



The Gray Wolf and the Endangered Species Act (ESA): A Brief Legal History

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January 19, 2012

Congressional Research Service

7-5700

www.crs.gov

R41730

Summary

Wolves had all but disappeared from the contiguous United States when Congress enacted the Endangered Species Act of 1973 (ESA), and the U.S. Fish and Wildlife Service (FWS) listed wolves as an endangered species in most of the lower 48 states. Since then, the gray wolf (*Canis lupus*) has held every status of protection under the ESA, as regulatory efforts have shifted from conserving the wolf, which culminated in reintroducing wolves into three parts of the American West in the 1990s, to reducing wolf protections where its population has surged. Litigation has followed each regulatory change. After courts rejected regulatory efforts to reduce protections, Congress enacted P.L. 112-10, Section 1713, which removes federal protection of the gray wolf in Montana, Idaho, eastern Washington, eastern Oregon, and north-central Utah, and marks the first legislative delisting in the history of the ESA. P.L. 112-10 further prohibits judicial challenge of the delisting.

In December 2011, FWS delisted wolves in the Western Great Lakes area. In addition, FWS proposed recognizing a new species of wolf, the eastern wolf (*Canis lycaon*), and changing the gray wolf's historic range to omit all or parts of 29 states in the eastern United States. Also, FWS plans to delist wolves in Wyoming, contingent upon the Wyoming legislature's passing certain management requirements. Finally, FWS proposed evaluating whether wolf populations in the Pacific Northwest and the Southwest are appropriately protected under the ESA. Pending legislation would shift gray wolf management to the states (H.R. 1819 and H.R. 2584, §119), or would eliminate ESA protections for gray wolves (H.R. 838, H.R. 509, and S. 249).

This report provides a brief history of the laws, regulations, and lawsuits related to the wolf's protected status. Fuller analyses of the concepts discussed in this report can be found in the companion report, CRS Report RL34238, *Gray Wolves Under the Endangered Species Act (ESA): Distinct Population Segments and Experimental Populations*, by Kristina Alexander and M. Lynne Corn.

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Background

At the time of the Endangered Species Act (ESA or the act) enactment, the wolf was nearly extirpated from all of the lower 48 states except Minnesota. Since then, the population of the gray wolf has grown, prompting many to argue that protection is no longer necessary. The U.S. Fish and Wildlife Service (FWS) reports 1,651 wolves in the Northern Rocky Mountains as of December 31, 2010;¹ approximately 4,269 wolves in the Western Great Lakes area as of December 10, 2010;² and 50 wolves in the Southwest as of January 2011.³ As the gray wolf's population has changed, so has its ESA protection. It has been classified as endangered, threatened, experimental, and even delisted, meaning that it is no longer protected under the ESA. The history of the gray wolf's recovery (and whether it actually has recovered) is marked by conflict, with each regulatory change bringing litigation. In 2011, Congress enacted legislation which directed FWS to delist most wolves in the Northern Rocky Mountains and prohibited judicial challenge of the delisting.⁴

Listing History of the Gray Wolf

Before the gray wolf was protected as a species under the ESA, four subspecies were protected: the Mexican wolf, the northern Rocky Mountain wolf, the eastern timber wolf, and the Texas gray wolf.⁵ In 1978, protection of the wolf at the subspecies level ended. Instead, FWS listed the gray wolf species (*Canis lupus*) as endangered throughout the lower 48 states except Minnesota, where, because of its larger population, FWS classified it as threatened.⁶ Thus, in 1978, gray wolf protection was as depicted in **Figure 1**.

¹ Rocky Mountain Wolf Recovery 2010 Interagency Annual Report Summary and Background, available at <http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt10/index.html>.

² FWS Midwest Region Press Release, *Status of Wolves in the Western Great Lakes Under the Endangered Species Act* (December 10, 2010), available at <http://www.fws.gov/midwest/News/release.cfm?rid=320>.

³ FWS Southwest Region Press Release, *2009 Mexican Wolf Population Survey Complete* (February 5, 2010), available at <http://www.fws.gov/southwest/docs/WolffinalPopCount2009NewsReleaseFeb52010.pdf>.

⁴ P.L. 112-10, §1713.

⁵ See 43 Fed. Reg. 9607 (March 9, 1978).

⁶ 43 Fed. Reg. 9607 (March 9, 1978). *Endangered* is defined as being in danger of extinction throughout all or a significant portion of its range. 16 U.S.C. §1532(6). *Threatened* is defined as likely to become endangered within the foreseeable future. 16 U.S.C. §1532(20).

Figure I. Gray Wolf Protection Pursuant to 1978 ESA Listing



Source: Congressional Research Service.

Gray Wolf Experimental Populations

In 1982, Congress amended the ESA to allow experimental populations (Ex Pops) of endangered or threatened species to be reintroduced into their former habitats.⁷ In the case of the gray wolf, FWS planned to locate three Ex Pops in Central Idaho, Yellowstone, and the Blue Range of Arizona and New Mexico. All were deemed nonessential Ex Pops, meaning that the wolves would be treated as threatened species under most circumstances.⁸ Under the ESA, a threatened species may not be killed or harmed unless it is subject to special rules that allow taking.⁹ FWS issued such rules for the gray wolf Ex Pops, detailing when a wolf might be killed. FWS could not have issued special rules if it had determined the wolves were endangered.

