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Counsel for Plaintiffs

13
14 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 **SAN FRANCISCO DIVISION**

16 WILDEARTH GUARDIANS, a non-profit
organization; WESTERN WATERSHEDS
PROJECT, a non-profit organization;
17 CASCADIA WILDLANDS, a non-profit
organization; ENVIRONMENTAL
18 PROTECTION INFORMATION CENTER,
a non-profit organization; KLAMATH
19 FOREST ALLIANCE, a non-profit
organization; KLAMATH-SISKIYOU
20 WILDLANDS CENTER, a non-profit
organization; THE LANDS COUNCIL, a non-
21 profit organization; and WILDLANDS
NETWORK, a non-profit organization,
22

Plaintiffs,

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1
2 vs.

3 DAVID BERNHARDT, as Secretary of the
4 United States Department of the Interior; the
5 UNITED STATES DEPARTMENT OF THE
6 INTERIOR, a federal department; the
7 UNITED STATES FISH AND WILDLIFE
8 SERVICE, a federal agency; and AURELIA
9 SKIPWORTH, as Director of the United States
10 Fish and Wildlife Service,

11 Federal Defendants.

12 INTRODUCTION

13 1. WildEarth Guardians, Western Watersheds Project, Cascadia Wildlands, the
14 Environmental Protection Information Center, Klamath Forest Alliance, Klamath-Siskiyou
15 Wildlands Center, The Lands Council, and Wildlands Network (collectively, “Plaintiffs”),
16 bring this civil action against the above-named Federal Defendants (collectively, the
17 “Service”) under the citizen suit provision of the Endangered Species Act (“ESA”), 16
18 U.S.C. § 1540(g), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, for
19 violations of the ESA and APA.

20 2. This case challenges the Service’s decision to remove federal ESA protections from
21 gray wolves in the contiguous United States. The Service’s decision was published in the
22 Federal Register on November 3, 2020 (85 Fed. Reg. 69,778) and took effect on January 3,
2021.

3. The Service’s 2020 final rule removing gray wolves throughout the contiguous United
States from the list of endangered and threatened wildlife — excepting the Mexican wolf (*C.
l. baileyi*) and red wolf (*C. rufus*) subspecies listings, as well as the already Congressionally-

1 delisted gray wolf population in the Northern Rocky Mountains distinct population segment
2 (“DPS”) — is premature, conflicts with the Service’s responsibility to take a precautionary
3 approach to wildlife management in accordance with the mandates and intent of the ESA,
4 and blatantly contravenes prior court orders and rulings on the matter.

5 4. The Service’s rule relies on the premise that alleged recovery in one region (the Great
6 Lakes) is sufficient to delist a species formerly distributed across the entire continent. The
7 rule explains that despite the fact that gray wolves have yet to be restored to approximately
8 85 percent of the species’ historic range — including in ecologically viable populations in the
9 Pacific Northwest (or “West Coast states”) and the Southern (or “Central”) Rocky
10 Mountains — wolves in the valuable, suitable habitats afforded by these regions simply do
11 not matter to the yet-to-be-achieved recovery of the species overall.

12 5. Plaintiffs – a coalition of conservation organizations dedicated to gray wolf
13 conservation in the American West – are thus compelled to bring this civil action. The
14 Service’s 2020 rule removing gray wolves from the list of endangered and threatened wildlife
15 is arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA and APA.

16 JURISDICTION

17 6. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 16 U.S.C. §
18 1540(g), and 5 U.S.C. § 704.

19 7. This Court has the authority to review the Service’s actions or inactions complained
20 of herein, and grant the relief requested, under the ESA’s citizen suit provision, 16 U.S.C. §
21 1540(g), and the APA, 5 U.S.C. § 706.

1 8. All requirements for judicial review required by the ESA are satisfied. Plaintiffs
2 delivered a notice of intent to sue letter, as required by the ESA, via email on November 6,
3 2020. That same notice of intent to sue letter was also sent via FedEx, and received by
4 Defendants on November 10 and 12, 2020. These letters notified each defendant of
5 Plaintiffs' intent to file a civil action to rectify the legal violations described in the letter. A
6 copy of Plaintiffs' notice letter is attached to this complaint as Exhibit 1. More than sixty-
7 days have elapsed since all defendants received Plaintiffs' notice of intent to sue for
8 violations of the ESA and APA when removing the gray wolf in the contiguous United
9 States from the list of endangered and threatened wildlife.

10 9. All requirements for judicial review required by the APA are satisfied. Plaintiffs
11 exhausted their administrative remedies related to the final rule challenged by this lawsuit.
12 Plaintiffs submitted timely comments to the Service relating to its proposal to remove gray
13 wolves in the contiguous United States from the list of endangered and threatened wildlife.

14 10. The relief sought is authorized by 28 U.S.C. §§ 2201 (Declaratory Judgment), 28
15 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5 U.S.C. § 706 (APA).

16 **VENUE**

17 11. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. §
18 1391(e). Federal Defendant U.S. Fish and Wildlife Service maintains an office within this
19 District. Federal Defendant U.S. Department of the Interior maintains an office within this
20 District. At least one Plaintiff maintains an office within this District. A significant portion
21 of the events or omissions giving rise to these claims occurred within this District.
22

1 **INTRADISTRICT ASSIGNMENT**

2 12. Assignment to the San Francisco, Oakland, or Eureka Divisions under Civil L.R. 3-
3 2(c) is appropriate because: (1) multiple plaintiffs and their members are located in counties
4 within those districts; (2) federal defendants U.S. Fish and Wildlife Service and U.S.
5 Department of the Interior maintain offices in San Francisco, Oakland, and Arcata; and (3)
6 the consequences of the final gray wolf delisting rule challenged in this litigation will occur,
7 in part, within the lands covered by the San Francisco, Oakland, and Eureka Divisions.

8 **STANDING**

9 13. Plaintiffs satisfy the minimum requirements for Article III standing to pursue this
10 civil action. Plaintiffs – including their members, supporters, and staff – have suffered and
11 continue to suffer injuries to their interests in gray wolves, gray wolf habitat, and pursuing
12 their interests in areas occupied by gray wolves caused by the Service’s decision to remove
13 gray wolves in the contiguous United States from the list of endangered and threatened
14 wildlife. This Court can redress these injuries by granting the relief requested. There is a
15 present and actual controversy between the parties.

16 **PARTIES**

17 14. Plaintiff, WILDEARTH GUARDIANS (“GUARDIANS”), is a non-profit
18 organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and
19 the health of the American West. Guardians is specifically committed to ensuring the
20 survival and recovery of the gray wolf throughout its historical range. Guardians has
21 approximately 235,000 active members and supporters across the American West, including
22 many who reside in California, Oregon, Washington, Colorado, Utah, New Mexico, and

1 Idaho. Guardians brings this action on behalf of itself, its members, and its supporters. The
2 delisting rule at issue in this litigation frustrates Guardians' mission to provide for the
3 recovery and maintenance of the gray wolf throughout its historical range, and harms
4 Guardians', its members', and staffs' interests in gray wolves and gray wolf recovery.

5 15. Plaintiff, WESTERN WATERSHEDS PROJECT, is a non-profit organization
6 founded in 1993 with approximately 12,000 members and supporters. It has offices in Idaho,
7 Montana, Wyoming, Oregon, Arizona, Utah, Nevada, and California, and its mission is to
8 protect and restore western watersheds and wildlife through education, public policy
9 initiatives, and legal advocacy. Western Watersheds Project works to influence and improve
10 public lands management throughout the West. It works to prevent harm to ecological,
11 biological, cultural, historic, archeological, scenic resources, wilderness values, roadless areas,
12 Wilderness Study Areas, and designated Wilderness. Western Watersheds Project brings this
13 action on behalf of itself, its members, and its supporters. The delisting rule at issue in this
14 litigation frustrates Western Watersheds Project's mission to provide for the recovery and
15 maintenance of the gray wolf throughout its historical range, and harms Western Watersheds
16 Project's, its members', and staffs' interests in gray wolves and gray wolf recovery.

17 16. Plaintiff, CASCADIA WILDLANDS, is a non-profit organization headquartered in
18 Eugene, Oregon. Cascadia Wildlands has approximately 12,000 members and supporters
19 throughout the United States. Cascadia Wildlands works to educate, protect, and restore the
20 Cascadia Bioregion's (extending from northern California to southeastern Alaska) wild
21 ecosystems and native species, including the gray wolf. Cascadia Wildlands brings this action
22 on behalf of itself, its members, and its supporters. The delisting rule at issue in this litigation

1 frustrates Cascadia Wildlands’ mission to provide for the recovery and maintenance of the
2 gray wolf throughout its historical range, and harms Cascadia Wildlands’, its members’, and
3 staffs’ interests in gray wolves and gray wolf recovery.

