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**Pro hac vice* applications pending

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ANIMAL WELLNESS ACTION; THE CENTER FOR A HUMANE ECONOMY; PROJECT COYOTE, a project of EARTH ISLAND INSTITUTE, INC.; THE KETTLE RANGE CONSERVATION GROUP; FOOTLOOSE MONTANA; and THE GALLATIN WILDLIFE ASSOCIATION,

Plaintiffs,

v.

U.S. FISH AND WILDLIFE SERVICE; MARTHA WILLIAMS, Director of U.S. Fish and Wildlife Service; U.S. DEPARTMENT OF THE INTERIOR; and DEB HAALAND, Secretary of the Interior,

Defendants.

Case No.

COMPLAINT

INTRODUCTION

1. Animal Wellness Action, the Center for a Humane Economy, Project Coyote, a project of the Earth Island Institute, Inc., the Kettle Range Conservation Group, Footloose Montana, and the Gallatin Wildlife Association (collectively, "Plaintiffs") bring this action to challenge Defendants' (collectively, "the Service") Finding for the Gray Wolf in the Northern Rocky Mountains and Western United States, 89 Fed. Reg. 8,391 (Feb. 7, 2024) ("Finding").

2. This Finding and its Species Status Assessment ("SSA") was issued in response to a July 2021 petition ("2021 Petition") filed by dozens of organizations, including Plaintiffs, requesting federal Endangered Species Act ("ESA") protections for gray wolves (*Canis lupus*) in the Western United States ("Western gray wolves") or, in the alternative, gray wolves in the Northern Rocky Mountains ("NRM gray wolves").

3. The Service decided in its Finding that the Western gray wolf distinct population segment ("DPS") does not warrant listing as an endangered or threatened species under the ESA.

4. In its analysis, however, the Service committed multiple violations of the ESA. The Service failed to adequately and properly analyze the five ESA threat factors; failed to apply the best available science by relying on faulty science in certain portions of the analysis and, in other portions, neglecting to apply any

science at all; and failed to conduct an adequate and proper significant portion of range ("SPR") analysis.

5. Plaintiffs file this action to challenge and remedy these violations of the ESA and APA.

JURISDICTION AND VENUE

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

7. This Court has the authority to review the Service's action(s) and/or inaction(s) complained of herein and grant the relief requested under 16 U.S.C. § 1540(g) and 5 U.S.C. § 706.

8. The relief sought is authorized by 28 U.S.C. § 2201, 28 U.S.C. § 2202, 16 U.S.C. § 1540, and 5 U.S.C. § 706.

9. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e). Violations of the ESA have occurred and continue to occur in this district, a substantial part of events or omissions giving rise to the claim have occurred in this district, Plaintiffs have members in this district, and Plaintiff FOOTLOOSE MONTANA is headquartered in this district.

10. The Missoula Division is a proper divisional venue per Local Rule 3.29(b).

11. Plaintiffs mailed their 60-day notice of intent to sue pursuant to 16 U.S.C. § 1540(g)(2) to Defendants by U.S. Postal Service certified mail on April 22, 2024. Plaintiffs also e-mailed the notice to Defendants on April 22, 2024. Plaintiffs received U.S. Postal Service return receipts indicating that the notices were received by Defendants on May 2, 2024, and May 3, 2024. Sixty days have now elapsed since Plaintiffs mailed and e-mailed their notice of intent to sue.

12. Plaintiffs received a response from the Fish and Wildlife Service, Mountain-Prairie Region, acknowledging receipt of the 60-day notice on May 2, 2024, and informing Plaintiffs that the Service believes that the Finding already addressed the issues raised by the notice.

PARTIES

Plaintiffs

13. Plaintiff ANIMAL WELLNESS ACTION ("AWA") is a 501(c)(4) nonprofit headquartered in Washington, D.C. that works to promote animal welfare by advocating for the passage and enforcement of laws that protect animals, including wildlife, from cruelty. It champions policies that alleviate the suffering of companion animals, wildlife including wild wolves, and farm animals, and lobbies for the election of candidates who care about animal causes.

14. Plaintiff THE CENTER FOR A HUMANE ECONOMY ("the Center") is a 501(c)(3) nonprofit headquartered in Maryland. It is the first

nonprofit of its kind, focusing specifically on influencing the conduct of corporations to forge a more humane economy. Its efforts include corporate engagement, advocacy campaigns, consumer education, and research and analysis of business practices. In a society where consumers, investors, and stakeholders consistently report a preference for the humane treatment of animals, the Center works to make these desires for social responsibility a reality.

15. AWA and the Center combined have over 110,000 supporters throughout the eleven states of Montana, Idaho, Wyoming, Utah, Colorado, Nevada, California, Oregon, Washington, New Mexico, and Arizona (the "Western States"), and over 1,000 members in Montana specifically. AWA and the Center's diverse base of supporters, members, and staff want to move wildlife management toward an ethical, science-based, democratic vision of wildlife conservation that respects biodiversity and the intrinsic value of life. The failure of the federal government to protect the Western gray wolf due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of AWA and the Center and their volunteers, members, and supporters.

16. Plaintiff PROJECT COYOTE is a fiscally-sponsored project of the national 501(c)(3) nonprofit organization Earth Island Institute, that serves as a hub for grassroots campaigns dedicated to conserving, preserving, and restoring the ecosystems on which civilization depends. Project Coyote based in Larkspur,

California, is a coalition of wildlife scientists, educators, ranchers, and community leaders that promotes compassionate conservation and coexistence between humans and wild carnivores through education, science, advocacy, and coalition building. Project Coyote is dedicated to changing negative attitudes toward coyotes, wolves, and other North American wild carnivores by replacing ignorance and fear with understanding, respect, and appreciation. Project Coyote has over 9,000 members and supporters in the Western States, 191 of which are in Montana. The failure of the federal government to protect the Western gray wolf due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of Project Coyote and its volunteers, members, and supporters.

17. Plaintiff THE KETTLE RANGE CONSERVATION GROUP ("Kettle Range") is a 501(c)(3) nonprofit organization founded in 1976 based in Republic, Washington whose mission is to defend wilderness, protect biodiversity, and restore ecosystems of the Columbia River Basin. The goals of Kettle Range are to preserve federal and state roadless areas to protect critical habitat for native terrestrial and aquatic species, and to safeguard resources of clean water, outdoor recreation, and natural scenic beauty, including old growth forests, wild rivers, and other habitat critical to the survival of endangered species. The failure of the federal government to protect the Western gray wolf due to the challenged actions will adversely affect the

substantial recreational, aesthetic, and conservational interests of Kettle Range and its volunteers, members, and supporters.

18. Plaintiff FOOTLOOSE MONTANA is a 501(c)(3) grassroots nonprofit organization based in Missoula, Montana dedicated to the protection of wildlife and to end the nightmare of trapping. Footloose Montana is committed to ending the slaughter of wolves in Idaho and Montana and protecting grizzly bears, lynx, and other endangered species. Footloose Montana has roughly 4,000 supporters, most of whom are in Montana. The failure of the federal government to protect the Western gray wolf due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of Footloose Montana and its volunteers, members, and supporters.

19. Plaintiff THE GALLATIN WILDLIFE ASSOCIATION ("GWA") is a local, all-volunteer grassroots wildlife conservation 501(c)(3) nonprofit founded in 1976 and based in Bozeman, Montana. GWA was originally founded half a century ago as a hunter-conservationist organization, but it has expanded the diversity of its causes and membership over time. GWA over 100 dues-paying members in good standing in Montana, and more members across the United States, including hunters, non-consumptive users, conservationists, and other diverse Americans. The organization is dedicated to the preservation and restoration of wildlife, fisheries, habitat, and migration corridors in southwest

Montana and the Greater Yellowstone Ecosystem using science-based decision-making. GWA believes in the protection of the gray wolf for multiple reasons, the most important is to maintain their traditional role as an apex predator that contributes balance to the ecology of the wild. GWA is opposed to the hostility towards predator species it sees across Montana, Idaho, and Wyoming and is specifically opposed to the hunting of gray wolves, which occurs across Montana and specifically occurs within the county in which GWA is based. The failure of the federal government to protect the Western gray wolf due to the challenged actions will adversely affect the substantial recreational, aesthetic, and conservational interests of GWA and its volunteers, members, and supporters.

20. Each of the above plaintiffs were signatories to the 2021 Petition.

Plaintiffs' Interests

21. Plaintiffs and their members, supporters, and staff have a long-standing interest in the gray wolf, including and specifically the Western gray wolf, and routinely advocate for gray wolf protection in United States. They have actively participated in the development of wolf policy. They have fought for laws and policies that protect gray wolves, and fought against laws and policies that threaten or harm gray wolves.

22. AWA and the Center have been closely involved in wolf protection issues for the past several years. Immediately upon the federal delisting of wolves

from the Endangered Species Act by the outgoing Trump administration in the fall of 2020, AWA and the Center began publishing letters to government officials and public blogs, alerts, and action items, urging our supporters to take action and oppose the delisting. Shortly thereafter, AWA and the Center filed a 60-day notice of intent to sue the Department of the Interior for the illegal delisting action. In early 2021, when Wisconsin announced the opening of a wolf hunting season in response to the federal delisting, AWA and the Center joined a small coalition of groups, which also included co-Plaintiff Project Coyote, in suing the Wisconsin Department of Natural Resources in state court. AWA, the Center, and Project Coyote's efforts resulted in an injunction against a second Wisconsin wolf hunt that was planned to take place in the fall of 2021. In the meantime, AWA and the Center led a coalition of groups filing an *amici curiae* brief in the 2021 federal lawsuit against the 2020 delisting rule, 85 Fed. Reg. 69,778 (Nov. 3, 2020), that took effect on January 4, 2021. That lawsuit resulted in the delisted decision being vacated and federal ESA protections restored for wolves across the country, except for wolves in the Northern Rocky Mountains ("NRM"). More recently, AWA has spearheaded an effort to enact a federal law to ban the use of motor vehicles to run over and kill wolves on federal lands in states like Wyoming and Montana after horrific reports of "hunters" in those states engaging in torture and torment of both wolves and coyotes using snowmobiles as a weapon. Both AWA and CHE have

spent considerable resources, including staff time, legal fees, communications costs including paid social media costs, lobbying work and other resources in our ongoing effort to safeguard wolf populations in the country. Because of the Service's action(s) and inaction(s), AWA and CHE have had to divert resources to advocate for the protection of gray wolves and advocate against activities and policies that harm wolves. The Finding, under which Western gray wolves remain federally unprotected, has harmed and will continue to harm AWA's and CHE's interests in gray wolves and gray wolf conservation. The Finding will also adversely affect the substantial recreational, aesthetic, and conservational interests of AWA's and CHE's supporters, members, and staff.

