

OFFICE OF SPECIES CONSERVATION



300 North 6<sup>th</sup> St  
Boise ID 83702

Michael Edmondson  
Administrator

DEPARTMENT OF FISH & GAME



PO Box 25  
Boise ID 83712

Ed Schriever  
Director

August 23, 2021

The Honorable Deb Haaland  
Secretary of the Interior  
1849 C Street N.W.  
Washington, DC 20240  
[doiexecsec@ios.doi.gov](mailto:doiexecsec@ios.doi.gov)

Martha Williams, Principal Deputy Director  
U.S. Fish and Wildlife Service  
1849 C Street N.W.  
Washington, DC 20240  
[Martha\\_Williams@fws.gov](mailto:Martha_Williams@fws.gov)

Re: May 26, 2021 and July 29, 2021 petitions for listing of gray wolf

Dear Secretary Haaland and Principal Deputy Director Williams:

The Idaho Governor's Office of Species Conservation (OSC) and the Idaho Department of Fish and Game (IDFG) reviewed the Center for Biological Diversity *et al.*'s petition (CBD petition) to the U.S. Fish and Wildlife Service (USFWS), dated May 26, 2021, which requested emergency relisting of gray wolf in Idaho and adjacent states as a Northern Rocky Mountains distinct population segment (NRM DPS) or alternatively as part of a broader Western [U.S.] DPS. We have also reviewed Western Watersheds *et al.*'s July 29, 2021 petition (WWP petition) to list a "Western" DPS of gray wolves.

These petitions and calls for emergency listing are based on a flawed premise regarding both the substance and impact of 2021 changes in state laws. Despite headlines to the contrary, 2021 Idaho legislative changes do NOT in fact call for killing 90% of Idaho's wolves or for wolf eradication. In addition, those familiar with Idaho's extensive and rugged backcountry, challenges of hunting or trapping wolves in Idaho, and wolf biology and reproduction cycles will recognize that the level of population reduction speculated by petitioners under the new law is not a practical reality. Supporting that conclusion is data from over a decade of post-delisting management and monitoring in the NRM DPS, as well as other readily available scientific information (see below).

In the first month after the change in law took effect (July 2021), a total of 3 wolves were harvested by hunters and trappers statewide, and three additional wolves harvested as of August 20 (IDFG mandatory harvest reports, 2021). In combination with 19 wolves from agency control actions to address livestock depredation, wolf mortality between July 1 – August 20, 2021 totals 25. That number is comparable to (or lower than) the wolf mortality in the same timeframe for the past 5 years (IDFG Mortality reports 2016-2021).

Importantly, Idaho's new law also does NOT create an unregulated free-for-all. State regulatory measures and ongoing monitoring remain in place to ensure Idaho's wolf population remains above USFWS recovery levels. We do not expect the 2021 legislative change to result in Idaho's population falling below the population management objective of 500 wolves assessed by USFWS for Idaho in the 2009 delisting rule.

Since delisting, Idaho's wolf population has demonstrated resiliency, and remained well above recovery levels, even with Idaho's stepwise increases in methods of take and season length. *See 85 Fed. Reg. 69,798-9*. Over the last decade, the Idaho Fish and Game Commission has incrementally extended hunting and trapping seasons (to include both foothold only and combined foothold/snaring seasons). As the wolf population remained well above both recovery levels and USFWS-assessed management objectives, and because of continuing wolf conflicts in unsuitable habitat and excessive predation on certain elk populations, the Commission has also incrementally authorized additional methods of take (*e.g.*, use of electronic calls). With these incremental increases, peak population estimates (post-breeding) have still remained above 1,500 in Idaho alone in 2019 and 2020.

Similarly, while Montana's 2021 legislative changes authorize additional methods of take for wolves at the state Fish and Wildlife Commission's discretion, Montana regulatory mechanisms remain in place to regulate and limit take to ensure the population stays above recovery levels.

Wolves in the NRM DPS remain well above recovery levels and state management objectives assessed in the 2009 delisting rule (74 Fed. Reg. 15123), as reissued in 2011 (76 Fed. Reg. 25,590). The reissued 2009 delisting rule identified a distinct population segment of gray wolf as the NRM DPS and delisted the portions of this DPS outside of Wyoming (74 Fed. Reg. 15,123-9). Notably, an act of Congress required the 2011 reissuance of the rule, including identification of the NRM DPS, without regard to any other provision of statute or regulation applicable to issuance of such rule, and this law stated that the reissued rule was not subject to judicial review (P.L. 112-10 § 1713, 125 Stat. 38 (April 15, 2011)).

The Ninth Circuit Court of Appeals upheld the validity of the reissued rule designating and delisting the NRM DPS in accordance with congressional action. *Alliance for the Wild Rockies v. Salazar*, 672 F.3d 1170 (9<sup>th</sup> Cir. 2012). USFWS delisted the Wyoming portion of the NRM DPS in 2012, and the D.C. Circuit Court of Appeals upheld this delisting. *Defenders of Wildlife v. Zinke*, 849 F.3d 1077 (D.C. Cir. 2017). Listing a "Western" DPS that greatly expands upon the NRM DPS identified and delisted in the reissued 2009 rule would not be in accordance with P.L. 112-10.

