

# Colorado Gray Wolf 10(j) Rulemaking EIS US Fish and Wildlife Service

## Cooperator Comment Review Call Notes

July 26, 2023  
11:00 am – 12:00 pm MST  
Microsoft Teams Meeting

Attendees:

Name	Organization	E-Mail
Kurt Broderdorp	FWS	kurt_broderdorp@fws.gov
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### **FEIS: Cooperator Review Comments**

The group continued discussing the Service's responses to comments on the admin draft FEIS from cooperating agencies. The group discussed how to address the ungulate provision with cooperating agencies and agreed that it would be important to explain that the Service engages with Tribes at a different level than counties and other cooperators because they are sovereign nations.

The group discussed the following comments and prepared responses (in blue): (*Note: The comment responses provided below are the initial responses discussed on this call. Final comment responses are included in the separate document summarizing the Service's responses to cooperating agency comments on the draft FEIS.*)

Moffat County:

- Concerned that only the EIS and not the rule was shared with the cooperators. Cooperators asked for a red-lined track changes version (multiple requests) and were denied. Made review in a short time frame difficult and placed a bigger burden on the cooperators. Denying the track changes version is not in the spirit of cooperation and questionable legally.
  - [The Service has shared what they are able to share according to agency policy and guidance from attorneys.](#)
- Concern/opposition with no state-wide ungulate provision. Text goes on to provide information related to the impact to the State's economy.
  - [The ungulate provision honors Tribal sovereignty and was specifically requested by the Tribes.](#)
- Opposition to removing pets and redefining dogs to "working dogs" and stated it must remain.

- This change was made to be consistent with the final State Plan.
- An alternative must evaluate the socioeconomic impacts of how wolves impact ungulates and therefore state hunting revenues, even if that alternative is not selected.
  - There is a record of the Service analyzing this alternative in the DEIS and it is included under alternatives considered but not carried forward for detailed analysis in the FEIS.
- Appreciate changes to Table 4-3 (socioeconomics) but requested further justification in the reported death loss of 83 cattle and 31 sheep from wolf depredation when there are 200 wolves in Colorado. Does seem to make sense more cattle than sheep? Still concern that feedlots are included
  - The socioeconomics analysis will be reviewed based on this information.
- Previous comment that wolves being present and altering livestock grazing patterns, rangeland vegetation utilization and livestock water behavior should be evaluated.
  - This would be a consequence of wolf reintroduction and is outside the scope of the Service's action.

#### Arizona Department of Game and Fish (AZDGF)

- In some sections of the document, reference is made to the reintroduction of the Mexican wolf. For accuracy, this should be modified in all instances to refer to the "recovery" of the Mexican wolf. This highlights that the Mexican wolf is being managed as dictated by the Act and not a discretionary action by the state and federal wildlife management agencies. In addition, the Department recommends changing the term "over-hunting" with "over-utilization" for the term over-hunting is often misused.
  - Will change the language as requested.
- Page 4-33, reference is made to the organizations that participated in the 2022 revision to the Mexican wolf recovery plan. It would be more accurate to reference that there was much broader participation than the list provided as there was representation from independent scientists and academic institutions in both the U.S. and Mexico as well. This mix of scientists was essential to the development of a revised recovery plan that represented the best available science. It also outlines and recognizes the six key elements in the 2022 Mexican Wolf Recovery Plan, Second Revision. It is important to acknowledge that the recovery plan and the Act itself emphasizes the genetic uniqueness of the Mexican wolf and the importance of protecting this genetic uniqueness into the future from both a legal and ecological standpoint.
  - Will change the language as requested.
- Page 4-34, there is note of the Service's role in law enforcement and public education/outreach. The Department recommends including recognition of the role that State Wildlife Agencies in Arizona and New Mexico contributed in these important activities.
  - Requested text will be added.
- Page 4-37, there is a statement that indicates there will be no cumulative adverse impacts to ungulate populations in the future. This statement seems quite strong looking into an uncertain future for gray wolf reintroduction. This could be reworded to indicate that there are no anticipated adverse impacts to ungulates by wolf reintroduction. As written, this statement has implications outside of the Colorado reestablishment program.