23. Project Coyote runs a Protect America's Wolves campaign, which aims to promote the compassionate conservation of our nation's wolves and works to safeguard wolves from persecution and inhumane hunting and trapping practices and policies across the country. Project Coyote works to ensure that state and federal wolf policies nationwide are aligned with the ecological, moral, cultural, and spiritual values that diverse stakeholders hold in regard to wolves. Project Coyote educates their supporters on wolf related issues across the country and provides resources needed to engage in advocating for wolves. Project Coyote provides comments on state wolf management plans and engages its supporters in wolf related policy-making decisions. Project Coyote also frequently engages in

litigation in defense of wolves. Most recently, in 2022, it filed a lawsuit against the state of Montana, challenging its inhumane and aggressive wolf hunting and trapping policies, which allow mass killing and practices such as baiting, snaring, and night hunting and overall threaten wolves' continued survival in the region. Project Coyote also in recent years challenged the state of Wisconsin over its decision to hold two wolf hunts in a single calendar year, which would have allowed the killing of half of the state's wolf populations and put the survival of the Wisconsin wolf population at risk. Project Coyote has been forced to spend resources, including staff time and money, because of the Service's challenged action(s) and inaction(s). These resources expended include staff time on building scientific expertise and research; staff time on legal and policy matters; paying for billboards in Idaho and Montana urging passerby to support relisting the gray wolf; litigation expenses, including the above-mentioned Montana and Wisconsin lawsuits; and other efforts. The Finding, under which Western gray wolves remain federally unprotected, has harmed and will continue to harm Project Coyote's interests in gray wolves and gray wolf conservation. The Finding will also adversely affect the substantial recreational, aesthetic, and conservational interests of Project Coyote's supporters, members, and staff.

24. The Kettle Range Conservation Group ("Kettle Range") has been closely involved in gray wolf protection in Washington state for many years; it is

based in northeastern Washington, the area of the state known for wild gray wolf packs. Kettle Range has submitted numerous petitions, letters, and comments to Washington state, the governor, and its agencies regarding gray wolves; it has also been involved in litigation over gray wolves. Most recently, for example, Kettle Range and other organizations petitioned the Washington Fish & Wildlife Commission in 2023 to undertake rulemaking to put in place enforceable standards to regulate Washington's management of gray wolves. As another recent example, in 2020 Kettle Range and other organizations submitted a rulemaking petition to the Washington Department of Fish and Wildlife requesting amendments to state rules on when wolves can be killed for conflict with livestock and asking for the adoption of a rule that would mandate the implementation of nonlethal deterrence measures. After their petition was denied, Kettle Range and co-petitioners successful appealed the denial to Washington Governor Jay Inslee; ultimately, Kettle Range and co-petitioners were forced to sue the Washington Fish & Wildlife Commission in 2022 for its failure to abide by Governor Inslee's directive. The instant Finding, under which Western gray wolves remain federally unprotected, has harmed and will continue to harm Kettle Range's interests in gray wolves and gray wolf conservation. The Finding will also adversely affect the substantial recreational, aesthetic, and conservational interests of Kettle Range's supporters, members, and staff.

25. Footloose Montana has an estimated 4,000 members and more than 12,000 supporters. Most of the supporters are in the Rocky Mountain West, and most of those are in Montana. Footloose Montana has been heavily involved in wolf conservation efforts. Footloose Montana works to educate the public about the value of wolves and the threats against them through trap-release workshops, letters to the editor, and newsletters. They have sponsored and run expert educational panels in Montana's three major cities, and plan to use recordings of these panels as statewide educational materials that will be available via YouTube. It funded and created 60-second television spots related to wolf protection that aired in Montana, northern Wyoming, and eastern Washington. Footloose Montana members have traveled to Wyoming and traveled within Montana in order to testify in front of commissions about wolf harvest. Footloose Montana has also been a plaintiff in multiple lawsuits, including one challenging the iPOM method used by Montana's Fish, Wildlife and Parks for counting wolves in Montana and a successful lawsuit to stop the trapping of wolves in grizzly habitat in Idaho. Footloose Montana also engages in lobbying activity, such as its efforts to defeat Montana House Bill 372 in the 2023 legislative session. This bill would have made wolf hunting and trapping a state constitutional right free from "undue" (or possibly any) limitations or restrictions. The Service's refusal to relist wolves has diverted most of Footloose Montana's resources to the fight for wolf conservation.

While Footloose Montana's mission is to end recreational trapping on public lands and fight for all wildlife, because of the Service's Finding, Footloose Montana has not been able to educate people on the importance of other species who are trapping targets and has not been able to spend as much time on mountain lions, black bears, and grizzly bears. The instant Finding, under which Western gray wolves remain federally unprotected, has harmed and will continue to harm Footloose Montana's interests in gray wolves and gray wolf conservation. The Finding will also adversely affect the substantial recreational, aesthetic, and conservational interests of Footloose Montana's supporters, members, and staff.

26. The Gallatin Wildlife Association has been involved in fighting laws and policies that harm gray wolves for years. GWA has been a plaintiff in multiple wolf-related lawsuits, including most recently a federal lawsuit challenging Idaho's authorization of wolf trapping and snaring in grizzly bear habitat (in which Footloose Montana was a co-plaintiff). GWA has also submitted comments to federal rulemaking, such as a December 5, 2021 comment urging the Service to relist the gray wolf, and has submitted comments to Montana regarding Montana's wolf management policies and practices. GWA has been forced to expend resources such as time and money on legal challenges that GWA would not have to do were the gray wolf subject to federal protection. GWA anticipates having to continue to expend resources such as time and money on legal challenges in the

future because of the Service's denial of the 2021 Petition and refusal to list the gray wolf. The instant Finding, under which Western gray wolves remain federally unprotected, has harmed and will continue to harm GWA's interests in gray wolves and gray wolf conservation. The Finding will also adversely affect the substantial recreational, aesthetic, and conservational interests of GWA's supporters, members, and staff.

27. Many of Plaintiffs' members, supporters, and staff live in or near areas occupied by Western gray wolves in Montana, Idaho, Wyoming, Colorado, California, Oregon, and Washington, or they visit these areas for hiking, camping, photography, birdwatching, observing wildlife, and other recreational and professional pursuits. Petitioners' members, supporters, and staff gain aesthetic enjoyment from observing, attempting to observe, hearing, seeing evidence of, studying, and photographing gray wolves, and also gain aesthetic enjoyment from observing ecosystems enhanced and fortified by these animals. The opportunity to possibly view wolves, or signs of wolves, in these areas is of significant interest and value to Plaintiffs' members, supporters, and staff, and increases their use and enjoyment of Western United States wildernesses and public lands. Plaintiffs' members, supporters, and staff have engaged in these activities in the past and have specific plans to continue to do so in the future.

28. Plaintiffs, as well as their members, supporters, and staff, are dedicated to ensuring the long-term survival and recovery of the gray wolf throughout the contiguous United States, and specifically in the Western United States, including Montana, and to ensuring that the Service complies with all applicable federal laws related to the survival and health of the Western gray wolf species. In furtherance of these interests, Plaintiffs' members, supporters, and staff have worked, and continue to work, to conserve wolves in throughout the contiguous United States and specifically in the Western United States, including Montana.

29. The interests of Plaintiffs and their members, supporters, and staff have been, and will continue to be, injured by the Service's denial of the 2021 Petition and the Service's Finding that the Western gray wolf does not warrant listing as endangered or threatened under the ESA. The interests of Plaintiffs and members, supporters, and staff have been, and will continue to be, injured by the Service's failure to comply with their obligations under the ESA and APA. These injuries are fairly traceable to the Service's actions and are redressable by this Court by granting the relief requested.

30. Clint Nagel is the President of the Gallatin Wildlife Association. He has lived in Montana for 13 years and has lived in different Western States for most of his life. Mr. Nagel enjoys recreating in nature, and one of the ways he

enjoys recreating in the wilderness and derives aesthetic enjoyment from his natural surroundings is through photography of landscapes and wildlife. Mr. Nagel treasures the memorable experience he had of seeing a gray wolf in the wild in Yellowstone National Park in Wyoming. To Mr. Nagel, witnessing a gray wolf is a special experience that one never forgets. To Mr. Nagel, the gray wolf is an iconic American species and he feels strongly that gray wolves should be part of the American landscape; that they are meant to be in Montana and in the Western States more broadly. Mr. Nagel has grave concerns that gray wolves will become rarer in Montana and in the Western States, due to the action(s) and inaction(s) of the Service and the ability of states to manage gray wolves themselves given the action(s) and inaction(s) of the Service. He worries that he may never personally experience or witness a gray wolf in the wild again in his lifetime, and it saddens him. It also worries and saddens Mr. Nagel that he may never witness a wild gray wolf in his home state of Montana.

