

# **EXHIBIT A**

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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **OAKLAND DIVISION**

17 DEFENDERS OF WILDLIFE, *et al.*,

18 Plaintiffs,

19 v.

20 U.S. FISH AND WILDLIFE SERVICE, *et al.*,

21 Defendants.

22 WILDEARTH GUARDIANS, *et al.*,

23 Plaintiffs,

24 v.

25 DEBRA HAALAND, U.S. SECRETARY OF  
26 THE INTERIOR, *et al.*,

27 Defendants.

28 NATURAL RESOURCES DEFENSE  
COUNCIL, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR, *et al.*,

Defendants.

Case Nos. 4:21-cv-00344-JSW  
4:21-cv-00349-JSW  
4:21-cv-00561-JSW

**AMICI CURIAE BRIEF FOR ANIMAL  
WELLNESS ACTION; ANIMAL  
WELLNESS FOUNDATION; SAULT STE.  
MARIE TRIBE OF CHIPPEWA INDIANS;  
ALLIANCE FOR ANIMALS;  
EARTHDAY.ORG; FRIENDS OF THE  
WISCONSIN WOLF & WILDLIFE; GOOD  
WOLF; LEAGUE OF HUMANE VOTERS -  
WISCONSIN; NATIONAL  
WOLFWATCHER COALITION; PLAN B  
FOR WOLVES; SPCA INTERNATIONAL;  
THE CENTER FOR A HUMANE  
ECONOMY; THE 06 LEGACY;  
WISCONSIN WOLF FRONT UNITED;  
AND WOLF PATROL IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT**

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<b>DOCUMENT</b>	<b>AR Range</b>
Delisting Rule, 85 Fed. Reg. 69,778 (Nov. 3, 2020)	AR_0000038-0000155
Gray Wolf Biological Report (Oct. 13, 2020)	AR_0000397-0000448
Summary Report of Independent Peer Reviews for the U.S. Fish and Wildlife Service Gray Wolf Delisting Review (May 2019)	AR_0000956-0001200

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1 **I. INTRODUCTION**

2 Gray wolves face urgent, imminent and clearly identifiable threats to their populations.  
3 Wolves currently number less than 6,500 across their range in the “lower 48” states.<sup>1</sup> Wolf  
4 populations are fragmented through much of their range by roads, railways, farms and other  
5 human developments. They face meta-population threats from large-scale trophy hunting and  
6 recreational trapping programs. They face direct mortality from poaching, mistaken-identity  
7 kills from nearly year-round coyote-hunt seasons, and incidental killing by traps and poisons.  
8 They are the victims of retribution killing. They face the risk of disease and are threatened with  
9 the effects of genetic inbreeding due to population isolation. And most recently, they are  
10 threatened by rapid climate change.<sup>2</sup>

11 In short, although gray wolves have the ability to reproduce, survive and thrive, it is a  
12 challenge for them to just maintain their populations given the many perils they confront every  
13 day, even under protection of the Endangered Species Act, 16 U.S.C. §§ 1531, *et seq.* (“ESA”).  
14 It is not surprising that, even after decades under ESA protection, gray wolves have seen only  
15 modest improvement in range, and are nowhere near their historical numbers or range.

16 When the U.S. Fish and Wildlife Service (“Service” or “FWS”) removed ESA  
17 protections for the gray wolf in 2011 (“2011 Rule”), a delisting decision that was ultimately  
18 invalidated by the courts, Minnesota, Wisconsin and Michigan rushed to institute trophy hunting  
19 and commercial trapping programs for wolves, including hound hunting, snares, baiting,  
20 electronic calls and the use of leg-hold traps. *See* Minn. Stat. Ann. § 97B.645; Wis. Stat. §  
21 29.185(1m); Mich. Comp. Laws Serv. § 324.95163. As a result of this abandonment of federal  
22 protections and a return to inadequate state-based management programs, wolf numbers declined  
23 in nearly every state.

24  
25 <sup>1</sup> These total population numbers are compiled from the individual populations identified in the  
26 Delisting Rule. *See* AR\_0000038 at AR\_0000048-50 (85 Fed. Reg. 69,778, 69788-90 (Nov. 3,  
2020)). (“AR” citations refer to documents in the Administrative Record.)

27 <sup>2</sup> These and other threats to wolves are briefly identified, but not thoroughly evaluated, in the  
28 Delisting Rule. *Id.*, at AR\_0000054-56.

1 This scenario is unfortunately repeating itself, even more aggressively, in 2021 after the  
 2 Service’s latest decision to delist gray wolves took effect on January 4, 2021. *See* AR\_0000038  
 3 (85 Fed. Reg. 69,778 (Nov. 3, 2020)) (“Delisting Rule”). Pursuant to its wolf harvest law, which  
 4 mandates a hunting season regardless of the health or integrity of state wolf populations,  
 5 Wisconsin conducted a wolf hunt in February 2021. During a 48-hour period, a total of 218 gray  
 6 wolves were killed, about 100 more than the applicable legal limit.<sup>3</sup> In an April 16, 2021 letter,  
 7 the Wisconsin Governor admitted that the Wisconsin Department of Natural Resources “was  
 8 forced to develop harvest quotas without the usual input and science-based research it would  
 9 have used had more time been available” and that it did not use a proper public input process or  
 10 meaningfully consult with the affected Tribal nations.<sup>4</sup> A new peer-reviewed study found that,  
 11 after the February wolf hunt, gray wolf populations in Wisconsin in April 2021 declined 27-33%  
 12 from the prior year.<sup>5</sup> Several other states have announced plans to conduct wolf hunts in the near  
 13 future.<sup>6</sup>

14 As explained herein, the Service violated the ESA in promulgating the Delisting Rule by:  
 15 (1) failing to properly assess the current range of the gray wolf, thereby violating yet again the  
 16 range evaluation criteria that led to the invalidation of the 2011 Rule in *Humane Soc’y of United*  
 17 *States v. Zinke*, 865 F.3d 585 (D.C. Cir. 2017) (“*Humane Society 2017*”); (2) failing to identify  
 18 the consequences of the loss of the gray wolf’s historical range on the survival of the species;  
 19 and (3) failing to conduct a careful, reasoned analysis of the existing state regulatory protections  
 20 for gray wolves applicable once delisting occurred. These fundamental deficiencies resulted in  
 21 an arbitrary and capricious agency decision that fails to comply with the ESA.

22 The ESA has been a national success story in protecting species like the gray wolf from  
 23

24 <sup>3</sup> R. Johnson and A. Schneider, *Wisconsin Wolf Season Report*, February 2021, at 2-3.

25 <sup>4</sup> Delisting of the Gray Wolf: A Message from Governor Tony Evers and Lieutenant Governor  
 Mandela Barnes, Email dated April 16, 2021.

26 <sup>5</sup> A Treves, *et al.*, Quantifying the effects of delisting wolves after the first state began lethal  
 27 management, PeerJ 9:e11666 (2021).

28 <sup>6</sup> *See* Section III(F) herein.