Reintroduction has been controversial from the time Congress authorized it. For example, a rider to the Appropriations Act for 1992 banned spending any money to release wolves into Yellowstone and Central Idaho for that fiscal year.¹⁰ Eventually, 66 wolves were released into

⁷ P.L. 97-304 §6(6), 96 Stat. 1424; 16 U.S.C. §1539(j).

⁸ 16 U.S.C. §1539(j)(2)(C).

⁹ 16 U.S.C. §1533(d). Special rules provide customized protection that FWS deems necessary and advisable for the species' conservation. The ESA prohibits *taking* an endangered species. 16 U.S.C. §1538(a)(1)(B). Taking is defined as "harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. §1532(19).

¹⁰ P.L. 102-154; 105 Stat. 993.

Central Idaho and Yellowstone in 1995 and 1996,¹¹ while the Mexican gray wolf was reintroduced to the Blue Range beginning in 1998.¹² Lawsuits were filed challenging the reintroduction, but courts upheld the wolf Ex Pop program in each case.¹³

Following the reintroduction of the Mexican gray wolf, gray wolf protection was as depicted in **Figure 2**.

Figure 2. Gray Wolf Protection after Reintroduction of Mexican Gray Wolf

(Valid until May 5, 2011, except during times when FWS designated Distinct Population Segments (DPSs))



Source: Congressional Research Service based on information from 59 Fed. Reg. 60266 (November 22, 1994) (Yellowstone); 59 Fed. Reg. 60281 (November 22, 1994) (Central Idaho); and 63 Fed. Reg. 1766 (January 12, 1998) (Blue Range).

The Central Idaho and Yellowstone wolves flourished. Their population was 1,651 in 2010,¹⁴ which was a slight drop from their 2009 population of 1,706.¹⁵ The Mexican gray wolf population has not been so successful. In January 2011, the population totaled 50, which was nearly a 20% increase from 2010,¹⁶ but still less than the peak population of 59 in 2006.¹⁷

¹¹ 59 Fed. Reg. 60266 (November 22, 1994) (Central Idaho); 59 Fed. Reg. 60252 (November 22, 1994) (Yellowstone).

¹² 63 Fed. Reg. 1752 (January 12, 1998).

¹³ *United States v. McKittrick*, 142 F.3d 1170 (9th Cir. 1998) (upholding Ex Pop wolf reintroduction program); *Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224 (10th Cir. 2000) (upholding Ex Pop wolf reintroduction program); *New Mexico Cattle Growers v. U.S. Fish and Wildlife Service*, 1999 WL 34797509 (D.N.M. 1999) (upholding reintroduction of Ex Pop wolves to New Mexico and Arizona); *Defenders of Wildlife v. Lujan*, 792 F. Supp. 834 (D.D.C. 1992) (suit to force reintroduction of wolf into Yellowstone as planned was ruled moot due to Appropriations Act).

¹⁴ Rocky Mountain Wolf Recovery 2010 Interagency Annual Report, available at <http://www.fws.gov/mountain-> (continued...)

When regulatory efforts by FWS to delist the wolves in the Northwest were repeatedly found legally insufficient, Congress legislated the delisting of certain wolf populations in P.L. 112-10, §1713. In 2011, FWS delisted wolves in Montana, Idaho, eastern Washington, eastern Oregon, and north-central Utah in compliance with that law,¹⁸ although Wyoming wolves kept their Ex Pop status. On October 5, 2011, FWS proposed delisting the wolves in the Wyoming DPS and terminating the Ex Pop.¹⁹ The proposal is contingent upon the Wyoming legislature's passing certain management requirements.

Gray Wolf Distinct Population Segments

In 1978, Congress revised the definition of *species* by introducing the term distinct population segment (DPS),²⁰ which describes a population of a listed vertebrate species that is genetically distinct and has a separate range.²¹ Prior to this change, the ESA allowed species, subspecies, and groups of “smaller taxa” to be listed.²²

2003 Western, Eastern, and Southwestern DPSs

An April 2003 rule designating three gray wolf DPSs, Western, Eastern, and Southwestern, was FWS's first regulatory initiative to decrease ESA protection of the gray wolf.²³ Under the rule, FWS downlisted Western and Eastern DPSs from endangered to threatened and delisted gray wolves in the Southeast. FWS listed the Southwestern DPS as endangered pursuant to the rule, and retained the three Ex Pops in central Idaho, Yellowstone, and Blue Range.

(...continued)

prairie/species/mammals/wolf.

¹⁵ FWS Memorandum, *Service review of the 2009 wolf population in the NRM DPS* [Northern Rocky Mountain Distinct Population Segment] (April 26, 2010), available at <http://www.fws.gov/mountain-prairie/species/mammals/wolf/post-delisting-wolf-monitoring/doc20100428072425.pdf>.

¹⁶ FWS, Blue Range Wolf Reintroduction Area Monthly Project Updates, available at http://www.fws.gov/southwest/es/mexicanwolf/BRWRP_notes.cfm.

¹⁷ FWS Mexican Wolf Recovery Program, Annual Progress Reports 2001 through 2008, available at <http://www.fws.gov/southwest/es/mexicanwolf/documents.shtml>.

¹⁸ 76 Fed. Reg. 25590 (May 5, 2012).

¹⁹ 76 Fed. Reg. 61782 (October 5, 2011).

²⁰ P.L. 95-632, §2, 92 Stat. 3752. See 16 U.S.C. §1532(16) for the current definition of *species*.