31. Anja Heister is a co-founder and member and supporter of Footloose Montana. She studied biology in Frankfurt, Germany, receiving an M.S. in Biology from the Johann Wolfgang von Goethe University. She moved to Missoula, Montana in 2000 and received a Ph.D. in interdisciplinary studies, focusing on wildlife conservation, from the University of Montana. Her Ph.D. dissertation was on trapping. She is also the author of the book Beyond the North American Model

of Wildlife Conservation: From Lethal to Compassionate Conservation. Dr. Heister co-founded Footloose Montana in 2007, with the goal of wildlife conservation and protection through ending the commercial and recreational trapping of wildlife on public lands, which Dr. Heister believes is a matter of animal cruelty due to multiple factors. Dr. Heister has been advocating for wildlife conservation and against trapping for 17 years and counting. Dr. Heister has personally observed wolves in the wild three times, once in Yellowstone National Park and twice in the Bitterroot Valley of Montana. When she saw the wolves, she thought it was a beautiful and fantastic experience. Seeing wolves running in the wild made her heart sing. In wolves, Dr. Heister sees a clear biological and evolutionary connection to her beloved dogs. Dr. Heister saw these wolves while she was en route to conduct some of her favorite hobbies and activities, such as hiking, backpacking, and cross-country skiing, all with her dogs, in beautiful Montana wilderness areas. However, Dr. Heister no longer conducts some of her favorite recreational activities, such as cross-country skiing with her dogs, because she has grown more and more concerned about the danger of injury and death that winter trapping (including winter wolf trapping) poses to her dogs, should her dogs accidentally step into a trap hidden under snow or other cover. Dr. Heister has lost the ability to enjoy some of her favorite recreational pursuits due to the action(s) and inaction(s) of the Service. She has become emotionally and cognitively

distressed due to what she considers the increasingly precarious existence of gray wolves. She feels a psychological toll from to the increasing suffering of wolves due to the exploitative attitude and unscientific perspectives of Montana's Fish, Wildlife and Parks and the gray wolf's delisting in her region. She is particularly appalled about how the gray wolf has become a political object in her home state. Were the Western gray wolf listed under the ESA, Dr. Heister would feel a huge sense of relief and that justice has been done, and that her longtime efforts, which include significant personal sacrifices, over the course of decades have at last yielded some good.

32. Norman Bishop is a member and supporter of both Project Coyote and the Gallatin Wildlife Association. He served as Resources Interpreter for the National Park Service for 36 years in multiple locations throughout the western United States. He is currently a resident of Bozeman, Montana. As Park Ranger, he was a compiler and reviewer of the 1990 and 1992 "Wolves for Yellowstone?" reports and the 1994 Environmental Impact Statement for the reintroduction of gray wolves to Yellowstone National Park. He was also the principal interpreter of wolves and their restoration at Yellowstone National Park from 1985-1997. His job included educating the public about wolves and the reintroduction plan and responding to thousands of inquiries about wolves. He continued this educational work after his retirement from the NPS, by leading field courses on wolves for the

Yellowstone Association Institute. He has served on many committees, boards of directors, and advisory boards, including the Region 3 Montana Fish, Wildlife, and Parks Citizen Advisory Committee, and various groups now actively working towards wolf restoration in Colorado. Mr. Bishop has recreated throughout the western United States throughout his life, in particular through hiking, wildlife watching, and Nordic skiing. He continues to hike, wildlife watch, and ski, nowadays mostly in and around Bozeman and the Gallatin National Forest. One of the reasons Mr. Bishop moved to Montana many years ago was the greater Yellowstone ecosystem. In his opinion, the greater Yellowstone ecosystem is one of the last near-complete ecosystems in the world, which is very important to him. Mr. Bishop cares a great deal about wolves because, as with other apex predators and carnivores, they are a keystone species in their ecosystem and are a critical and necessary piece for the healthy functioning of the whole. When he was on the team that restored wolves to Yellowstone, he recognized that by restoring wolves, they restored a missing part of the ecosystem; restored its integrity and wholeness. It is intensely exciting to Mr. Bishop that he lives and recreates in such an ecosystem; to Mr. Bishop, life is profoundly different when in the presence – even if unseen, except for small traces – of wolves and grizzly bears (another apex predator). This ecological integrity requires wolves, however – and not just wolves' mere presence, but rather it requires the establishment of stable, lasting packs. Wolf

packs serve to educate new generations of wolves, passing on culture, traditions, and knowledge. Without stable packs, wolves cannot fulfill their ecological role. In addition to their crucial contribution toward a balanced ecosystem, Mr. Bishop also thinks gray wolves are beautiful and awe-inspiring animals, who belong and deserve to exist and thrive in the wild in healthy and well-functioning populations. Mr. Bishop remembers vividly the first time he saw wolf tracks in the wild, around 1997, when he was skiing in the Blacktail Plateau. Although he interacted with wolves (including by carrying them and feeding them) during the reintroduction of wolves into the Northern Rockies, seeing their tracks in the wild was a truly special experience and gave him a feeling of fulfillment and success. To this day, one of the things Mr. Bishop enjoys most in his outdoor recreational pursuits is seeing wildlife and signs of wildlife such as animal tracks. Seeing wolf tracks in the wild hugely enriches not only his recreational activities but also his day-to-day life. But his sense of fulfillment and success are deeply threatened by the challenged action(s) and inaction(s) of the Service, as is his thrill and enjoyment of seeing signs of wolves and enjoyment of the healthy and functioning ecosystem. Mr. Bishop worries that this beloved ecosystem will fail if wolves continue to be killed as they are in the Northern Rockies. He worries that his children, grandchildren, and their grandchildren will not have the opportunity to witness wild wolves or signs of their thriving presence, or experience the undisrupted greater Yellowstone

ecosystem he has come to know and love. When he thinks about this, Mr. Bishop is reminded of Henry David Thoreau's words when he, too, lamented the disappearance of ecosystems and their inhabitants: "I am that citizen whom I pity… I wish to know an entire heaven and an entire earth."

33. Suzy Bennitt is a Board Member and supporter of Animal Wellness Action, an organization dedicated to the conservation and protection of animals in the United States, including grey wolves. She currently resides in Ojai, California. Ms. Bennitt also served on the Yosemite Conservancy' Council of Directors from 2004 to 2022, where she worked to preserve the ecological integrity of Yosemite National Park so that visitors from around the world could enjoy its natural splendor and wildlife. She has been deeply involved in animal conservation issues since 1993 and have been a very active and vocal advocate on a number of fronts for increasing protections for wildlife, including wolves. both on the state and federal level, and opposing the hunting of wolves in the United States. Through her work as Board Member of Animal Wellness Action, she has supported communications and lobbying efforts to implement more protective policies for wolves. These efforts have included various communications strategies, including writing letters to newspapers, meeting with federal and state legislators, creating social media posts, and other activities, to both try and influence state executives, legislators, and agency staff to educate the general public to the plight of wolves in

the United States. As a resident of California, Ms. Bennitt is aware that California's wolves were exterminated in the early 1900s by a nationwide eradication program on behalf of the livestock industry. Wolves began to return to Oregon and Washington in the 2000s, and in 2011, a wolf from Oregon made his way into California. Ms. Bennitt is aware that, today, fewer than a dozen known wolves now live in California, including the Lassen pack. She is also aware that the seven-member Shasta pack, the state's first in nearly 100 years, disappeared from Siskiyou County within months after its discovery in 2015 amidst fears of poaching. Ms. Bennitt has read recent reports of wolves migrating from Oregon to other areas in California, including one known as OR-93 in 2021 that approached Los Padres National Forest, a national forest that borders my home in Ojai. She has also read of a reported citing of a wolf in 2024 in Mount Pinos, also in the Los Padres National Forest. Lastly, she is aware of reported sightings of wolves near or in Yosemite, and she hopes that one day wolf packs return to this National Park so that she and other visitors can enjoy them in the wild. She believes that protection of wolves in the Northern Rocky Mountains states will lead to more migration of wolves into the area of California that she inhabits, and will also increase the likelihood that she can enjoy spotting wolves in the national forest near my home and in Yosemite. She has traveled in the Western U.S., including California, Colorado, Idaho, Nevada and Utah and Wyoming, for recreational purposes,

including hiking, camping and skiing. Ms. Bennitt and her husband are hoping to travel to Montana and Yellowstone Park this year to hike and view wildlife, including wolves. Ms. Bennitt is constantly on the lookout for signs of wolves; she has not yet been able to see or photograph one in the wild. Being able to do so would be one of the highpoints of her life and is one of the main reasons why she continues to hike these areas. She is aware that the actions of the Service in this matter in refusing to restore Endangered Species Act protections for Western wolves is adversely impacting the likelihood that she will have a chance to see wolves in the wilds of the Northwest and in the area of California where I reside, thereby greatly diminishing my use and enjoyment of these natural resources. In addition, she is aware of the methods used in hunting wolves in the Northern Rockies states, including the inhumane use of hounds to track and kill wolves, the irresponsible actions of unqualified hunters, and the open exceedances of wolf kill quota, all of which have had a significant adverse impact on her recreational, conservational, and aesthetic interests.

34. Gail Miller-Richardson is a member and supporter of the Gallatin Wildlife Association. She is 77 years old and lives in Bozeman, Montana. She worked within the travel and tourism industry in Greater Yellowstone for over 20 years; tourism is a lucrative and important industry in Montana. From 1978 until 1987, she worked in Yellowstone National Park (YNP), in the travel and

information, transportation and group tour departments. She then worked for a travel company "Off the Beaten Path" in Bozeman which organizes environmentally conscious small group and custom travel, from 1990 to 2012. Specifically, Ms. Richardson worked as a naturalist guide, taking small groups on tours in YNP and throughout the western United States. She also designed itineraries for small group trips for conservation organizations such as World Wildlife Fund and National Parks Conservation Association. Upon gray wolf reintroduction into YNP in 1996, wolf-watching became a huge draw for tourists from the United States and around the world. She remembers the emotions of seeing and hearing wolves in YNP for the first time. She and her clients were crying with joy. To them, YNP's apex predator had returned and would make the ecosystem whole. In her experience, wolves, grizzly bears and bison are the wildlife species that visitors to YNP want to see. Ms. Richardson has commented multiple times on both federal and Montana state wildlife policies, including policies affecting wolves like hunting and trapping, and has also written to Idaho and Wyoming state wildlife agencies. She has testified before Montana state legislative committees about various wildlife issues, including wolves. Her recreational pursuits have included hiking, backpacking, and cross-country skiing; she and her husband continue to hike in and around Yellowstone and plan to do so in the future. A particular thrill was and continues to be seeing wolves and bears