- Edits will be made to the ungulate cumulative impact analysis.
- Page 4-44, states that dispersing wolves from Colorado may have an adverse economic impact to livestock producers. The Department believes it is important to acknowledge that a dispersing northern wolf to the Kaibab Plateau in Arizona would also pose jeopardy to the economically important North Kaibab deer herd. This is a prime concern to the Arizona Game and Fish Commission and seems to merit mention here. While many deer herds in the West have a high degree of connectivity to other source populations, the Kaibab is, in essence, a deer "island" and, as such, has special status to Arizona.
  - Noted cumulative impacts to ungulates could extend outside of Colorado.

#### Rio Blanco County:

- Table 3-2 (Issues dismissed) – Recreation should be discussed in the EIS “because locals familiar with the area’s where wolves will be located understand the increased risk of spending time in the wilderness with the introduction of wolves.”
  - This issue is outside of the Service’s scope.
- Definition changes – reiterated comments from the DEIS on changes to livestock producer and problem wolves. “Wounded – Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf bite.” Consider wolf cause of animal going through a fence. That wouldn’t be caused by a bite but should still be considered wounded by a wolf. Consider heart or lung damage from wolves running the livestock long distances or for long periods of time. Therefore, we request the word “bite” be removed from the definition of “wounded” and that it read, “Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf.”
  - There was inconsistency in the definitions in the draft. The language now reads: Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf or wolves.
- “To preserve physical evidence that the livestock or dogs were recently attacked by a wolf or wolves, the [wolf] carcass and surrounding area must not be disturbed. The Service or designated agent must be able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.” 88 FR 10278. “The Service or designated agent must be able to confirm that the livestock or dog were wounded, harassed, molested, or killed by a wolf or wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed to preserve physical evidence that the take was conducted according to this rule.” 88 FR 10278. In Rio Blanco County, there will be cases where a wolf kill would not be located in an area that is easily accessible and agency staff will not be able to get to the carcass in time to confirm the kill by wolves. However, there may be strong evidence of wolf presence (tracks, scat, and/or hair) that the rancher could verify by taking photos and scat and/or hair samples from the site.
  - The group discussed that WSP would refer to the public comment response to a similar comment to develop a response to this comment.
- FEIS /rule must allow for legal management and take of gray wolves significantly impacting ungulate populations – expand tribal provision to the whole state. “This should

be an all in or an all out, the FWS should not be playing favorites when it comes to non-science management decisions.”

- The ungulate provision honors Tribal sovereignty and was specifically requested by the Tribes.
- Allowable forms of “take” – Harassment vs take – Should these be separated out on page 71 – 72?
  - Harassment is a form of take so the two terms should be together.
- Pg 75 – (v)(D) & Pg iii– “Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.” Public land management agencies (USFS or BLM) are land management agencies. They are not livestock managers and do not/should not have livestock husbandry practices included in allotment plans. Request this language be removed.
  - See public comment response: “As noted in the FEIS, animal husbandry practices, such as adjusting calving timing and location, increased human supervision by range riding over large grazing areas, and livestock guardian dogs, have been proven effective at minimizing livestock losses and thereby reducing wolf conflict with livestock operators. The Service believes that all nonlethal options for reducing wolf conflict should be used prior to using lethal take.”
- g vii – Alt.1 Additional taking by grazing permittees on public land: Discusses the requirement that a depredation must have taken place on “that allotment” for an authorization to be given. Permits (authorization) should include “that allotment and/or neighboring allotments”. Wolves don’t know the boundaries and livestock on a neighboring allotment may be in just as much danger as the allotment where they killed the first time. This would be very true if the killing happened within a short distance from the boundary line.
  - This change was not incorporated. Permits apply to actions on the permittee’s private property, not adjacent properties.
- Pg vi – Alt. 1 – Additional taking by private citizens on their private land: Similar to the public land issue noted above, it is important to include neighboring private property where at least one depredation has occurred. There will likely be situations where wolves kill on one landowner’s property and then attack on a neighboring property. Agency staff should be able to provide neighboring landowners the ability to take a wolf that has killed livestock and/or pets on the neighbors and has now moved to their property and is threatening to kill again.
  - This change was not incorporated. Permits apply to actions on the permittee’s allotment, not adjacent allotments. Repeated depredation permits also allow for at least one depredation, so you don’t need to rely on adjacent depredations to reach more than one.
- g viii – Alt 1 – Agency take of wolves that repeatedly depredate livestock: “(4) evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.” Rio Blanco County request this to be removed as noted in above comments for page 75. Allotment plans and annual operating plans do not/should not include animal husbandry practices because they are not livestock managers, they are land managers.