1 extinction. In adopting the ESA, Congress recognized that “various species of fish, wildlife, and  
2 plants in the United States have been rendered extinct *as a consequence of economic growth and*  
3 *development untempered by adequate concern and conservation;....*” 16 U.S.C. § 1531(a)(1)  
4 (emphasis added). Since species on the ESA lists are extremely vulnerable and a delisting  
5 instantaneously removes ESA protections and exposes them to a full range of new threats, a  
6 delisting must be based on a careful analysis of the five applicable criteria using the best  
7 available science. This Delisting Rule, however, represents an unlawful and unwarranted  
8 handover from the federal government to the states of the responsibility to protect gray wolves.

9 Many Amici Curiae are based in the Western Great Lakes states, which contain the  
10 largest population of gray wolves. They are closely involved in public education, advocacy,  
11 wolf protection and other activities involving the “existing regulatory mechanisms” that impact  
12 wolves in those states. Their collective experience reveals that these key states are wholly  
13 unequipped to protect gray wolves, in part because politics has supplanted science for wolf  
14 protection. In fact, some states have laws requiring routine killing of wolves with little or no  
15 regard for sound, scientific management practices. Although a large majority of the general  
16 public supports wolf protection, these states have not adopted humane, objective and biologically  
17 sound wolf protection laws and policies. Instead, these states have disregarded concerted efforts  
18 from local conservation groups and tribal nations, like the Amici Curiae, to adhere to science in  
19 managing wolf populations. Thus, this abrupt removal of ESA protections threatens to rapidly  
20 reverse the slow, but measureable gains resulting from the gray wolf’s 47 years of ESA  
21 protection.

22 Gray wolves have historically been the subject of misconceptions, negative attitudes and  
23 unfounded fear. Many conservation groups, including most of the Amici Curiae, are working  
24 hard to educate the public regarding the important role of wolves in our ecology and economy,  
25 and are advocating for respectful, compassionate and safe policies to protect wolves and other  
26 wildlife. Gray wolves have an integral role in the culture of Amicus Curiae Sault Ste. Marie  
27  
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1 Tribe of Chippewa Indians and many other Indian Tribes.<sup>7</sup> Wolves also bring extraordinary  
2 benefits to ecosystems. For example, biologists in Yellowstone National Park have found that  
3 wolves play a pivotal role in moving sedentary deer and elk populations from overgrazed areas,  
4 enabling aspen and willow to reclaim lost ground, and in restoring riparian ecosystems. In short,  
5 wolves provide a check on prey populations, improve ecosystems, and serve as integral parts of  
6 Tribal nation culture.

7 For these reasons, the Amici Curiae request that the Court vacate the unlawful,  
8 scientifically unsupported, and misguided decision of the Service to delist the gray wolf. The  
9 gray wolf desperately needs the protection of the ESA, and this species’ continued existence is  
10 imperiled without it.

11 **II. INTERESTS OF THE AMICI CURIAE**

12 The Sault Ste. Marie Tribe of Chippewa Indians and the grassroots, regional and national  
13 animal welfare and environmental organizations who join together in this Brief collectively have  
14 important roles in protecting gray wolves and addressing the consequences of gray wolf  
15 delistings under the ESA. We briefly explain here the interest of each Amicus Curiae.

16 Animal Wellness Action (“AWA”) is a 501(c)(4) organization that works to prevent  
17 cruelty to animals by promoting the enactment and enforcement of good public policies, often  
18 through work at the federal government level. The principals and staff of AWA have a long  
19 history of protecting gray wolves. AWA’s thousands of supporters and donors support  
20 reinstatement of federal protections for the gray wolf.

21 Animal Wellness Foundation (“AWF”) works to get veterinarians to the front lines of the  
22 animal welfare movement, and promotes responsible pet ownership, animal protection policies,  
23 disaster relief efforts and eradication of infectious diseases. AWF supports animal protection

24 \_\_\_\_\_  
25 <sup>7</sup> See, e.g., The National Congress of American Indians, Resolution No. AK-21-024, Calling for  
26 Government-to-Government Consultation Between Tribal Nations and the United States  
27 Regarding Protection of Grey Wolves (June 20-24, 2021) (“WHEREAS, Grey Wolves play an  
28 important role in the culture of many Tribal Nations, and that any attempt to remove Grey  
Wolves from protection under the Endangered Species Act would substantially impact such  
tribes. . .”).

1 policies at the federal level, including through its Animal Wellness Veterinary Council.

2 The Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized tribe, with a  
3 reservation in the Upper Peninsula of Michigan. It is the largest tribe east of the Mississippi  
4 River, and is one of the tribes of Anishinabe (Chippewa) Indians. Its people are spiritual  
5 brothers to the wolves, as discussed in Section III(E) of this Brief, and believe the future survival  
6 of the gray wolf requires ESA protection.

7 Alliance For Animals (“AFA”) is a non-profit animal rights organization created to  
8 promote ethical, compassionate treatment of all animals. The Alliance confronts exploitation  
9 and cruelty to animals such as the gray wolf. Since 1983, AFA has been advocating for animals  
10 by hosting knowledgeable speakers, participating in public debates, promoting humane  
11 education, mass advertising, and by exposing cruelty wherever animals are harmed or treated  
12 unfairly.

13 EARTHDAY.ORG’s mission is to diversify, educate and activate the environmental  
14 movement worldwide. Growing out of the first Earth Day in 1970, EARTHDAY.ORG is the  
15 world’s largest recruiter to the environmental movement, working with more than 75,000  
16 partners in over 192 countries to drive positive action for our planet.

17 Friends of the Wisconsin Wolf & Wildlife is a grassroots 501(c)(3) organization formed  
18 in 2011 in response to the wolf hunt and expansion of hunting and trapping in state parks in  
19 Wisconsin. It has been active in participating in wolf and wildlife reform, inspiring mainstream  
20 hunters, non-extractive users, scientists, tribal members and the general public to become  
21 involved with wildlife through advocacy and education.

22 Good Wolf is a nonprofit organization whose mission is to educate the public about the  
23 true nature of wolves, the important role predators play in maintaining healthy ecosystems, and  
24 to encourage humane, objective and biologically sound wildlife preservation policies. Through  
25 education and advocacy Good Wolf seeks to dispel the unfounded fear and persecution of these  
26 majestic animals by creating understanding and appreciation of their true nature.

27 League of Humane Voters-Wisconsin is a non-partisan organization that endorses

28

1 animal-friendly legislation at both the local and statewide level. It believes that legislators listen  
2 when voters take animal-friendly legislation seriously by getting involved in the election process.

3 National Wolfwatcher Coalition (“NWC”) is a 501(c)(3) nonprofit, all-volunteer  
4 organization that educates and advocates for the long-term recovery and preservation of wolves  
5 based on the best available science and the principles of democracy. NWC educates the public,  
6 advocates for science-based decision making in government and participates in activities that  
7 promote citizens’ awareness and participation in decision-making processes involving wolves.

8 Plan B To Save Wolves is a wolf conservation organization that leverages the founders’  
9 combined professional experience to make a much-needed difference. The organization works  
10 by empowering those that rescue wolf dogs and educating people about the wild wolf.

11 SPCA International works to stop the abuse and suffering of animals with innovative  
12 programs that serve both animals and their human caretakers. Its mission is to advance the  
13 safety and well-being of animals and its vision is for all animals to live a life free of cruelty.