4 17. Plaintiff, ENVIRONMENTAL PROTECTION INFORMATION CENTER
5 (“EPIC”), is a non-profit organization located in Eureka, California. Since 1977, EPIC has
6 defended the wildlife and wild places of the Klamath Mountains and North Coast Range.
7 EPIC’s mission is the science-based protection and restoration of northwest California’s
8 forests and seeks to ensure that a connected landscape exists for species survival, species
9 recovery, and climate adaptation. Most of EPIC’s 15,000 members and supporters live in
10 northern California. EPIC’s members and staff use, enjoy, and recreate on public lands
11 within the range of the gray wolf. EPIC’s members and staff use, enjoy, and recreate on
12 public lands that could serve as habitat for gray wolves. EPIC, its members, and staff are
13 dedicated to the recovery of the gray wolf throughout its historical range, including in
14 northern California. The delisting rule at issue in this litigation frustrates EPIC’s mission to
15 provide for the recovery and maintenance of complete and functional ecosystems, and
16 harms EPIC’s, its members’, and staffs’ interests in gray wolves and gray wolf recovery.

17 18. Plaintiff, KLAMATH FOREST ALLIANCE (“KFA”), is a non-profit organization
18 founded in 1989, based in Orleans, California. Its mission is to promote sustainable
19 ecosystems and sustainable communities of the Klamath-Siskiyou Mountain region. KFA
20 participates in forest planning through agency engagement, substantive comments and
21 collaboration, and uses law, science, place-based knowledge and conservation advocacy to
22 defend the biodiversity, wildlife, waters and mature forests of the Klamath-Siskiyou

1 bioregion. KFA’s members and staff use, enjoy, and recreate on public lands within the
2 current and future range of the gray wolf. KFA brings this action on behalf of itself, its
3 members, and its supporters. The delisting rule at issue in this litigation frustrates KFA’s
4 mission to provide for the recovery and maintenance of the gray wolf throughout its
5 historical range, and harms KFA’s, its members’, and staffs’ interests in gray wolves and gray
6 wolf recovery.

7 19. Plaintiff, KLAMATH-SISKIYOU WILDLANDS CENTER (“KS Wild”), is a non-
8 profit organization headquartered in Ashland, Oregon. KS Wild has over 3,500 members
9 and supporters in more than 10 states, with most members concentrated in southern Oregon
10 and northern California. On behalf of its members, KS Wild advocates for the forests,
11 wildlife, and waters of the Rogue and Klamath Basins and works to protect and restore the
12 extraordinary biological diversity of the Klamath-Siskiyou region of southwest Oregon and
13 northwest California. KS Wild uses environmental law, science, education, and collaboration
14 to help build healthy ecosystems and sustainable communities. Through its campaign work,
15 KS Wild strives to protect the last wild areas and vital biological diversity of the Klamath
16 region. KS Wild is a leader in protecting public lands and routinely participates in
17 commenting, monitoring, and litigation affecting public lands and the natural resources
18 located there. KS Wild’s members and staff use, enjoy, and recreate on public lands within
19 the range of the gray wolf. KS Wild brings this action on behalf of itself, its members, and its
20 supporters. The delisting rule at issue in this litigation frustrates KS Wild’s mission to
21 provide for the recovery and maintenance of the gray wolf throughout its historical range,
22

1 and harms KS Wild's, its members', and staffs' interests in gray wolves and gray wolf
2 recovery.

3 20. Plaintiff, THE LANDS COUNCIL, is a non-profit organization based in Spokane,
4 Washington. The Lands Council's mission is to preserve and revitalize Inland Northwest
5 forests, water, and wildlife through advocacy, education, effective action, and community
6 engagement. The Lands Council collaborates with a broad range of interested parties to seek
7 smart and mutually respectful solutions to environment and health issues. The Lands
8 Council is enriched by the beauty of nature. The Lands Council is energized by the
9 recreational opportunities afforded by nature, and is inspired to preserve its legacy for future
10 generations. The Lands Council's members and staff use, enjoy, and recreate on public lands
11 within the range of the gray wolf. The Lands Council brings this action on behalf of itself, its
12 members, and its supporters. The delisting rule at issue in this litigation frustrates The Lands
13 Council's mission to provide for the recovery and maintenance of the gray wolf throughout
14 its historical range, and harms The Lands Council's, its members', and staffs' interests in gray
15 wolves and gray wolf recovery.

16 21. Plaintiff, WILDLANDS NETWORK, is a non-profit organization headquartered in
17 Salt Lake City, Utah. It was established in 1991, and its mission is to reconnect nature in
18 North America. Wildlands Network is focused on conserving the wholeness of nature,
19 which requires protecting the biodiversity of species. Wildlands Network works to provide
20 for large core reserves of habitat and the presence of apex predators and species, including
21 the gray wolf. Wildlands Network brings this action on behalf of itself, its members, and its
22 supporters. The delisting rule at issue in this litigation frustrates The Wildlands Network's

1 mission to provide for the recovery and maintenance of the gray wolf throughout its
2 historical range, and harms Wildlands Network's, its members', and staffs' interests in gray
3 wolves and gray wolf recovery.

4 22. Plaintiffs' members, supporters, and staff are dedicated to ensuring the long-term
5 survival and recovery of gray wolves throughout the contiguous United States, and ensuring
6 the Service complies with the ESA and bases all of its listing (and de-listing) decisions on the
7 best scientific and commercial data available.

8 23. Plaintiffs' members, supporters, and staff live in or near, and/or routinely recreate in
9 or near, gray wolf habitat across the western United States; including, but not limited to: the
10 Pacific Northwest region (including the West Coast states of Oregon, Washington, and
11 California); the Southern and/or Central Rocky Mountains region (including Colorado,
12 Utah, Nevada, and northern New Mexico); and the Northern Rocky Mountains region
13 (including Idaho, Wyoming, and Montana). Plaintiffs' members, supporters, and staff enjoy
14 observing – or attempting to observe – and studying gray wolves in the Pacific Northwest,
15 Southern and/or Central Rocky Mountains, and Northern Rocky Mountains. Plaintiffs'
16 members, supporters, and staff enjoy observing – or attempting to observe – and studying
17 signs of gray wolves' presence, and observing, studying, and/or photographing gray wolves
18 in areas where gray wolves are known to travel, disperse, roam, and sometimes congregate
19 (e.g., rendezvous sites). The opportunity to view gray wolves or signs of gray wolves in the
20 wild in the Pacific Northwest, Southern and/or Central Rocky Mountains, and/or Northern
21 Rocky Mountains, and elsewhere across the American west – by itself – is of significant
22

1 interest and value to Plaintiffs' members, supporters, and staff, and increases their use and
2 enjoyment of these areas.

3 24. Upon delisting, gray wolves may be killed under state management regimes in the
4 West Coast states of Oregon, Washington, and California, and/or in the Southern and/or
5 Central Rocky Mountains states, including Colorado, Utah, Nevada, and northern New
6 Mexico. Any wolf killing by State actors would harm Plaintiffs' members', supporters', and
7 staff's interests in gray wolves in the American West and elsewhere and decrease their ability
8 to observe, or attempt to observe, and enjoy gray wolves and their sign in the wild.

9 25. The final rule challenged in this lawsuit harms these interests in gray wolves and
10 diminishes Plaintiffs' members', supporters', and staff's enjoyment of recreating within gray
11 wolf habitat and surrounding areas.

12 26. Plaintiffs' members, supporters, and staff derive aesthetic, recreational, scientific,
13 inspirational, educational, spiritual, and other benefits from gray wolves in the American
14 West, in recreating in areas occupied by and used by gray wolves, in working to protect gray
15 wolves from human-caused mortality and disturbance, and in working to restore gray wolves
16 in the contiguous United States. In furtherance of these interests, Plaintiffs' members,
17 supporters, and staff have worked and continue to work to conserve gray wolves in the
18 Pacific Northwest, Southern and/or Central Rocky Mountains, and Northern Rocky
19 Mountains, including work to restore gray wolf populations throughout the contiguous
20 United States.

21 27. Plaintiffs' interests have been, are being, and unless the requested relief is granted,
22 will continue to be harmed by the Service's decision to remove gray wolves in the

1 contiguous United States from the list of endangered and threatened wildlife. If this Court
2 issues the relief requested, the harm to Plaintiffs' interests will be alleviated and/or lessened.

3 28. Defendant DAVID BERNHARDT is sued in his official capacity as Secretary of the
4 United States Department of the Interior. As Secretary, Mr. Bernhardt is the federal official
5 with responsibility for all Service officials' inactions and/or actions challenged in this
6 complaint.

7 29. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal
8 department responsible for applying and implementing the federal laws and regulations
9 challenged in this complaint.

10 30. Defendant, the UNITED STATES FISH AND WILDLIFE SERVICE is an agency
11 within the United States Department of the Interior that is responsible for applying and
12 implementing the federal laws and regulations challenged in this complaint.

13 31. Defendant AURELIA SKIPWORTH is sued in her official capacity as Director of
14 the United States Fish and Wildlife Service. As Director, Ms. Skipworth is the federal official
15 with responsibility for the Service officials' inactions and/or actions challenged in this
16 complaint.

17 **FACTS**

18 **The Gray Wolf (*Canis lupus*)**

19 32. Gray wolves are the largest wild members of the canid (dog) family and have a broad
20 circumpolar range.

21 33. Adult gray wolves range in weight from 40 to 175 pounds, depending on sex and
22 geographic locale.