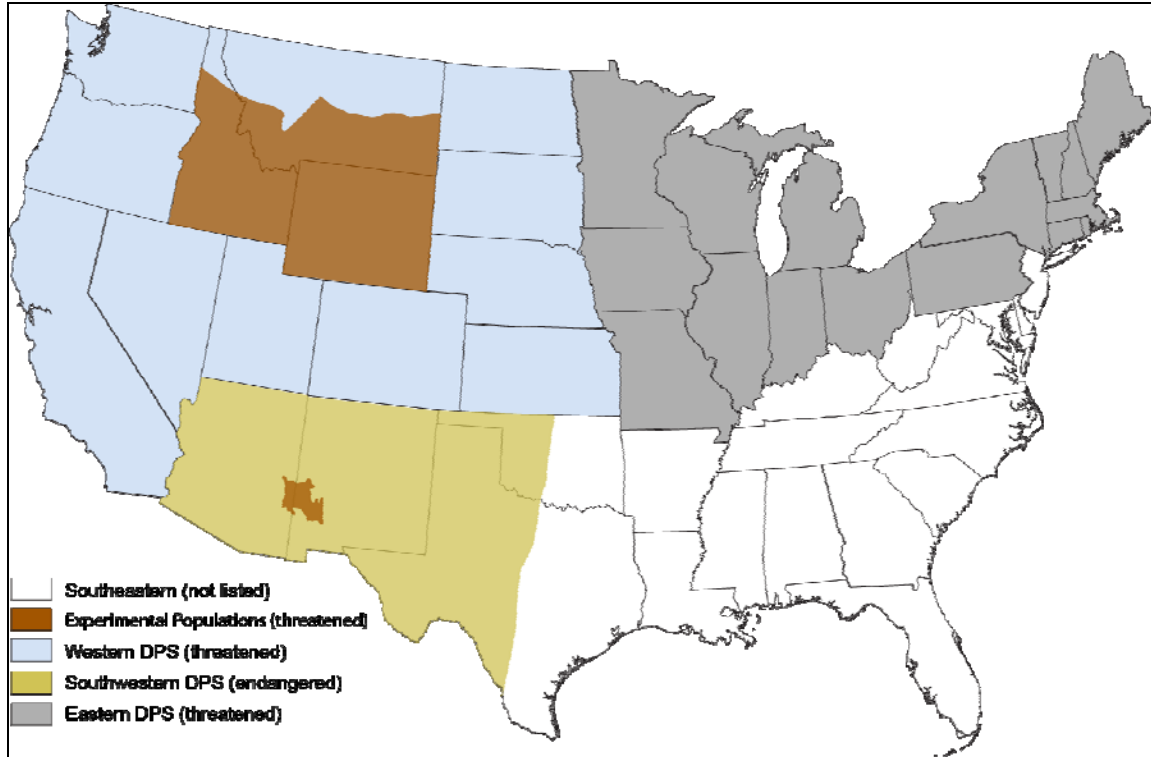
²¹ See 61 Fed. Reg. 4722 (February 7, 1996) for the FWS DPS Policy.

²² P.L. 93-205, §3(11), 87 Stat. 886.

²³ 68 Fed. Reg. 15803 (April 1, 2003).

Following that 2003 rulemaking, the map of gray wolf protection was as depicted in **Figure 3**.

Figure 3. Gray Wolf Protection after 2003 DPS Designations
(Valid until 2005 court decisions)



Source: Congressional Research Service based on information from 68 Fed. Reg. 15862 (April 1, 2003).

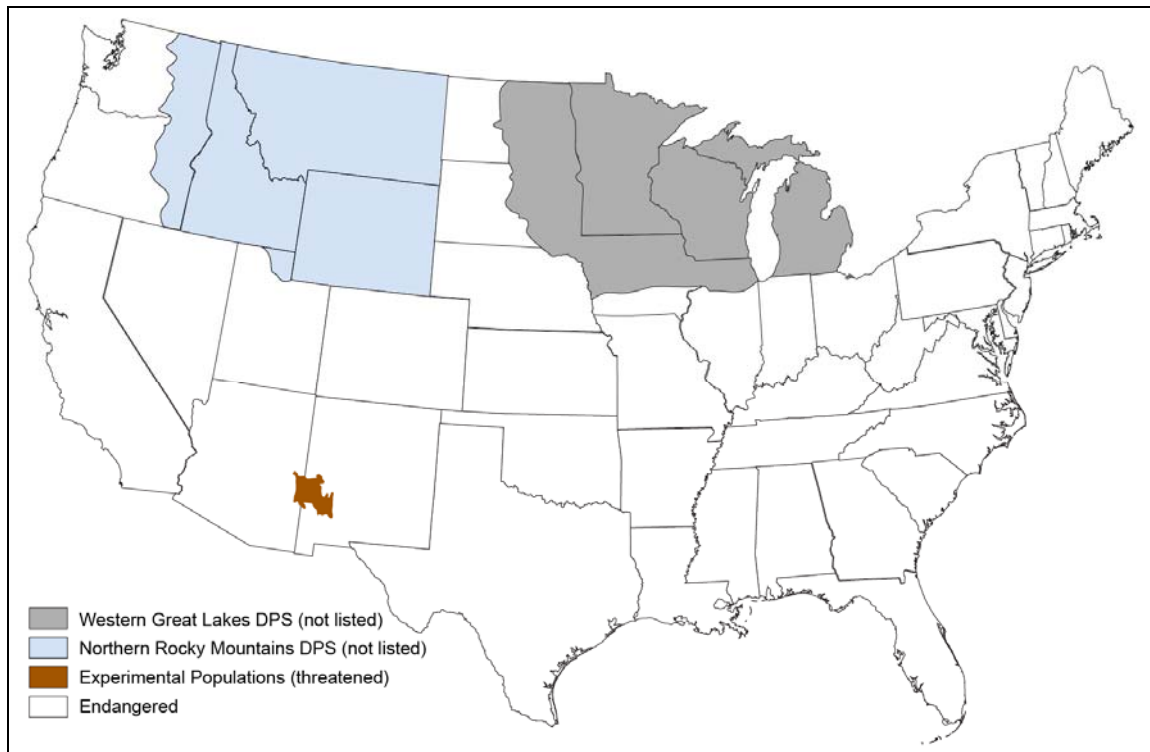
In 2005, two different courts held that the 2003 rule violated the ESA, primarily by the way it calculated the range of the wolf, and both courts vacated the rule.²⁴ As a result, the wolf regained the ESA protections that existed in 1998 as shown in **Figure 2**.