when hiking or skiing, or seeing evidence of them, such as through tracks and scat. To Ms. Richardson, even the knowledge and awareness of wolves' presence, which carries the idea of wildness and an ecosystem that is whole and unbroken, is uniquely thrilling. Ms. Richardson is always looking for wildlife, particularly grizzly bears and wolves, whenever she visits the park or national forest lands around the park. She personally observed the changes that wolf reintroduction brought to Yellowstone's ecosystem, both in plant and wildlife ecology. She found it fascinating to watch the Park return to a more pristine state, where the ecosystem now has all its native wildlife, due to the return of the gray wolf. Ms. Richardson is very emotionally attached to YNP, including its wildlife, ecology, and geology. Coming to Yellowstone and Montana changed her life. Yellowstone made her able to appreciate the complexity and beauty of the natural world. This appreciation has also made her realize how much there is to lose. She worries that she and her family may no longer be able to see wolves, or evidence of gray wolves, in areas around and even within Yellowstone. For example, around one-fifth of the park's wolf population was killed by hunters in 2021. She worries that future generations may not have the opportunity to experience the whole ecosystem of the area, of which YNP is the anchor. Ms. Richardson believes that it is important for people to come out of their comfort zone, out of urban environments and immerse themselves in the natural world, not only for themselves, but also because she

believes that we cannot expect people to appreciate and preserve the natural world, in all of its complexity and biodiversity, without experiencing it themselves. Without appreciation and firsthand knowledge, people will not care about preserving natural spaces and their inhabitants. Ms. Richardson worries that in the future, her nephews, great-niece, and great-nephews will not be able to experience the biodiverse Yellowstone that she has. A particularly traumatizing incident was the Phantom Lake Pack's destruction in 2021, when pack members were harvested after crossing the invisible boundary between Yellowstone National Park and Custer-Gallatin National Forest lands. Ms. Richardson went to hearings and saw many very emotional and outraged people. She herself was appalled and angry; the incident caused her great pain. It was traumatic to realize that the Phantom Lake Pack, members of which she had personally observed, no longer exists due to needless death and destruction caused by trophy hunters. It makes her sad to think of the wolves she personally observed being killed upon crossing an invisible boundary by hunters waiting for them. She believes that the lack of scientific management of wolves in Montana, Wyoming and Idaho means more dead Yellowstone wolves, and that is unacceptable and must be stopped.

35. Samantha Miller is a staff member of the Center for a Humane Economy and a supporter of the Center and Animal Wellness Action. Since the release of the Sawtooth Pack in Idaho in 1997, Ms. Miller has personally invested

in gray wolf recovery in the Western United States. At the age of 12, she saved her allowance to symbolically "adopt" a member of the Sawtooth pack, Chemukh, the breeding female. Growing up in California, she dreamed of seeing wolves in her home state. From her childhood, she dedicated herself to ensuring wolves were recovered and protected. Unfortunately, in many ways, she feels that she has failed them. She believes that the Service's earlier decision to downlist the NRM DPS has been disastrous, causing grave injury to wolves and to those, like her, who have worked tirelessly to protect them. Knowing that wolves across the NRM are being brutally slaughtered deeply distresses her. As wolves expanded across the West, she sought to live and recreate in wolf country. She has been a resident of California, Oregon, Washington, and Colorado. Much of her family now lives in Idaho and Montana. She am an avid hiker and backpacker and a member of both Colorado Backcountry Horsemen and Rocky Mountain National Park Search and Rescue. She has sought wolves while recreating in various national forests and parks, including but not limited to: Colville National Forest (WA); Okanogan-Wenatchee National Forest (WA); Yellowstone National Park (MT); Selway-Bitterroot National Forest (MT); Custer-Gallatin National Forest (MT); Grand Teton (WY); Caribou-Targhee National Forest (ID); Mount Hood National Forest (OR); Opal Creek Wilderness (OR); Arapaho and Roosevelt National Forests (CO); Routt National Forest (CO); Never Summer Wilderness (CO); Indian Peaks

Wilderness (CO); Rocky Mountain National Park (CO); and White River National Forest (CO). When she lived in Washington, she intentionally sought acreage in wolf country and leased her land to a cattle producer to implement livestock-wolf coexistence techniques. By using electric fencing, mixed herd composition, guardian dogs, spotlights, and human presence, she and the cattle producer experienced zero losses from wolf predation. She was fortunate enough to hear wolves in both the Colville and Okanogan-Wenatchee National Forests. She is currently a resident of Grand County, Colorado, where wolves were released in December 2023. She has worked diligently to help her community live with wolves, ensuring access to non-lethal assistance. However, the federal government's abandonment of wolves has sent a clear message to livestock producers that wolves are not valued. Her state borders Wyoming, and the area has already lost several wolves from our first wolf pack to Wyoming wolf hunters. She believes that without endangered species protections from the Service, wolves, who do not recognize manmade boundaries, will continue to be killed mercilessly. She is aware that the lack of federal protection allows wolves to be run over by snowmobiles, tortured, trapped, snared, gunned from the sky, and their pups killed in their dens. She sees the federal government as complicit in this, and she believes that the United States Department of Agriculture has become an ally in what she considers to be a war on wolves through their APHIS-Wildlife Services program.

To her, this is unacceptable. She has devoted much of my life to protecting wolves, including her professional career. After the Profanity Peak Pack was slaughtered by the Washington Department of Fish and Wildlife in 2016, she pivoted her career to wildlife policy. In 2020, she co-authored "Wolf Conservation Planning: A Guide for Working Together Using Science, Inclusivity, and Ethical Practices" with the nation's leading wolf experts. The decision to downlist wolves has devastated her personally and has had a significant impact on future generations. She believes her six-year-old son deserves to live in a country where wolves are protected and not persecuted. She hopes he never learns the details of the mass killing allowed to happen to wolves because of Service action, and she worries that he may never grow up to experience wolves as she has. The action(s) and inaction(s) of the Service has harmed Ms. Miller emotionally, recreationally, and conservationally.

36. The relief requested by Petitioners here, if granted, would redress, or at least lessen, the injuries of Plaintiffs and their members, supporters, volunteers, and staff. The relief requested by Plaintiffs, if granted, would require the Service to comply with the requirements of the ESA and APA and would thereby benefit the health of wolf populations in the Western States; increase ecological stability in wolf habitats in the Western States; and preserve and potentially expand the gray wolf's current occupied range.

Defendants

37. Defendant U.S. FISH AND WILDLIFE SERVICE is an agency within the U.S. Department of the Interior that ESA. It has been delegated the authority to administer the ESA with respect to terrestrial species, including the gray wolf.

38. Defendant MARTHA WILLIAMS is sued in her official capacity as Director of the U.S. Fish and Wildlife Service. As Director, Ms. Williams is the federal official with responsibility for all Service actions and/or inactions challenged in this case.

39. Defendant U.S. DEPARTMENT OF THE INTERIOR is the federal department responsible for applying and implementing the federal laws and regulations challenged in this case.

40. Defendant DEB HAALAND is sued in her official capacity as Secretary of the Interior. As Secretary, she has supervisory responsibility over the U.S. Fish and Wildlife Service, including the ultimate responsibility for the administration of the ESA with regard to threatened and endangered terrestrial and freshwater plant and animal species.

STATUTORY AND REGULATORY BACKGROUND

41. The "plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction, whatever the cost." *Tenn. Valley Auth.*

v. Hill, 437 U.S. 153, 184 (1978). The ESA is "a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531(b).

42. The ESA directs the Secretary of the Interior, through the Fish and Wildlife Service (the "FWS"), to list species that the Secretary determines are endangered or threatened. *Rancho Viejo, LLC v. Norton*, 323 F.3d 1062, 1064 (D.C. Cir. 2003). The ESA defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6). The ESA also protects species in less immediate peril, which the FWS may list as "threatened species." A threatened specifies refers to "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. § 1532(20).

43. Under § 4(d) of the ESA, the FWS must issue regulations "necessary and advisable to provide for the conservation of [endangered and threatened] species." 16 U.S.C. § 1533(d).

44. Under the ESA, a "species" includes "distinct population segments" of a species ("DPS"). 16 U.S.C. § 1532(16). In order to be a DPS, a population of a species must be both "discrete" and biologically and ecologically "significant." 61 Fed. Reg. 4722, 4725 (Feb. 7, 1996).

45. The ESA requires that FWS consider the danger of the subject species' extinction "in all or a significant portion of its range." 16 U.S.C. § 1532(6), (20). The FWS later defined "range" as "the general geographical area within which the species is currently found." 79 Fed. Reg. 37578, 37579 (July 1, 2014) ("SPR policy"). Range also "includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitats)." 79 Fed. Reg. 37578, 37583.

46. Although the Ninth Circuit has previously held that the FWS's interpretation of "range" to mean "current range" is entitled to deference, the Service is no longer entitled to that deference. *Loper Bright Enterprises v. Raimondo*, No. 22-451 (2024); *Relentless, Inc. v. Department of Commerce*, No. 22-1219 (2024).

47. Even when the agency did receive deference under the law, the SPR policy nevertheless "require[d] that FWS consider the historical range of a species in evaluating other aspects of the agency's listing decision, including habitat degradation." *Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1067 (9th Cir. 2018) (citing *Humane Soc'y v. Zinke*, 865 F.3d 585, 605–06).

48. The Service cannot simply "brush off a substantial loss of historical range as irrelevant to the species' endangered or threatened status," *Humane Soc'y*,

865 F.3d at 605, and now, given *Loper* and *Relentless*, the interpretation of the term "range" warrants fresh inquiry.

49. The meaning of the phrase "significant portion of range" has been subject to a number of challenges throughout the years, and courts have struck down all Service interpretations of the phrase to date.

50. ESA listing decisions must be made "solely on the basis of the best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A).

51. The ESA requires the FWS to list a species if they are an endangered or threatened species due to any one or a combination of the following five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. 50 C.F.R. § 424.11(c); 16 U.S.C. § 1533(a)(1).