- See public comment response: “As noted in the FEIS, animal husbandry practices, such as adjusting calving timing and location, increased human supervision by range riding over large grazing areas, and livestock guardian dogs, have been proven effective at minimizing livestock losses and thereby reducing wolf conflict with livestock operators. The Service believes that all nonlethal options for reducing wolf conflict should be used prior to using lethal take.”
- Pg ix – Alt 1 – Agency take to reduce impacts on wild ungulates: This is important to be included in the final Rule because there is definite potential for a pack(s) to begin killing in large numbers rather than just what they need to survive. This could be detrimental to one or many more guides and outfitters as well as to a rural community that economically depends on big game hunting.
  - The ungulate provision honors Tribal sovereignty and was specifically requested by the Tribes.

#### Bureau of Land Management (BLM)

- Request to remove info in Appendix F on the specific location of cultural sites.
  - Specific locations will be removed from the FEIS.

#### State of Wyoming

- (Table ES-1) Wyoming questioned the efficacy of relocation of wolves under the provision for agency take of wolves that repeatedly depredate livestock.
  - This is one of many tools, won't be sole tool but one of many options that can be used.
- (Section 2.3.3) Questioned why the decision regarding the ungulate provision occurred? “This seems odd that it would be allowed on tribal lands but not elsewhere, I realize the importance of recognizing sovereignty, but question why the impacts on ungulates would be different on tribal versus any other lands, the wolves are not differentiation prey availability and selection based on land status?”
  - The ungulate provision honors Tribal sovereignty and was specifically requested by the Tribes.
- (Section 2.4.2) Re the text: “Gray wolves in most of Wyoming, outside the wolf trophy game management area (WTGMA), are considered predators and can be killed legally with no limit on such lethal take. Therefore, wolves are unlikely to persist long term in portions of Wyoming where they are designated as predatory animals... Despite these challenges, it is possible that gray wolves dispersing from the northern Rocky Mountains population could reach Colorado.” The State of Wyoming commented: “Unsure why this has to be referenced in this manner, despite the predator status, wolves have dispersed to Colorado and are the wolves that are currently there and have even dispersed to the Grand Canyon. This may just be semantics but is continuously used by groups opposed to the dual status/classification in Wyoming.”
  - The Service notes this concern and will edit the language.
- (Table 2-4) Re: the incidental take provision, “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.” Wyoming commented, “WHY would this not be considered

accidental? We realize intent is difficult to prosecute, but this is not unheard of in areas where wolf and coyotes are sympatric or with another species as well.”