14 The Center for a Humane Economy (“CHE”) is the first organization of its kind in the  
15 animal protection movement because its mission is to encourage corporations to honor their  
16 duties to social responsibility. In a culture where consumers, investors, and other key  
17 stakeholders abhor animal cruelty and the degradation of the environment, CHE sees innovation  
18 as a means of change. CHE supports laws and regulations that improve the welfare of animals in  
19 captivity and in the wild.

20 The 06 Legacy is a nonprofit organization whose mission is to advocate for gray wolves  
21 and their ancestral lands by educating the public and breaking misconceptions about wolves,  
22 bringing awareness to current legislation, and creating change to save wolves.

23 Wolf Patrol is a conservation movement founded on the principles of biocentricity, and  
24 indigenous cultural preservation. It supports the recovery of gray wolves in the lower 48 states  
25 and encourages a greater understanding and tolerance for cultural world views that promote a  
26 harmonious co-existence with wolves and other predators. It advances the reform of wolf  
27 management in states where gray wolves are classified as game animals, and helps ensure the

28

1 continued recovery of gray wolves in suitable native habitat where they once roamed.

2 Wisconsin Wolf Front United works to promote science-based management of wildlife  
3 and environmental policy through a student-based program of educational outreach, direct action  
4 and lobbying.

5 **III. GRAY WOLF BACKGROUND AND REGULATORY TREATMENT**

6 **A. The Near Extirpation Of Wolves In The Contiguous United States**

7 The wolf once ranged throughout most of the North American continent. AR\_000406-07  
8 & fig. 1 (Biological Report). Prior to European contact, the total wolf population in North  
9 America, including the gray wolf, the red wolf, and the Mexican gray wolf, may have been as  
10 high as hundreds of thousands of individuals. AR\_0000048. These numbers, however, did not  
11 persist as human agricultural and industrial development spread throughout North America, and  
12 increased development was accompanied by widespread persecution of wolves by humans.  
13 AR\_0000052.

14 Starting in the eighteenth century, private citizens and local and state governments  
15 throughout the United States authorized and funded bounties intended to exterminate the wolf.  
16 AR\_0000054. Surviving wolf populations in the eastern half of the United States were largely  
17 eliminated by such bounties. AR\_0000146. By the 1970s, the only wolves in the eastern United  
18 States consisted of just under a thousand wolves in northeastern Minnesota. *Id.* Professional  
19 hunters, primarily utilizing poison, eliminated gray wolf populations from the American West by  
20 the 1930s. *Id.* Many, if not all, of the last individual wolves in the West were killed in the  
21 1940s. *Id.*

22 The federal government also maintained a predator eradication program in the United  
23 States-Mexico border region to prevent the return of Mexican wolves from Mexico.  
24 AR\_0000410. By the 1970s, the “success” of these efforts effectively eliminated Mexican  
25 wolves from the United States side of the border, and severely reduced the numbers on the  
26 Mexico side. *Id.*

1           **B. Federal Classification And Protection Of Gray Wolves As An Endangered**  
 2           **Species**

3           The gray wolf was one of the first species to receive federal protection under the  
 4 conservation laws that preceded the ESA. Under the Endangered Species Preservation Act of  
 5 1966, the eastern timber wolf subspecies (*canis lupus lycon*) was classified as endangered on  
 6 March 11, 1967 (32 Fed. Reg. 4001) and the Northern Rocky Mountain wolf (*canis lupus*  
 7 *irremotus*) on June 4, 1973 (38 Fed. Reg. 14,678). Following passage of the ESA in 1973, both  
 8 were classified as endangered under that Act in 1974 (39 Fed. Reg. 1171), followed by the  
 9 Mexican gray wolf (*canis lupus baileyi*) in 1976 (41 Fed. Reg. 17,740), and the Texas gray wolf  
 10 (*canis lupus monstrabilis*) also in 1976 (41 Fed. Reg. 24,064).

11           By March 9, 1978, the entire gray wolf species (*canis lupus*), including all subspecies,  
 12 was classified as endangered throughout the contiguous 48 states and Mexico, with the exception  
 13 of Minnesota, where gray wolves were listed as threatened. 43 Fed. Reg. 9607 (1978).

14           With the ESA's protections, gray wolf populations recovered in many parts of their  
 15 historic range. The gray wolf population in northeastern Minnesota grew and those wolves  
 16 dispersed to northern Wisconsin and Michigan. *See generally*, AR\_0000411-423. By the 1980s,  
 17 gray wolves from the United States-Canadian border also recolonized areas of northwestern  
 18 Montana for the first time in fifty years. AR\_0000412. And, in 1995 and 1996, the Service  
 19 reintroduced gray wolves to western Wyoming (Yellowstone National Park) and central Idaho,  
 20 which re-established a gray wolf population in this portion of the Northern Rocky Mountains for  
 21 the first time in nearly a century. *Id.*

22           **C. The Service's Track Record Of Failed Efforts To Delist Gray Wolves**

23           **1. The Attempted Downlisting in 2003**

24           Starting in 2003, the Service attempted new rulemaking that, if successful, would have  
 25 reversed more than two decades of hard won, but still marginal population recovery. The  
 26 Service initially attempted -- without a biological basis -- to subdivide the gray wolf population  
 27 into three distinct population segments ("DPSs"). 68 Fed. Reg. 15,804, 15,818 (Apr. 1, 2003)

1 (“2003 Rule”). In 1996, the Service published the Policy Regarding the Recognition of Distinct  
2 Vertebrate Population to clarify its interpretation of the term DPS for the purposes of listing,  
3 delisting, and reclassifying species under the ESA. 61 Fed. Reg. 4722 (Feb. 7, 1996). In  
4 conjunction with subdividing the gray wolf population into three DPSs, the Service downlisted  
5 the “Eastern” and “Western” populations to threatened, rather than endangered, status.

6 Two district courts struck down the 2003 Rule’s attempt to downlist core populations  
7 without considering the state of the gray wolves across their entire range. *Defenders of Wildlife*  
8 *v. U.S. Dep’t of the Interior*, 354 F. Supp. 2d 1156, 1168-1169 (D. Or. 2005); *National Wildlife*  
9 *Fed’n v. Norton* (“Norton”), 386 F. Supp. 2d 553, 564-565 (D. Vt. 2005). In *Defenders of*  
10 *Wildlife*, the District Court ruled that by downlisting the species based solely on the viability of  
11 two core populations, the Service was effectively ignoring the species’ status in its full range, as  
12 the ESA requires. 354 F. Supp. 2d at 1168-69. *Norton* further explained that the Service  
13 impermissibly lumped into the “Eastern” segment any gray wolves in the Northeast region of the  
14 United States, without ascertaining the status and viability of gray wolf populations in that  
15 region. 386 F. Supp. 2d at 566 (“The [2003] Rule makes all other portions of the wolf’s  
16 historical or current range outside of the core gray wolf populations insignificant and unworthy  
17 of stringent protection. The [Service’s] conclusion is contrary to the plain meaning of the ESA  
18 phrase ‘significant portion of its range,’ and therefore, is an arbitrary and capricious application  
19 of the ESA.”). The Service did not appeal these decisions.

