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Public Comments Processing
Attn: FWS-R6-ES-2022-0100
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Safari Club International Comments on “Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado; Environmental Impact Statement”

Dear Sir or Madam:

Safari Club International (“SCI”) appreciates the opportunity to comment on the U.S. Fish and Wildlife Service’s (“Service”) scoping for preparation of an Environmental Impact Statement (“EIS”) “to evaluate the potential environmental impacts of issuing a proposed rule requested by the State of Colorado for its reintroduction and management of the gray wolf (*Canis lupus*).”

SCI opposed and continues to oppose the forced introduction of wolves to Colorado. This is especially true because Colorado already has a wolf population. Further, SCI remains firm in our position that wildlife management decisions should be made based on science, by wildlife management professionals, in support of management objectives. SCI opposes “ballot box biology.” But following the narrow passage of Proposition 114, SCI and its chapters have cooperated with Colorado Parks and Wildlife (“CPW”) to ensure that the forced introduction of wolves, unlike the referendum, relies on the best available science as well as important input from the stakeholders who will be most affected by an increasing wolf population.

With that said, SCI supports the Service’s efforts to collaborate with the State of Colorado to implement the State’s management plan for wolves (currently in development), and to ensure the forced introduction of wolves does not negatively impact Colorado’s sheep, elk, deer, moose, and other wildlife populations. SCI appreciates that the Service is willing to work with CPW to ensure the State has appropriate and necessary flexibility for managing an increasing wolf population, and SCI offers the following comments to help the Service in development of the EIS and the future Section 10(j) rule.

Safari Club International

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 50,000 members and advocates worldwide, many of whom live or hunt in Colorado. SCI also has many

members who guide hunts in Colorado and depend on this for their livelihoods. SCI has four chapters in Colorado and multiple chapters in the surrounding states.

SCI has participated in multiple cases involving the federal listing status and management of wolves in the United States. For example, SCI intervened to defend the delisting of Western Great Lakes Distinct Population Segment wolves, Northern Rocky Mountains Distinct Population Segment wolves, and Wyoming wolves. E.g., *Humane Soc’y of the U.S. v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008); *Defs. of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008); *Alliance for the Wild Rockies v. Salazar*, 672 F.3d 1170 (9th Cir. 2012); *Humane Soc’y of the U.S. v. Jewell*, 76 F. Supp. 3d 69 (D.D.C. 2014); *Defs. of Wildlife v. Zinke*, 68 F.Supp.3d 193 (D.D.C. 2014).

SCI is currently defending the 2020 delisting of gray wolves in the lower 48 U.S. States from the Endangered Species Act (“ESA”) lists of endangered and threatened species. SCI believes that the Service correctly removed wolves from the ESA’s protections—recognizing, once again, that gray wolves have exceeded recovery criteria for decades. SCI was the first party to appeal the U.S. District Court for the Northern District of California’s vacatur of that 2020 rule.

SCI has also submitted numerous public comments regarding the federal listing status and management of wolves in the United States.

Legal Basis for Introducing a Listed Wolf Species into Colorado

SCI encourages the Service to ensure that it has appropriate legal authority under ESA Section 10(j) to support the State of Colorado’s wolf introduction under Proposition 114. Section 10(j) of the ESA defines an “experimental population” as a “population ... authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.” 16 U.S.C. § 1539(j)(1). Section 10(j) authorizes the Service to release a listed species “outside the current range of such species” if the release “will further the conservation of such species.” *Id.* § 10(j)(2)(A).