Readily available scientific information, including data from over a decade of post-delisting state management, does not support the CBD petition's speculative assertion that changes in Idaho and Montana law taking effect July 1, 2021, "risk causing state populations to fall below minimum recovery levels...." Likewise readily available scientific information does not support the WWP petition's premise that "new or previously existing state policies are likely to reduce wolf populations in [Idaho, Montana, and Wyoming] below [ ] 45 breeding pairs...."

The Endangered Species Act (ESA) dictates that the federal government must base listing decisions on science. To the extent USFWS considers emergency listing, we also include current relevant information below, which easily supports a conclusion that emergency listing is unwarranted.

For purposes of USFWS' 90-day determination, we recognize that the ESA and implementing regulations direct USFWS to rely on a petition's contents and "readily available" information. USFWS should recognize, however, that the petitions present minimal scientific or commercial information beyond that previously reviewed by USFWS. Because there have been significant changes in the federal administration and personnel since the 2011 delisting, we summarize readily available information below.

To the extent the petitions present scientific and commercial information, they are almost entirely a rehash of information that USFWS has previously reviewed and found did not merit listing action or further review. *See* 85 Fed. Reg. 69,778 (Nov. 3, 2020). Updated state monitoring and mortality information, which the petitions acknowledge, indicates the individual state populations and NRM DPS as a whole remain well above recovery levels assessed in the 2009 delisting rule.

The CBD petition's more recent "literature cites" are primarily citations to its own prior petitions or to media claims that are speculative, misinformed, or social commentary (*e.g.*, the CBD petition's literature reference to "Blanchard 2021" is a Spokesman-Review newspaper article headlined "*Critics say Idaho bill would kill 90% of wolves,*" and the reference to "Robbins 2021" is a New York Times article referring to "culture wars" in Montana). Although CBD and WWP's petitions and media headlines have made various characterizations about legislative intent or language, nothing in Idaho law mandates a reduction in the wolf population by 90%, and readily available information about wolf biology and Idaho wildlife management do not support petitioners' speculations about the potential for such reduction.

The single new scientific journal publication cited by the CBD petition related to wolf population information is *Barber-Meyer et al. (2021)*, but it pertains to wolf survival and cause-specific mortality in the Superior National Forest / Boundary Water Canoe Wilderness in Minnesota. This study raises no new information as to potential population threats, especially in the NRM DPS.

In addition to its reference to *Barber-Meyer et al.*, the WWP petition includes a few other more recent references; however, none of these constitute substantial scientific information indicating that ESA listing of wolves in the NRM DPS may be warranted.

With little, if any, new relevant scientific information, the CBD and WWP petitions speculate about the impacts of changes in Idaho and Montana laws related to authorities for take of wolves. Between the petitions and readily available information, there is no substantial scientific basis to conclude that recent changes in state law would decrease the population below recovery levels stated in the 2009 delisting rule, or even that the population would come close to approaching that threshold.

A review of the revised laws and administrative rules/regulations and seasons shows that the states continue to have mechanisms in place to limit and regulate take, particularly in habitat that USFWS identified as suitable in the 2009 delisting rule. Idaho, Montana, and Wyoming also continue to conduct monitoring to ensure that gray wolves in the individual states and NRM DPS as a whole continue to exceed recovery levels. In addition, prior USFWS reviews and other readily available information recognize the demonstrated resiliency of wolf populations and the generally temporary nature of harvest and control impacts.

For over a decade, petitioners have repeatedly speculated—incorrectly—about supposed “dire” effects of various state management actions on the wolf populations in the NRM DPS. They have done so in several prior petitions, lawsuits, and various fundraising campaigns. They and other organizations have made similar claims in advance of Idaho’s first hunting season in 2009, before Idaho’s first trapping seasons in 2011, and at other times when Idaho has made stepwise expansions to licensed harvest opportunities.<sup>1</sup> Such speculations have never been close to reality, and they generally ignore the number of wolves continuing to live in the NRM DPS under state and National Park Service management well above objectives assessed in the delisting rule.

### *The Petitions and Readily Available Information*

Idaho understands the legal standard for USFWS’ 90-day finding in response to an ESA listing petition, including the application of the recent Ninth Circuit Court of Appeals decision *Fund for Animals v. Haaland*, 997 F.3d 1010 (9<sup>th</sup> Cir. 2021). An initial 90-day USFWS finding is not a listing action; the 90-day finding addresses whether the petition presents “substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. 1533 (b)(3)(A)(emphasis added); *see also* 50 CFR 424.14(h)(1). If USFWS makes an affirmative 90-day finding, it will conduct a status review within 12 months of receipt of the petition and determine whether or not listing is warranted. 50 CFR 424.14(h)(2).

Idaho understands that USFWS will make its initial 90-day finding based on consideration of information in the petitions and “information readily available at the time the determination is made.” 50 CFR 424.14(h)(ii). It is not appropriate for USFWS to solicit or consider information that is not readily available in making its 90-day finding.