## 20 2. The Attempted Delisting in 2007

21 In 2007, the Service promulgated a new rule purporting to create the “Western Great  
22 Lakes gray wolf DPS” and to simultaneously delist that population segment, even though the  
23 broader species remained endangered elsewhere. *See* 72 Fed. Reg. 6052 (Feb. 8, 2007) (“2007  
24 Rule”). A D.C. District Court struck down that rule as procedurally and substantively  
25 unsupported under the ESA because the Service failed to address statutory ambiguities  
26 concerning the use of a DPS to delist rather than protect a species. *Humane Society of the U.S. v.*  
27 *Kemphorne*, 579 F. Supp. 2d 7, 9 (D.D.C. 2008). The Service did not appeal this decision.

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**3. The Attempted Delisting in 2009**

In December 2008, the Solicitor of the Department of the Interior (“DOI”) issued a memorandum analyzing the statutory authority for designating a DPS for the specific purpose of delisting a species (“2008 Solicitor’s Opinion”). Then, in 2009, the Service republished the 2007 Rule with a limited discussion of the 2008 Solicitor’s Opinion. 74 Fed. Reg. 15,070, 15,075 (April 2, 2009) (“2009 Rule”). Following legal challenges, the Service withdrew the 2009 Rule, acknowledging that it was promulgated without notice and comment. *Humane Society of the U.S. v. Salazar*, No. 09-1092, Docket Entry No. 27 (D.D.C. July 2, 2009).

**4. The Attempted Delisting in 2011**

In 2011, the Service once again attempted to create a Western Great Lakes (“WGL”) DPS for the purpose of delisting it, this time adopting the legal analysis in the 2008 Solicitor’s Opinion. 76 Fed. Reg. 81,666, 81,670 (Dec. 28, 2011) (“2011 Rule”). The 2011 Rule was challenged and vacated in *Humane Society of the U.S. v. Jewell*, 76 F. Supp. 3d 69, 110 (D.D.C. 2014). The *Jewell* court explained: “the structure, history, and purpose of the ESA do not permit the designation of a DPS for the purpose of delisting the . . . DPS. [Further], the ESA does not allow the designation of a DPS made up of [populations] already protected under the ESA at a more general taxonomic level.” *Id.* at 110-113.

On appeal, the D.C. Circuit Court of Appeals concluded as a threshold matter that the Service does have the legal authority “to carve out of an already-listed species a ‘distinct population segment’ for the purpose of delisting that segment and withdrawing it from the [ESA’s] aegis, . . . but only when the Service first makes the proper findings.” *Humane Society 2017*, 865 F.3d at 595 (emphasis added). Nonetheless, the Court affirmed the District Court’s vacatur of the 2011 Rule, holding that “the government failed to reasonably analyze or consider two significant aspects of the rule—the impacts of partial delisting and of historical range loss on the already-listed species.” *Id.* at 589 (emphasis added). As the Court explained: the ESA “requires the Service, when reviewing and redetermining the status of a species, to look at the whole picture of the listed species, not just a segment of it.” *Id.* at 601.



1 As to the impacts of partial delisting, the Court further explained: “[t]he fundamental  
2 error in the Service’s decision is that, in evaluating whether gray wolves in the Western Great  
3 Lakes region are a [DPS], the Service failed to address the impact that extraction of the segment  
4 would have on the legal status of the remaining wolves in the already-listed species.” *Id.* at 600.

5 The Court concluded:

6 The Service’s power is to designate genuinely discrete population segments; it is  
7 not to delist an already-protected species by balkanization. The Service cannot  
8 circumvent the Endangered Species Act’s explicit delisting standards by riving an  
9 existing listing into a recovered sub-group and a leftover group that becomes an  
orphan to the law. Such a statutory dodge is the essence of arbitrary-and-  
capricious and ill-reasoned agency action.

10 *Id.* at 603 (emphasis added).

11 Although the Court accepted as reasonable the Service’s interpretation of “range” under  
12 the ESA to mean current rather than historic range, the Court concluded that the Service must  
13 still consider in its analysis the loss of historical range. The Service’s failure to do so rendered  
14 its decision unreasoned, arbitrary and capricious. *Id.* at 603, 607. Such an analysis would need  
15 to start with “[d]efining the physical boundaries of the relevant historical range” and  
16 “[e]stablishing the appropriate timeframe for the measuring a species’ historical range.” *Id.* at  
17 606-07. The Service must then consider the consequences of the loss of historical range on the  
18 survival of the species as a whole, the DPS as designated, and the remnant wolves surviving  
19 outside of the DPS. *Id.*

20 **D. The Service’s 2020 Delisting Rule**

21 The latest Delisting Rule immediately eliminated all remaining ESA protections for the  
22 gray wolf throughout the contiguous United States, except for a small population of Mexican  
23 gray wolves in Arizona and New Mexico. AR\_0000039. The Service now contends that the  
24 gray wolf entities currently listed under the ESA—Minnesota (threatened) and the remaining 44  
25 states (endangered)—are neither species, subspecies nor DPSs. AR\_0000044. The Service  
26 justifies its nationwide delisting of the gray wolf by narrowly defining the gray wolf’s range to  
27 the WGL, thereby creating the appearance of population recovery within that narrow range.

1 AR\_0000049. As explained below, this new approach is an unlawful end-run around the  
 2 direction provided in *Humane Society 2017* to consider the historical range of the gray wolves in  
 3 any delisting decision and to analyze the impact of delisting on populations outside of the WGL  
 4 Region.

5 **E. The Sault Ste. Marie Tribal Nation’s Perspective**

6 The spiritual life and existence of the Anishinabe tribe are built upon respect for and  
 7 preservation of wolves. Anishinabe history states when the first person (subsequently given the  
 8 name Way-na-boo’zhoo) sought a companion, the Creator provided Ma-en’gun, the wolf, as that  
 9 companion, and the Creator told them” “Each of you is to be a brother to the other.”<sup>8</sup> The first  
 10 person and the wolf travelled the land. Working together they gave names to the other animals  
 11 and things. They now travel separate paths, but a tenet of Anishinabe spiritual (religious) is:  
 12 “What shall happen to one of you will also happen to the other. Each of you will be feared,  
 13 respected, and misunderstood by the people that will later join you on this Earth.”<sup>9</sup>

14 In earlier American history, both the wolves and the Anishinabe (and other Indians)  
 15 suffered great losses, but both have now come back from that brink. The Anishinabe did not  
 16 create the ESA, but the goal of the ESA—long term viability of the wolves as a species—has  
 17 been and continues to be a way of life, a spiritual and moral mandate for the Anishinabe.  
 18 Unfortunately, in this matter, the Service showed little interest in hearing from the people who  
 19 know the wolves best and who live the goal of the ESA. And the Service showed even less  
 20 interest in sharing the goal. The Service and the Anishinabe were both aware of the states’  
 21 history of overhunting, and were aware of the substantial risk that posed to gray wolves.