²⁴ *Defenders of Wildlife v. U.S. Dept. of the Interior*, 354 F. Supp. 2d 1156, 1172 (D. Or. 2005) (“FWS downlisted the entire Eastern and Western DPSs without analyzing the threats to the graywolf [sic] outside of the core areas, as required”); *National Wildlife Federation v. Norton*, 386 F. Supp. 2d 553, 564 (D. Vt. 2005) (“FWS appears to be classifying the graywolf [sic] based upon geography, not biology”).

2007 Western Great Lakes DPS and 2008 Northern Rocky Mountain DPS

On February 8, 2007, FWS designated and delisted a Western Great Lakes gray wolf DPS.²⁵ Additionally, on that same day, FWS *proposed* designating and delisting a Northern Rocky Mountain DPS, if Wyoming revised its state management plan.²⁶ If Wyoming failed to do so, significant portions of Wyoming would remain protected Ex Pop areas. In the February 2008 final rule, FWS designated a DPS consisting of the eastern third of Washington and Oregon, a small part of north-central Utah, and all of Montana, Idaho, and Wyoming.²⁷ The Ex Pops in the Northern Rocky Mountain area were effectively reclassified as a DPS by the rule. Wolves not in a DPS or an Ex Pop remained endangered. At that point, gray wolf protection was as depicted in Figure 4.

Figure 4. Gray Wolf Protection after 2007-2008 DPS Designations
(Valid until 2008 court decisions)



Source: Congressional Research Service based on 2008 data from FWS and Montana Fish, Wildlife and Parks.

Note: The data for this map are from 2008, and not based on the information published in the FWS DPS notices (72 Fed. Reg. 6058; 73 Fed. Reg. 10517), which is from 2006.

²⁵ 72 Fed. Reg. 6052 (February 8, 2007).

²⁶ 72 Fed. Reg. 6106 (February 8, 2007).

²⁷ 73 Fed. Reg. 10514 (February 27, 2008).

Courts rejected both DPSs. The District Court of Montana issued a preliminary injunction halting the delisting in July 2008.²⁸ The court held that there was no showing that the genetic interchange among wolf packs in the area was stable enough to support delisting. Without adequate gene flow, the court noted, wolves could become inbred and perhaps endangered once more. The District Court of the District of Columbia vacated the Western Great Lakes DPS designation and the delisting rule in September 2008, holding that because the DPS program was created to enhance protection, FWS's use of it to delist may be contrary to the ESA.²⁹ In light of court orders, FWS withdrew the rules, and the wolf protection shown in **Figure 2** was reinstated.³⁰

2009 Western Great Lakes and Northern Rocky Mountain DPSs

On April 2, 2009, FWS again designated and delisted DPSs in the Western Great Lakes³¹ and the Northern Rocky Mountains.³² The boundaries of these DPSs were the same as in the 2007 and 2008 rules, except that while Wyoming was part of the Northern Rocky Mountain DPS, its wolves were not delisted. The wolves in Wyoming kept their Ex Pop status. Wolves outside of Ex Pop or DPS boundaries remained listed as endangered. Following the April 2009 rules, wolf protection was as depicted in **Figure 5**.

²⁸ *Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008).

²⁹ *Humane Society of the United States v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008).

