

Gray Wolf Reintroduction in Colorado

History, Management, and Law

BY DAVID JENNINGS



This article gives an overview of the history of gray wolves in the United States, describes the plan for their reintroduction into Colorado, and explains the laws that protect them.

The Colorado Parks and Wildlife Department (CPW) is set to begin releasing gray wolves, *Canis lupus*, back into Colorado by the end of 2023, as mandated by the voters. This article explains how we arrived at this juncture, outlines CPW's plan for gray wolf reintroduction, and gives an overview of the relevant laws.

Proposition 114

Support for reintroducing gray wolves to Colorado has existed since the mid-1990s.¹ But it was not until 2019 that the Rocky Mountain Wolf Action Fund started gathering signatures on a petition to change the Colorado statutes to require the state to reintroduce gray wolves. This petition eventually became Proposition 114, and it was introduced on the ballot in Colorado during the 2020 election. It directed CPW to (1) develop a plan to reintroduce and manage gray wolves in Colorado no later than December 31, 2023, on designated lands west of the Continental Divide; (2) hold statewide hearings about scientific, economic, and social considerations; (3) periodically obtain public input to update the plan; and (4) use state funds to assist livestock owners in preventing conflicts with gray wolves and pay fair compensation for livestock losses.²

In November 2020, Proposition 114 passed with a margin of 50.91% in favor to 49.09% against, making Colorado the first state to pass legislation to reintroduce wildlife. Proposition 114 is now codified at CRS § 33-2-105.8 (the statute).³ CPW is tasked with overseeing compliance with the statute.

A Brief History of Gray Wolves in the United States

The history of gray wolves in the United States provides some context for the motivations behind Proposition 114. In the early 19th century, gray wolves inhabited most areas of the United States,

with a population of about 2 million individual wolves.⁴ By the late 1800s, as settlers expanded into the western states, much of gray wolves' traditional prey, such as bison and other ungulates (hoofed mammals), was depleted through hunting and habitat destruction for agricultural purposes.⁵ With fewer traditional prey available, gray wolves switched to depredating the livestock now occupying much of the landscape, which in turn led to the targeted extermination of gray wolves by settlers. As is fairly typical with species that become a nuisance to humans, this led to an extermination campaign, which included state and federal programs to poison and trap adult wolves and kill young wolves in dens.⁶ This persistent hunting eventually led to the functional extirpation of gray wolves in the contiguous United States by the mid-20th century, with only a few hundred individual wolves remaining.⁷

In Colorado specifically, gray wolves were eradicated by around 1940, but in more recent years some individuals and packs have independently dispersed back into the state. For instance, in 2004, a gray wolf carcass was found near Idaho Springs.⁸ Other occasional encounters were subsequently recorded throughout the state,⁹ and by 2019, a pack started venturing into northwestern Colorado from Wyoming. Thus, the gray wolf releases pursuant to the statute will augment this natural dispersion.

Gray wolves were first federally protected by the Endangered Species Preservation Act of 1966 and later by the Endangered Species Act (ESA), and they are listed as endangered under Colorado's Nongame, Endangered, or Threatened Species Conservation Act. Although Proposition 114 is the first successful ballot initiative concerning the reintroduction of wildlife, it is not the first time gray wolves have been reintroduced into part of their historic range. Gray wolves were famously reintroduced into Yellowstone National Park from 1995 to 1997,

and populations have subsequently become well-established in Wyoming. Mexican gray wolves, *C. lupus baileyi*, a gray wolf subspecies, were also reintroduced into Arizona and New Mexico in the late 1990s.¹⁰ So while the method for achieving reintroduction in Colorado is novel, the general concept of wolf reintroduction is not and has been successfully performed elsewhere. Indeed, the gray wolf population in the contiguous United States grew to over 6,000 individuals by 2020, largely as a result of reintroduction efforts and federal protection.¹¹

CPW's Wolf Management Plan for Reintroducing Gray Wolves to Colorado

Pursuant to the statute, CPW published a draft wolf management plan on December 9, 2022. Over the next six months, CPW held various public meetings and solicited feedback on the plan. On May 3, 2023, CPW's commissioners unanimously approved its final Colorado Wolf Restoration and Management Plan (the plan).¹² Among other things, the plan addresses implementing the reintroduction effort, recovery, management, and wolf-livestock interactions.