52. FWS listing determinations are subject to review under § 706 of the APA. Under that standard, a reviewing court must overturn an agency decision if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A reviewing court "must not 'rubber-stamp … administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.'" *Bureau of Alcohol,*

Tobacco and Firearms v. Fair Lab. Rel. Auth., 464 U.S. 89, 97 (1983) (quoting *Nat'l Lab. Rel. Bd. v. Brown*, 380 U.S. 278, 291–292 (1965)).

FACTUAL BACKGROUND

The Gray Wolf and the ESA

53. The gray wolf once ranged throughout most of the North American continent. Prior to European contact, the total gray wolf population the Western United States and Mexico could have been as high as several hundreds of thousands of individuals. North America-wide, it may have been two million gray wolves.

54. Wolves coexisted with indigenous human populations of North America for thousands of years. Wolves were, and continue to be, prominently featured in indigenous peoples' myths, legends, and oral histories. Wolves sometimes occupied a sacred or near-sacred space in indigenous spirituality.

55. Wolves and indigenous peoples not only coexisted but may even had had cooperative reciprocal relationships at times, where individual wolves would be tamed. Some tribes even used the same word for "wolves" and "dogs."

56. Out of all members of its genus, the gray wolf is the species most specialized for cooperative hunting. Gray wolves are highly social and highly expressive animals. They typically live and hunt in packs, which usually consist of a nuclear family (a breeding pair and their offspring) and other non-breeding

adults. Lone wolves will often leave packs after reaching adulthood, dispersing and, if the lone wolf can locate a mate, potentially establish a new pack if the pair can maintain an unclaimed area with sufficient food over time. Wolves even sometimes establish lifelong mates.

57. For centuries after the settlement of North America by European colonists, wolves were widely persecuted by settlers and their descendants. In the early 20th century, the federal government itself sponsored a nationwide wolf eradication campaign. By the middle of that century, wolves had been nearly eliminated from the lower 48 states.

58. As recognition of the ecological importance of the gray wolf as an apex predator grew, however, conservation efforts began.

59. Between 1966 and 1976, the Service and predecessor agencies declared as endangered regional subspecies of the taxonomic species of the gray wolf. In 1978, the FWS downlisted the gray wolf in Minnesota to threatened but kept the gray wolf in the endangered category for the remaining states (excluding Alaska). 43 Fed. Reg. 9,607, 9,608, 9,612 (Mar. 9, 1978). In 1995 and 1996, the FWS reintroduced wolves to Idaho and Yellowstone National Park. *See* 65 Fed. Reg. 43450, 43457 (July 13, 2000).

60. The FWS began its efforts to remove ESA protections for wolves only several years after reintroducing wolves. *Id.* at 43450.

61. In 2003, the FWS issued a rule subdividing the gray wolf listing into three "distinct population segments" (DPS) – an Eastern segment, a Western segment, and a Southwestern segment – and downlisted the Eastern and Western segments as threatened instead of endangered. 68 Fed. Reg. 15804, 15818 (Apr. 1, 2003). Two district courts subsequently invalidated the 2003 Rule's attempted designation of those three segments. *Defs. of Wildlife v. U.S. Dep't of the Interior*, 354 F. Supp. 2d 1156, 1170-72 (D. Or. 2005); *Nat'l Fed'n v. Norton*, 386 F. Supp. 2d 553, 564-65 (D. Vt. 2005).

62. In 2009, the FWS simultaneously identified and delisted a new gray wolf DPS – the Northern Rocky Mountain population. 74 Fed. Reg. 15123 (Apr. 2, 2009). Although the rule was struck down in court in *Defs. of Wildlife v. Salazar*, 729 F. Supp. 2d 1207, 1228 (D. Mont. 2010), it was then reinstated by an act of Congress in 2011, circumventing the courts and the science which underpinned the court's decision. Department of Defense and Full-Year Appropriations Act, 2011, Pub. L. No. 112-10, § 1713, 125 Stat. 150 (2011). This purely political maneuver directed the FWS to delist the NRM population, excepting the portion of it located in Wyoming.

63. Then, after multiple delisting attempts and court reversals, the Wyoming gray wolf was delisted in 2017 and has remained delisted since. 82 Fed. Reg. 20,284 (May 1, 2017).

64. Therefore, since 2011, Idaho and Montana have been responsible for management of gray wolves within their borders, and since 2017, Wyoming has had uninterrupted management of gray wolves within the state.

65. The wolf populations in Idaho, Montana, and Wyoming are of critical importance for other Western states and for the success of the species' recolonization of significant portions of their former range.

66. Washington relies on dispersing wolves from source populations located in Idaho and Montana that regularly migrate into the state.

67. Colorado receives dispersals from the Greater Yellowstone Area.

68. Oregon similarly relies on dispersing wolves from its northern neighbors of Idaho and Washington.

69. California then receives dispersals of wolves from Oregon.

The 2021 Petition

70. In 2021, Animal Wellness Action, the Center for a Humane Economy, Project Coyote, Kettle Range Conservation Group, Footloose Montana, the Gallatin Wildlife Association, and dozens of other organizations filed a petition with the FWS requesting federal ESA protections for gray wolves in the Western United States, or, in the alternative, gray wolves in the Northern Rocky Mountains.

71. Though the FWS released an initial 90-day finding in September 2021 that the petitioned action "may be warranted," it has now reversed course in its 2024 "not warranted" Finding.

72. The FWS's action was taken despite several documented instances of wolf mismanagement in the Northern Rocky States; those management failures were recognized by the Service itself in, ironically, its very press statement announcing its decision to deny Plaintiff's petition, which recognized that "[t]he states of Montana and Idaho recently adopted laws and regulations designed to substantially reduce the gray wolf populations in their states *using means and measures that are at odds with modern professional wildlife management*."[1] (Emphasis added.)

Gray Wolf Populations and Management in the Western States

Montana

73. Recently, in 2023, Montana published a wolf management plan in which the stated objective is reduce the state's population from nearly 1,100 to around 450 wolves.

[1] *U.S. Fish and Wildlife Service completes status review and finding for gray wolves in the Western United States; launches National Recovery Plan*, U.S. Fish & Wildlife Service (Feb. 2, 2024), https://www.fws.gov/press-release/2024-02/service-announces-gray-wolf-finding-and-national-recovery-plan.

74. In 2021, Montana passed a law that, among other wolf killing liberalizing provisions, authorizes the Fish and Wildlife Commission to permit the harvest of an unlimited number of wolves by the holder of a single wolf hunting or wolf trapping.

75. Since 2021, Montana's Fish, Wildlife, and Parks Department has been legislatively stripped of important discretionary decision-making abilities with regards to wolf management by the Montana State Legislature.

76. Non-scientific, politically motivated bills passed in 2021 included House Bill 224, which mandated that Montana Fish, Wildlife, and Parks permit the use of snares for trapping wolves. Another bill, Senate Bill 314, mandated Montana Fish, Wildlife, and Parks to adopt new rules to reduce the wolf population to a size as low as 15 breeding pairs.

77. Since 2021, wolves in Montana may be taken by methods including firearms, snaring, trapping, baiting, and, on private land, at night and with artificial lights and night scopes.

78. In both 2021 and 2023, bills in the Montana legislature that would have made wolf hunting and trapping a state constitutional right free from "undue" (or possibly any) limitations or restrictions very nearly passed the supermajority requirement to be placed on the ballot.

79. Also in 2021, Montana switched from its Patch Occupancy Model to an "integrated" Patch Occupancy Model, or iPOM, in 2021. iPOM uses three submodels, a practice which compounds error, and two of the three models are properly meant to estimate distribution rather than abundance.

80. There are serious and substantial concerns about the use of iPOM to estimate wolf population sizes in Montana. *See infra* ¶¶ 161-172.

81. The 2022 iPOM estimate of wolf population size in Montana was 1,087 wolves and 181 wolf packs.

82. Montana's Fish, Wildlife, and Parks also fails to apply the best available science, much less science at all, in other ways. In Montana's 2023 wolf management plan, Montana's Fish, Wildlife, and Parks erroneously cited scientific studies. In the plan, Montana's Fish, Wildlife, and Parks claimed that studies support propositions that they, in fact, do not.

83. For one example, the management plan stated that "with wolf distribution broadly distributed across Montana and high rates of individual dispersal among packs, the population is sufficiently connected to maintain genetic viability and diversity," and cites for support vonHoldt et al. (2010).

84. However, vonHoldt et al. (2010) did not stand for that broad proposition. Indeed, the study expressed concern over the genetic ramifications of management plans developed by Montana and Idaho that included higher levels of

hunting and lethal removal due to livestock conflict; it stated that the study itself was limited in its ability to infer population structure and genetic connectivity for current conditions in the NRM; and suggested that maintenance of adequate effective population sizes might require managing for higher wolf survival in certain areas and during seasonal dispersal peaks. Additionally, while the study was published in 2010, the data that was the basis for the study were DNA samples collected from 1995 to 2004. This data is now nearly three decades old and should not be relied upon by Montana's Fish, Wildlife, and Parks for its assertion that the current gray wolf population is "sufficiently connected to maintain genetic viability and diversity."

85. As another example, the management plan used Bassing et al. (2020) to stand for the proposition that "wolf packs in the NRM are demographically and genetically connected by high rates of long distance dispersal," but Bassing et al. (2020) did not conduct a comprehensive survey of the region, used very limited number of genetic markers, and reported "little evidence to support our hypotheses that immigration compensated for harvest mortality within groups of wolves in the Rocky Mountains," and also reported that "…immigration did not buffer groups from the effects of harvest."

86. As yet another example, the management plan treated "dispersal" and "effective dispersal" as synonymous terms, which is a basic failure of scientific

understanding and terminology akin to treating "population size" and "effective population size" as synonymous.

87. In sum, Montana's gray wolf management plan, its population estimates, and any resulting rulemaking or other regulatory decisions are by necessity suspect and cannot be relied upon by the Service in a manner that obeys the requirements of the ESA.

88. Yet the Service relied on Montana's wolf management plan and population estimates heavily in its SSA.

Idaho

89. In 2023, Idaho finalized a new wolf management plan that stated an objective of reducing an estimated peak population of 1,337 wolves in 2022, to a population of approximately 500 wolves in the future.