Idaho understands that USFWS must apply the “substantial scientific or commercial information” standard “in light of any prior reviews or findings the Services have made on the listing status of the species that is the subject of the petition.” 50 CFR 424.14(h)(iii). Idaho understands that USFWS regulations identify “substantial scientific or commercial information” as “credible scientific or commercial information in support of a petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. 50 CFR 424.14(h)(1)(i).

Idaho understands that USFWS will not consider conclusions drawn in a petition without the support of credible scientific or commercial information as “substantial information.” 50 CFR 424.14(h)(1)(i). This regulation is particularly applicable to the speculations and conclusions in the two petitions as to the effects of changes in Montana and Idaho laws on wolf populations.

Because of the turnover in USFWS leadership and staff, Idaho wants to ensure that USFWS is aware of readily available information from USFWS’ own administrative records, court decisions, and other publications. Such readily available information is described below.

---

<sup>1</sup> *E.g.*, *Wolf Advocates sue to stop Idaho Hunt*, Idaho Mountain Express, Aug. 17, 2011, quoting an attorney for petitioner Alliance for the Wild Rockies before the opening of Idaho’s 2011 wolf season, “Idaho could easily shoot 90 percent of the wolves that are currently there before the 9<sup>th</sup> circuit could decide the case...” The 2011 harvest mortality was nowhere near this number (IDFG 2011 harvest data).



*Information Readily Available to USFWS*

**1. November 2020 USFWS denial of 2020 Center for Biological Diversity listing petition and more recent information in the 2021 CBD and WWP petitions**

USFWS previously reviewed most of the information presented in the CBD and WWP petitions in its consideration of prior petitions and in its delisting actions. USFWS most recently reviewed information related to the NRM DPS in conjunction with USFWS' 2020 delisting rule for conterminous United States outside the NRM DPS. 85 Fed. Reg. 69,778 (November 3, 2020).

USFWS' 2020 Notice of Final Rule also included a 90-day finding determination that a 2020 petition by Center for Biological Diversity (supplementing prior petitions on 12/17/2018 and 2/26/2019) did not present substantial scientific or commercial information indicating re-listing of gray wolf in the NRM DPS may be warranted.

The 2021 CBD petition provides very little new scientific information beyond that provided in its prior petitions. This Petition's "Literature" references that are media stories should be discounted as scientific information, as discussed above. The CBD petition reflects updated population estimates from the various state wildlife management agencies and updated U.S. Department of Agriculture statistics for wolf predation on livestock. These data indicate the NRM DPS continues to contain a robust gray wolf population. The only new scientific journal publication is *Barber-Meyer et al.* 2021, which assessed the relative importance of the Boundary Waters Canoe Area Wilderness to gray wolf population dynamics from 1968-2018 in a population that was not reintroduced or recolonized, not subject to harvest in the study area until recently, and used both wilderness and adjacent mainly public non-wilderness. This study raises no new information as to potential population threats in the NRM DPS.

The WWP petition refers to a few other documents more recent than the 2020 USFWS review. However, a review of these citations indicates they do not contain substantial science related to the status of wolf populations in Idaho and adjacent states. *Carroll et. al.* 2021 is a policy commentary about the USFWS' SPR and DPS policies and a critique of 2019 ESA regulations. This document's conclusion misstates the ESA's goal as one of "saving all the pieces" linked to quote from a 1968 reprint of Aldo Leopold's 1949 *Sand County Almanac*. However, as longstanding published USFWS policy recognizes, the ESA "is not intended to establish a comprehensive biodiversity conservation program and it would be improper for USFWS to recognize a potential [population] and afford it the Act's substantive protections solely or primarily on these grounds" (61 Fed. Reg. 4,724-5).

Two of the WWP petition's other recent references are specific to wolves in Wisconsin and have overlapping authorship. These references are obviously out-of-touch with longstanding conflict management and harvest in Alaska and over a decade of post delisting management in NRM DPS. For example, *Treves et al.* 2021 describes the State of Wisconsin as the first among all states and tribes that regained authority over wolves. *Santiago-Avila 2020* evaluated disappearances of radiocollared wolves under different regulatory frameworks in Wisconsin to evaluate hypotheses regarding poaching (illegal take). The NRM DPS has over a decade of monitoring of live wolves and tracking of mortality that are far more definitive scientific information regarding the status of the NRM DPS.

Although USFWS's 2020 review did not include a publication referenced in the WWP petition studying mange and genetic variation in Yellowstone National Park wolves (DeCandia

et al 2021), USFWS did address mange and other diseases, along with genetic health, related to the NRM DPS (85 Fed. Reg. 69,818). The DeCandia study does not raise substantially new issues for a population that remains healthy overall.

The references in the CBD and WWP petitions do not raise substantial new scientific information beyond that reviewed by USFWS in November 2020, and do not change the threat analysis for the NRM DPS population that has remained robust since delisting.