Key Elements for Conservation and Management

The plan focuses on seven key elements for the future of wolf conservation and management in the state: (1) social tolerance for wolves and economic impacts of their presence in the state, (2) wolf recovery, (3) wolf management with respect to wolf-livestock interactions, (4) wolf management with respect to wolf-ungulate interactions, (5) wolf interactions with other wildlife species, (6) wolves and human safety concerns, and (7) monitoring and research.¹³

Reintroduction Implementation

The plan contemplates sourcing wild gray wolves from locations with similar ecological condi-

tions to western Colorado.¹⁴ Idaho, Montana, and Wyoming are listed as the first choices, with eastern Oregon and eastern Washington serving as alternates. This detail, however, is not yet finalized, with representatives from these states recently denying the existence of any agreements to provide Colorado with gray wolves. In fact, the states of Wyoming¹⁵ and Idaho¹⁶ have indicated that they are opposed to the reintroduction of wolves in Colorado and will not send wolves here. North-central Utah has also been listed as a possible source location, but the Utah state government also seems unresponsive to Colorado reintroducing gray wolves.¹⁷ So, it remains to be seen where Colorado's reintroduced gray wolves will actually come from.

Nonetheless, CPW proposes to capture 10 to 15 gray wolves annually from several different packs over a three-to-five-year timeframe, for a total of around 30 to 50 gray wolves in the initial releases. The captured gray wolves will be fitted with GPS collars with additional radio telemetry capability prior to being released in Colorado. The collars will also have a mortality sensor and transmit at least one location per day via satellite, enabling CPW to quickly investigate any mortalities or alleged interactions with livestock or people.

Under the statute, gray wolves are only permitted to be released west of the Continental Divide.¹⁸ And because gray wolves are also capable of dispersing considerable distances relatively quickly, release locations will be at least 60 miles from neighboring states and tribal lands. After considering these factors, along with habitat suitability and conflict risk modeling, the plan proposes two main areas into which gray wolves will be released: (1) the I-70 corridor between Glenwood Springs and Vail, down to the Roaring Fork Valley, and (2) the Highway 50 corridor between Gunnison and Monarch Pass. The initial releases, however, are set to take place in the first area.

Gray wolves will be released onto state or private lands rather than federal lands to avoid the additional requirements and associated expenses that would be required under the National Environmental Policy Act (NEPA).¹⁹ Unlike the gray wolf reintroduction into Yellowstone,

where the US Fish and Wildlife Service (FWS) used a "soft release," allowing the wolves to acclimate in pens before being released, CPW will implement a "hard release," immediately releasing wolves upon arrival at the locations identified.

Wolves will be monitored post-release through their GPS collars and a CPW campaign encouraging the public to report any wolf sightings. The success of the releases will be evaluated by wolves (1) having a greater than 70% survival rate in the first six months after release, (2) demonstrating "low" mortality in the two-to-three-year post-release period, (3) remaining in Colorado, (4) forming pairs and reproducing to establish packs, and (5) producing offspring that survive and successfully reproduce.²⁰ If the initial releases are successful, populations will be allowed to grow naturally toward recovery levels. But if they are deemed unsuccessful, further releases will be required.

Recovery of Wolves in Colorado

The statute requires CPW to develop a methodology for determining whether to remove gray wolves from Colorado's threatened and endangered species list.²¹ This methodology is one of the most controversial, and legally significant, aspects of the plan. The plan does not, of course, affect any federal recovery plans or goals for gray wolves.

The plan uses a phased approach based on the number of wolves recorded in the state, with each phase corresponding to their status on the Colorado threatened and endangered species list.²² Initially, CPW will use a minimum wintertime count to monitor gray wolf population size, but this will adapt to population estimates and modeling as the gray wolf population grows.

CPW's phased approach starts with phase 1a, which is the current status of gray wolves in Colorado (i.e., endangered on the Colorado threatened and endangered species list). If CPW records a minimum count of 50 wolves anywhere in Colorado for four successive years, recovery will move to phase 2.

In phase 2, gray wolves are downlisted to state threatened. If CPW records a minimum count of fewer than 50 wolves anywhere in Colorado for two successive years, it will review

relisting gray wolves as state endangered. But if CPW records a minimum count of 150 wolves anywhere in Colorado for two successive years, or a minimum count of 200 wolves anywhere in Colorado with no temporal requirement, then recovery will move to phase 3.