90. Even before the new management plan, the main source of wolf mortality in Idaho was legal harvest, according to the state.

91. While before 2019, hunting was the primary form of legal harvest, since that year, trapping has surpassed hunting. According to the state, during 2019 to 2021, trapping harvest increased 91% and hunting harvest increased 18%, when compared to the three years immediately preceding.

92. In 2022, the Idaho Department of Fish and Game sold over 53,600 wolf hunting and trapping tags.

93. The number of wolf trapping tags sold each year has been steadily increasing since 2017, according to the state.

94. For example, in the 2021-2022 season, over twice as many wolf trapping tags were sold as were sold in the 2017-2018 season.

95. According to the state, for the years from 2019 to 2021, Idaho wolf numbers fluctuated around 1,270.

96. While this management plan purports a population goal of around 500, the publicly stated intent of lawmakers behind Idaho's Senate Bill 1211, which was passed in 2021, was to ultimately reduce the population to around 150 (about a 90% reduction).

97. Idaho's Senate Bill 1211 statutorily liberalized wolf harvest in Idaho state in multiple ways and removed science-based discretion from the Idaho Department of Fish and Game. Among other things, S.B. 1211 authorized a year-round trapping season on private property and authorized additional methods of take that had been previously prohibited (no weapons restrictions, use of bait, nighttime hunting and trapping, allowing the use of vehicles and dogs for hunting wolves).

98. While the current management plan calls for an ideal population size of around 500, the liberalization of wolf harvest, the poor population count methodology (*see infra* ¶¶ 156-160) the rapidly increasing number of trapping tags,

and the new statutory delay of 30 days before a harvester is required to report a wolf harvest, will undoubtedly lead to an over-harvest of hundreds of wolves before the Idaho Department of Fish and Game even knows, much less before the Department can act.

99. Now, In Idaho, wolves may be taken year-round, with no daily or season bag limit.

100. For half the year, Idaho permits "expanded hunting methods," during which use of dogs, night hunting, bait on private lands, and use of motor vehicles is allowed, and weapons restrictions no longer apply.

101. Idaho implemented a new wolf population estimate method in 2019. The state installed about 500 trail cameras that take photographs at timed intervals upon detecting motion. A statistical model called a "space-to-event" (or STE) model is applied to the photographic data in order to find the average amount of space between wolves. That average is then used to estimate the statewide population size.

102. There are serious and substantial concerns about the use of the STE method to estimate wolf population sizes in Idaho. *See infra* ¶¶ 156-160.

103. Idaho has failed to release an annual wolf management report for years. The last report was for the year of 2016, though it was released years later, in 2018. Unless it has been reported privately to the Service, this failure violates

the 2012 Memorandum of Understanding ("MOU") between Idaho, Montana, Wyoming, and the U.S. Fish and Wildlife Service.

Wyoming

104. In Wyoming, wolves may be taken by any legal means year-round and without limit in the "Predatory Animal Area," which covers most of the state.

105. Since 2022, Wyoming only allows for 160 wolves total in the state; the public objective of Wyoming's hunting season is to maintain the total wolf population at the 160-wolf level.

106. As of the end of 2023, Wyoming reported 352 wolves and 43 packs in the state. Most of these wolves fall within the Wolf Trophy Game Management Area and so are subject to hunting without bag or method limits.

107. Gray wolves can even be run over with vehicles, including snowmobiles, legally.

108. In a February 29, 2024 incident, a Wyoming man who ran down a young female gray wolf with a snowmobile, captured her, taped her muzzle shut, paraded her in a local bar while subjecting her to extended and drawn-out abuse – including going so far as to kiss the dying wolf while being filmed; the wolf too weak to do anything but bare its teeth – and finally killed her. On information and belief, this individual has only received a citation for bring a wild animal into an eating establishment.

109. In 2023, over 100 wolves were known to be killed by humans in Wyoming. Human-caused mortalities represent almost 90% of all known wolf mortalities in the state.

Oregon

110. In 2016, the Oregon Legislature passed a law to statutorily enshrine the Oregon Fish and Wildlife Commission's delisting of the gray wolf as endangered under the Oregon ESA.

111. Therefore, the gray wolf cannot be relisted in Oregon by rulemaking by the Oregon Department of Fish and Wildlife. Relisting would require legislative action.

112. The subsequent 2019 Oregon Wolf Conservation and Management Plan developed by the Oregon Department of Fish & Wildlife opened the proverbial door to authorized hunting and trapping in the future to control wolf populations in "Phase III" of the plan.

113. Gray wolf population growth has stalled in the state since 2021. In its recently released 2023 annual report, the Oregon Department of Fish & Wildlife provided a minimum known wolf count of 178. The count was also 178 in 2022.

114. Oregon offers nearly 68,500 square kilometers (26,400 square miles) potential wolf habitat that could support a population of approximately 1,450 wolves.

115. Since 2021, known illegal take has increased by an average of 450%.

116. According to the Oregon Department of Fish & Wildlife, in 2023, twelve illegal wolf takes (including seven by poison) are known to have occurred. 2023 alone represents a substantial increase in poaching from the already-high levels of immediately previous years.

117. In 2022, seven Oregon wolves were known to have been killed illegally.

118. In 2021, eight wolves were found unlawfully killed by poison; this included an entire pack.

119. Thus, from 2021 through 2023, there were a total of 27 known illegal wolf takes.

120. However, in the entire three immediately preceding years (2018, 2019, and 2020), there was a combined illegal take of only six wolves.

121. In an April 12, 2024 news release, Oregon's Department of Fish and Wildlife expressed that it "remains extremely concerned about the number of confirmed poaching events and other suspicious deaths of wolves in Oregon."[2]

122. ***Washington***

[2] *2023 Annual Wolf Report Available*, Oregon Dep't of Fish and Wildlife Wolf Updates (April 12, 2024), https://dfw.state.or.us/wolves/updates.html.

123. While the gray wolf has been classified as endangered under Washington state law, Washington recently sought public comment on a proposal to reclassify the gray wolf in the state from endangered status to sensitive status.

124. In 2019, the Confederated Tribes of the Colville Reservation removed season and bag limits on wolf hunting.

125. The Service, however, only accounted for "limited" tribal harvest in their SSA. The Service neglected the fact that bag and season limits have been removed.

126. Washington, like Oregon, has also experienced a large spike in illegal wolf take in recent years.

127. In 2023, four wolves were killed illegally.

128. In 2022, nine wolves were poached, including six by poison.

129. In the preceding three years, however, Washington only had two unlawful takes in 2021 and zero to one in 2020 and 2019.

130. By last count, Washington has 260 wolves in 42 packs. Most are in the northern and eastern parts of the state.

Utah

131. There are currently no known established wolf packs in Utah.

132. Utah requires by law that state wildlife officials prevent the establishment of any viable wolf pack in the state by extermination of any wolves that disperse into the state. Utah Code § 23-29-201(2).

Nevada

133. Nevada does not have a known established wolf population.

134. Nevada recently had a suspected sighting of three wolves in March 2024, but after lab testing, the animals were revealed to have been coyotes, not wolves.

135. Gray wolves are rarely sighted in Nevada. One was documented in 2016, and the next most recent confirmed report of a gray wolf in the state was in 1922.

California

136. Extirpated from the state in the 1920s, the gray wolf began to recolonize California by dispersal in 2011.

137. According to the California Department of Fish and Wildlife, there are seven confirmed packs today, all in Northern California, and 44 known wolves in California.

Colorado

138. Colorado Parks and Wildlife cannot provide a specific population number for wolves in Colorado, but there are very few, by any count. As many as

six congregating wolves were identified by Colorado Parks and Wildlife in 2020, and in 2021, Colorado saw the first breeding pair established in the state in multiple decades.

139. Due to a recent effort to reintroduce wolves into Colorado, a small number of wolves were relocated from Oregon into Colorado in late 2023.

140. ***New Mexico and Arizona***

141. Northern portions of New Mexico and Arizona are considered suitable habitat for the Western gray wolf, per the SSA.

142. Currently, there is no known established Western gray wolf population in New Mexico or Arizona.

143. The Mexican gray wolf (*Canis lupus baileyi*), which is a subspecies of the gray wolf (*Canis lupus*) and whose range covers New Mexico and Arizona, remains endangered under the ESA.

144. Inbreeding and a lack of genetic diversity are serious threats to the Mexican gray wolf.

145. Were the Western gray wolf to successfully disperse into New Mexico and Arizona, it could lead to genetic exchange between the Western wolves and Mexican wolves, increasing Mexican wolf genetic diversity.

The Service's "Not Warranted" Finding

The ESA Five-Factor Threat Analysis

146. The ESA requires the FWS to list a species if they are endangered or threatened due to any one or a combination of the following five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. 50 C.F.R. § 424.11(c); 16 U.S.C. § 1533(a)(1).

147. In their 2009 rule delisting the NRM wolf, the Service stated that "if a State changed their regulatory framework to authorize the unlimited and unregulated taking of wolves … emergency listing would be immediately pursued." 74 Fed. Reg. 15,123, 15,148 (Apr. 2, 2009).

148. In its February 2, 2024 press release describing the Finding, the Service unequivocally acknowledged that "[t]he states of Montana and Idaho recently adopted laws and regulations designed to substantially reduce the gray wolf populations in their states using means and measures that are at odds with modern professional wildlife management." *See supra* ¶ 72.

149. In multiple states, most notably Idaho and Montana, limitations and restrictions on harvest methods, seasons, and bag limits have recently been reduced or eliminated. *See supra* ¶¶ 73-109; 123.

150. Idaho and Montana have also recently experienced the political co-option of relevant, science-based state agency authority over wildlife. The agencies in these states responsible for wolf management and ensuring wolf conservation have lost authority and discretion since 2021. Instead, the state legislatures are increasingly mandating these agencies' action(s) and inaction(s) with respect to wolf management policy and implementation. *See supra* ¶¶ 75-76; 78; 97-99.

151. It is likely that the state agencies that should have authority and discretion over wolf management will be subject to even more legislative usurpation in the future in Idaho and Montana.