## **2. Population Information and Monitoring**

CBD's petition acknowledges the 2020 state population estimates for gray wolf in Idaho, Montana and Wyoming continue to exceed not only the USFWS recovery criteria but also the state/NPS management objectives that USFWS assessed in the 2009 delisting rule. In addition, the CBD petition reflects that Oregon and Washington (including the Colville Reservation) also contain minimum populations above 150 wolves and 15 packs each. Readily available information also demonstrates that gray wolf distribution extends northward from the U.S. Northern Rocky Mountains across the Canada border, extending across various provinces to Alaska, comprising a robust population.

As the petitions reflect, IDFG's estimated summer (post-breeding) 2020 population in Idaho alone exceeded 1,500 wolves (*e.g.*, CBD petition reference IDFG 2021a). The petition-referenced IDFG document reflects a relatively stable summer population in Idaho between 2019 (estimated 1,566 wolves) and 2020, even with mortality of 583 wolves documented between the two estimates.

In USFWS' 2020 review, which relied on the 2019 Idaho estimate, USFWS determined that "While the current estimates for Idaho and Montana are not directly comparable to year-end minimum counts, indications from mortality data are that the number of individuals in these States remains similar to the number of individuals that were in these States in 2015, when all of the States were reporting year-end minimum counts..." (85 Fed. Reg. 69,788). USFWS' 2020 review described IDFG's remote camera methodology for population estimates, along with Idaho's use of analytical information from biological samples collected during mandatory harvest checks and from other mortalities, including collection of DNA samples and teeth for age determination.

Additional information on the development and use of the camera sampling methodology, along with information from other IDFG wolf surveys and monitoring, is in IDFG reports on file with USFWS. *E.g.*, *IDFG Federal Aid in Wildlife Restoration Performance Report for Project F16AF00908* (July 1, 2016 – June 30, 2019); *IDFG Federal Aid in Wildlife Restoration Performance Report for Project F19AF00856* (July 1, 2019 to June 30, 2020; Wolf Camera Project is Investigation 7); *IDFG Federal Aid in Restoration Project F19AF00858 Statewide Surveys & Inventory* (July 1-2019-June 30, 2020). IDFG's statewide survey reports summarize mortality from mandatory harvest/control reports (distinguishing hunting versus trapping) and other mortality.

## **3. Recovery Thresholds and Management Objectives Assessed in the 2009 Delisting Rule**

The above population information indicates that the NRM DPS is not only well above recovery standards but also well above state management objectives assessed in the 2009 delisting rule. The 2009 delisting rule identified the following recovery thresholds: Montana, Idaho, Wyoming (including Yellowstone National Park) are to maintain at least 10 breeding

pairs and 100 wolves by state, with a safety margin of managing at least 15 breeding pairs and at least 150 wolves in mid-winter (74 Fed. Reg. 15,186).

The 2009 delisting rule assessed demographic characteristics based on the following State/NPS management objectives: an average of 1,100 wolves in the entire DPS, “fluctuating around 400 wolves in Montana, 500 in Idaho, and 200 to 300 in Wyoming” (referring to core areas of suitable habitat and refugia in northwestern Montana, central Idaho and the Greater Yellowstone Area) (74 Fed. Reg. 15,137).

In the 2009 Delisting Rule, USFWS concluded:

We believe maintaining the NRM gray wolf population at or above 1,500 wolves in currently occupied areas would slowly reduce wild prey abundance in suitable wolf habitat. This would result in a gradual decline in the number of wolves that could be supported in suitable habitat. Higher rates of livestock depredation in these and surrounding areas would follow. This too would reduce the wolf population because problem wolves are typically controlled.

74 Fed. Reg. 15,140.

The WWP petition appears to be based on the previously rejected premise that the recovery criteria of 450 wolves in Idaho, Montana, and Wyoming is an artificially low recovery threshold. WWP petition at 31. The 2009 delisting rule and prior USFWS reviews have addressed these contentions. In addition, the WWP petition (p. 42) obliquely acknowledges the flaws in its premise and refers to the overly robust state of the NRM population: “Part of the need to push out of the Northern Rocky Mountains to new geographic areas and new states was that the Northern Rocky Mountains was a good source population with a healthy number of wolves for the ecosystem, having reached the saturation point where all available territories were occupied.”

#### **4. USFWS Assessment of Suitable Habitat**

A primary focus of the recent Idaho and Montana legislative changes is to address wolf conflicts related to private property, which is generally consistent with USFWS’ determination of unsuitable wolf habitat. In the November 2020 review, USFWS distinguished suitable and unsuitable habitat, reflecting the 2009 (Montana and Idaho) and 2012 final delisting rules (Wyoming):

Suitable wolf habitat in the region is characterized by public land with mountainous, forested habitat that contains abundant year-round wild ungulate populations, low road density, low numbers of domestic livestock that are only present seasonally, few domestic sheep, low agricultural use, and few people (Carroll et al. 2006, pp. 536–548; 2006, pp. 27–31; Oakleaf et al. 2006, pp. 555–558). Unsuitable wolf habitat is typically the opposite (i.e., private land, flat open prairie or desert, low or seasonal wild ungulate populations, high road density, high numbers of year-round domestic livestock including many domestic sheep, high levels of agricultural use, and many people).