In phase 3, gray wolves are removed from the Colorado threatened and endangered species list and would have nongame status; this classification still confers a general prohibition against harassing, taking, or possession. If CPW estimates with less than 80% confidence a population of fewer than 150 wolves anywhere in Colorado for two successive years, it will review relisting gray wolves as state threatened.

According to the plan, "long-term management of wolves should be impact- and science-based, with consideration of biological and social science as well as economic and legal considerations."²³ The population threshold for delisting is controversial because of the consequences for wolf management associated with wolves moving from endangered to threatened to nongame status. Additionally, the plan takes no position as to whether the CPW Commission has the statutory authority to eventually reclassify gray wolves as a game species or take any other "appropriate management actions."²⁴

Wolf Management

The statute requires that "[r]estoration of the gray wolf to the state must be designed to resolve conflicts with persons engaged in ranching and farming in this state."²⁵ It also requires that the plan provide "[d]etails for the restoration and management of gray wolves, including actions necessary or beneficial for establishing and maintaining a self-sustaining population."²⁶ And finally, the statute requires that "the commission shall not impose any land, water, or resource use restrictions on private landowners in furtherance of the plan."²⁷

CPW submitted a proposed rule requesting that FWS designate the reintroduced gray wolves as a "nonessential experimental population" under the ESA. This designation would provide for "allowable, legal, purposeful, and incidental taking of the gray wolf within a defined [non-essential experimental population] area while concurrently providing for the conservation of

the species.”²⁸ There is some precedent for this, as the Yellowstone releases in the 1990s were designated as a nonessential experimental population.²⁹ At the time of this writing, it remains to be seen whether the final rule will be promulgated before the end of 2023 and the initiation of gray wolf releases.

In the plan, CPW asserts that aversive conditioning and lethal taking of gray wolves will be necessary “to protect human safety, to reduce livestock depredation, or to mitigate risks of substantial effects on ungulates.”³⁰ But these methods will be limited while gray wolves remain protected under federal and state law. The plan proposes to use “impact-based” management within an adaptive management framework for gray wolves. In other words, CPW will have flexibility to manage wolves while learning about their effects on Colorado’s ecosystems. The plan contemplates that positive impacts may include (1) reduction of overpopulated ungulates; (2) dispersal of ungulates, resulting in less herbivory; (3) removal of more diseased prey animals; and (4) social, economic, and intrinsic values. Conversely, negative effects may include depredation and harassment of livestock, loss of pets and working animals, and the decline of ungulate populations below management objectives.³¹

Wolf-Livestock Interactions

The plan requires that the state both “[a]ssist owners of livestock in preventing and resolving conflicts between gray wolves and livestock” and “[p]ay fair compensation to owners of livestock for any losses of livestock caused by gray wolves, as verified pursuant to the claim procedures authorized by §§ 33-3-107 to 33-3-110.”³²

Under the plan, CPW will offer various non-lethal conflict minimization materials to landowners, including turbo fladry (a type of electric fencing with brightly colored flags attached) and scare devices such as fox lights. The purpose of this approach is to reduce wolf-livestock conflicts before they begin. Any hazing techniques deployed, however, must be authorized by FWS while gray wolves remain federally listed.³³

Another bone of contention during the public hearings on the draft plan was compensation

for livestock owners for losses attributed to gray wolves. Per the plan, CPW will provide 100% fair market value compensation, up to \$15,000 per animal, for the confirmed deaths of livestock and working animals killed by gray wolves. The plan does not require individuals to employ conflict minimization techniques to be eligible. The reasons for this are not clearly outlined in the plan,³⁴ but the compensation structure does provide some incentive for livestock owners to implement conflict minimization techniques by permitting compensation for additional animals when those techniques are deployed.

Laws Protecting Gray Wolves

Although far from the only state or federal law implicated by the reintroduction of gray wolves, the ESA³⁵ arguably has the most significance here because of its cascading effects on other laws, such as NEPA. Though their status under the ESA is frequently changing, gray wolves are currently delisted in Idaho, Montana, Wyoming, and parts of Oregon, Washington, and Utah. They are listed as endangered under the ESA in the remaining contiguous 48 states except Minnesota, where they are listed as threatened.³⁶ Because of this listing, FWS rather than CPW currently has management authority over gray wolves in Colorado, and CPW’s plan must comply with all FWS regulations.