SCI further encourages the Service to consider whether a population of wolves in Colorado is wholly separate geographically from nonexperimental populations and whether any release is outside the current gray wolf range. Of course, the Service is aware of healthy wolf populations in Wyoming, Idaho, and the other Northern Rocky Mountains (“NRM”) states. In Colorado, “[t]here are known wolves already in the state.”¹ These wolves have dispersed from the NRM. For example, in 2019, a radio-collared wolf from Idaho was found in Jackson County, Colorado. In 2020, CPW visually confirmed the presence of a pack of six wolves in Moffat County, along the border with Wyoming and Utah. Since that time, CPW has “received additional sighting reports and photos of wolves in this area.”² Most notably, in June 2021, CPW observed wolf pups from the pairing of the 2019 Idaho wolf and another disperser, and even fitted one of these

¹ CPW website, available at <https://cpw.state.co.us/learn/Pages/Wolves-in-Colorado-FAQ.aspx>.

² *Id.*

pups with a GPS collar. Altogether, CPW “typically field[s] around 100 sightings each year.”³ While CPW staff are not able to confirm all these sightings, the many reported sightings suggest the possibility of more wolves than simply this one pack. Given the dispersion of wolves from the NRM and the existence of wolves already in the State, it may not be possible to fulfill the Section 10(j) definitions and criteria.

SCI understands that the Service will consider a “no action” alternative. SCI encourages the Service to reconsider this option, as it seems inconsistent to determine that Colorado does not have a wolf “population” so as to support a Section 10(j) rule, but that Colorado does have a “resident” wolf population so as to support a Section 6 cooperative agreement. SCI further encourages the Service to consider whether an ESA Section 6 agreement permits a State to import a listed species, where it already has a “resident” population of that species, and if such import would constitute “take” under Sections 3 and 9(a)(1) of the ESA. *See* 16 U.S.C. § 1532(19) (defining “take” as “to harass, harm, pursue, hunt, shoot, would, kill, trap, capture, or collect, or to attempt to engage in any such conduct”); § 1535(c) (addressing programs to conserve “resident” species of fish and wildlife; discussing possible prohibitions on “take” under Section 9(a)(1) of the ESA); § 1538(a)(1) (prohibiting the “take” of endangered species).

Management Flexibility for the State

On November 3, 2020, the Colorado citizenry narrowly passed Proposition 114, a ballot initiative directing the Colorado Parks and Wildlife Commission to develop a plan to introduce gray wolves west of the Continental Divide. CPW has begun to develop an adaptive management plan for the introduction of wolves on the Western Slope, and to govern wolf management in the state. The process is guided by both expert input (through a Technical Working Group) and stakeholder input (through a Stakeholder Advisory Group (“SAG”)). The Service should ensure that any Section 10(j) rule complements and incorporates this process.

The Service should evaluate in the EIS, and then adopt a rule, with sufficient management flexibility to allow the State to fully implement its wolf management plan. In so doing, the Service should evaluate and then adopt a “nonessential” designation for the Colorado gray wolf experimental population. Congress made clear that only in rare cases should an experimental population be designated as “essential.” *E.g.*, H.R. Conf. Rep. 97-567, 8 (1982); *see also* 63 Fed. Reg. 1752, 1755 (Jan. 12, 1998) (establishing the nonessential experimental population of Mexican wolf); 51 Fed. Reg. 41790 (Nov. 19, 1986) (establishing the nonessential experimental population of red wolves).

Moreover, the Service should evaluate in the EIS and then adopt a rule that ensures the State may effectively manage the impact of wolves on wild ungulate and sheep populations. As part of the EIS evaluation, the Service will undoubtedly determine that hunting and wildlife viewing are

³ *Id.*

important economic drivers in the State, with hunting being particularly important in areas west of the Continental Divide.⁴

When the introduced wolf population establishes itself, it will undoubtedly impact—and most likely reduce—Colorado’s renowned elk, deer, and moose populations. A reduction in mule deer will conflict with CPW’s “Western Slope Deer Management Strategy.”⁵ SCI encourages the Service to take this into account in the EIS and any Section 10(j) rule.

Fewer elk and mule deer due to predation also means fewer hunting tags available for resident and non-resident hunters. Such a reduction in tags and the hunting licenses required to purchase the tags would result in a loss of revenue for CPW for management of wildlife and habitat. Any Section 10(j) rule must recognize this fact and include sufficient management authority to account for significant and unacceptable impacts on sheep and ungulate game species.