65 Fed. Reg. 69,816.

## 5. Wolf Population Resiliency

Prior USFWS reviews have recognized the resiliency of wolf populations in response to human-caused mortality. For example, in 2008, in considering a revision of the 10j rule while wolves were listed, USFWS stated:

Total mortality of adults in the NRM wolf population was nearly 26 percent per year from 1994 to 2006, and the human-caused mortality was about 20 percent per year (Smith 2007). However, the NRM wolf population still continued to expand at about 24 percent annually (Service, et al. 2007, p. Table 4). These data indicate that the current annual human-caused mortality rate of about 20 percent in the adult portion of the NRM wolf population could be increased to some extent without causing the NRM wolf population to decline. Wolf populations and packs within the NRM wolf population are expected to be quite resilient to regulated mortality because adequate food supplies are available and core refugia provide a constant source of dispersers to replenish breeding vacancies in packs.

73 Fed. Reg. 4722 (January 28, 2008).

Mortality information and population estimates from 2008 to the present support USFWS' and other scientific conclusions regarding resiliency of wolves in the NRM DPS, with the annual population in Idaho cycling from lows of approximately 900 - 1,000 wolves following harvest and control mortality to above 1,500 in August in recent years. *See, e.g.*, 85 Fed. Reg. 69,800. USFWS again recognized such resiliency in its recent 2020 review:

Based on these more recent methods that evaluate population trends (genetic analysis of harvested wolves) and provide a population estimate (modeling), the wolf population in Idaho appears to be resilient to the increased level of human-caused mortality in the State, indicating that Idaho wolves remain well above recovery levels of 10 breeding pairs and 100 wolves and continue to be widely distributed across the state.

85 Fed. Reg. 69,800.

Readily available information from scientific literature references previously reviewed by USFWS regarding wolf population resiliency include the following:

- Removal rates of ~ 60% or higher are generally needed to offset wolf reproduction and immigration (National Research Council 1997, Hayes and Harestad 2000). Wolf populations must be reduced by at least 60% for a minimum of 4 years to sustain a population decline. (NRC 1997).
- Wolf populations can increase by 50% per year under optimal conditions (Hayes 1995), and growth rates following release from control are typically high due to increased per-capita prey availability that results in increased reproduction (Keith 1983, Ballard et al. 1987, Fuller 1989, Boertje and Stephenson 1992, Klaczek et al. 2016).
- Wolf populations are likely to decline at harvest rates of 35% only if rates of pup survival are  $\leq$  65% (Webb et al. 2009).
- Populations have been documented as maintaining or even increasing numbers in the face of human-caused mortality in excess of 45% (Ballard et al. 1987, Mech 2001, Gude et al. 2012).

In its recent November 2020 determination, USFWS stated:

Another factor we considered regarding likely long-term wolf population levels is the practical challenge of reducing wolf populations down to levels that may threaten their viability and maintaining such reductions long term through legal, public harvest alone (e.g., hunting and trapping). These challenges include: Wolves' reproductive capacity, which will require increased levels of mortality to maintain populations well below carrying capacity; wolf dispersal capability, which allows for rapid recolonization of vacant, suitable habitats and the ability to locate social openings in existing packs; the likelihood that wolves will become more challenging to harvest as their numbers are reduced and as they become more wary of humans; and the likelihood that hunter and trapper interest and dedication will diminish as the wolf population is reduced, impacts are less pronounced, and success rates decline. It was primarily due to the unregulated use of poisons that wolf populations were extirpated in the lower 48 United States outside of Minnesota. At present, poisons are either not used at all, or their use is highly regulated and has not posed a significant threat to wolf populations in the United States in recent decades.

85 Fed. Reg. 69,874.

Consistent with USFWS' description of this practical challenge, Idaho populations have demonstrated resiliency in response to Idaho's stepwise expansion of seasons, methods of take and harvest limits. In combination with estimated population data for peak post-breeding population, IDFG harvest data included in WWP's petition (petition Fig. 1) reflect the resiliency of the wolf population and the "practical challenges" of achieving of any population decline through public harvest. This harvest data includes years encompassing the Idaho Fish and Game Commission's stepwise extension of hunting seasons to year-round or 11-months statewide and stepwise extension and expansion of trapping seasons (including use of a combination of foothold only seasons and foothold/snaring). *See* 85 Fed. Reg. 69,798-9. This information also encompasses recent years in which harvest limits were 15 wolves per hunter per calendar year and 15 wolves per trapper per trapping seasons. 85 Fed. Reg. 69,799. Harvest mortality decreased between the fall 2019 and fall 2020 seasons despite the lengthy seasons, available hunting and trapping opportunities, and availability of expense reimbursements for hunter/trapper expenses.

As described below, readily available information reflects that under recently revised laws in Idaho and Montana, states continue to conduct monitoring and to have adequate mechanisms to regulate and limit human-caused wolf mortality such that wolves will remain above recovery levels. State regulatory mechanisms remain in place to address the highly unlikely scenario in which wolf mortality occurs at a greater level than state wildlife managers expect based on experience and past data.