Relevant Provisions of the Endangered Species Act

Gray wolves are one of the 44 species present in Colorado that are currently listed as endangered under the ESA³⁷ (or under review for listing). Species listed under the ESA can be classified as threatened or endangered, and each classification carries different requirements. A threatened species is one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is one that is in danger throughout all or a significant portion of its range. Species may be listed because of any of five factors: (1) the presence of threatened destruction, modification, or curtailment of its habitat or range; (2) overuse for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of

existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.³⁸

Listed species are managed by either FWS or the National Marine Fisheries Service (collectively, the agencies). The ESA’s provisions are designed to help species recover by (1) designating critical habitat, where applicable;³⁹ (2) prohibiting take;⁴⁰ and (3) imposing civil and criminal penalties for violators.⁴¹ If the populations of a listed species sufficiently recover, that species may be “delisted.” In theory, this is one of the ESA’s goals, and some notable past success stories include the recovery and subsequent delisting of bald eagles and American alligators.

Another relevant concept here is that of a “distinct population segment” (DPS). A DPS has no broader scientific meaning, but under the ESA, it is a vertebrate population or group of populations in a particular geographic range that is discrete from other populations of the species and significant in relation to the entire species.⁴² The idea behind a DPS is that it can allow the agencies to more efficiently allocate resources to target the most threatened populations of a species. But some argue that this concept has little scientific support and is sometimes used by the agencies to deliberately delist populations. Gray wolves in Colorado are not currently part of a DPS, but whether they could be designated as such in the future is uncertain.

Finally, an especially important provision for gray wolf reintroduction in Colorado is section 10,⁴³ which provides for various exceptions to the ESA. Section 10(j) specifically concerns “experimental populations,” the designation CPW has requested for gray wolves in its recent proposed rule. When populations are reintroduced and designated as experimental under the ESA, they are listed as threatened regardless of the species’ designation elsewhere. This permits FWS more discretion in managing that specific population, as opposed to if the population were designated as endangered. More specifically, the “threatened” designation permits the listing agency discretion to “issue such regulations as [it] deems necessary and advisable to provide for the conservation of such species.”⁴⁴

But to qualify as an experimental population under section 10(j)(1), the population must be “wholly separate geographically from nonexperimental populations of the same species.” Given the proximity of the proposed release locations to the boundaries of existing packs, it remains to be seen whether Colorado’s population could be considered geographically isolated from other populations, unlike the gray wolves reintroduced into Yellowstone National Park. Indeed, given how far wolves frequently travel, it seems like a tenuous argument to say that the introduced populations will be “wholly separate,” as required under section 10(j).

Gray Wolves and the ESA

Gray wolves in general have perhaps the most convoluted relationship with the ESA of any species ever listed, and it is worth taking some time to review this history to provide additional context for what is happening in Colorado, and what to expect in the coming months and years.

The Appendix shows a timeline of the most significant gray wolf events relating to the ESA and its predecessors. This is not an exhaustive list of every ESA-related legal action involving gray wolves, but rather highlights the increasingly regular changes in their federal status.⁴⁵

Colorado’s Nongame, Endangered, or Threatened Species Conservation Act

Under Colorado’s Nongame, Endangered, or Threatened Species Conservation Act, all wildlife in Colorado is classified as either game or nongame. “Big game” includes black bears, mountain lions, and various ungulates like white-tailed deer.⁴⁶ And “small game” includes various birds such as grouse and wild turkey, and mammals such as cottontail rabbits.⁴⁷ “Nongame wildlife” is everything not classified as game wildlife by a CPW Commission rule or regulation.⁴⁸ Gray wolves are currently classified as a nongame species in Colorado.