SCI’s concerns for wildlife also extend to livestock. Colorado’s current wolf population has already depredated livestock and dogs.⁶ An introduced population will only have a greater impact. Therefore, the Service should consider and implement a Section 10(a)(1) permit to provide the state with necessary authority to address these detrimental impacts.

The Service should also recognize that Colorado’s wolf introduction and management plan is likely to include regulated wolf hunting at some point. Colorado’s SAG is likely to recommend regulated hunting once the wolf population achieves “phase 4” (e.g., delisting under state law), to address wolf impacts on the landscape, livestock, and ungulate populations. This is consistent with the ESA’s definition of “conservation,” which recognizes that regulated hunting may be used to manage abundant populations of recovered species. *See* 16 U.S.C. § 1532(3) (defining “conservation” to include “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary,” which, “in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking”). The Service should evaluate and ensure in the Section 10(j) rule that the State has sufficient flexibility to properly manage an overly abundant wolf population, especially if the gray wolf is delisted under State law before it is—again—delisted under federal law.

⁴ For example, see <https://coloradooutdoorsmag.com/2015/07/08/7-reasons-hunting-benefits-colorado/>.

⁵ CPW, Status of Colorado’s Deer, Elk, and Moose Populations (Feb. 2020), available at https://cpw.state.co.us/Documents/Hunting/BigGame/Colorado_Big_Game_Population_Status_and_Management_Summary2_2020.pdf; CPW, Western Slope Mule Deer Management Strategy, <https://cpw.state.co.us/learn/Pages/CO-WestSlopeMuleDeerStrategySummit.aspx>.

⁶ Examples of news coverage of recent wolf depredation: Colorado Sun (June 5, 2022), <https://coloradosun.com/2022/06/06/wolves-cattle-north-park/>; Outdoor Life (Jan. 19, 2022), <https://www.outdoorlife.com/conservation/colorado-confirms-third-wolf-depredation/>; Denver Post (Jan. 13, 2022), <https://www.denverpost.com/2022/01/13/gray-wolf-colorado-kill-dog/>.

Finally, while still early in the process, the Service should evaluate and then include an “escape clause” that authorizes the State to lethally remove all members of the experimental population if its “nonessential” status is at risk. The Service included such escape clauses in numerous other experimental population rules. This provision is very appropriate here, given that the Service has recognized gray wolves across the lower 48 U.S. States as no longer endangered or threatened under the ESA. 85 Fed. Reg. 69778 (Nov. 3, 2020).⁷

Interbreeding with the Mexican Wolf

SCI encourages the Service to consider how the introduction of gray wolves in Colorado will impact the nonessential experimental population of Mexican wolves in New Mexico and Arizona. The Service should consider regulated take in a “buffer zone” between the populations as a means of preventing the interbreeding of these species.

Consideration of Delisting Criteria

SCI recommends that the Service evaluate and then adopt specific and measurable delisting criteria for the introduced wolf population. The Service must ensure it has provided metrics that will motivate the State and reduce the risk that delisting—which recognizes the success of the introduction conservation program—will be hijacked by litigation. Of course, these criteria should align with State goals where possible.

Conclusion

Thank you again for the opportunity to comment on the development of the EIS and potential Section 10(j) rule. If you have any questions or need anything further, please contact Regina Lennox, Litigation Counsel, at rllennox@safariclub.org.

Sincerely,



Sven Lindquist
President, Safari Club International

⁷ The Service routinely includes such clauses in experimental population rules. *E.g.*, 50 C.F.R. § 17.84(j) (including “escape clause” in rule establishing nonessential experimental populations of California condors); *id.* § 17.84(x) (including “escape clause” in rule establishing nonessential experimental population of wood bison in Alaska); 59 Fed. Reg. 60266 (Nov. 22, 1994) (rule establishing nonessential experimental population of the Rocky Mountain gray wolf).