#### **6. Adequacy of Regulatory Mechanisms**

The petitions do not present substantial scientific or commercial information to support their contention that changes in 2021 Idaho and Montana laws risk populations falling below recovery levels, or posing a significant threat to the NRM DPS from an ESA perspective.

Notably, a primary focus of the 2021 changes to Idaho and Montana regulatory mechanisms is to reduce private property conflicts, which generally involve areas of habitat that

the USFWS has determined is unsuitable (see above). Where 2021 legislative changes may increase levels of take in areas of suitable wolf habitat, regulatory mechanisms remain in place to ensure mortality does not risk the wolf population falling below recovery levels.

Regulatory mechanisms include the following Idaho laws and related administrative rules:

- While the 2021 amendment to Idaho Code 36-201(3) authorizes a year-round trapping season on private property, Idaho Code 36-104(b)(2) continues to provide the Commission discretion to open/close hunting or trapping seasons and set harvest limits on public lands, open/close hunting seasons and set limits on private lands, and set harvest limits for trapping seasons on private lands.
- While the 2021 amendment to Idaho Code 36-201(2) authorizes additional methods of take for wolves that were previously prohibited by Idaho Code 36-1101(b), Idaho Code 36-104(b)(2) continues to provide the Commission with discretion to restrict or expand hunting methods or trapping methods (*i.e.*, determine by what means wolves and other wildlife are taken). The Commission has adopted administrative rules and season proclamations in accordance with Idaho Code 36-105(3) in exercise of this authority. *E.g.*, IDAPA 13.01.08.410-413 (Rules Governing Taking of Big Game Animals, relating to methods of take restrictions); IDAPA 13.01.16.450, 455 (Trapping of Wildlife and Taking of Furbearing Animals, related to trapping restrictions).
- Idaho Code 36-104(b)(3) continues to provide the Commission with authority to adopt emergency closures or restrictions upon hunting, fishing, or trapping as necessary for preservation, protection or management of wildlife; Idaho Code 36-106(e)(6) continues to provide the Director with similar emergency authority “to close any open season or to reduce the bag limit or possession limit” “if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise....”
- The 2021 amendment to Idaho Code 36-408(1) regarding game tags does not mandate unlimited take of wolves. While it states that there “shall be no limit to the number of wolf tags an individual can purchase,” the allowance for unrestricted tag purchase does not translate into unlimited harvest. The Commission still has authority to limit an individual hunter/trapper’s take of wolves (daily bag and possession limits, etc.), and season closure authorities remain effective (see above).
- The 2021 amendments did not change Idaho Code 36-409(c), which requires a trapper or hunter to have a game tag for each individual wolf harvested.
- Idaho maintains responsive monitoring of wolf harvest. Idaho administrative rules continue to require hunters and trappers to report wolf harvest and present harvested animal parts for biological data collection within 10 days. IDAPA 13.01.08.420, 13.01.16.500. IDFG summarizes harvest information and data collection on wolves and other species in its annual reports to USFWS regarding statewide surveys and inventories (see USFWS report references on page 6 above).



- The 2021 amendments to Idaho Code 36-1107(c), which relates to controlling depredation of wolves on livestock and domestic animals, now expressly allow an animal owner to use a private contractor to control wolves, in addition to federal, state or local agency personnel. However, 36-1107(c) still requires private individuals or their contractors to obtain a permit from IDFG, including complying with appropriate conditions and limits, to control wolves for protection of livestock when a wolf is not actively molesting or attacking livestock.
- As reflected in the 2020 population information reviewed by USFWS and acknowledged by petitioners, the use of expense reimbursement in 2019 to encourage hunting and trapping participation in areas of recognized unsuitable wolf habitat (private land / livestock depredation) and areas of excessive predation on elk populations did not send the population into a tailspin. Idaho's peak population estimate for August 2020 was only 10 fewer wolves (1,556 wolves) than the peak estimate for 2019 (1,566).
- As stated above, the Commission has discretion under Idaho Code 36-104(b)(2) and 36-104(b)(3) to adopt more restrictive seasons or methods if take of wolves is greater than expected under an expanded season or method.

Idaho state laws and administrative rules are readily available at <https://legislature.idaho.gov/statutesrules/idstat/title36/> (statutes) and <https://adminrules.idaho.gov/rules/current/13/index.html> (administrative code, rules).

### ***Emergency Relisting is Unwarranted***

Idaho separately addresses the petitioned request for emergency listing. There are no federal statutes or regulations that provide for “emergency” listing as a petitioned action or mandate USFWS to make a determination on such a request. An emergency listing action is expressly committed to the Secretary’s discretion. *Fund for Animals v. Hogan*, 428 F.3d 1059 (D.C. Cir. 2005). Scientific data identify no “emergency” meriting an emergency listing action. Nevertheless, because of the potential for significant negative consequences and needless diversion of state and federal resources that an unwarranted emergency listing would entail, we provide this recent information and data in addition to that presented above to support efficient and appropriate decision-making. *See* 16 U.S.C. §1533(b)(1)(A) and §1533(b)(7)(B).