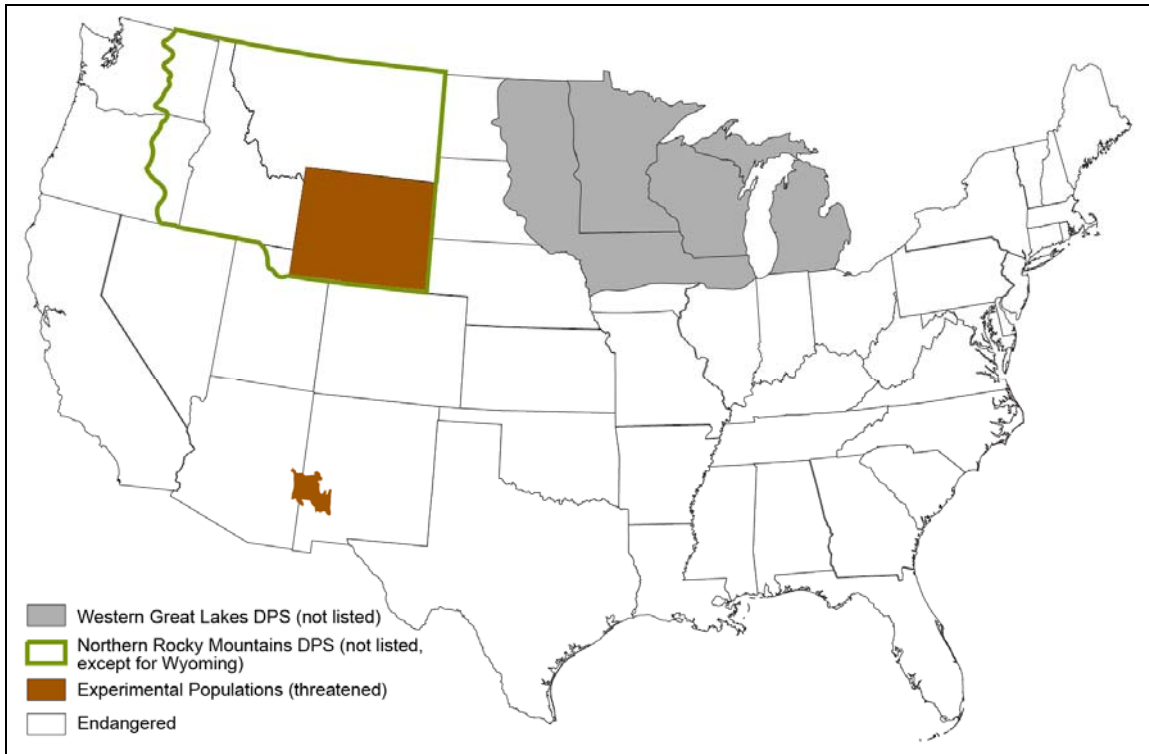
³⁰ 73 Fed. Reg. 75356 (December 11, 2008).

³¹ 74 Fed. Reg. 15069 (April 2, 2009).

³² 74 Fed. Reg. 15123 (April 2, 2009).

Figure 5. Gray Wolf Protection after 2009 DPS Designations

(Valid until 2009 settlement of Western Great Lakes DPS lawsuit and 2010 decision regarding Northern Rocky Mountain DPS)



Source: Congressional Research Service based on 2009 data from FWS and Montana Fish, Wildlife and Parks.

Once again, FWS withdrew the rules following lawsuits. The Montana District Court held that delisting all but the Wyoming wolves in the Northern Rocky Mountain DPS violated the ESA because the act did not allow listing or delisting a subgroup of a DPS.³³ After the Humane Society of the United States filed suit challenging the Western Great Lakes DPS, the parties settled.³⁴ Ultimately, FWS withdrew both rules separately,³⁵ and wolves returned to the protections that existed in 1998, as shown in **Figure 2**.

Subsequent litigation between the state of Wyoming and FWS led to a reexamination of Wyoming's management plan. In November 2010, the District Court of Wyoming ordered FWS to reconsider whether Wyoming's wolf management plan would meet recovery goals for the species to enable the state to assume management authority over its wolves.³⁶ Wyoming announced a new management plan in July 2011, which was approved by FWS.

³³ *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010).

³⁴ *Humane Society of the United States v. Salazar*, Civ. No. 09-1092 (D.D.C. July 2, 2009).

³⁵ 74 Fed. Reg. 47483 (September 16, 2009) (Western Great Lakes); 75 Fed. Reg. 65574 (October 26, 2010) (Northern Rocky Mountains).

³⁶ *Wyoming v. U.S. Department of the Interior*, No. 09-CV-118J, 2010 U.S. Dist. LEXIS 122829 (D. Wyo. November 18, 2010).

Conditional Settlement Agreement

In March 2011, FWS entered a conditional settlement agreement with most of the plaintiffs that had challenged the 2009 Northern Rocky Mountain DPS rule. The agreement would have delisted wolves in Montana and Idaho provided the August 2010 decision vacating the April 2009 rule were partially withdrawn. The settling plaintiffs moved the District Court of Montana to reinstate the 2009 DPS rule as it applied to Montana and Idaho until FWS could issue a new rule. However, the court rejected the motion, effectively ending the settlement.³⁷ The court held that it lacked authority under the ESA to reinstate part of the 2009 rule because it would lead to killing protected wolves.

2011 Northern Rocky Mountain DPS Legislation

In April 2011, Congress enacted the first law directing FWS to delist a species. Pursuant to the Full-Year Appropriations Act of 2011, P.L. 112-10, Section 1713, Congress required FWS to reissue the April 2009 Northern Rocky Mountain DPS rule, which delisted the gray wolf in Montana, Idaho, eastern Washington, eastern Oregon, and north-central Utah. Wolves in the rest of the lower 48 states remained federally protected as either threatened or endangered. P.L. 112-10 bars judicial review of the reissued rule, but still allows subsequent FWS regulatory action, such as delisting in Wyoming, or relisting of the DPS, should the wolf's status change. FWS reissued the April 2009 Northern Rocky Mountain DPS rule on May 5, 2011.