22 **F. Wholly Inadequate State Regulatory Protections**

23 The majority of states within the “lower 48” have no protections in place for gray wolves,  
 24 including states that have a wolf presence like Indiana, Kentucky, Massachusetts, Maine,  
 25 Missouri, Ohio, Utah, and Vermont. *See* 78 Fed. Reg. 35,664, 35,675 (June 13, 2013). Other

26 \_\_\_\_\_  
 27 <sup>8</sup> E. Banai, *The Mishomis Book* 8 (1988) (recording Ojibway oral history).

28 <sup>9</sup> *Id* at 8.

1 states seek to actively prevent recovery of the species. For example, Utah requires state wildlife  
 2 officials to capture and kill any wolf that comes into the state to prevent the establishment of a  
 3 viable wolf pack. Utah Code § 23-29-201. In 2013, South Dakota passed legislation designating  
 4 wolves in the eastern half of the state as “varmint” that can be shot on sight. S.D. Codified  
 5 Laws § 41-1-1.

6 After federal delisting between 2012 and 2014, Minnesota, Wisconsin, and Michigan  
 7 instituted trophy hunting and commercial trapping programs for gray wolves, which exposed  
 8 them to random killing for the first time in more than 40 years. *See* Minn. Stat. Ann. § 97B.645;  
 9 Wis. Stat. § 29.185(1m); and Mich. Comp. Laws Serv. § 324.95163. Wisconsin authorized some  
 10 of the most abusive and unsporting practices, including hound hunting, snares, baiting, electronic  
 11 calls, and the use of leg-hold traps, producing a body count well past 1000 animals over two  
 12 hunting seasons. *See* Wis. Stat. § 29.185(1m). Wolf numbers declined in every state. In  
 13 Wisconsin alone, between 2012 and 2014, 370 wolves were killed in just three seasons (20% of  
 14 its total wolf population), just through hunting and trapping.<sup>10</sup>

15 More recently in February 2021, immediately following the Delisting Rule, Wisconsin  
 16 instituted a large scale wolf hunt, which is a harbinger of what is to come without federal ESA  
 17 protection. Over 26,000 people applied for a hunting permit.<sup>11</sup> WDNR officials sold 1,547  
 18 permits for the season, which came out to about 13 hunters per wolf under the quota’s target  
 19 number of 119 wolves.<sup>12</sup> This equated to twice as many permits as normal, and marked the  
 20 highest ratio of any season so far. Disturbingly, the permitted means included night hunting,  
 21 hunting with dogs, snares, traps, guns, night vision, and running them down with snowmobiles,  
 22 among other means.<sup>13</sup> In just 48 hours, Wisconsin racked up 218 wolf kills, which was 80%  
 23 more than its own quota and nearly 20% of the state’s estimated wolf population.<sup>14</sup>

24 \_\_\_\_\_  
 25 <sup>10</sup> Wisconsin Wolf Season Report, 2013-14 at 1.

26 <sup>11</sup> R. Johnson and A. Schneider, Wisconsin Wolf Season Report, February 2021, at 2.

27 <sup>12</sup> *Id.*

28 <sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.*

1 A former Wisconsin Department of Natural Resources (“WDNR”) Wildlife Health  
2 Specialist volunteered to participate in the May 2021 necropsies on some wolves killed during  
3 the February 2021 hunt. She has nearly 30 years of anatomic pathology experience, which  
4 includes thousands of necropsies on wild and domestic animals. She observed the following  
5 regarding the wolves killed during the February 2021 wolf hunt in Wisconsin:

6 [T]he extent of intentional premortem trauma that I observed, and that was  
7 documented, with these February 2021 wolves was egregious and appalling.  
8 These wolves were not simply and cleanly ‘killed.’ The state sanctioned and legal  
methods allowed that caused extreme extensive traumas must not be allowed to  
occur again in Wisconsin.<sup>15</sup>

9 To make matters worse, this was the first-ever wolf hunting season to be held in  
10 February, which is part of the gray wolf’s breeding season, so undoubtedly some of the wolves  
11 killed were pregnant.<sup>16</sup> As a result, some wolf packs will not produce pups this year, while other  
12 packs may dissolve.<sup>17</sup>

13 Dr. Adrian Treves, one of the peer reviewers for the Delisting Rule, estimates that a steep  
14 decline in gray wolf population occurred due to the Wisconsin hunt: “we expect a maximum of  
15 695-751 wolves to be alive in Wisconsin by 15 April 2021, a minimum 27-33% decline in the  
16 last 12 months.”<sup>18</sup> This contradicts the state expectation of no change in the population size.

17 Wolf conservation in the United States has long been a politically charged issue. As a  
18 consequence, statehouse sentiment more often than sound science has driven wolf conservation  
19 policies. In Michigan, for example, state senators introduced a Resolution that urged its  
20 Department of Natural Resources to quickly implement a wolf hunting and trapping program in  
21 2021 while federal protections were absent. *See* Senate Resolution No. 15. Similarly, in Idaho,  
22 the Governor signed a bill into law on May 5, 2021 that will allow for the killing of 90% or more  
23

24 <sup>15</sup> Additional Written Public Comment Regarding the 2021 Fall Wolf Hunt (June 18, 2021).

25 <sup>16</sup> *Id.* at 7; Wisconsin’s Green Fire, The February 2021 Wisconsin Wolf Hunt: A Preliminary  
Assessment (May 2021) at 11.

26 <sup>17</sup> *See id.*

27 <sup>18</sup> A Treves, *et al.*, Quantifying the effects of delisting wolves after the first state began lethal  
management, PeerJ 9:e11666 (2021).

1 of the state's wolf population. *See* Senate Bill 1211. The state's politically-driven kill sanction  
 2 was so egregious that its own Department of Fish and Game officially opposed the bill because,  
 3 according to news reports, it removed decisions about how to manage wildlife from the  
 4 department's professionals and placed that decision making in the hands of politicians.<sup>19</sup>

5 The post-delisting environment where states are now charged with protecting and  
 6 preserving our nation's wolf populations in the absence of federal protections is abundantly  
 7 clear: political agendas that promote the killing of wolves have replaced science-based and  
 8 ecologically-sound conservation approaches to wolf management.

### 9 **G. Ecological And Economic Benefits Of The Gray Wolf**

10 The ecological benefits of gray wolf populations have long been demonstrated, for  
 11 example in central Idaho and Yellowstone National Park.<sup>20</sup> Since the reintroduction of gray  
 12 wolves into these regions, the health of the entire ecosystem has improved.<sup>21</sup> One resulting  
 13 benefit is that the grazing behavior of elk and other ungulates has changed along the region's  
 14 waterways, allowing for an expansion of canopy cover, which provides habitat, food, and shelter  
 15 for populations of beaver and songbirds and simultaneously enhances the waterways' abilities to  
 16 provide healthy trout habitat.<sup>22</sup> Another benefit accrues to scavenger species such as bears,  
 17 badgers, eagles (and many others), which are provided a more reliable food source on a year-  
 18 round basis from the "leftovers" of gray wolf kills.<sup>23</sup> Foxes are yet another beneficiary, because

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 20  
 21 <sup>19</sup> April 22, 2021 Minutes of Idaho Fish and Game Commission Special Meeting, available at  
 22 <https://idfg.idaho.gov/sites/default/files/commission/commission-meeting-minutes-042221.pdf>;  
 23 "Bill to increase killing of Idaho wolves clears House panel" (Associated Press April 22, 2021),  
 24 available at <https://apnews.com/article/bills-idaho-wolves-environment-and-nature-lifestyle-4c74d048aead83a5804e813f4419179d>.