- 1 34. Gray wolves are highly territorial, social animals that live and hunt in packs.
- 2 35. Gray wolves are well adapted to travelling fast and far in search of food, and to
3 catching and consuming large mammals.
- 4 36. Gray wolves in North America primarily eat medium to large mammals, including
5 deer, elk, and other species.
- 6 37. Gray wolves successfully occupy a wide range of habitats if sufficient prey availability
7 exists and human-caused mortality is adequately regulated. High-quality, suitable habitat
8 generally exists in areas with sufficient prey where human-caused mortality is relatively low
9 due to limited human access, there are high amounts of escape cover, or there is a relatively
10 low risk of wolf-livestock conflicts.
- 11 38. Where human-caused mortality is low or nonexistent, gray wolf populations are
12 regulated by the distribution and abundance of prey on the landscape. Density-dependent,
13 intrinsic mechanisms (*e.g.*, social strife, territoriality, and disease) may limit gray wolf
14 populations when ungulate densities are high.
- 15 39. Gray wolf pack social structure is relatively adaptable, and breeding members may be
16 replaced from within or outside the pack, and pups may be reared by other pack members if
17 their parents die.
- 18 40. Gray wolf dispersal capabilities allow wolf populations to expand and recolonize
19 vacant habitats as long as rates of human-caused mortality are not excessive. The rate of gray
20 wolf recolonization may be impacted by the extent of intervening unoccupied habitat
21 between the source population and newly recolonized areas.
- 22 //

The Gray Wolf's Decline in the Contiguous United States

41. Hundreds of thousands of gray wolves likely ranged across the western United States and Mexico. However, the gray wolf's range and numbers declined significantly throughout the 19th and 20th centuries as the result of human-caused mortality from poisoning, trapping, and shooting, and from government-funded programs of gray wolf eradication.

42. Historically (which the Service views as being at the time of European settlement), the gray wolf's range included most of North America, and consequently, most of the lower 48 United States, except in the far southeastern region of the country. By 1974, the species had been eliminated from most of its historical range, and occurred only in small populations in Minnesota and on Isle Royale, Michigan.

43. Today, gray wolves exist primarily in two metapopulations: one covering the Western Great Lakes (or "Great Lakes") states of Minnesota, Wisconsin and Michigan; and the other in the Congressionally-created and Congressionally-delisted Northern Rocky Mountains region of Idaho, Montana, and Wyoming (also referred to as the "NRM DPS"). A small number of recolonizing gray wolves can be found in the Pacific Northwest (or "West Coast") states of Oregon, Washington, and California as well.

44. The Great Lakes metapopulation currently consists of approximately 4,200 individuals.

45. While the current population in the Northern Rocky Mountains metapopulation is difficult to discern due to the states of Idaho and Montana stopping annual minimum gray wolf population counts back in 2016, in 2015, the population was thought to be approximately 1,900 individuals. Additionally, approximately 311 wolves occurred in

1 Wyoming in 2020, and approximately 311 wolves occurred in the States of Oregon,
2 Washington, and California in 2020.

3 46. A number of lone dispersing wolves have been documented outside of the Great
4 Lakes and Northern Rocky Mountain metapopulations in all States within the historical
5 range of the gray wolf west of the Mississippi River, except in Oklahoma and Texas. Since
6 the early 2000s, individual gray wolves have been confirmed and reported in the following
7 states: Vermont, Massachusetts, New York, Indiana, Illinois, Iowa, Missouri, North Dakota,
8 South Dakota, Nebraska, Kansas, Colorado, Utah, Arizona, and Nevada.

9 47. Although gray wolves are starting to make a comeback in select areas of the United
10 States, the species has yet to achieve self-sustaining populations in much of their historic
11 habitat across vast portions of the American West, including in the Pacific Northwest region
12 (including the West Coast states of Oregon, Washington, and California) and the Southern
13 and/or Central Rocky Mountains region (including the states of Colorado, Utah, Nevada,
14 and northern New Mexico).

15 **The Service's Listing of Gray Wolves as an Endangered Species in the Contiguous United**
16 **States**

17 48. Gray wolves were among the first species granted federal protections, first under the
18 legislative predecessors to the ESA, the Endangered Species Preservation Act of 1966 and
19 the Endangered Species Conservation Act of 1969, and subsequently under the ESA of
20 1973, as amended.

21 49. The entities listed in the 1978 gray wolf listing rule included: (1) an endangered
22 population at the taxonomic species level (*C. lupus*) throughout the contiguous United States
and Mexico; and (2) a threatened population in Minnesota.

1 50. At the time of the 1978 listing, human-caused mortality was identified as a primary
2 threat to the species.

3 51. At the time of the 1978 listing, there were only approximately 1,235 wolves in
4 Minnesota remaining.

5 **The Service’s Prior Attempts to Remove Gray Wolves in the Contiguous United States from**
6 **the List of Endangered and Threatened Wildlife**

7 52. The Service’s November 3, 2020 final rule stripping gray wolves throughout the
8 contiguous United States of ESA protections is but another attempt in a long history of
9 failed rules seeking the species’ removal from the list of endangered and threatened wildlife.

10 53. In 2003, the Service attempted to designate three separate DPSs of gray wolves and
11 reclassify their status. 68 Fed. Reg. 15,804 (April 1, 2003). The 2003 rule designated an
12 Eastern DPS and reclassified it as threatened under the ESA. The 2003 rule designated a
13 Western DPS and reclassified it as threatened under the ESA. The 2003 rule designated a
14 Southwestern United States and Mexico DPS and classified it as endangered under the ESA.
15 The 2003 rule delisted the gray wolf in unoccupied non-historical range.

16 54. The 2003 rule was vacated in both *Defenders of Wildlife v. Secretary, U.S. Dep’t of the*
17 *Interior*, 354 F. Supp. 2d 1156 (D. Or. 2005) (“*Oregon Wolves*”), and in *Nat’l Wildlife Fed’n v.*
18 *Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005) (“*Vermont Wolves*”).

19 55. In *Oregon Wolves*, the court held that the Service: (1) arbitrarily and capriciously failed
20 to properly analyze whether the gray wolf was endangered or threatened in a “significant
21 portion of its range” by failing to consider that “a species can be extinct throughout a
22 significant portion of its range if there are major geographical areas in which it is no longer
viable but once was,” 354 F. Supp. 2d at 1167–68; (2) arbitrarily and capriciously applied its

1 DPS policy to “expand the boundaries” of its proposed DPSs, which effectively decreased
2 protections for the species outside of core recovery areas despite there being no changes to
3 existing threats to justify less protection, 354 F. Supp. 2d at 1171; and (3) arbitrarily and
4 capriciously failed to consider the attempt to down-list the species in vast portions of its
5 geographic range without applying the ESA’s section 4 listing factors, 354 F. Supp. 2d at
6 1172. As summarized by a federal appellate court later addressing the case, the *Oregon Wolves*
7 court held that “by downlisting the species based solely on the viability of a small population
8 within that segment, the Service was effectively ignoring the species’ status in its full range,
9 as the [ESA] requires.” *Humane Soc’y of the United States v. Zinke*, 865 F. 3d 585, 592 (D.C. Cir.
10 2017).

11 56. In *Vermont Wolves*, the court held that the Service “cannot downlist an area that it
12 previously determined warrants an endangered listing because it ‘lumps together’ a core
13 population with a low to non-existent population outside of the core area.” 386 F. Supp. 2d
14 at 565. The *Vermont Wolves* court held that the Service “bypass[es] the application of the ESA
15 in the non-core area” when it arbitrarily “expands the boundaries” of the wolf population to
16 achieve its desired outcome to lessen federal protections for the species. 386 F. Supp. 2d at
17 565. The *Vermont Wolves* court held that a final rule “that makes all other portions of the
18 wolf’s historical or current range outside of the core gray wolf populations insignificant and
19 unworthy of protection” is “contrary to the plain meaning of the ESA phrase ‘significant
20 portion of its range,’ and therefore is an arbitrary and capricious application of the ESA.”
21 386 F. Supp. 2d at 566.

1 57. In 2007, the Service attempted to designate a Western Great Lakes DPS and remove
2 it from the list of endangered and threatened wildlife. 72 Fed. Reg. 6,052 (Feb. 8, 2007).

3 58. The 2007 rule was vacated in *Humane Soc’y of the United States v. Kempthorne*, 579 F. 2d 7
4 (D.D.C. 2008).

5 59. In 2008, the Service attempted to designate a Northern Rocky Mountains DPS and
6 remove it from the list of endangered and threatened wildlife. 73 Fed. Reg. 75,356 (Feb. 27,
7 2008).

8 60. The 2008 rule was enjoined in *Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D.
9 Mont. 2008), and subsequently vacated and remanded.

10 61. In 2009, the Service attempted to designate a Western Great Lakes DPS and remove
11 it from the list of endangered and threatened wildlife. 74 Fed. Reg. 15,070 (Apr. 2, 2009). In
12 2009, the Service attempted to designate a Northern Rocky Mountains (except Wyoming)
13 DPS and remove it from the list of endangered and threatened wildlife. 74 Fed. Reg. 15,123
14 (Apr. 2, 2009).

15 62. The 2009 Western Great Lakes DPS rule was vacated by *Humane Soc’y of the United*
16 *States v. Salazar*, 1:09-CV-1092-PLF (D.D.C. 2009) (case settled). The 2009 Northern Rocky
17 Mountains (except Wyoming) DPS rule was vacated by *Defenders of Wildlife v. Salazar*, 729 F.
18 Supp. 2d 1207 (D. Mont. 2010).