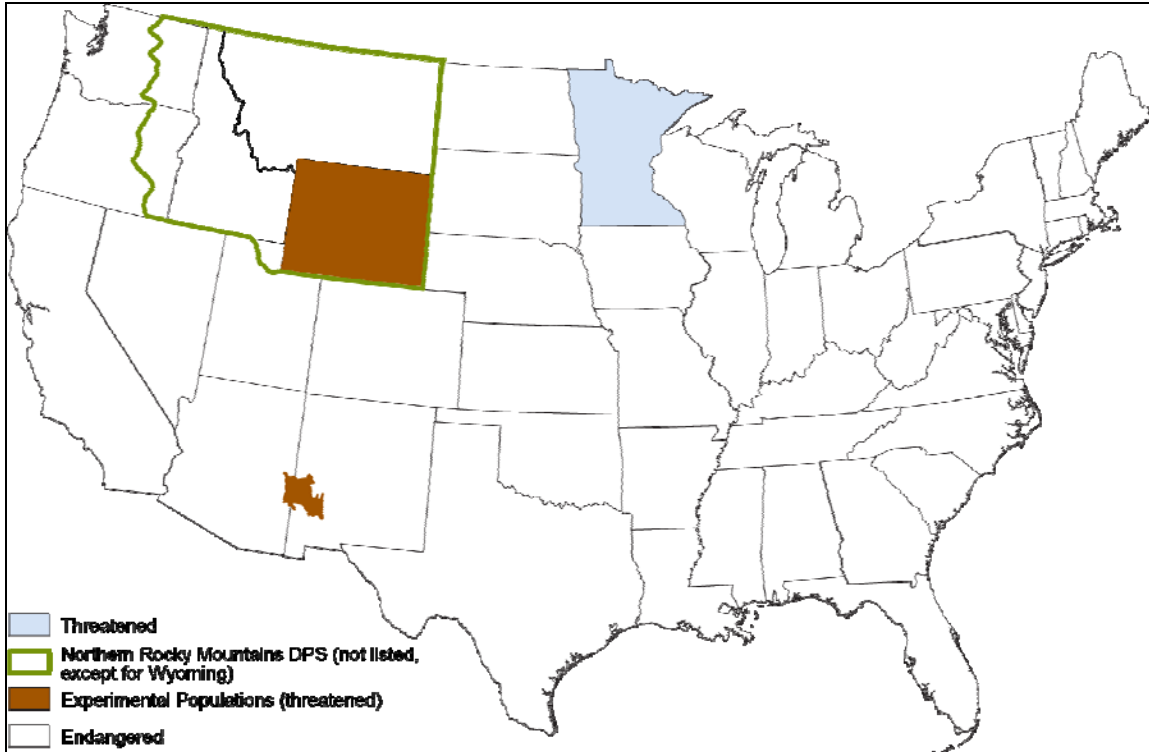
Enactment of P.L. 112-10, Section 1713 was significant because up to this point, legislative efforts to change the listing of any species were extremely rare and never successful.³⁸ Some have argued that the law is a tipping point in species protection, and that politics and not science will dictate species protection in the future. However, Section 1713 is not a blanket delisting, but a direction to re-release a rule in which FWS determined that the best available science supported delisting those wolves. As referenced above, however, a federal court had found that FWS had violated the ESA in making this determination.

Wolf protection following reissuance of the April 2009 rule was as depicted in **Figure 6**.

³⁷ *Defenders of Wildlife v. Salazar*, 09-cv-77-DWM (D. Mont. April 9, 2011).

³⁸ All examples were from the 100th Congress and were proposed amendments to the Endangered Species Act Amendments of 1987. They were not passed. See 133 Cong. Rec. H. 11248 (proposed amendment to prevent the Concho water snake from being considered a listed species); 133 Cong. Rec. H. 11248 (proposed amendment to prevent the gray wolf from being considered a listed species); and 133 Cong. Rec. H. 11617 (proposed amendment to prevent the leopard darter minnow from being considered a listed species).

Figure 6. Gray Wolf Protection from May 5, 2011, to December 28, 2011
(Valid from regulation effecting P.L. 112-110 until the Western Great Lakes delisting)



Source: Congressional Research Service, based in part on 2009 data from FWS and Montana Fish, Wildlife and Parks.