Although there is some overlap, the 72 species on the Colorado threatened and endangered species list do not necessarily include all 44 federally endangered or threatened species found in Colorado. Gray wolves, however, are classified as endangered on both lists.⁴⁹ Under Colorado’s Nongame, Endangered, or Threatened Species

Conservation Act, it is “unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship and for any common or contract carrier to knowingly transport or receive for shipment” any species or subspecies of wildlife listed as threatened or endangered.⁵⁰

Should gray wolves be delisted again federally at some point, which would not be unusual given their status history, their management would return to CPW. Again, if their population reaches 50, gray wolves will shift from state endangered to threatened, and they will be delisted in the state if their population reaches 150 (for two successive years) or 200 (within any timeframe). It is far too early to estimate with any confidence when Colorado’s population may reach that size, but by comparison, it took about eight years for the initial 41 wolves released into Yellowstone National Park to grow to a population size of around 150 wolves.⁵¹

Some Practical Considerations

The prospect of a large, highly mobile, federally and state endangered species roaming lands west of the Continental Divide will surely impact legal practice in those areas through additional regulatory concerns. And although gray wolves will not be released onto federal or tribal lands, there is of course the potential that they will disperse into those areas with time (as well as lands east of the Continental Divide).

The take prohibition in section 9 of the ESA is broad and imposes serious consequences, including civil and potentially criminal penalties.⁵² “Take” includes “harm” and “harass,” but these terms are not defined in the ESA. “Harm” has subsequently been interpreted to mean an act that kills or injures wildlife, including significant habitat modification or degradation.⁵³ And “harass” has been interpreted as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”⁵⁴

Aside from the direct implications stemming from the ESA’s take prohibition, section 7 of the ESA prohibits federal agencies from jeopardizing the continued existence of any listed species or destroying critical habitat.⁵⁵ Accordingly, any

federal agency proposing an action subject to section 7, such as certain infrastructure projects, is required to informally consult with the relevant agency (in the case of gray wolves, FWS). The goal of this process is to determine the effects of the proposed action and minimize any adverse effects as necessary. If adverse effects are expected, formal consultation is required and FWS must produce a biological opinion. And if the biological opinion makes a finding of jeopardy or adverse modification of critical habitat, FWS must propose reasonable or prudent alternatives to minimize or offset harmful effects.


Post-Plan Developments and the Future

The 2023 Colorado legislative session saw three wolf-related bills requiring Governor Polis’s attention. First, on May 16, 2023, Governor Polis vetoed SB 256, which would have prevented the reintroduction from happening until FWS completed its potentially lengthy section 10(j) analysis to determine whether Colorado’s gray wolves will be designated as a nonessential experimental population.⁵⁶ Many expect Colorado’s reintroduced wolves will receive that section 10(j) designation, just perhaps not before the releases begin at the end of 2023. That means that until they receive that designation, Colorado’s gray wolves will continue to be protected under their federal and state endangered status.

Next, on May 23, 2023, Governor Polis signed SB 255, which creates the wolf depredation compensation fund to compensate landowners and agricultural producers for depredation of livestock and working animals by wolves.⁵⁷ This bill directs the state treasurer to transfer \$175,000 from the general fund to the wolf depredation compensation fund for the 2023–24 state fiscal year, before increasing that amount to \$350,000 for each fiscal year thereafter.

And finally, on May 24, 2023, Governor Polis signed HB 1265, which creates the “Born to Be Wild” specialty license plate in Colorado.⁵⁸ The purpose of this license plate is to raise funds for nonlethal means of mitigating and preventing conflicts between gray wolves and people. This license plate will be available for purchase beginning January 1, 2024.

Conclusion

Gray wolves have been cautiously dispersing back into Colorado for at least the past 20 years; CPW's reintroductions will accelerate this natural process. At the time of this writing, gray wolf reintroductions are still anticipated to take place before the end of 2023. But, as with seemingly anywhere gray wolves are found in the United States, a legal quagmire is almost certain to follow, as gray wolf populations are so often lumped together or split into separate DPSs, and listed or delisted from the ESA, depending on which way the political winds are blowing. And what makes this situation unusual and potentially challenging for legal practice in Colorado is that gray wolves (1) are highly mobile, (2) will be reintroduced in different areas over a period of several years, and (3) are likely to experience changes in listing status under both the ESA as well as the state equivalent. Consequently, practitioners would do well to stay apprised of what is likely to be a fluid legal dynamic. 