19 63. In 2011, Congress reissued the 2009 Northern Rocky Mountain (except Wyoming)
20 rule designating a DPS and removing it from the list of endangered and threatened wildlife
21 in Public Law 112-10, The Department of Defense and Full-Year Continuing
22 Appropriations Act.

1 64. In 2011, the Service again attempted to designate a Western Great Lakes DPS and
2 remove it from the list of endangered and threatened species. 76 Fed. Reg. 81,666 (Dec. 28,
3 2011).

4 65. The 2011 Western Great Lakes rule was vacated by *Humane Soc’y of the United States v.*
5 *Jewell*, 76 F. Supp. 69, 110 (D.D.C. 2014). The vacatur of the 2011 Western Great Lakes rule
6 was upheld on appeal by *Humane Soc’y of the United States v. Zinke*, 865 F. 3d 858 (D.C. Cir.
7 2017).

8 66. In *Humane Soc’y of the United States v. Zinke*, the court held that the Service failed to
9 consider two significant aspects in its 2011 Western Great Lakes rule: (1) the impacts of
10 partial delisting on the remnant population, and (2) the impacts of historical range loss on
11 the already-listed species. 865 F. 3d at 585.

12 67. In 2012, the Service attempted to remove gray wolves in Wyoming from the list of
13 endangered and threatened species. 77 Fed. Reg. 55,530 (Sept. 10, 2012).

14 68. The 2012 Wyoming rule was vacated in *Defenders of Wildlife v. Jewell*, 68 F. Supp. 3d 193
15 (D.D.C. 2014). The vacatur of the 2012 Wyoming rule was reversed on appeal in *Defenders of*
16 *Wildlife v. Zinke*, 849 F. 3d 1077 (D.C. Cir. 2017). The 2012 Wyoming rule was reinstated in
17 2017. 82 Fed. Reg. 20,284 (May 1, 2017).

18 **The Service’s 2019 Proposal to Remove Gray Wolves from the List of Endangered and**
19 **Threatened Wildlife**

20 69. On March 15, 2019, the Service published a proposed rule to remove the gray wolf in
21 the contiguous United States from the list of endangered and threatened wildlife. 84 Fed.
22 Reg. 9,648 (Mar. 15, 2019) (hereinafter “2019 proposed rule”).

1 70. In the 2019 proposed rule, the Service lumped the Minnesota and contiguous United
2 States and Mexico populations (excepting the Mexican wolf and red wolf subspecies
3 populations, as well as the already Congressionally-created and Congressionally-delisted
4 Northern Rocky Mountains population) into a singular “gray wolf entity.”

5 71. In the 2019 proposed rule, the Service removed the entire, newly created, “gray wolf
6 entity” from the list of endangered and threatened wildlife.

7 72. In the 2019 proposed rule, the Service relied on the fact that solely one
8 metapopulation – gray wolves in the three Great Lakes states of Minnesota, Wisconsin, and
9 Michigan – may be faring well, in large part, thanks to the ESA’s federal management
10 regime, to justify the removal of federal protections from the entire entity as a whole.

11 73. The 2019 proposed rule acknowledged that the “gray wolf entity” is not a “species,”
12 as that term is defined under the Act.

13 74. The 2019 proposed rule acknowledged that the “gray wolf entity” is not a “sub-
14 species,” as that term is defined under the Act.

15 75. The 2019 proposed rule acknowledged that the “gray wolf entity” is not a DPS, as
16 defined by the agency’s 1996 DPS Policy, 61 Fed. Reg. 4,722 (Feb. 7, 1996).

17 **The Service’s 2020 Final Decision to Remove Gray Wolves from the List of Endangered and**
18 **Threatened Wildlife**

19 76. On November 3, 2020, the Service published a final rule to remove the gray wolf in
20 the contiguous United States from the list of endangered and threatened wildlife. 85 Fed.
21 Reg. 69,778 (Nov. 3, 2020) (hereinafter “final rule”).

22 77. The final rule explains that neither of the listed entities (the threatened “Minnesota”
entity, nor the endangered “Lower 48 States and Mexico outside of the Northern Rocky

1 Mountain DPS and Minnesota” entity) qualifies as a “species,” a “sub-species,” or a “DPS,”
2 as those terms are statutorily defined by the Act and under the Service’s 1996 DPS Policy. 85
3 Fed. Reg. 69,783–84.

4 78. The final rule explains that the threatened population in Minnesota is not a DPS
5 because it is not discrete from gray wolves in the endangered entity in the Western Great
6 Lakes region (*i.e.*, Wisconsin and Michigan). 85 Fed. Reg. 69,783. The final rule explains that,
7 likewise, the endangered entity is not a DPS because wolves in the Western Great Lakes
8 region are not discrete from gray wolves in Minnesota. *Id.*

9 79. The final rule explains that the endangered entity is not a DPS because wolves in the
10 Pacific Northwest (or, “West Coast States”) are not discrete from wolves in the
11 congressionally-delisted Northern Rocky Mountains (“NRM”) DPS. 85 Fed. Reg. 69,783–84.

12 80. The final rule explains that since “[n]either of the listed entities is a DPS, ... thus,
13 neither of the entities is a ‘species,’ as that term is defined under the Act.” 85 Fed. Reg.
14 69,784.

15 81. The final rule explains that “the currently listed gray wolf entities could be removed
16 from the List because they do not meet the statutory definition of a ‘species’ [which is
17 an] independent basis for delisting.” 85 Fed. Reg. 69,784 (citing 50 C.F.R. 424.11(e)(3)).

18 82. In the final rule, the Service assessed the conservation status of gray wolves in three
19 different configurations: (1) “Each of the two currently listed gray wolf entities separately”
20 (referred to as “Minnesota” and the “44-State entity” in the final rule); (2) “the two currently
21 listed entities combined into a single entity (the approach in [the Service’s] proposed rule)”
22 (referred to as the “combined listed entity” in the final rule); and (3) “a single gray wolf entity

1 that includes all gray wolves in the lower 48 state [sic] and Mexico except for the Mexican
2 wolf” (referred to as the “lower 48 United States entity” in the final rule). 85 Fed. Reg.
3 69,784 –85.

4 83. In the final rule, the Service interprets the term “range” as referring to “the area
5 occupied by the species at the time [the Service] make[s] a status determination under section
6 4 of the Act.” 85 Fed. Reg. 69,786 (citing 79 Fed. Reg. 37,583 (July 1, 2014)).

7 84. In the final rule, the Service declines to include areas in which only “lone dispersers”
8 are found in its definition of “current range,” explaining: “Wolves occur periodically in the
9 lower 48 United States as lone dispersers in places that otherwise lack evidence of persistent
10 wolf presence or suitable habitat for supporting a resident wolf population While
11 dispersal plays an important role in recolonization of suitable habitat, individual dispersers
12 that do not settle in an area, survive, and reproduce do not substantively contribute to the
13 wolf’s viability (*i.e.*, the ability of a species to sustain populations in the wild over time).
14 Therefore, we did not include the areas in which only these lone dispersers are occasionally
15 found in our definition of current range.” 85 Fed. Reg. 69,786.

16 85. In the final rule, the Service explains: “[t]he wolves in Wisconsin and Michigan
17 contain sufficient resiliency, redundancy, and representation to sustain populations within
18 the 44-State entity over time. Therefore, we conclude that the relatively few wolves that
19 occur within the 44-State entity outside of Wisconsin and Michigan, including those in the
20 West Coast States and central Rocky Mountains as well as lone dispersers in other States, are
21 not necessary for the recovered status of the 44-State entity.” 85 Fed. Reg. 69,883.

1 86. In the final rule, the Service explains: “Although substantial contraction of gray wolf
2 historical range occurred within the 44-State entity since European settlement, the range of
3 the gray wolf has expanded significantly since its original listing in 1978, and the impacts of
4 lost historical range are no longer manifesting in a way that threatens the viability of the
5 species. The causes of the previous contraction . . . and the effects of that contraction . . . in
6 addition to the effects of all other threats, have been ameliorated or reduced such that *the 44-*
7 *State entity* no longer meets the Act’s definitions of “threatened species” or “endangered
8 species.” 85 Fed. Reg. 69,885–86 (emphasis added).

9 87. In the final rule, the Service explains: “Although substantial contraction of gray wolf
10 historical range occurred within the 44-State entity since European settlement, the range of
11 the gray wolf has expanded significantly since its original listing in 1978, and the impacts of
12 lost historical range are no longer manifesting in a way that threatens the viability of the
13 species. The causes of the previous contraction . . . and the effects of that contraction . . . in
14 addition to the effects of all other threats, have been ameliorated or reduced such that *the*
15 *combined listed entity* does not meet the Act’s definitions of “threatened species” or
16 “endangered species.” 85 Fed. Reg. 69,889 (emphasis added).