2011 Regulatory Changes to Gray Wolf Protection

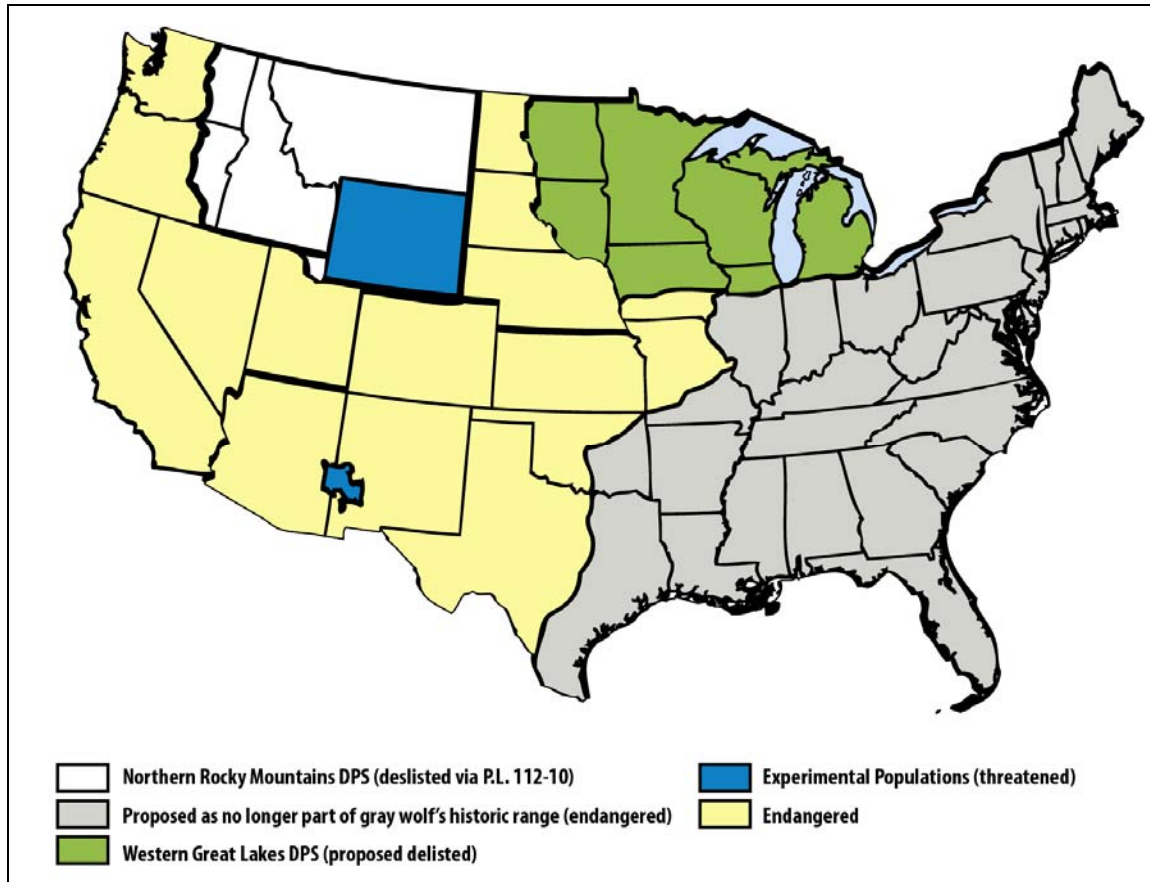
On May 5, 2011, FWS proposed additional changes to gray wolf protection.³⁹ These changes were designating a Western Great Lakes DPS and delisting it (which became final in December 2011); revising the gray wolf’s historic range by eliminating parts or all of 29 eastern states from that range; initiating a five-year review for the gray wolf; initiating a status review of the gray wolf in the Pacific Northwest; initiating a status review of the Mexican wolf in the Southwest and Mexico; and recognizing a new species of wolf, the eastern wolf (*Canis lycaon*).⁴⁰ Some of these actions seem likely to lead to further differentiated protection of wolves depending on population location.

³⁹ 76 Fed. Reg. 26086 (May 5, 2011).

⁴⁰ 76 Fed. Reg. 26086 (May 5, 2011).

As proposed by FWS's May 2011 notice of rulemaking, gray wolf protection would be as depicted in **Figure 7**.

Figure 7. Gray Wolf Protection Proposed by 76 Fed. Reg. 26086



Source: Congressional Research Service, compiled from 76 Fed. Reg. 26086 and other map sources listed above.

Western Great Lakes DPS

In December 2011, FWS designated and delisted the Western Great Lakes DPS of gray wolves.⁴¹ The proposed rulemaking of May 5, 2011, included other actions besides the Western Great Lakes delisting, but FWS announced it would address those other issues in a separate final rule. While the gray wolf population numbers meet planned recovery goals, it is not clear whether the DPS meets the requirements under FWS's DPS Policy⁴² to justify their segregation from the remainder of the wolves of the lower 48 states. To satisfy the policy, a population must be shown to be *discrete* ("markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors"⁴³) and *significant* (meaning its demise

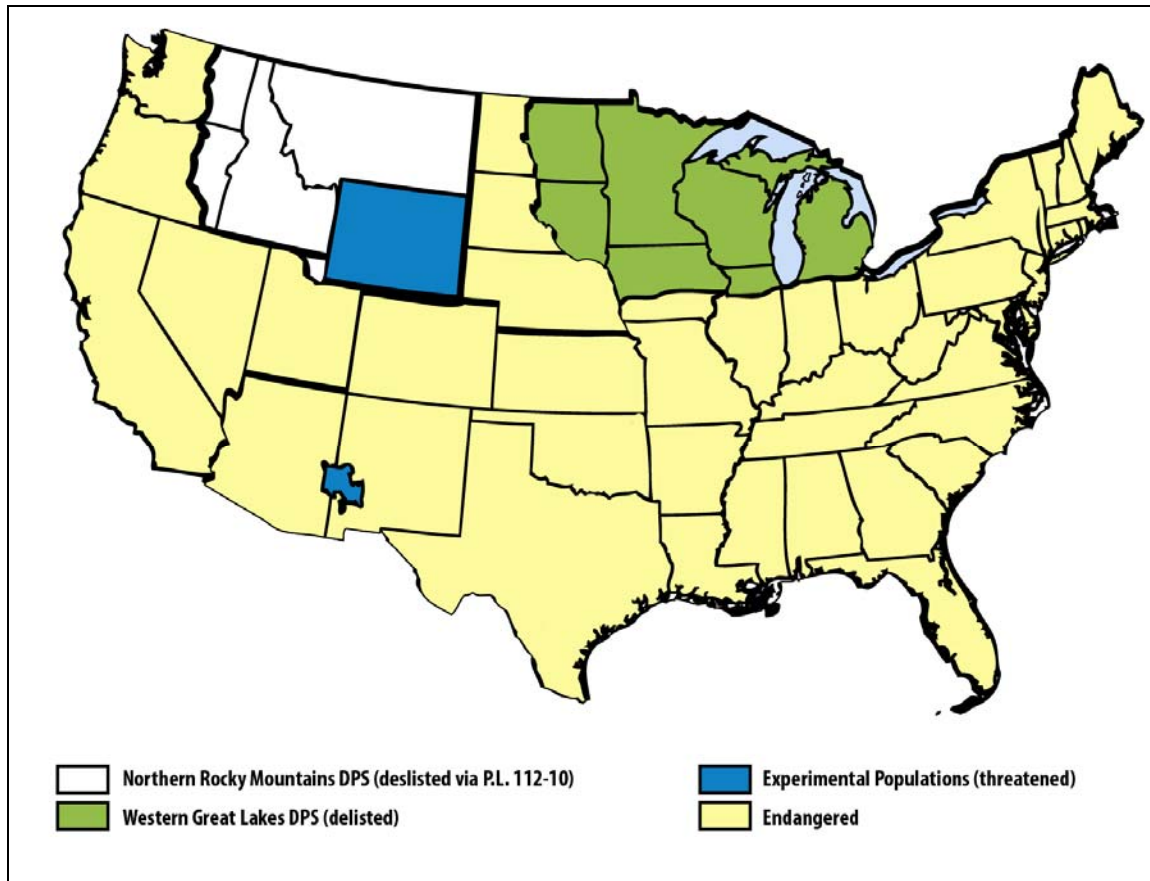
⁴¹ 76 Fed. Reg. 81666 (December 28, 2011).