25 <sup>20</sup> *See generally*, A. Kelley, The Ecological and Human-Centered Benefits of Wolf  
 26 Reintroduction to Yellowstone National Park (2018), available at  
 27 <https://www.animalsandsociety.org/human-animal-studies/sloth/sloth-volume-4-no-1-winter-2018/ecological-human-centered-benefits-wolf-reintroduction-yellowstone-national-park/>.

28 <sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> C. Wilmers and W. Getz, Gray Wolves as Climate Change Buffers in Yellowstone, *PLoS Biol* 3(4): e92 (2005), available at <https://doi.org/10.1371/journal.pbio.0030092>.

1 they are killed by coyotes, which in turn are killed by gray wolves, and after the reintroduction of  
2 wolves to Yellowstone, fox numbers increased.<sup>24</sup>

3 Wolves also play an important role in our economy. The International Wolf Center in  
4 Ely, Minnesota contributes \$3 million and 66 new jobs to the local economy annually.<sup>25</sup> Annual  
5 visitor spending has increased by \$35.5 million since the reintroduction of wolves in the states  
6 surrounding Yellowstone National Park.<sup>26</sup>

7 **IV. THE SERVICE’S DELISTING RULE VIOLATES THE ENDANGERED SPECIES**  
8 **ACT AND ADMINISTRATIVE PROCEDURES ACT.**

9 **A. The Service Did Not Properly Evaluate The Current Or Historic Range Of**  
10 **The Gray Wolf, Thereby Improperly Segmenting And Fatally Undermining**  
11 **The Wolf Range Analysis.**

12 The ESA requires that the Service designate a species as threatened or endangered based  
13 on the danger of that species’ extinction “in all or a significant portion of its range.” 16 U.S.C.  
14 § 1532(6), (20). The ESA does not define the term “range.” In 2014, the Service adopted a  
15 policy on “range” (“Range Policy”) defining it as “current range, not its historical range,” but  
16 also providing that “[t]his range includes those areas used throughout all or part of the species’  
17 life cycle, even if they are not used regularly (e.g. seasonal habitats).”<sup>27</sup>

18 Although some recent cases have determined that the Service’s interpretation of “range”  
19 as “current range” is reasonable, these cases have emphasized that the Range Policy “still  
20 requires that FWS consider the historical range of a species in evaluating other aspects of the  
21 agency’s listing decision, including habitat degradation.” *Ctr. for Biological Diversity v. Zinke*,

22 <sup>24</sup> D. Flagel, *et al.*, Fear and loathing in a Great Lakes forest: cascading effects of competition  
23 between wolves and coyotes, *Journal of Mammalogy*, Volume 98, Issue 1 (February 8, 2017), at  
24 pp. 77–84, available at <https://doi.org/10.1093/jmammal/gyw162>.

25 <sup>25</sup> D. Schaller, *Ecocenter as Tourist Attraction: Ely and the International Wolf Center* (1996),  
26 available at <https://hdl.handle.net/11299/205783>.

27 <sup>26</sup> *Wolves and People in Yellowstone: Impacts on the Regional Economy*, Yellowstone Park  
28 Foundation (September 2006), available at  
[https://defenders.org/sites/default/files/publications/wolves\\_and\\_people\\_in\\_yellowstone.pdf](https://defenders.org/sites/default/files/publications/wolves_and_people_in_yellowstone.pdf)

<sup>27</sup> Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the  
Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species.” 79  
Fed. Reg. 37,578 (July 1, 2014) (“Range Policy”).

1 900 F.3d 1053, 1067 (9th Cir. 2018), citing *Humane Soc’y*, 865 F.3d at 605-06. Accordingly,  
2 the Delisting Rule fails because (1) its determination of current range of the gray wolves is  
3 arbitrary and lacks a scientific basis, and (2) it fails to consider the historic range of the gray  
4 wolves in its analysis.

5 **1. The Delisting Rule Fails To Consider The Status Of Gray Wolves**  
6 **Existing Outside Of The Western Great Lakes Region.**

7 The Service characterized the current range of the gray wolf in the “lower 48” states as  
8 two populations: “One spread across northern Minnesota, Michigan and Wisconsin, and the other  
9 consisting of the recovered and delisted NRM [Northern Rocky Mountains] DPS wolf population  
10 that is biologically connected to a small number of colonizing wolves in western Washington,  
11 western Oregon, northern California, and, most likely, Colorado.” AR\_0000049. However, the  
12 Service admits:

13 [W]olves have been detected in all States within historical gray wolf range west  
14 of the Mississippi River except Oklahoma and Texas (Citation). Since the early  
15 2000s, confirmed records of individual gray wolves have been reported from  
16 Vermont, Massachusetts, New York, Indiana, Illinois, Iowa, Missouri, North  
17 Dakota, South Dakota, Nebraska, Kansas, Colorado, Utah, Arizona, and Nevada.  
*The total number of confirmed records in each of these States, since the early  
2000s, ranges from 1 to at least 27, the latter occurring in North Dakota, which  
also has an additional 45 probable but unverified reports.*

18 *Id.* (Emphasis added.) Gray wolves, including breeding pairs and packs have also been reported  
19 in Western Washington and Oregon (currently managed under federal authority) and in  
20 California. AR\_0000414-15. Remarkably, the Service summarily dismisses their existence as  
21 “lone dispersers in places that otherwise lack evidence of persistent wolf presence or suitable  
22 habitat for supporting a resident wolf population” and thereby incorrectly fails to include them  
23 within the “current range” of the species.

24 This failure to recognize and address these individual populations defies the clear  
25 instructions of the D.C. Circuit in *Humane Society 2017* overturning the Service’s 2011 Rule that  
26 attempted to delist just the WGL population through the DPS process. The Court recognized that  
27 the 2011 Rule had no analysis of the status of the wolves outside of the so-called WGL DPS,  
28

1 explaining that “the [ESA’s] text requires the Service, when reviewing and redetermining the  
2 status of a species to look at the whole picture of the listed species, not just a segment of it.”  
3 *Humane Society 2017*, 865 F.3d at 601. The Service now purports satisfy this guidance by  
4 identifying the existence of sustainable wolf populations outside of the WGL, but fails to provide  
5 any evidence or analysis why those places with reported populations lack evidence of persistent  
6 wolf presence or suitable habitat, or as a threshold matter, even what constitutes sufficient  
7 evidence of wolf presence and suitable habitat.

8 In doing so, the Service repeats its past mistakes. *See, e.g., Norton*, 386 F. Supp. 2d at  
9 566 (“The [2003] Rule makes all other portions of the wolf’s historical or current range outside  
10 of the core gray wolf populations insignificant and unworthy of stringent protection. The  
11 [Service’s] conclusion is contrary to the plain meaning of the ESA phrase ‘significant portion of  
12 its range,’ and therefore, is an arbitrary and capricious application of the ESA.”). The Service  
13 cannot lump all populations into one 44-state entity without first ascertaining the status and  
14 viability of gray wolf populations in each of those states.