17 88. In the final rule, the Service explains: “Although substantial contraction of gray wolf
18 historical range occurred within the 44-State entity since European settlement, the range of
19 the gray wolf has expanded significantly since its original listing in 1978, and the impacts of
20 lost historical range are no longer manifesting in a way that threatens the viability of the
21 species. The causes of the previous contraction . . . and the effects of that contraction . . . in
22 addition to the effects of all other threats, have been ameliorated or reduced such that *the*

1 *lower 48 United States entity* does not meet the Act’s definitions of “threatened species” or
2 “endangered species.” 85 Fed. Reg. 69,893 (emphasis added).

3 89. In the final rule, the Service explains that its post-delisting monitoring efforts “will
4 focus on wolves within Minnesota, Wisconsin, and Michigan” only. 85 Fed. Reg. 69,894.

5 90. In the final rule, the Service concludes that “gray wolves in the lower 48 states
6 (excepting the Mexican wolf) are recovered.” 85 Fed. Reg. 69,893.

7 91. Gray wolves in Oregon have not recovered as defined by the ESA. Gray wolves in
8 Washington have not recovered as defined by the ESA. Gray wolves in California have not
9 recovered as defined by the ESA. Gray wolves in Colorado have not recovered as defined by
10 the ESA. Gray wolves in Nevada have not recovered as defined by the ESA. Gray wolves in
11 Utah have not recovered as defined by the ESA. Gray wolves in Arizona have not recovered
12 as defined by the ESA.

13 **FIRST CLAIM FOR RELIEF**

14 **(Violation of ESA – Illegal “Species” Determination/DPS Analysis)**

15 92. Plaintiffs incorporate all preceding paragraphs.

16 93. The final rule concludes “[t]he gray wolf entities that are currently on the List do not
17 meet the Act’s definition of a ‘species.’” 85 Fed. Reg. 69,783.

18 94. The final rule explains that neither currently listed entity “encompasses an entire
19 species, or a subspecies, of gray wolf” and that they also do not qualify as a distinct
20 population segment (“DPS”). 85 Fed. Reg. 69,783–84.

1 95. The final rule cites to 50 C.F.R. § 424.11(e)(3) to support the need to delist gray
2 wolves because they purportedly do not meet the definition of a “species” under the Act. 85
3 Fed. Reg. 69, 784.

4 96. These conclusions are erroneous, arbitrary and capricious, are not based on the best
5 available science, conflict with the ESA, and conflict with the Service’s 1996 DPS Policy.

6 97. The ESA does not define the term “distinct population segment” (“DPS”), and
7 therefore, in 1996, the Service issued a “Policy Regarding the Recognition of Distinct
8 Vertebrate Population Segments Under the Endangered Species Act,” 61 Fed. Reg. 4,722
9 (Feb. 7, 1996) (hereinafter “DPS Policy”).

10 98. The DPS Policy interprets the term “distinct population segment” as requiring
11 consideration of three factors: (1) the discreteness of the population segment in relation to
12 the remainder (also referred to as the “remnant”) of the species to which it belongs; (2) the
13 significance of the population segment to the species to which it belongs; and (3) the
14 population segment’s conservation status in relation to the Act’s standards for listing. 61
15 Fed. Reg. 4,725.

16 99. A population may be considered discrete if it meets one of two conditions: (1) it is
17 “markedly separated” from other populations of the same taxon as a consequence of
18 physical, physiological, ecological, or behavioral factors; and/or (2) it is delimited by
19 international governmental boundaries within which differences in control of exploitation,
20 management of habitat, conservation status, or regulatory mechanisms exist that are
21 significant in light of section 4(a)(1)(D) of the Act. 61 Fed. Reg. 4,725.

1 100. The DPS Policy provides “[t]he standard established for discreteness is simply an
2 attempt to allow an entity given DPS status under the Act to be adequately defined and
3 described.” 61 Fed. Reg. 4,724.

4 101. The DPS Policy makes clear that complete discreteness is not required, as “the
5 standard adopted does not require absolute separation of a DPS from other members of its
6 species, because this can rarely be demonstrated in nature for any population of organisms.”
7 61 Fed. Reg. 4,724. This standard is intended to create a low bar, as it “allow[s] entities
8 recognized under the Act to be identified without requiring an unreasonably rigid test for
9 distinctness.” 61 Fed. Reg. 4,724. In particular, the DPS Policy specifically contemplated that
10 a DPS would have “some limited interchange among population segments considered to be
11 discrete” 61 Fed. Reg. 4,724.

12 102. In the final rule, the Service concludes that the two listed entities (the threatened
13 Minnesota entity and the endangered lower-48 entity) “are not markedly separated from
14 other populations of the same taxon.” 85 Fed. Reg. 69,783.

15 103. In the final rule, the Service concludes that the threatened Minnesota entity is “not
16 discrete from the endangered listed entity [(the endangered lower-48 entity)] where they abut
17 in the Great Lakes area because gray wolves in Minnesota are not discrete from gray wolves
18 in Wisconsin and Michigan.” 85 Fed. Reg. 69,783.

19 104. In the final rule, the Service concludes that “gray wolves in the West Coast States that
20 are part of the endangered listed entity [(the endangered lower-48 entity)] are not discrete
21 from the recovered NRM population.” 85 Fed. Reg. 69,783–84.

1 105. In the final rule, because the Service determined there was a lack of discreteness, it
2 did not continue to evaluate the significance of these populations. 85 Fed. Reg. 69,783–84.

3 106. The final rule’s conclusions are legally flawed, not supported by the best available
4 science, are in conflict with the ESA and the DPS Policy, and are therefore, arbitrary,
5 capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. §
6 706(2)(A).

7 107. In the final rule, the Service determines a lack of discreteness to a Congressionally-
8 created DPS — one that never had a legally sufficient scientific basis — without adequately
9 considering the discreteness of wolves in places such as the West Coast States and the
10 Southern (or “Central,” as described in the final rule) Rocky Mountains, including Colorado,
11 Utah, Nevada, and northern New Mexico.

12 108. In the final rule, the Service ignores its obligation to conduct a “comprehensive
13 review” that addresses the entire listed entities, as opposed to smaller portions of those
14 entities.

15 109. In the final rule, the Service fails to include a DPS analysis for Pacific Northwest gray
16 wolves. 85 Fed. Reg. 69,854. Instead, the Service relies on a 2013 analysis in the final rule. 85
17 Fed. Reg. 69,854–55 (referencing 78 Fed. Reg. 35,664, 35,711–13 (June 13, 2013)). In the
18 final rule, the Service ignores data from 2013 to the present by referring back to the 2013
19 analysis. In the final rule, the Service ignores its prior conclusion that wolves in the NRM
20 DPS would be isolated from other suitable habitat to the west and south of the DPS. 73 Fed.
21 Reg. 10,514, 10,518 (Feb. 27, 2008). In the final rule, the Service ignores its prior conclusion
22 that wolves occurring in the Cascade Mountains in the Pacific Northwest would not be a

1 part of the NRM DPS. 73 Fed. Reg. 10,514, 10,518 (Feb. 27, 2008) (“if wolves dispersed into
2 the [North Cascades] they would remain protected by the Act as endangered because it is
3 outside of the NRM DPS.”); *see also* 74 Fed. Reg. 15,123, 15,127 (April 2, 2009) (same).

4 110. In the final rule, the Service ignores the best available science, including the concerns
5 of peer reviewers, regarding its conclusion that Pacific Northwest (or “West Coast states”)
6 gray wolves are not discrete from wolves in the NRM DPS.

7 111. In the final rule, the Service erroneously concludes that wolves occurring outside of
8 the geographic boundaries of the NRM DPS in Oregon, Washington, California, Colorado,
9 and elsewhere do not meet the discreteness test in that they are not markedly separated from
10 other populations of the same taxon as a consequence of physical physiological, ecological,
11 or behavioral factors, including genetic differences. In the final rule, the Service erroneously
12 concludes that these wolves are not significant to the rest of the taxon by failing to consider
13 that these wolves represent a significant part of the species’ recovery in areas where these
14 wolves are recolonizing historic habitats. In the final rule, the Service erroneously attempts
15 to expand the geographic boundaries of a Congressionally-created, and Congressionally-
16 delisted, NRM DPS in an effort to avoid its ESA obligations to recover gray wolves
17 throughout their historic and current ranges.

18 112. The Service’s determinations that neither of the listed entities constitute a “species,”
19 or a DPS in the final rule violate the ESA and the DPS Policy and are “arbitrary, capricious,
20 an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

21 113. In the final rule, the Service relies on a recently enacted regulation requiring the
22 Secretary to delist a species if the Secretary determines “[t]he listed entity does not meet the

1 statutory definition of a species.” 85 Fed. Reg. 69,784 (citing 50 C.F.R. § 424.11(e)(3)(2020)).
2 But this regulation violates the ESA’s purposes and policies, 16 U.S.C. § 1531, and is
3 therefore “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
4 law.” 5 U.S.C. § 706 (2)(A).

5 SECOND CLAIM FOR RELIEF

6 (Violation of ESA – Illegal Analysis of Various “Gray Wolf Entities”)

7 114. Plaintiffs incorporate all preceding paragraphs.

8 115. In the final rule, the Service assesses three separate gray wolf entities: (1) the two
9 listed entities (the threatened Minnesota entity and the endangered lower-48 entity)
10 separately; (2) the two listed entities (the threatened Minnesota entity and the endangered
11 lower-48 entity) combined; and (3) the two listed entities (the threatened Minnesota entity
12 and the endangered lower-48 entity) and the NRM DPS combined. 85 Fed. Reg. 69,784–85.