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NOTES

1. See Pate et al., "Coloradans' Attitudes Toward Reintroducing the Gray Wolf into Colorado," 24 *Wildlife Soc'y Bull.* 421 (Autumn 1996). Based on survey data collected even before gray wolves were reintroduced into Yellowstone National Park, some 7 out of 10 Colorado residents supported wolf reintroduction in the state.
2. See Proposition 114, https://leg.colorado.gov/sites/default/files/initiative%2520referendum_107final.pdf.
3. See CRS § 33-2-105.8.
4. See McIntyre, *War Against the Wolf: America's Campaign to Exterminate the Wolf* (Voyageur 1995).
5. See FWS, *Northern Rocky Mountain Wolf Recovery Plan* 1-3 (Aug. 3, 1987), https://ecos.fws.gov/docs/recovery_plan/870803.pdf.
6. See *id.*
7. See McIntyre, *supra* note 4.
8. CPW, *Colorado Wolf Restoration and Management Plan* 4 (2023), <https://cpw.state.co.us/Documents/Wolves/2023-Final-CO-Wolf-Plan.pdf>.
9. *Id.*
10. A detailed discussion of gray wolf taxonomy is beyond the scope of this article. *But see* Nowak, "Wolf Evolution and Taxonomy," in Mech and Boitani, eds., *Wolves: Behavior, Ecology, and Conservation* 239-58 (Univ. of Chi. Press 2003).
11. FWS, *Gray Wolf Biological Report: Information on the Species in the Lower 48 United States* (2020), <https://binged.it/3K6pp83>.
12. *Colorado Wolf Restoration and Management Plan*, *supra* note 8.
13. *Id.* at 7.
14. *Id.* at 20.
15. Adelson and Herbst, "Wyoming Won't Give Wolves to Colorado; CPW Doesn't Know Where It Will Get Them," 9News (May 1, 2023), <https://www.9news.com/article/news/investigations/wyoming-wolves-colorado/73-d0c3eadd-5bc0-4aaf-9e90-d1be9bf8e342>.
16. Adelson, "Idaho Won't Give Wolves to Colorado, Which Still Hasn't Found a Source," 9News (July 20, 2023), <https://www.9news.com/article/life/animals/colorado-wolf-reintroduction-idaho/73-18957627-f5ba-44e9-b317-555275fe49b6>.
17. See Adelson and Herbst, *supra* note 15.
18. See CRS § 33-2-105.8(5)(a).
19. See 42 USC §§ 4321 et seq.
20. *Colorado Wolf Restoration and Management Plan*, *supra* note 8 at 22. What constitutes "low" mortality in this context is not defined in the plan.
21. CRS § 33-2-105.8(3)(iv) provides that "[m]ethodologies for determining when the gray wolf population is sustaining itself and when to remove the gray wolf from the list of endangered or threatened species, as provided for in Section 33-2-105 (2)."
22. *Colorado Wolf Restoration and Management Plan*, *supra* note 8 at 23.
23. *Id.* at 25.
24. *Id.*
25. See CRS § 33-2-105.8(1)(d).
26. See CRS § 33-2-105.8(3)(a)(III).
27. See CRS § 33-2-105.8(3)(b).
28. Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado, 88 Fed. Reg. 10,258 (Feb. 17, 2023).
29. See Establishment of a Nonessential Experimental Population of Gray Wolves in Yellowstone National Park in Wyoming, Idaho and Montana, 59 Fed. Reg. 60,252 (Nov. 22, 1994).
30. *Colorado Wolf Restoration and Management Plan*, *supra* note 8 at 26.
31. *Id.* at 27.
32. See CRS § 33-2-105.8.
33. *Colorado Wolf Restoration and Management Plan*, *supra* note 8 at 31.
34. See CRS § 33-3-103.
35. See Endangered Species Act of 1973, 16 USC §§ 1531 et seq.
36. <https://ecos.fws.gov/ecp/species/4488>.
37. <https://www.fws.gov/office/colorado-ecological-services-field-office/species>. Technically, 3 of these 44 species are not physically present in Colorado, but their habitat in Nebraska depends on water from several Colorado river basins.
38. See 16 USC § 1533(a)(1).
39. See 16 USC § 1533(a)(3).
40. See 16 USC § 1532(19). Under the ESA, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
41. See 16 USC § 1540.
42. Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act, 61 Fed. Reg. 4,722 (Feb. 7, 1996).
43. See 16 USC § 1539(j).
44. See 16 USC § 1533(d).
45. See Ward, "The Gray Wolf Under the Endangered Species Act (ESA): A Case Study in Listing and Delisting Challenges," *Cong. Rsch. Serv.* (2020).
46. See CRS § 33-1-102(2).
47. See CRS § 33-1-102(41).
48. See CRS § 33-1-102(29).
49. See Nongame, Endangered, or Threatened Species Conservation Act, CRS §§ 33-2-101 et seq.
50. See CRS § 33-2-105(3).
51. See <https://www.nps.gov/yell/learn/nature/wolves.htm>.
52. See 16 USC § 1538. See also Quarles et al., "Another Take on 'Take': The Section 9 Prohibition," in Baur and Ya-Wei, eds., *Endangered Species Act: Law, Policy, and Perspectives* 141 (ABA Book Publ'g 2021).
53. See 50 CFR § 17.3.
54. *Id.*
55. See 16 USC § 1536. See also Taylor and Sayers Jr., "Interagency Consultation and Conservation Duties Under Section" 7, in Baur and Ya-Wei, *supra* note 52 at 111.
56. SB 23-256, <https://leg.colorado.gov/bills/sb23-256>.
57. SB 23-255, <https://leg.colorado.gov/bills/sb23-255>.
58. HB 23-1265, <https://leg.colorado.gov/bills/hb23-1265>.