15 Instead, the Service must consider the “whole picture,” *i.e.*, “the impact that extraction of  
16 the segment would have on the legal status of the remaining wolves in the already-listed  
17 species.” *Humane Society 2017*, 865 F. 3d at 600. The Service acknowledges it must do so, but  
18 attempts to do so by concluding that the loss of some or all of these populations outside the WGL  
19 region would not threaten the WGL population or the entire species. However, the assumptions  
20 underlying this conclusion are false. AR\_0001082-83, AR\_0001090 (Summary Report, App. C,  
21 Reviewer 2—Dr. Charles (Carlos) Carroll at 8–9, 16).

22 First, the assumption that wolves existing outside of the WGL population “do not  
23 contribute to the ability of the Western Great Lakes population to withstand stochastic events,  
24 nor to the [species’] ability to withstand catastrophic events,” is demonstrably false.  
25 AR\_0001089-90. The recent Wisconsin hunt demonstrates that catastrophic events are not just  
26 foreseeable, but have happened and are likely to recur in an unregulated or poorly regulated  
27 environment. AR\_0001090. As Dr. Carroll explained: a widely dispersed population



1 necessarily “contribute[s] to metapopulation resiliency, *e.g.*, by its differential exposure to  
2 disease outbreaks or climate change,” or other human-caused extirpations. *Id.*

3 Second, the assumption that gray wolves are “generalist” and vagile species implies a  
4 lack of significant variation across the contiguous U.S. that is unsupported by the best available  
5 science. To the contrary, the data shows “substantial genetic and ecotypic variation within the  
6 metapopulation of wolves.” AR\_0001091. Multiple studies show that “North American wolves  
7 are morphologically and genetically differentiated on a local scale.” *Id.* This variation  
8 necessarily contributes to the greater diversity in the population and contributes to  
9 metapopulation resiliency. The Service failed to analyze and consider these critical issues.

10 **2. The Delisting Rule Fails To Consider The Important Impacts Of The**  
11 **Historic Range Loss Of Gray Wolves.**

12 The Court in *Humane Society 2017* required the Service to consider historic range loss  
13 and provided a clear roadmap for doing so. Such an analysis would need to start with “[d]efining  
14 the physical boundaries of the relevant historical range” and “[e]stablishing the appropriate  
15 timeframe for the measuring a species’ historical range.” 865 F.3d at at 606-07. The Service  
16 must then consider the consequences of the loss of historical range on the survival of the species  
17 as a whole, the DPS as designated, and the remnant wolves surviving outside of the DPS. *Id.*  
18 The Service cannot avoid these requirements by attempting an end-run around the DPS process  
19 because the ESA still requires a consideration of these issues in delisting.

20 Whether the Service labels the WGL region as a DPS or not, the Service must still  
21 consider, in any delisting attempt, the consequences of historic range loss on the survival of the  
22 species as a whole, within the two core populations existing in the WGL region and the Northern  
23 Rocky Mountains, and for the remnant populations existing outside of these core populations.

24 The Service, however, ignores the lost historic range of the gray wolves in its analysis, as  
25 it did in its prior unsuccessful listing attempts. Although the gray wolf has largely disappeared  
26 across 95% of its historic range, those areas indisputably remain suitable habitats with potential  
27 for repopulation. For example, there are ecologically viable populations in the Pacific

1 Northwest, California and the Southern Rocky Mountains, which are within the wolves’ historic  
2 range and are on the verge of becoming self-sustaining.

3 Under the Service’s reasoning, however, such nascent populations do not qualify for the  
4 ESA’s protections because the gray wolves have supposedly already “recovered” in one  
5 narrowly-defined range. As Dr. Carroll observed: “[d]espite the current small population size,  
6 the existence of such a peripheral (and likely larger) population at a future time could well  
7 contribute to metapopulation resiliency.” AR0001090. The Service fails to consider not only the  
8 potential of these populations within the lost historic range to become self-sustaining in the near  
9 future, but also their expected contribution to the resiliency of the Great Lakes Region  
10 population and to the species overall, in particular to catastrophic events such as the 2021  
11 Wisconsin wolf hunt.

12 **B. The Existing Regulatory Mechanisms Have Historically Been And Continue**  
13 **To Be Patently Inadequate.**

14 In promulgating the Delisting Rule, the Service also failed to analyze the “the inadequacy  
15 of existing regulatory mechanisms.” 16 U.S.C. § 1533(a)(1)(D). The Amici Curiae share (but  
16 will not repeat) the serious concerns raised in Plaintiffs’ Joint Motion for Summary Judgment  
17 regarding the many deficiencies in key state management plans. The Amici Curiae have serious  
18 additional concerns regarding the Service’s complete failure to critically consider the history of  
19 state-sanctioned wolf hunts and depredation programs, which also renders the Delisting Rule  
20 arbitrary and capricious. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*  
21 *Ins. Co.*, 463 U.S. 29, 43 (1983) (“an agency rule would be arbitrary and capricious if the agency  
22 . . . entirely failed to consider an important aspect of the problem”).

23 **1. State Regulatory Mechanisms Improperly Prioritize Killing Of**  
24 **Wolves Over Protection Of Wolves.**

25 In the Delisting Rule, the Service provides a rote summary of state laws and some wolf  
26 kill events, but a mere recitation of state laws and the aftermath of previous delistings is  
27 insufficient here. This situation differs significantly from *Crow Indian Tribe v. United States*,

1 343 F. Supp. 3d 999, 1016 (D. Mont. 2018) (“*Crow*”), which involved a delisting of the grizzly  
 2 bear. The regulatory mechanisms in *Crow* consisted primarily of grizzly bear management plans  
 3 that plaintiffs argued did not reflect the state governments’ true intentions (which the court did  
 4 not want to second-guess). *Id.* at 1015-16.

5 The gray wolf situation is critically different because the issue here is not just the  
 6 inadequate state management plans, but also the state statutes compelling and/or authorizing  
 7 wolf hunts and retribution kills, which directly cause significant physical mortality of wolves.  
 8 There is abundant evidence, from previous and current delistings, that these hunts are not  
 9 effectively managed. Although the plans supposedly limit the number of wolf kills, all available  
 10 evidence demonstrates that those plans do not work. Rather than having to “second guess” state  
 11 agency intentions, there is a compelling amount of evidence that the wolf-related “regulatory  
 12 mechanisms” are not working to protect wolves.