13 116. The Service’s assessments of the listed entities combined violates existing case law.
14 *Defenders of Wildlife v. Secretary, U.S. Dep’t of the Interior*, 354 F. Supp. 2d 1156 (D. Or. 2005);
15 *National Wildlife Fed’n v. Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005); *Humane Soc’y of the United*
16 *States v. Zinke*, 865 F. 3d 858 (D.C. Cir. 2017); *Defenders of Wildlife v. Norton*, 23 F. Supp. 2d 9,
17 19 (D.D.C. 2002).

18 117. The Service’s creation of entirely fictional “gray wolf entities,” and simultaneous
19 delisting of such entities, violates the ESA.

20 118. The Service’s analysis of various “gray wolf entities” in the final rule violates the ESA
21 and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
22 law.” 5 U.S.C. § 706 (2)(A).

1 **THIRD CLAIM FOR RELIEF**

2 **(Violation of ESA – Illegal SPR Analysis)**

3 119. Plaintiffs incorporate all preceding paragraphs.

4 120. The ESA requires the Service to consider a species’ status across a “significant
5 portion of its range” in making listing determinations. 16 U.S.C. § 1532(6); *Defenders of*
6 *Wildlife v. Norton*, 258 F. 3d 1136 (9th Cir. 2001).

7 121. There are two situations under which a species, sub-species, or DPS may qualify for
8 listing under the ESA. First, the ESA requires the Service to consider a species’ status
9 throughout all of its range. 16 U.S.C. §§ 1532(6), (20). Second, the ESA requires the Service
10 to consider a species’ status across a “significant portion of its range.” 16 U.S.C. §§ 1532(6),
11 (20).

12 122. The ESA does not define “significant portion of its range,” but the Ninth Circuit has
13 explained one way a species may qualify for listing throughout a “significant portion of its
14 range” is if there are “major geographical areas in which it is no longer viable but once was.”
15 *Defenders of Wildlife v. Norton*, 258 F. 3d 1136, 1145–46 (9th Cir. 2001).

16 123. The Service must (1) quantify the species’ historic range in order to establish a
17 temporal baseline; and (2) then determine whether the lost or no longer viable area, as
18 measured against the baseline, amounts to a significant portion. If a species is “expected to
19 survive” in an area that is much smaller than its historic range, the Service must explain its
20 conclusion that the lost area is not a “significant portion of its range.” *Defenders of Wildlife*,
21 258 F. 3d at 1145. An “adequate explanation” why territory, which was a part of a species’
22 historic range but is no longer occupied or considered viable, is not a “significant portion”

1 of the species' range is required. If the lost area qualifies as a "significant portion," then the
2 Service must complete a threats assessment to determine if the species qualifies for listing
3 throughout a "significant portion of its range." 16 U.S.C. §§ 1532 (6), (20).

4 124. The phrase "significant portion of its range" does not mean that threats in the
5 "significant portion" must render the entire species at risk of extinction. *Defenders of Wildlife*,
6 258 F. 3d at 1141. The phrase "significant portion of its range" was intended to allow for
7 protection in one area, even if a species is abundant or overabundant in another area. *Id.* at
8 1144. There is no bright-line percentage of habitat that must be affected in order for an area
9 to be "significant." *Id.* at 1143. For a species with a small historical range, even a very small
10 percentage of habitat may be "significant." *Id.*

11 125. In 2014, the Service issued a policy interpreting the phrase "significant portion of its
12 range." 79 Fed. Reg. 37,578 (July 1, 2014) (hereinafter "2014 SPR Policy"). The 2014 SPR
13 Policy was vacated in-part by the federal courts. *Center for Biological Diversity v. Jewell*, 248 F.
14 Supp. 3d 946 (D. Ariz. 2017) (finding the Service's interpretation of significant portion of its
15 range" in the 2014 SPR Policy "impermissibly clashes with the rule against surplusage and
16 frustrates the purposes of the ESA" and is therefore arbitrary and capricious under the ESA)
17 *amended in part by* 2017 WL 8788052 (limiting the court's vacatur of the 2014 SPR Policy to
18 the District of Arizona); *Desert Survivors v. U.S. Dep't of the Interior*, 336 F. Supp. 3d 1131 (N.D.
19 Cal. 2018) (clarifying the court's ruling on the merits in 321 F. Supp. 3d 1011 that the 2014
20 SPR Policy interpreting the phrase "significant portion of its range" is vacated and set aside
21 in regard to the policy's definition of "significant").

1 126. In the Service’s 2019 proposed rule, the Service acknowledged that part of its 2014
2 SPR Policy had been vacated across the country in *Desert Survivors*, 336 F. Supp. 3d 1131.

3 127. In the Service’s final rule, the Service fails to acknowledge that part of its 2014 SPR
4 Policy has been vacated across the country in *Desert Survivors*, 336 F. Supp. 3d 1131. *See* 85
5 Fed. Reg. 69,853 (ignoring this fact in its response to comments on the issue).

6 128. The Service cannot interpret the phrase “significant portion of its range” in a way
7 that wholly excludes analysis of the species’ historical range. *Tucson Herpetological Soc. v.*
8 *Salazar*, 566 F. 3d 870, 876 (9th Cir. 2009). The Service must define the phrase “significant
9 portion of its range” in a manner that includes quantification of the species’ historic range
10 and an evaluation of whether the lost habitat amounts to a “significant portion” of that
11 range. *Id.*

12 129. The Service may not look only to the health of the species’ population in certain areas
13 while ignoring threats in areas where the population is either extirpated or home to only a
14 few individuals. *Tucson Herpetological Soc.*, 566 F. 3d at 877 (“It is insufficient . . . to point to
15 one area or class of areas where [a species’] population persists to support a finding that
16 threats to the species elsewhere are not significant . . .”).

17 130. In the final rule, the Service’s “significant portion of its range” analyses are legally
18 deficient and violate the ESA and APA. 16 U.S.C. §§ 1532(6), (20); 5 U.S.C. § 706(2)(A).

19 131. In the final rule, the Service’s interpretation of the term “significant” in its
20 “significant portion of its range” analysis violates the ESA.

21 132. In the final rule, the Service defines “significant” by asking whether “any portions are
22 biologically meaningful in terms of resiliency, redundancy, or representation of gray wolves

1 in the 44-State entity.” 85 Fed. Reg. 69,885. In the final rule, the service relies on the
2 assumption that there is allegedly sufficient resiliency, redundancy, and representation to
3 sustain gray wolf populations over time provided by the Great Lakes area metapopulation,
4 and that other wolves are merely part of the Congressionally-created (and Congressionally-
5 delisted) Northern Rocky Mountains DPS, and therefore are expendable. *Id.* In the final rule,
6 the Service asserts that “the relatively few wolves that occur outside the Great Lakes area
7 within the gray wolf entity, including those in the West Coast States and Central/Southern
8 Rocky Mountains as well as lone dispersers in other States, are not necessary for the
9 recovered status of the combined listed entity.” 85 Fed. Reg. 69,886.

10 133. In the final rule, the Service ignores the possibility of ever restoring gray wolves to
11 the thousands of square miles of suitable habitat with sufficient prey base outside of the
12 Great Lakes region. In the final rule, the service ignores the value of recovering gray wolves
13 in the West Coast States and Central/Southern Rocky Mountains. In the final rule, the
14 Service ignores the “significance” of suitable habitats within the West Coast States and the
15 Central/Southern Rocky Mountains to the species recovery in these regions.

16 134. In the final rule, the Service’s interpretation of “range” in its “significant portion of
17 its range” analysis violates the ESA.

18 135. In the final rule, the Service defines the term “range” unlawfully narrowly and
19 excludes the importance of individual dispersers to the species’ recovery. In the final rule,
20 the service ignores the best available science, including the concerns of peer reviewers,
21 regarding its definition of “range.”
22

1 136. The Service’s determinations that gray wolves are not in danger of extinction
2 throughout all or a significant part of its range, 16 U.S.C. § 1532 (6), nor are they likely to
3 become an endangered species within the foreseeable future throughout all or a significant
4 part of its range, 16 U.S.C. § 1532 (20), violate the ESA and are “arbitrary, capricious, an
5 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

6 **FOURTH CLAIM FOR RELIEF**

7 **(Violation of ESA – Inadequate Threats Assessment)**

8 137. Plaintiffs incorporate all preceding paragraphs.

9 138. The ESA requires the Service to determine whether a species qualifies as an
10 endangered species or threatened species due to one or more (or a combination of) factors
11 as described in section 4(a)(1) of the Act. These factors include: (A) the present or
12 threatened destruction, modification, or curtailment of its habitat or range; (B)
13 overutilization for commercial, recreational, scientific, or educational purposes; (C) disease
14 or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or
15 manmade factors affecting its continued existence. 16 U.S.C. § 1533 (a)(1). These same
16 factors must be considered before delisting a species, subspecies, or a DPS. 50 C.F.R. §
17 424.11(d).

18 139. The ESA requires the Service’s evaluation of threats for purposes of delisting must
19 consider both the threats currently facing the species, subspecies, or DPS, and the threats
20 that are reasonably likely to affect the species, subspecies, or DPS in the foreseeable future
21 following the removal of the ESA’s protections.