#### Idaho

Changes in Idaho law effective July 1, 2021, have not resulted in dramatic increases in wolf mortality speculated by the petitioners. As stated above, Idaho requires hunters or trappers to report harvest and check animal parts in with IDFG within 10 days. Mandatory harvest report data from July 1 to August 20 reflect that licensed hunters and trappers killed a total of six wolves statewide, five by hunting and one by trapping (IDFG mortality reports 2021); three of these wolves were killed in July.

Information on trapper and hunter participation to date indicates that allowing individuals to purchase an unlimited number of wolf tags will not result in significant change to harvest, as no individual reached the maximum 2020 harvest limit. (*See Appendix, Figure 2*).

Agency control actions between July 1 and August 20, 2021 to address livestock depredations have result in 19 wolf mortalities (IDFG reports 2021).

Mortality information for the period from July 1 - August 20 during 2021 is thus comparable to or lower than the wolf mortality in the same timeframe for the past 5 years (IDFG Mortality reports 2016-2021).

Annual mortality information indicates lower mortality for the 2020-2021 season (July 1, 2020 – June 30, 2021) than the previous 2019-2020 season (July 1, 2019 – June 30, 2020). *See Appendix, Figure 1*, graph compilation from IDFG data. Please note that the WWP petition Figure 1 was an IDFG graphic produced based on to-date information earlier in the spring.

#### Montana

Changes in Montana law effective July 1, 2021, have had no practical effect. Montana currently has no open wolf hunting or trapping seasons. The new laws expand the Montana Fish and Wildlife Commission's discretionary options related to the hunting and trapping of wolves. *See <https://fwp.mt.gov/wolfproposal>*. Montana still has limits and regulations in place to ensure wolves remain above recovery levels.

#### Wyoming

Petitioners have not identified any changes to Wyoming law, and Idaho is aware of none. The D.C. Circuit Court of Appeals has previously upheld the 2012 rule delisting the Wyoming portion of the NRM DPS, including FWS' determination that Wyoming's predator management area was not a significant portion of the range. *Defenders of Wildlife v. Zinke*, 849 F.3d 1077 (D.C. Cir. 2017).

#### ***Conclusion***

We send you this letter sensitive to the legal standards that courts have applied to USFWS' 90-day determination for petitioned listing actions and to USFWS' discretion for considering emergency listing under the ESA. Although we are hopeful that your staff have already compiled this information from past reviews and agency files, we recognize the potential for overlooking such information during the compressed 90-day review timeframe and agency transition. We also want to ensure that USFWS' institutional knowledge and familiarity with readily available information carries across administrations so that important wildlife conservation resource are not needlessly invested in addressing serial petitions based on unfounded speculation. Please contact us if we can be of assistance in this or other matters of mutual interest.

Sincerely,



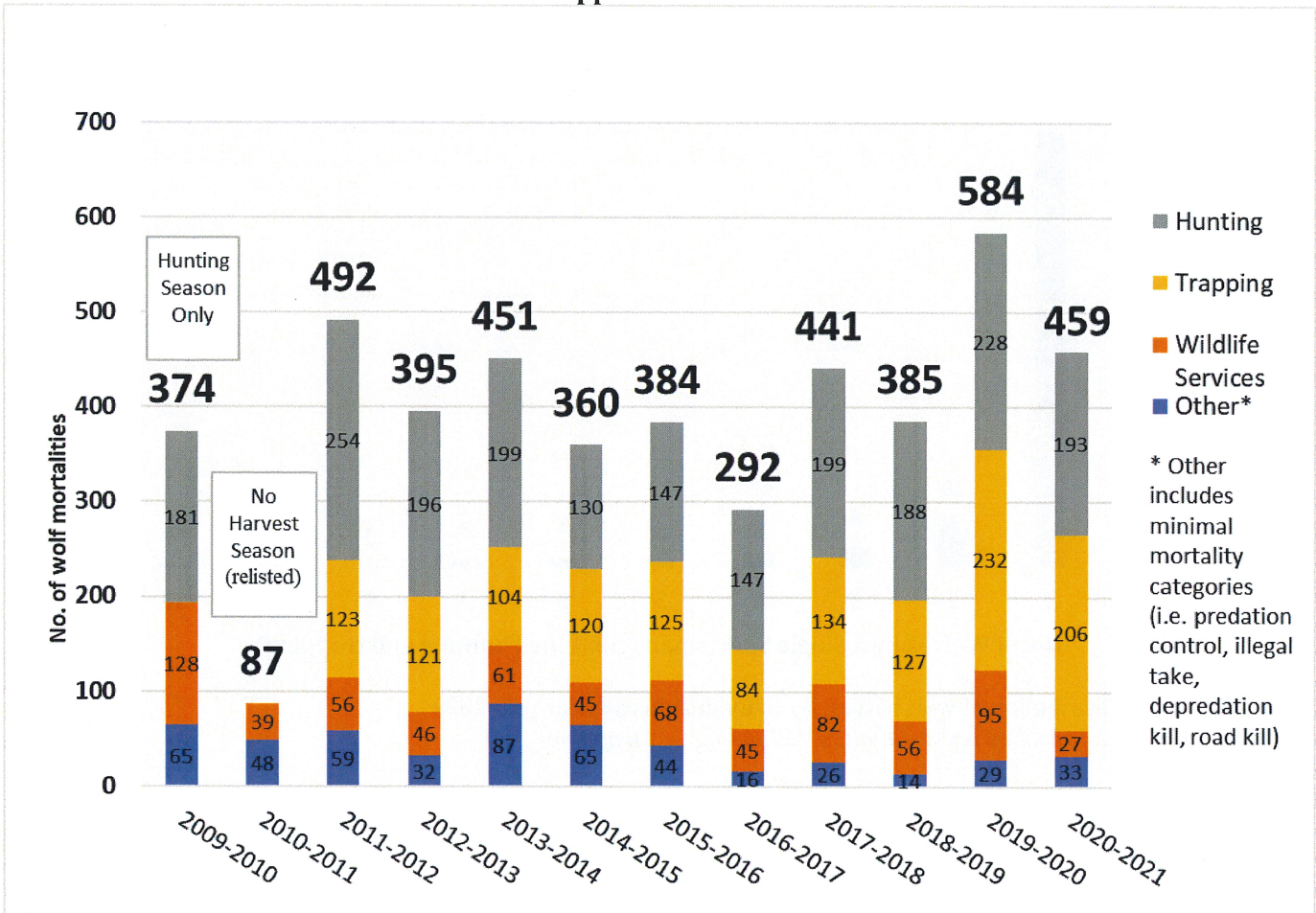
Mike Edmonson  
Administrator  
Idaho Office of Species Conservation