- From comment response report: “Under the rule, take of a gray wolf is allowed if the take is accidental and/or incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take and such take is reported within 24 hours. The Service may refer incidental take that does not meet these provisions to the appropriate authorities for prosecution. Hunters have the responsibility to identify their target before shooting. 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.”
- (Section 3.3.1) Deleted “most critical” in the first sentence and replaced with “primary,” so the sentence reads, “Elk, mule deer, and white-tailed deer are the primary prey species for wolves in the northern Rocky Mountains.”
  - Comment will be incorporated.
- (Section 3.5, Socioeconomics) Noted that implementation of predator control methods can be a financial burden for operators especially in localized situations in areas of repeated/chronic depredation (more specific to wolves and grizzly bears).
  - The EIS does include this information on costs of management measures by landowners in chapter 4.
- (Section 4.4.1, Gray Wolf) Re: the text under the no-action alternative noting that illegal human-caused mortality may be highest under this alternative, noted “‘Legal’ human-caused mortality may be high as well. When wolves were relisted in WY in 2014 the following years saw the highest level of agency removal as a direct response to livestock depredation due to the increased wolf population and subsequent increased depredation.”
  - Noted. This does not change the analysis presented in the FEIS.
- (Section 4.4.1, Gray Wolf) Commented under alternative 1 that capture and relocation of wolves in response to repeated depredation does not seem like a realistic option.
  - This won’t be sole tool but one of many options that can be used.
- (Section 4.7.2, Socioeconomics, No-Action Alternative) Noted that including lower birth weights and smaller weight at sale as indirect impacts of depredation is speculative or needs some type of citation. Noted later in the section that it is difficult to quantify all factors associated with decreases in these measures.
  - The FEIS will be checked for a citation and to note this is difficult to quantify.
- (Section 4.7.2, Socioeconomics, No-Action Alternative) Recommended removing statewide data for Oregon, Washington, and Wyoming “as it confuses the context of the significance of localized depredation. This is a standard point of those opposed to grazing and in opposition of management efforts on wolves in regards to depredation, to use total in areas without wolves is disingenuous.”
  - Additional context was added from the DEIS to address public comments. These data provide the reader with both a broader scale and more locally focused range of impact analysis.
- (Section 4.7) Noted that “range riders are extremely effective at locating depredated livestock to inform management decisions. From a carnivore conflict management perspective this is their best asset.”
  - Noted

## Colorado Parks and Wildlife (CPW)

- We believe that the EIS needs to explicitly analyze and state that the Colorado wolf population area will be designated as nonessential. This is a key component to the experimental designation under section 10(j), and has direct relevance to Section 7 consultation requirements. The EIS should address this and insert the term 'nonessential' where appropriate throughout the document.
  - This is pre-decisional till the ROD is signed. The text in the draft ROD will be modified to include this language.
- There is not an explicit statement that reintroduction under Section 10(j) would further the conservation of the species. As this is a specific requirement under Section 10(j), having a definitive statement, front and center, would strengthen the Service's position. We suggest that emphasizing that this has been properly analyzed will strengthen the Service's determination that creating a nonessential experimental population under the proposed 10(j) rule in Alternative 1 (and maybe Alt 2 as well) would "contribute to the conservation of" gray wolves so they have clearly satisfied that statutory requirement in 16 U.S.C. § 1539(j)(2)(A).
  - The FEIS will be reviewed, and this language will be incorporated. This will be incorporated at a minimum into the impact analysis of alternative 1, in the selection of the preferred alternative, and in the ROD. Will review for other places as well.
- In the provisions about "additional take" on private and public lands, this statement is repeated in tables ES-1, 2-2, 2-3, and 2-4. "(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." We ask if there should be a "previously" in the highlighted section so it says the Service or agent has previously authorized lethal removal? Otherwise, it begs the question, isn't the authorization of lethal removal what is being done in the current action?
  - The Service is currently evaluating this suggested change.
- Specific wording recommendations:
  - On page 1-1, in the first paragraph, we suggest the inclusion of a footnote at the end of the sentence that begins: "Wolf populations in Montana, Wyoming, Idaho..." that clarifies the status and current legal considerations. We suggest that the footnote could include the language: The listing status of gray wolves throughout the western United States, except in the Mexican Wolf Experimental Area, is currently under review by the Fish and Wildlife Service. In addition, the district court decision rejecting a Service-proposed de-listing rule for gray wolves has been appealed and is currently pending in the U.S. Court of Appeals for the Ninth Circuit. The appeal is currently stayed by agreement of the parties until February 2024.
    - This statement oversimplifies a complex process. This will not be incorporated to simplify the process for the reader.
  - On page 2-5, #9. The sentence that begins: "However, State policy..." should be edited to state: "However, the State Constitution only allows for the use of

(nonlethal) leghold traps for scientific investigations and other limited purposes. Should State law change, the range of alternatives considered in the EIS does not include anything that dictates what tools can or cannot be used, and the State would be able to use foothold traps as a management tool should it choose to do so."

- [Language will be changed to reflect these edits.](#)
- On page 4-48, We suggest the inclusion of "Colorado Constitution Art. 18 § 12b (2021)" in the roster of Additional relevant State plans or laws.
  - [Language will be changed to reflect these edits.](#)