1 140. In the final rule, the Service determined that the threats to the gray wolf throughout
2 the Lower 48 have been reduced such that the listed entities no longer meet the definition of
3 threatened or endangered under the ESA. 85 Fed. Reg. 69,889. In making this determination,
4 the Service failed to utilize the best available science and failed to carefully consider and
5 adequately apply section 4(a)(1)'s threat factors in accordance with the ESA and the Service's
6 implementing regulations and policy.

7 141. The final rule fails to include an adequate section 4(a)(1) threats factors analysis for
8 gray wolves in the Central/Southern Rocky Mountains. The final rule fails to adequately
9 consider whether gray wolves occurring in the Central/Southern Rocky Mountains are
10 threatened or endangered because of any of the following (or a combination of) the
11 following factors: (A) the present or threatened destruction, modification, or curtailment of
12 its habitat or range; (B) overutilization for commercial, recreation, scientific, or educational
13 purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or
14 (E) other natural or manmade factors affecting its continued existence. 16 U.S.C. § 1533
15 (a)(1). The final rule fails to consider the vast amount of suitable habitat for gray wolves in
16 the Central/Southern Rocky Mountains states that remains unoccupied. The final rule fails
17 to consider the importance of connectivity corridors and habitats necessary to foster
18 movement into and recolonization of habitats in the Central/Southern Rocky Mountains
19 states by gray wolves in the Northern Rocky Mountains DPS.

20 142. In the final rule, the Service concludes that while a group of six wolves travelling
21 together in a group was documented in far northwestern Colorado (within close proximity to
22 Utah) in January 2020, as dispersers, these wolves are not necessary to the recovery of the

1 44-State entity, and therefore, do not matter to the recovery of the species. 85 Fed. Reg.
2 69,883.

3 143. By failing to conduct an adequate section 4(a)(1) threats analysis for gray wolves in
4 the Central/Southern Rocky Mountains, the final rule fails to consider an important aspect
5 of the species recovery – the recovery of gray wolves in the Central/Southern Rocky
6 Mountains – and therefore, violates the ESA and APA. 16 U.S.C. § 1533(a)(1); 5 U.S.C. §
7 706(2)(A).

8 144. The final rule fails to include an adequate section 4(a)(1) threats factors analysis for
9 gray wolves in the Pacific Northwest or West Coast states of Oregon, Washington, and
10 California.

11 145. The final rule fails to adequately consider whether gray wolves occurring in the West
12 Coast states of Oregon, Washington, and California qualify as an endangered or threatened
13 species because of the present or threatened destruction, modification, or curtailment of the
14 species range. 16 U.S.C. § 1533(a)(1)(A). The final rule fails to consider the best available
15 science in its analysis of “suitable habitat” in the West Coast states by primarily considering
16 road density and human population density only. The final rule fails to consider the vast
17 amount of suitable habitat for gray wolves in the West Coast states that remains unoccupied.
18 The final rule fails to consider the importance of connectivity corridors and habitats
19 necessary to foster movement into and recolonization of habitats in the West Coast states by
20 gray wolves in the Northern Rocky Mountains DPS. The final rule arbitrarily relies on the
21 Service’s belief that wolves outside of Wisconsin and Michigan are not necessary for the
22 recovery of the 44-State entity. 85 Fed. Reg. 69,885. The final rule arbitrarily relies on the

1 Service's belief that individual dispersing wolves are not necessary for the recovery of the 44-
2 State entity. The final rule fails to consider that the Service's erroneous determination that
3 gray wolves in the West Coast states are the same as gray wolves in the Northern Rocky
4 Mountains DPS curtails the current range of the listed endangered entity (gray wolves in the
5 Lower 48).

6 146. The final rule fails to adequately consider whether gray wolves occurring in the West
7 Coast states of Oregon, Washington, and California qualify as an endangered or threatened
8 species because of overutilization for commercial, recreational, scientific, or educational
9 purposes. 16 U.S.C. § 1533(a)(1)(B). The final rule fails to consider the impacts of human-
10 caused mortality on gray wolves in the West Coast states. The final rule fails to consider the
11 impacts of lethal management of gray wolves in Oregon, Washington, and California. The
12 final rule fails to consider the impacts of excessive levels of recreational hunting in the
13 Northern Rocky Mountains DPS on the recovery of gray wolves in the West Coast states.
14 The final rule fails to consider the impacts of hunting and trapping of gray wolves on tribal
15 lands in the West Coast states on the recovery of gray wolves in the West Coast states. The
16 final rule fails to consider the impacts of the immense loss of gray wolves in the West Coast
17 states at the behest of livestock producers on the recovery of gray wolves in the West Coast
18 states. The final rule fails to consider the threats to gray wolf recovery in the West Coast
19 states due to the lack of non-lethal coexistence practices in key gray wolf habitats in Oregon,
20 Washington, and California. The final rule fails to consider that current levels of lethal take
21 of gray wolves in the West Coast states is regulated by the Act's protections and that levels
22

1 of lethal take of gray wolves in the West Coast states is likely to increase without the Act's
2 protections in effect.

3 147. The final rule fails to adequately consider whether gray wolves occurring in the West
4 Coast states of Oregon, Washington, and California qualify as an endangered or threatened
5 species because of disease or predation. 16 U.S.C. § 1533(a)(1)(C). The final rule fails to
6 adequately consider the potential for disease to threaten gray wolf populations in the West
7 Coast states. The final rule fails to consider the potential impacts of disease on gray wolves
8 in the West Coast states due to the Pacific Northwest's uniquely different climate from that
9 of the Great Lakes region. The final rule assesses the threat factor of disease and predation
10 on gray wolves in the Great Lakes region alone, and fails to consider the impacts of disease
11 on small and isolated populations, such as those found in the West Coast states.

12 148. The final rule fails to adequately consider whether gray wolves occurring in the West
13 Coast states of Oregon, Washington, and California qualify as an endangered or threatened
14 species because of the inadequacy of regulatory mechanisms. 16 U.S.C. § 1533(a)(1)(D). The
15 final rule fails to consider the adequacy of state management plans in the West Coast states
16 of Oregon, Washington, and California. The final rule fails to consider the non-binding
17 nature, and recent changes to, the gray wolf management plan in Washington State. The final
18 rule fails to consider the lack of state-level protections for gray wolves in Oregon. The final
19 rule fails to consider the impact of potential state-regulated hunting of gray wolves in the
20 West Coast states absent the Act's federal protections. The final rule fails to adequately
21 consider gray wolf management on federal public lands in the West Coast states, including
22

1 on lands managed by the United States Forest Service and United States Bureau of Land
2 Management.

3 149. The final rule fails to adequately consider whether gray wolves occurring in the West
4 Coast states of Oregon, Washington, and California qualify as an endangered or threatened
5 species because of other manmade factors affecting the species' continued existence. 16
6 U.S.C. § 1533(a)(1)(E). The final rule fails to adequately consider the impacts of climate
7 change on the recovery of gray wolves in the West Coast states. The final rule fails to
8 consider the changes in habitat suitability and current and future ranges for gray wolves in
9 the West Coast states that are resulting from and will continue to result from the changing
10 climate. The final rule fails to consider the impacts of climate change on gray wolves' prey
11 availability (including deer and elk populations) in the West Coast states. The final rule fails
12 to consider the best available science, including the concerns of peer reviewers, regarding
13 climate change and its impacts upon the recovery of gray wolves in the West Coast states.

14 150. The final rule fails to adequately consider whether gray wolves occurring in the West
15 Coast states of Oregon, Washington, and California qualify as an endangered or threatened
16 species because of the cumulative impacts of threats in combination. 16 U.S.C. § 1533(a)(1).

17 151. By failing to conduct an adequate section 4(a)(1) threats analysis for gray wolves in
18 the West Coast States, the final rule fails to consider an important aspect of the species'
19 recovery – the recovery of gray wolves in the West Coast States – and therefore, violates the
20 ESA and APA. 16 U.S.C. § 1533(a)(1); 5 U.S.C. § 706(2)(A).

21 152. In the final rule, the Service relies on the alleged recovery of wolves in the Northern
22 Rocky Mountains DPS to rationalize that gray wolves in the West Coast states of Oregon,

1 Washington, and California are not necessary to support the recovery of the species overall.
2 But the final rule does not consider the best available science in concluding that recovery in
3 the Northern Rocky Mountains DPS has been and continues to be successful in supporting
4 an ecologically viable population of gray wolves in the Northern Rocky Mountains DPS.

5 153. In the final rule, the Service discusses state management regimes in the Northern
6 Rocky Mountains DPS states of Idaho, Montana, and Wyoming. But the final rule does not
7 consider the best available science in concluding that the state management regimes in
8 Idaho, Montana, and Wyoming have been and continue to be successful in supporting an
9 ecologically viable population of gray wolves in the Northern Rocky Mountains DPS.