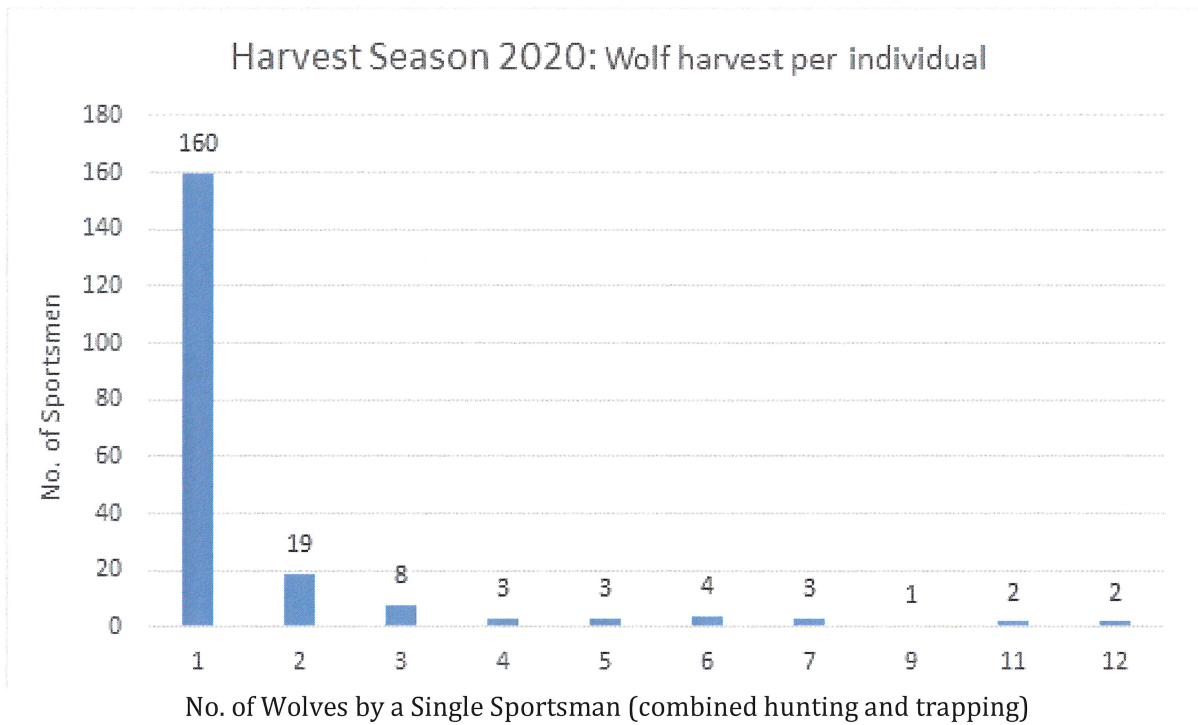
Ed Schriever  
Director  
Idaho Department of Fish and game



Appendix



**Figure 1.** Annual (July 1 – June 30) Idaho Wolf Mortality, 2009/2010 – 2020/2021 (Note that Figure 1 in the WWP petition was a similar graphic from an IDFG presentation to an Idaho Legislative committee earlier in 2021; the above Figure 1 reflects complete information for the 2020-2021 year ending June 30 and includes minor corrections for some prior year data).



**Figure 2.** Distribution of wolf harvest by individual in calendar year 2020.  
*(no individual reached harvest limit of 15 hunting / 15 trapping)*