to the Service by June 30 and posted on CPW's website. The annual report may include, but is not limited to: post-release wolf movements and behavior, wolf minimum counts or abundance estimates, reproductive success and recruitment, territory use and distribution, cause-specific wolf mortalities, and a summary of wolf conflicts and associated management activities to minimize wolf conflict risk.

The Service will evaluate Colorado's wolf reintroduction and management program in an annual summary report. Additionally, five years after the last reintroductions are completed, the Service

will evaluate whether the wolf population is meeting the State's recovery goals and conservation of the species. During this evaluation, the Service will assess the reintroduction program and coordinate with CPW if it is determined that modifications to reintroduction protocols are necessary. Five years after the reintroductions is a reasonable timeline for this evaluation because it mirrors the minimum post-delisting monitoring period used to evaluate the success of management programs after species have achieved recovery. It also provides a suitable period to evaluate wolf population growth and abundance to assess progress toward achieving the State of Colorado's recovery goals, while concurrently minimizing wolf-related conflicts in the state. If modifications to wolf monitoring and management activities are needed, the Service will coordinate closely with CPW to ensure progress toward achieving recovery goals while concurrently minimizing wolf-related conflicts in Colorado.

For More Information

You may obtain a copy of the final EIS and ROD online at <http://www.regulations.gov> by searching for Docket No. FWS-R6-ES-2022-0100 or on the Service's website <https://www.fws.gov/coloradowolf>. Alternatively, you may obtain a copy of the final EIS and ROD by contacting the U.S. Fish and Wildlife Service office via email (Colorado_wolf_10j@fws.gov)

RECOMMENDATION OF RULE ISSUANCE

Based on the foregoing ROD and the findings of the EIS, I recommend approval and issuance of a final nonessential experimental population rule (section 10(j) rule) for the population of gray wolves that would be reintroduced to Colorado.

Matt Hogan
Regional Director
U.S. Fish and Wildlife Service