10 154. The final rule's treatment of the status of Idaho's wolf population and regulatory
11 mechanisms in place there is arbitrary and capricious, and therefore the final rule does not
12 contain an adequate section 4(a)(1) threats analysis for gray wolves occurring in the
13 Congressionally-created (and Congressionally-delisted) Northern Rocky Mountains DPS.
14 The final rule ignores that the State of Idaho stopped reporting minimum wolf population
15 numbers in 2015. The final rule ignores wolf population data for Idaho more recent than
16 2016. The final rule ignores that Idaho allowed 60 percent of its wolf population to be
17 hunted or trapped in 2019-2020. The final rule ignores Idaho's wolf bounty program. The
18 final rule failed to rely on the best scientific and commercial data related to Idaho's wolf
19 population. The final rule failed to rely on the best scientific and commercial data related to
20 Idaho's wolf management regime.

21 155. The Service's determination that the threats to the gray wolf throughout the Lower
22 48 have been reduced such that the listed entities no longer meet the definition of threatened

1 or endangered under the ESA violates the ESA and is “arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

3 **FIFTH CLAIM FOR RELIEF**

4 **(Violation of ESA – Failure to Use and Apply the Best Available Science)**

5 156. Plaintiffs incorporate all preceding paragraphs.

6 157. The ESA requires listing determinations to be based “solely on the basis of the best
7 scientific and commercial data available,” (hereinafter “best available science”). 16 U.S.C. §
8 1533(b)(1)(A).

9 158. The final rule fails to consider, apply, and comport with the best available science.

10 159. The final rule’s application of the scientific concept of “resiliency, redundancy, and
11 representation,” or the “3 Rs,” as authored by Shaffer and Stein (2000), fails to comport with
12 the best available science. The final rule rests on the premise that gray wolves in the Great
13 Lakes region alone purportedly provide adequate “resiliency, redundancy, and
14 representation” to sustain populations within the 44-State entity over time. 85 Fed. Reg.
15 69,885. The Service uses these “3 R’s” (resiliency, redundancy, and representation) to define
16 “significance” under its “significant portion of its range” analysis. 85 Fed. Reg. 69,885. The
17 Service explains that the relatively few wolves outside of the Great Lakes area within the 44-
18 State entity, including those in the West Coast states and lone dispersers in other states, such
19 as Colorado, are not necessary to the recovery of the 44-State entity overall. 85 Fed. Reg.
20 69,885. But the Service misinterprets and misapplies the science underlying the “3 Rs”
21 concept. In the final rule, the Service applies the “3 Rs” concept at the species-level, 85 Fed.
22 Reg. 69,854, but the best available science mandates the “3 Rs” concept is to be applied in

1 the broader ecosystem-based context, *see* Shaffer and Stein (2000). The Service’s failure to
2 base the final rule on the best available science violates the ESA and APA. 16 U.S.C. §
3 1533(b)(1)(A); 5 U.S.C. § 706(2)(A).

4 160. The final rule’s analysis of habitat suitability fails to comport with the best available
5 science. The final rule fails to apply the best available science to its analysis of habitat
6 suitability in the Central/Southern Rocky Mountains, including in Colorado, Utah, Nevada,
7 and northern New Mexico. Instead, the final rule rests on the Service’s belief that the gray
8 wolves occurring in the Central/Southern Rocky Mountains, including in Colorado and
9 Utah, are not necessary to the recovery of the 44-State entity overall. 85 Fed. Reg. 69,885.
10 The final rule fails to explain why the Central/Southern Rocky Mountains no longer contain
11 necessary suitable habitat for gray wolf recovery, as the Service has concluded it does in prior
12 rules. The Service’s failure to base the final rule on the best available science violates the
13 ESA and APA. 16 U.S.C. § 1533(b)(1)(A); 5 U.S.C. § 706(2)(A).

14 161. The Service’s determination that the final rule is based on the best available science
15 violates the ESA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in
16 accordance with law.” 5 U.S.C. § 706 (2)(A).

17 **SIXTH CLAIM FOR RELIEF**

18 **(Violation of ESA – Illegal Post-Delisting Monitoring Program)**

19 162. Plaintiffs incorporate all preceding paragraphs.

20 163. Section 4(g)(1) of the ESA requires the Service to implement a system, in cooperation
21 with the States, to monitor effectively — for not less than five years — the status of all
22 species that have been determined to be recovered to the point at which the Act’s

1 protections are no longer required, and which have been removed from the federal list of
2 endangered and threatened wildlife. 16 U.S.C. § 1533(g)(1).

3 164. The Service’s Post-Delisting Monitoring Plan Guidance provides that the Service
4 should tailor a post-delisting monitoring program to collect and evaluate data “most likely to
5 detect increased vulnerability of the species following removal of ESA protections.” U.S.
6 Fish and Wildlife Service and National Marine Fisheries Service, Post-Delisting Monitoring
7 Plan Guidance Under the Endangered Species Act at 4-1 (August 2008) (hereinafter
8 “Monitoring Guidance”). The Service’s Post-Delisting Monitoring Plan Guidance provides
9 that different monitoring protocols in different locations due to differences in threats and
10 population dynamics should be contemplated. Monitoring Guidance at 4-2.

11 165. In the final rule, the Service explains: “Our monitoring activities will focus on wolves
12 within Minnesota, Wisconsin, and Michigan. Although the entities evaluated in this rule
13 include wolves outside of those states, we have determined that it is appropriate to focus on
14 the Great Lakes area because it includes the currently-listed Minnesota entity and that
15 portion of the 44-state entity that is most significant in terms of vulnerability of the species
16 following removal of the Act’s protections. Therefore, by evaluating the monitoring data
17 from the Great Lakes states, we can effectively monitor the status of the species.” 85 Fed.
18 Reg. 69,894.

19 166. In the final rule, the Service explains that it will not conduct any post-delisting
20 monitoring of the species outside of Minnesota, Wisconsin, and Michigan. 85 Fed. Reg.
21 69,894.

1 167. In the final rule, the Service explains that it will not conduct any post-delisting
2 monitoring of the species in Oregon, Washington, California, Colorado, or other states
3 where a small number of gray wolves currently exist. 85 Fed. Reg. 69,894.

4 168. In the final rule, the Service explains that it will not conduct any further post-delisting
5 monitoring of the species in the NRM DPS, including in Idaho and Montana, where post-
6 delisting monitoring is already complete, nor in Wyoming, where post-delisting monitoring is
7 currently in place. 85 Fed. Reg. 69,894.

8 169. In the final rule, the Service relies on a 2008 monitoring plan prepared for a DPS that
9 does not exist, entitled “Post-delisting Monitoring Plan for the Western Great Lakes Distinct
10 Population Segment of the Gray Wolf” (February 2008). 85 Fed. Reg. 69,894.

11 170. The Service’s failure to monitor gray wolves outside of the Great Lakes States and
12 reliance on an outdated monitoring plan for a DPS that does not exist violates the ESA and
13 the Service’s Post-delisting Monitoring Plan Guidance, and is “arbitrary, capricious, an abuse
14 of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

15 **SEVENTH CLAIM FOR RELIEF**

16 **(Violation of APA – Inadequate Public Notice and Comment)**

17 171. Plaintiffs incorporate all preceding paragraphs.

18 172. The APA requires federal agencies to provide notice of rulemaking to the public. 5
19 U.S.C. § 553(b). The APA requires federal agencies “shall provide interested persons an
20 opportunity to participate in the rule making through submission of written data, views or
21 arguments.” 5 U.S.C. § 553(c). Any changes between a proposed rule and final rule must be a
22 logical outgrowth of the notice and comments received.

1 173. Agency action without observance of the procedure required by law is arbitrary or
2 abuse of discretion and shall be set aside. 5 U.S.C. § 706(2)(D).

3 174. The changes between the Service’s 2019 proposed rule and the Service’s 2020 final
4 rule are significant and required additional notice and opportunity for the public to
5 comment.

6 175. The Service changed its approach from analyzing a single “gray wolf entity” in the
7 2019 proposed rule, to analyzing three different configurations of “gray wolf entities” in the
8 final rule.

9 176. The Service added significant new biological and policy information to the final rule
10 that was omitted from the 2019 proposed rule.

11 177. The Service did not provide the public, nor peer reviewers of the Service’s 2019
12 proposed rule, adequate notice and an opportunity to comment on the revised approach of
13 the final rule and significant new biological and policy information included within.

14 178. The Service’s failure to provide adequate notice and opportunity to comment on the
15 significant changes from the proposed rule to the final rule renders the final rule “arbitrary,
16 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706
17 (2)(A).

18 **REQUEST FOR RELIEF**

19 Plaintiffs respectfully request that this Court:

- 20 A. Declare the Service has violated and continues to violate the law as alleged above;
21 B. Set aside and vacate the Service’s November 3, 2020 final rule challenged herein
22 pending compliance with the ESA and APA, as alleged herein;

1 C. Remand this matter back to the Service with instructions to comply with the ESA
2 and APA, as alleged herein;

3 D. Issue any interim or permanent injunctive relief or other relief this Court deems
4 necessary, just, or proper or that Plaintiffs may subsequently request;

5 E. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses of litigation;

6 Respectfully submitted this 14th day of January, 2021.

7 /s/ Jason Flanders

8 /s/ John R. Mellgren
9 John R. Mellgren
applicant for admission pro hac vice

10 /s/ Kelly E. Nokes
11 Kelly E. Nokes
applicant for admission pro hac vice