152. Idaho, Montana, and Wyoming are the most important and critical states for the gray wolf, serving as the ultimate source populations for the rest of the Western States.

153. Declines in population in Idaho, Montana, and Wyoming will have cascading effects across the Western States.

154. Over the past decade, the gray wolf has increasingly become a political flashpoint. This politicization of the gray wolf is driving the above-mentioned legislative seizure of agency authority, the stark rise in unlawful take,

and the new laws eliminating limitations and restrictions on gray wolf harvest methods, seasons, and bag limits.

155. Gray wolf conservation – or, alternatively, gray wolf eradication – is no longer just a concern of biologists, environmentalists, and ranchers, but rather has grown to embody an outsize but fundamental political conflict roiling the country, especially since 2021.

156. The Service did not fully account for these sociopolitical aspects, especially those happening since 2021, in its SSA, despite the fact that scientific research, such as van Eeden et al. (2021), demonstrates that politics and politicization predicts and affects public attitudes towards gray wolves and their management.

Best Available Science

157. Idaho and Montana have in recent years implemented new wolf population estimation methods. Both systems have been subject to heavy criticism from experts, most notably and recently by Creel (2022) (criticizing both Idaho and Montana's specific methods) and Crabtree (2023) (criticizing spatial models more generally and Montana's specifically).

158. Idaho implemented its new method in 2019, installing about 500 trail cameras that take photographs at timed intervals and upon the detection of motion. It then applies a statistical model called a "space-to-event" (or STE) model to find

the average amount of space between wolves, and finally uses that average to estimate the statewide population size.

159. Creel (2022) argued, joining other expert voices, that in order for STE to yield accurate population size estimates, numerous "critical assumptions" must be met, and rarely does real world population data hold true to these assumptions.

160. There are also inherent limitations to STE models, Creel stated. For example, for species that are sparse, such as wolves or indeed any other apex carnivore, the need to use time-lapse cameras at randomized locations makes it unlikely to provide accurate estimates. STE is therefore much more suitable as a population estimation method for common species.

161. Examining Idaho's use of STE, Creel identified six different assumption violations, as well as two other fundamental flaws (errors in extrapolation and a large hole in data due to wolf elusiveness).

162. "Taken together," Creel summarized, "these problems do not allow confidence in the population estimates for Idaho wolves, or the associated inference that greatly liberalized hunting has essentially no effect on population size."

163. Montana switched from its Patch Occupancy Model to an "integrated" Patch Occupancy Model, or iPOM, in 2021. iPOM uses three submodels, a

practice which compounds error, and two of the three models are properly meant to estimate distribution rather than abundance.

164. Creel (2022) critically assessed the iPOM methodology for estimating wolf populations, pointing out fundamental deficiencies in its three key components: estimation of area occupied by wolves, estimation of territory size, and estimation of pack size.

165. In his assessment, Creel (2022) provided evidence that the reliance on data from hunter sightings and reports for estimating area occupied is flawed, leading to a high likelihood of false positives and subsequent population overestimation.

166. Creel (2022) deemed the method for estimating territory size unreliable, given its dependence on questionable, coarse, and mutually dependent variables, as well as insufficient data clusters which limit the predictive power.

167. Creel (2022) also critiqued the model for estimating pack size for its imprecise regression slope and inability to detect changes over time, raising concerns about its suitability for accurate wolf conservation and management guidance.

168. In a more recent study (which was conducted independently of Creel's 2022 study), Crabtree (2023) provided empirical evidence that the iPOM

methodology is plagued by a significant flaw, leading to a 150% overestimation bias in its wolf population estimates.

169. This bias stems from a critical assumption violation related to wolf pack occupancy stability during fall surveys, exacerbated by the use of large grid cells that include unoccupied areas.

170. The inherent problem in using occupancy modeling to estimate the area occupied by wolves is that any wolf sighting within a large cell leads to the inclusion of the entire 600 km2 cell area in the total area occupied by wolf packs. These packs are assumed to be spatially and numerically stable during the survey period, and the iPOM method compounds this issue by relying on hunter surveys, which 'confirm' observations as those of territorial pack members (rather than lone wolves).

171. The issue with relying on such assumptions and observations is that the survey occurs during the fall, a period marked by spatial and numerical instability in packs due to a natural decrease in territorial behavior, dispersal of young wolves, and hunter-induced mortality.

172. Additionally, Crabtree (2023) identified structural deficiencies, such as the lack of hierarchical integration and sensitivity to estimation errors, that further compromise the accuracy of iPOM's abundance estimates

173. Lastly, both STE and iPOM also fail to account for known wolf deaths. First, these models do not subtract wolves killed by a state agency or by the USDA Wildlife Service in response to livestock conflicts. Second, the models also do not reflect known wolf deaths through lawful harvest. For example, after the 2021 elimination of the buffer zone between Montana state land and the boundary of Yellowstone National Park that limited the number of wolves that could be killed, hunters lay in wait across the boundary of the National Park and lawfully killed nearly 30% of Yellowstone National Park wolves in a single season, including killing enough of Yellowstone's Phantom Lake Pack in a 2-month period that the pack's remaining members dispersed and the Phantom Lack Pack ceased to exist. Yet Montana's iPOM model still showed a pack in the area formerly inhabited by the Phantom Lake Pack. The model does not, and moreover cannot, reflect the reality of the heightened mortality and heightened speed of wolf harvests since 2021.

174. In sum, neither Idaho's nor Montana's population estimation methodologies can, or should, be relied upon by the Service in its gray wolf ESA analysis.

175. Yet the Service does rely on them in the SSA. The Serve also fails to discuss or mention Crabtree (2023) at all. The Service acknowledges, but dismisses, the serious concerns raised by multiple experts about iPOM and STE,

claiming that because there "are no published estimates of potential bias," the Service cannot know whether these methodologies are biased or not.

176. However, Crabtree (2023)'s study was available as of November 2023, well before the publication of the SSA, although it was not yet formally published and peer-reviewed.

177. In its SSA, then, the Service relies on the 'unpublished' nature of Crabtree (2023) in order to ignore its contents – including an estimation of potential bias – yet ironically later relies on unpublished, privately held, and non-peer reviewed data on genetic diversity from Wildlife Genetics International to support the Service's claim that gray wolf populations have maintained sufficient genetic diversity. The Service even acknowledges the unpublished nature and lack of peer review in its own analysis of the Wildlife Genetics International report, but there can be no meaningful peer review if the report remains unpublished and data remains private.

178. The SSA also discusses unlawful take in its analysis of population sizes and human-caused mortality.

179. However, the SSA is highly dismissive of the impact of poaching and unknown, unreported poaching on wolf mortality and population sizes.

180. Not only are poaching rates trending exponentially upwards (*see supra* ¶¶ 115-121; 125-128), but the best available science suggests that most

unlawful take is never discovered. This undiscovered, unreported poaching is termed "cryptic poaching."

181. There is strong evidence to suggest that the effect of poaching on the mortality of wolves is far underestimated.

182. Corrected estimates of poaching suggest that illegal killing may be the largest source of human caused mortality for wolves, including within the NRM. Studies suggest that unaccounted poaching may account for up to 46% to 59% of total mortality for the NRM wolf population, which alone raises concerns over wolf population viability.

183. The SSA, however, only mentions a possible 24%, up to at most 36%, of mortality due to cryptic poaching.

184. A recent study (Milleret et al. (2021)) found that tracking collars can have a positive effect on the survival of large carnivores through potentially dissuading poachers, which suggests there is an even higher risk of poaching for non-monitored individual wolves – and it is these same non-monitored wolves whose unlawful take would most likely go unnoticed.

185. The best available science also suggests that, counter to what has previously been thought, the more relaxed and permissive the management and hunting laws over a carnivore, the more illegal deaths that occur. Chapron and Treves (2016) analyzed data from periods during which no hunting or trapping

seasons were held, and during which the only killing allowed was by government agents. That study concluded that even with that type of selective killing by government agents, the notion that liberalized killing of large carnivores can be a useful tool to decrease illegal killing "has no support" and that "liberalizing killing appears to be a conservation strategy that may achieve the opposite outcome than that intended."

186. Research in other U.S. wolf populations (Wisconsin gray wolves and Mexican gray wolves) has also suggested that poaching increases with liberalized killing.

187. Therefore, the best available science suggests that, at best, it is unlikely that legalizing killing decreases poaching, and at worst, liberalized legal killing leads to a concomitant increase in unlawful take.

188. Despite the above, the Service concluded that "at current levels [unlawful take] mortalities have minimal impact on wolf abundance" and disregarded the 24% to 59% cryptic poaching mortality and skyrocketing rates of known unlawful take mortality in the SSA's population projections and modelling.

189. The Service repeatedly asserted in the SSA that the Western gray wolf is genetically healthy. It supports this assertion in part through un-peer-reviewed, unpublished data from 2021, from which the Service estimated the average ratio of

effective to census population size to be 0.17, with a 95% confidence interval between 0.12 and 0.26.

190. However, the Service's approach to the gray wolf's genetic health has been criticized many times.

191. A recently published study by vonHoldt et al. (2023) on gray wolf genetics and effective population size presented new findings that, taken together, and with the flawed populations models employed by Montana and Idaho, further undermine the accuracy of long-term population viability claims made in the SSA.

192. VonHoldt et al. (2023) found that effective population size – as opposed to census size – is a more accurate and relevant metric when assessing long term population viability and genomic diversity of gray wolves. According to their study, effective population size for gray wolves in the U.S. falls somewhere between 5.2-9.3% of census size (compared to the SSA's 17%, *see supra* ¶ 187). Applying this calculation specifically to NRM wolves, the existing effective population size is between 201 and 335 individuals. This study joins other studies in arguing for an effective population size of >500 in order to ensure long-term viability and genetic diversity within a population. The NRM's gray wolves' effective population size, being between 201 to 335 individuals, falls well below >500. This is a clear indication that NRM states are currently failing to meet bare minimum effective population size for long-term viability and genetic health.