⁴² 61 Fed. Reg. 4722 (February 7, 1996).

⁴³ 61 Fed. Reg. at 4725.

would be an important loss of genetic diversity⁴⁴). It is difficult to reconcile FWS's finding that the Western Great Lakes DPS is significant,⁴⁵ which is premised on preventing its demise, with the subsequent conclusion that all federal protections must be removed.

Figure 8. Gray Wolf Protection after 2011 | Western Great Lakes DPS Delisting



Source: Congressional Research Service, compiled from 76 Fed. Reg. 81666, and other map sources listed above.

Proposed Wyoming Delisting

On October 5, 2011, FWS announced that it planned to delist the wolves in Wyoming, contingent upon the Wyoming legislature's adopting certain measures for wolf management.⁴⁶ Under the proposed plan, wolves would either be protected or treated as game animals in 15.7% of the state (which does not include federal or tribal lands), meaning a license would be required to kill them.

⁴⁴ 61 Fed. Reg. at 4724. The policy sets four factors for determining a species' significance: (1) persistence of the segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the DPS would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon within its historic range; or (4) evidence that the DPS differs markedly from other populations of the species in its genetic characteristics.

⁴⁵ See 76 Fed. Reg. at 81672.

⁴⁶ 76 Fed. Reg. 61782 (October 5, 2011).

For the remaining 84.3% of the state, wolves could be killed on sight as predators. The state will manage wolf populations at 10 breeding pairs or 100 wolves outside of Yellowstone National Park.⁴⁷

Gray Wolf Legislation

Other bills before the 112th Congress also would restrict federal protection of the gray wolf. Those addressing the wolves of the West may not advance in light of P.L. 112-10. For example, Congress apparently chose P.L. 112-10, Section 1713 over the nearly identical S. 321 (Baucus), which would have given the 2009 rule the force of law rather than regulation. Additionally, H.R. 510 (Rehberg), which allows state regulation of wolves in Idaho and Montana, appears mooted by P.L. 112-10.

Other bills do not appear moot. For example, H.R. 838 (Kline) would eliminate federal protection of wolves in the Western Great Lakes area, proposing: “Any wolf in Minnesota, Wisconsin, or Michigan shall not be treated under any status of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), including as an endangered species, a threatened species, an essential experimental population, or a nonessential experimental population.”⁴⁸ H.R. 509 (Rehberg) and S. 249 (Hatch) would amend the ESA so it would not apply to the gray wolf. Those two bills would affect all gray wolves, including the populations in the Southwest as well as the Western Great Lakes and Northern Rocky Mountain areas.

After the delisting directed by P.L. 112-10 went into effect, H.R. 1819 (Miller—MI) was introduced to give states management authority over wolves provided that specified population levels were maintained. H.R. 1819 addresses all three gray wolf⁴⁹ population centers, the Northern Rockies, the Western Great Lakes, and the Southwest. In each case, if the numbers of wolves dip below a statutorily protected amount, the Secretary of the Interior would be authorized to treat wolves as protected for at least two years after reestablishing the targeted number of wolves. Under H.R. 1819, population goals would not be based on breeding pairs but on individuals. This criterion is not as clearly related to adequate genetic diversity and reproductive capacity, and might arguably be more difficult to measure than the number of breeding pairs.⁵⁰ This bill appears moot except for the Southwest population, since states already have management over the other populations following their delistings.

The proposed Department of the Interior, Environment, and Related Agencies Appropriations Act for FY2012 (H.R. 2584) includes a provision that would eliminate judicial review of certain gray wolf delistings. Section 119 of that bill would block judicial review of a delisting rule for either Wyoming wolves or those in the Western Great Lakes area, provided that the Secretary of the Interior has authorized the state to manage its gray wolves.

⁴⁷ 76 Fed. Reg. at 61788.

⁴⁸ This language appears to mean that Minnesota, Wisconsin, and Michigan wolves shall not be treated as *protected under* or *covered by* the ESA, but those italicized words are not in the bill. It is not clear how H.R. 838 would affect existing federal protection because of this wording.

⁴⁹ The bill defines *gray wolf* to include *Canus [sic] lycaon*, and *Canus [sic] lupus baileyi* (the Mexican wolf).

⁵⁰ Lone wolves are often secretive and hide to avoid attack by resident packs.

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Acknowledgments

The author would like to thank Pat McClaughry, Senior Graphics Specialist at CRS, and Kimberly Guess, of the Research Data Section at CRS, for creating the maps in this report.