APPENDIX. HISTORY OF GRAY WOLF EVENTS IN THE UNITED STATES

Year	Event
1967	Gray wolf subspecies the eastern timber wolf, <i>C. lupus lycaon</i> , listed as endangered under the Endangered Species Preservation Act of 1966 ¹
1973	Gray wolf subspecies the northern Rocky Mountain wolf, <i>C. lupus irremotus</i> , listed as endangered under the Endangered Species Conservation Act of 1969 ²
1973	Endangered Species Act signed into law on December 28
1976	Gray wolf subspecies the Mexican gray wolf, <i>C. lupus baileyi</i> , and the Texas wolf, <i>C. lupus monstrabilis</i> , listed as endangered ³
1978	Gray wolves relisted as endangered throughout the contiguous United States (excluding Minnesota) and Mexico ⁴
1995	Gray wolves reintroduced to Yellowstone National Park in Wyoming as a section 10(j) experimental population ⁵
1998	Mexican gray wolves reintroduced to Arizona and New Mexico ⁶
2003	The Eastern and Western DPSs designated and downlisted but endangered status retained for the Southwestern DPS ⁷
2005	Endangered status restored for the Eastern and Western DPSs after federal court invalidates DPSs ⁸
2007	The Western Great Lakes DPS designated and delisted ⁹
2008	Gray wolves in the Northern Rocky Mountain DPS delisted ¹⁰
2008	Federal courts vacate delistings of both the Western Great Lakes and Northern Rocky Mountain DPSs ¹¹
2009	The Northern Rocky Mountain DPS (excluding Wyoming) and the Western Great Lakes DPS delisted ¹²
2010	A federal court vacates delisting of the Northern Rocky Mountain DPS ¹³
2011	Congress directs FWS to delist the Northern Rocky Mountain DPS (excluding Wyoming) ¹⁴
2011	The Western Great Lakes DPS designated and delisted ¹⁵
2012	Wyoming gray wolves delisted ¹⁶
2014	Federal courts vacate rules delisting the Western Great Lakes DPS and Wyoming ¹⁷
2015	Mexican gray wolves reclassified as a separate subspecies and relisted as endangered ¹⁸
2015	The Western Great Lakes DPS and Wyoming listing reinstated ¹⁹
2017	Wyoming gray wolves delisting reinstated ²⁰
2020	Gray wolves, other than Mexican gray wolves, delisted everywhere in the contiguous United States ²¹
2022	A federal court vacates delisting rule, and gray wolves in the contiguous United States and Mexico, excluding the Northern Rocky Mountain DPS, are relisted as threatened in Minnesota and endangered in the remaining states ²²
2023	FWS in the process of updating the status review for gray wolves throughout the contiguous United States. A notice of a new proposed rule is expected by February 2, 2024 ²³
2023	FWS submits proposed rule to list Colorado's reintroduced gray wolves as a nonessential experimental population ²⁴