193. In addition to finding effective population levels well below what is required for long-term viability, vonHoldt et al. (2023) also found eroding genetic diversity and higher inbreeding in NRM wolves since 1990 (as compared to other populations).

194. Even worse, this finding suggests even further decay in heterozygosity for the NRM population into the future (i.e., a continued decline in genetic diversity).

195. On top of an inadequate analysis of genetic health, the Service failed to adequately analyze the problems with gray wolf connectivity across all relevant states. High rates of human-caused wolf mortality affect wolf dispersal and connectivity, and this is especially pertinent given that the high rates occur in Montana, Idaho, and Wyoming: states that contain the ultimate source populations for the other six relevant states. A decline in dispersals from these high-kill states can therefore result in cascading effects across the rest of the Western gray wolf range.

196. In its SSA, the Service relied on MOUs from 2008 and 2012 with Idaho, Montana, and Wyoming to satisfy its obligation to ensure sufficient future connectivity and genetic health.

197. However, despite these MOUs being 16 and 12 years old, respectively, the FWS apparently only has access to data from a single "2021

unpublished report from Wildlife Genetics International," which has not even been published – despite being three years old now – and therefore remains un-peer-reviewed.

198. Idaho has even failed to publish a gray wolf population report for eight years and counting, in violation of the spirit, and possibly the letter, of the MOU.

199. Despite these MOUs, there remains an urgent and critical need for genetic studies of United States gray wolves to use a standardized toolkit to minimize the extremely difficult challenge of merging "microsatellites" collected at different times, by different groups, using different methods. The haphazard and isolated nature of the data makes it difficult to understand at a larger scale the genomic signatures of connectivity, genetic diversity, and life history events.

200. In all senses, these MOUs have failed spectacularly.

201. In its SSA, then, the Service relies on dysfunctional agreements that have failed to produce the scientific knowledge they were meant to provide in order to conclude – without sufficient scientific basis – that gene flow and genetic health is robust across Western gray wolf populations.

202. Idaho, Montana, and Wyoming are the most important and critical states for the gray wolf, serving as the ultimate source populations for the rest of the Western States.

203. Declines in genetic health and gene flow in Idaho, Montana, and Wyoming will therefore have cascading effects across the Western States.

204. The Service's population modelling scenarios in the SSA also relied on a number of unscientific and unsupported assumptions regarding these management plans, and also use said plans to set artificial limits to their scientific models.

205. For example, the Service's modelled harvest scenarios appear to set an artificial floor of 150 wolves for Montana and Idaho each – based on nothing more than these states' current management plans that, for the time being, aim to keep the wolf populations not below 150 wolves.

206. Indeed, the Service's population model of Harvest Scenario 3 (in which the highest harvest rates were assumed) 'bottoms out' at a population size of approximately 750 wolves for the entirety of the of five states of Idaho, Montana, Wyoming, Oregon and Washington – which is, not coincidentally, 150 x 5 states.

207. In other words, the Service population models literally cannot go below 750 wolves total, because there is a built-in and completely unscientific assumption that each state will continue, *ad infinitum*, to have a minimum of 150 wolves, based on their *current* so-called 'commitments' – 'commitments' which are just the current management plans, which are not only subject to political

winds (and whims) but are also from states that lack scientifically reliable means of wolf population estimates, as discussed above.

208. To blindly rely on these states' current management plans – the same states which have not upheld their commitments made in the MOUs between them and the Service, no less – is arbitrary and capricious at best and extremely poor judgment at worst.

209. Another scientifically flawed assumption the Service has made is its assignation of a quasi-extinction threshold of only 5 wolves across five states.

210. A population size of one wolf per single state is incredibly low – far, far below what a realistic quasi-extinction rate should be.

211. Finally, the Service assumed that future harvest rates will be directly proportional to population size, even in states with highly liberalized hunting regulations such as Idaho and Montana – i.e., that as the population declines due to harvest, so will the number of wolves harvested.

212. As support for this assumption, the Service relied on historical data from centuries ago, even though far more effective technology and hunting methods exist today, and the liberalization of the permissible methods of wolf take makes the use of such technologies and methods much more likely.

213. The Service similarly assumed that it will be "difficult" to achieve and sustain higher rates, despite the fact that the gray wolf was eradicated in the 19th

century and first half of the 20th century with far less sophisticated technology and techniques, and despite the fact that states have begun to liberalize the methods of wolf take that are permissible.

Significant Portion of Range

214. The ESA requires that FWS consider the risk of the gray wolf's extinction or endangerment "in all or a significant portion of its range," which "includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (e.g., seasonal habitats)." *See supra* ¶ 45.

215. The SPR policy requires the Service to consider the gray wolf's historic range in other aspects of its assessment of the species, such as in analyzing the five threat factors. *See supra* ¶ 47.

216. In its Finding, the Service only assessed four SPRs: Idaho, Montana, the West Coast states (California, Western Oregon, and Western Washington), and the NRM.

217. The Service did not conduct any SPR analyses in areas in which the gray wolf historically occurred and where suitable habitat exists but where wolf populations have not yet established themselves.

218. The Service even received peer critique on failing to conduct a "more rigorous evaluation of states without established wolf populations," yet apparently failed to rectify this in the final version of its SSA.

219. The FWS did not adequately explain why it divided the Western gray wolf DPS into the four particular SPRs it identified.

220. The Service also did not conduct SPR analyses at all for other areas that are even within the Western gray wolf's *current* range, such as Wyoming and the rest of the Rockies.

221. The Service also did not explain why it did not conduct SPR analyses for these areas within the Western gray wolf's current range.

CLAIMS FOR RELIEF

FIRST CLAIM – Failing to Properly Assess ESA Five Factors

222. Plaintiffs incorporate by reference all preceding paragraphs.

223. The Service is required by the ESA to list a species if they are endangered or threatened due to any one or a combination of the following five threat factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. 50 C.F.R. § 424.11(c); 16 U.S.C. § 1533(a)(1).

224. The Service failed to properly assess the ESA's five threat factors in its Finding in the following ways:

A. The Service has failed to properly assess the inadequacy of existing regulatory mechanisms in multiple states, most notably Wyoming, Idaho, and Montana, that have reduced or eliminated limitations and restrictions on harvest methods, seasons, and bag limits.

B. The Service has failed to properly assess the inadequacy of existing regulatory mechanisms in failing to assess the recent seizure of regulatory authority by politicized state legislatures in Idaho and Montana, and the imminent threat of further and greater loss of agency authority.

C. The Service has failed to properly assess the current overutilization, and threat of increasing overutilization, of the gray wolf in the states of Wyoming, Montana, and Idaho.

D. The Service has failed to properly and adequately account for the manmade factor of heightened politicization of the wolf and heightened anti-wolf sentiment across the Western States, even though academic research exists to support the relevance of this factor.

E. The Service has failed to properly assess for the overutilization and/or manmade factor of exponentially increased incidents of poaching and the likely increased degree of undiscovered “cryptic” poaching.

F. The Service failed to properly analyze the natural factor of declining genetic health, gene flow, and connectivity, of which there is scientific evidence.

G. The Service also failed to analyze the above "A" through "F" threats in the aggregate, as the ESA requires.

225. Due to combined threat factors, the gray wolf is threatened within the meaning of the ESA within significant portions of its range.

226. These failures of the Service also violated the APA, 5 U.S.C. § 706(2)(A), for being arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA.

SECOND CLAIM – Failing to Use Best Available Science

227. Plaintiffs incorporate by reference all preceding paragraphs.

228. The Service is required to "solely" use the "best available science" and commercial data in conducting a SSA and evaluating whether or not to list, relist, or delist a species or DPS under the ESA. 16 U.S.C. § 1533(b)(1)(A).

229. The Service failed to use the best available science in its Finding in the following ways:

A. The Service relied on inadequate and inaccurate population estimate methodologies currently used by both Idaho and Montana.

B. The Service failed to use the best available science on minimum population size and effective population size.

C. The Service failed to address, incorporate, and apply the best available science on genetic health, gene flow, and connectivity.

D. The Service relied on unscientific factors in its population models, such as setting artificial and unscientific floors of 150 wolves per state, setting a not only unscientific but ludicrous quasi-extinction threshold, and making unscientific assumptions about future harvest rates.

230. These failures of the Service also violated the APA, 5 U.S.C. § 706(2)(A), for being arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA.

THIRD CLAIM – Failing to Properly Evaluate SPR

231. Plaintiffs incorporate by reference all preceding paragraphs.

232. The Service is required to list a species or DPS if it risks becoming either endangered or extinct in "a significant portion of its range." 16 U.S.C. §§ 1532(6), (20).

233. In its Finding and incorporated SSA, the Service violated the ESA in failing to conduct the legally required SPR analysis in the following ways:

A. The Service failed to explain why it neglected to conduct an SPR analysis in areas in which the gray wolf historically occurred and

where suitable habitat exists but where wolf populations have not yet established themselves.

B. The Service failed to rectify known and received expert critique in which the draft SSA was criticized for failing to conduct a "more rigorous evaluation of states without established wolf populations."

C. The FWS failed to adequately explain why it divided the Western gray wolf DPS into the four particular SPRs it chose (Idaho, Montana, the West Coast states, and the NRM).

D. The FWS also failed to conduct an SPR analysis, or explain why it did not conduct an SPR analysis, for other areas, including areas that are even within the gray wolf's current range such as Wyoming and the rest of the Rockies.

234. Gray wolves are threatened within the meaning of the ESA in significant portions of their range in the Western States.

235. These failures of the Service also violated the APA, 5 U.S.C. § 706(2)(A), for being arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the Service's 2024 "not warranted" Finding violates the ESA and also the APA due to it being arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA;

B. Vacate the Service's Finding;

C. Remand the matter back to the Service for re-analysis in compliance with the ESA and APA;

D. Issue other such relief, including preliminary or permanent injunctive relief, that Plaintiffs may request;

E. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees, under 16 U.S.C. § 1540(g) and/or 28 U.S.C. § 2412; and

F. Grant Plaintiffs such further and additional relief as the Court may deem necessary, just, or proper.

Dated: July 2, 2024

Respectfully submitted,

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