13 For example, after the 2011 delisting, Wisconsin mandated an “open season for both  
 14 hunting and trapping wolves that begins on the first Saturday in November of each year and ends  
 15 on the last day of February of the following year,” and authorized highly abusive practices such  
 16 as hound hunting, snares, baiting, electronic calls, and the use of leg hold traps. *See* Wis. Stat.  
 17 §§ 29.185(1m), (5)(a). Wolf numbers plummeted in Wisconsin during 2012-14, losing over 370  
 18 wolves in just three seasons (20% of its total wolf population) through hunting and trapping.<sup>28</sup>

19 In addition, at the time that the Northern Rocky Mountains DPS was delisted by  
 20 Congress, bypassing the ESA’s science-based approach to such decisions, several states had  
 21 virtually no protections for the gray wolf. Utah requires state wildlife officials to prevent the  
 22 establishment of a viable wolf pack by extermination of any wolves coming into the state. Utah  
 23 Code § 23- 29-201. South Dakota considers the wolves to be “varmints” that can be shot on  
 24 sight. S.D. Codified Laws § 41-1-1. In Wyoming, wolves may be taken by any legal means  
 25 year-round and without limit in the predator area. Wyoming Statutes §§ 23-2-303(d), 23-3-

26  
 27 \_\_\_\_\_  
 28 <sup>28</sup> Wisconsin Wolf Season Report, 2013-14 at 1.

1 103(a), 23-3-112, 23-3-304(b), 23-3-305, and 23-3-307. When wolves in Wyoming previously  
 2 lost ESA protection, and were subsequently subjected to unregulated taking in some areas of the  
 3 state, “most of the wolves in [those] area[s] were killed within a few weeks of losing the Act’s  
 4 protection (17 of at least 28).” 74 Fed. Reg. 15,123, 15,170 (April 2, 2009). This history  
 5 demonstrates the importance of considering state regulations in delisting decisions.

6 The Delisting Rule here has led to the most dramatic and inadequately regulated wolf  
 7 hunt to date in Wisconsin. That hunt was held in February 2021, during the gray wolf’s breeding  
 8 season. WDNR officials sold enough permits for there to be a ratio of about 13 hunters/trappers  
 9 per wolf under the quota’s target number of 119 wolves.<sup>29</sup> The permitted means of hunting  
 10 wolves included night hunting, hunting with dogs, snares, traps, guns, night vision, running them  
 11 down with snowmobiles, among other means.<sup>30</sup> In just 48 hours, Wisconsin allowed 218 wolves  
 12 to be legally killed statewide, which is more than 80% over the state-set quota and nearly 20% of  
 13 the state’s estimated wolf population.<sup>31</sup>

14 The Service has long recognized that this no-holds-barred approach to wolf  
 15 “management” can devastate wolf populations. *See, e.g.*, 71 Fed. Reg. 43,410, 43,428 (Aug. 1,  
 16 2006) (explaining that “[w]olves are unlike coyotes in that wolf behavior and reproductive  
 17 biology results in wolves being extirpated in the face of extensive human-caused mortality” and  
 18 determining Wyoming wolves were unlikely to persist in areas where they could be taken at any  
 19 time, by any means, by anyone, and without limit); 74 Fed. Reg. 15,123, 15,170 (same); *see also*  
 20 68 Fed. Reg. 15,804, 15,831 (Apr. 1, 2003) (“Wolves are very susceptible to human-caused  
 21 mortality and were exterminated by excessive human persecution. Wolf populations could not  
 22 persist in the face of unregulated human-caused mortality.”).

23 The Service’s simplistic view in the Delisting Rule that the gray wolf will survive  
 24 whatever the states throw at them in the future because they are adaptable and still above  
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26 <sup>29</sup> *See* R. Johnson and A. Schneider, Wisconsin Wolf Season Report, February 2021, at 2.

27 <sup>30</sup> *Id.*

28 <sup>31</sup> *Id.*

1 restoration goals is a misguided and unscientific approach that ignores the ESA’s goals. The  
2 ESA expressly aims for species recovery to the point where its own measures are “no longer  
3 necessary,” 16 U.S.C. § 1532(3), thus contemplating that something less can be enough to  
4 maintain a recovered species. The Service could not rationally conclude that the state regulatory  
5 framework described in the Delisting Rule is sufficient to sustain the gray wolf population,  
6 particularly given the history of state-sanctioned hunts and other activities that could over time  
7 drive them into extinction.

8 Several states have made no secret of their intentions to drastically reduce wolf numbers  
9 and gravely constrict wolf distribution. In most areas, including some of the most critical areas,  
10 the primary threat to wolf populations is a high rate of human-caused mortality. As a result, the  
11 inadequacy of state regulatory mechanisms remain current threats to the gray wolf’s survival,  
12 and the Service’s failure to critically analyze those mechanisms is arbitrary and capricious.

13 **2. The 2021 Wisconsin Wolf Hunt Ignored The Tribes’ Views And**  
14 **Continued A Pattern Of State Overhunting Of Wolves.**

15 From the Sault Tribe’s perspective, the disastrous slaughter of wolves during the most  
16 recent breeding season in Wisconsin is merely a continuation of the history of state-supported  
17 overhunting of wolves. The Service was aware of that record, but it did not meet its statutory  
18 obligation to analyze and account for that record. The Service would have complied with its  
19 duty if it first listened to the Indian Tribes who have been sharing the Great Lakes area with the  
20 wolves since the dawn of human existence. As discussed above, spiritual life and existence of  
21 the Anishinabe are built upon respect for and preservation of the wolves.

22 The Anishinabe tribe, living and embodying the goal of the ESA, did what they could to  
23 comply with their spiritual and moral duties during the Wisconsin wolf hunt. They took their  
24 quota of wolves that could be killed under state statute and they attempted to save those wolves.  
25 Though they, like the states, could have sold hunting licenses and tags for substantial sums, they  
26 chose not to. But that simply meant that the predictable Wisconsin-sanctioned overhunting  
27 resulted in a state-sanctioned slaughter that exceeded the quota for both the state and the tribes

1 combined. The Service, failing to conduct the required analysis, let the states repeat their history  
2 of overhunting.

3 **V. VACATUR IS THE APPROPRIATE LEGAL REMEDY FOR THESE ESA**  
4 **VIOLATIONS.**

5 The Amici Curiae request that the Court vacate the Delisting Rule because it is the  
6 normal and appropriate remedy for unlawful agency actions. *See, e.g., East Bay Sanctuary*  
7 *Covenant v. Biden*, 993 F.3d 640, 681 (9th Cir. 2021); *Humane Soc’y*, 579 F. Supp. 2d at 21. As  
8 the Delisting Rule confirms, the courts vacated each of the Service’s prior invalid attempts to  
9 delist the gray wolf. AR\_0000040-41, Table 1.

10 Based on their extensive hands-on experience in protecting gray wolves, particularly in  
11 the Western Great Lakes States where a majority of the “lower 48” gray wolves are located, the  
12 Amici Curiae believe it is essential that gray wolves be protected under the ESA while the  
13 current administration evaluates its future options. Given the devastating impacts of the  
14 February 2021 gray wolf hunt and other events in Wisconsin (where up to one-third of the wolf  
15 population perished in one year) and the announced plans in many states to conduct wolf hunts in  
16 the near future if ESA protections remain absent, restoration of the wolf to the ESA lists is  
17 essential to protect these highly vulnerable animals. The humane and biologically sound legal  
18 principles underlying the ESA compel that vacatur be adopted as the remedy.

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1 **VI. CONCLUSION**

2 For all of these reasons, the Amici Curiae respectfully request that the Court vacate the  
3 Delisting Rule. The Amici Curiae also request the opportunity to answer any questions that the  
4 Court may have and/or offer oral argument at the November 12, 2021 hearing.

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Respectfully submitted,

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