NOTES

1. Endangered Species, 32 Fed. Reg. 4,001 (Mar. 11, 1967).
2. Amendments to Lists of Endangered Fish and Wildlife, 38 Fed. Reg. 14,678 (June 4, 1973).
3. Determination That Two Species of Butterflies Are Threatened and Two Species of Mammals Are Endangered Species, 41 Fed. Reg. 17,736 (Apr. 28, 1976); Endangered Status for 159 Taxa of Animals, 41 Fed. Reg. 24,062 (June 14, 1976).
4. See Reclassification of the Gray Wolf in the United States and Mexico, With Determination of Critical Habitat in Michigan and Minnesota, 42 Fed. Reg. 9,607 (Mar. 9, 1978).
5. See Establishment of a Nonessential Experimental Population of Gray Wolves in Yellowstone National Park in Wyoming, Idaho and Montana, 59 Fed. Reg. 60,252 (Nov. 22, 1994).
6. See Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico, 63 Fed. Reg. 1,752 (Jan. 12, 1998).
7. See Final Rule to Reclassify and Remove the Gray Wolf From the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves, 68 Fed. Reg. 15,803 (Apr. 1, 2003).
8. See *Defs. of Wildlife v. Sec'y, U.S. Dep't of the Interior*, 354 F.Supp.2d 1156 (D.Or. 2005).
9. See Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife, 72 Fed. Reg. 6,052 (Feb. 8, 2007).
10. See Final Rule Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing this Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife, 73 Fed. Reg. 10,513 (Feb. 27, 2008).
11. See *Humane Soc. of the United States v. Kempthorne*, 579 F.Supp.2d 7 (D.D.C. 2008); *Defs. of Wildlife v. Hall*, 565 F.Supp.2d 1160 (D.Mont. 2008). After the *Hall* decision enjoined FWS from implementing the delisting, FWS asked the court to vacate the final rule and remand it back to them, which the court ordered on October 14, 2008.
12. See Final Rule to Identify the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and to Revise the List of Endangered and Threatened Wildlife, 74 Fed. Reg. 15,123 (Apr. 2, 2009).
13. See *Defs. of Wildlife v. Salazar*, 729 F.Supp.2d 1207 (D.Mont. 2010).
14. See Barringer and Broder, "Congress, in a First, Removes an Animal From the Endangered Species List," *N.Y. Times* (Apr. 12, 2011), <https://www.nytimes.com/2011/04/13/us/politics/13wolves.html>.
15. See Revising the Listing of the Gray Wolf (*Canis lupus*) in the Western Great Lakes, 76 Fed. Reg. 81,665 (Dec. 28, 2011).
16. See Removal of the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population, 77 Fed. Reg. 55,529 (Sep. 10, 2012).
17. See *Defs. of Wildlife v. Jewell*, 68 F.Supp.3d 193 (D.D.C. 2014) (vacating Wyoming delisting); *Humane Soc. of the United States v. Jewell*, 76 F.Supp.3d 69 (D.D.C. 2014) (vacating the Western Great Lakes DPS delisting).
18. See Endangered Status for the Mexican Wolf, 80 Fed. Reg. 2,487 (Jan. 16, 2015).
19. See Reinstatement of Final Rules for the Gray Wolf in Wyoming and the Western Great Lakes in Compliance with Court Orders, 80 Fed. Reg. 9,218 (Feb. 20, 2015).
20. See Reinstatement of Removal of Federal Protections for Gray Wolves in Wyoming, 82 Fed. Reg. 20,284 (May 1, 2017). FWS issued this rule to comply with the court's order in *Defs. of Wildlife v. Zinke*, 849 F.3d 1077 (D.C. 2017).
21. See Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife, 85 Fed. Reg. 69,778 (Nov. 3, 2020).
22. See *Defs. of Wildlife v. US Fish and Wildlife Serv.*, 584 F.Supp.3d 812 (N.D.Cal. 2022).
23. See FWS, Statement on the Gray Wolf in the Lower-48 United States, <https://www.fws.gov/sites/default/files/documents/2023%20USFWS%20Gray%20Wolf%20Statement.pdf>.
24. See Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado, 88 Fed. Reg. 10,258 (Feb. 17, 2023).

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