

U.S. District Court Vacates Gray Wolf Delisting Rule

February 18, 2022

On February 10, 2022, a district court vacated and remanded the U.S. Fish and Wildlife Service’s (FWS’s) [rule](#) (the “delisting rule”) that delisted—that is, removed from the list of endangered and threatened species—certain gray wolf “entities.” The U.S. District Court for the Northern District of California held that the rule violated the Endangered Species Act (ESA) and the Administrative Procedure Act (APA) in a number of ways. For example, the court concluded that FWS could not delist an entity solely because it determined the listed entity no longer met the definition of a species under the ESA and that FWS must instead apply the ESA’s explicit standards for delisting. The court also determined that FWS had not offered a reasonable construction of the phrase *significant portion of its range*, which appears in the ESA’s definitions of *endangered species* and *threatened species*. This is not the first time a court has invalidated FWS’s interpretation of this phrase; in 2018, a court [vacated](#) FWS’s 2014 joint [policy](#) with the National Marine Fisheries Service (NMFS) interpreting the phrase.

The court’s decision to vacate the delisting rule renders it void and effectively reinstates the listing status that each gray wolf entity had before that rule was promulgated. The gray wolf therefore is again listed as threatened in Minnesota and endangered elsewhere in the lower 48 states, except for the Northern Rocky Mountain distinct population segment (DPS), which had been delisted by prior actions. Vacating the delisting rule does not affect the listing status of the Northern Rocky Mountain DPS. The court’s decision may also affect FWS’s decisions on two pending petitions related to listing gray wolf DPSs.

This Sidebar discusses the history of rules relating to gray wolves under the ESA, the court’s recent decision, and next steps for FWS.

Listing History of the Gray Wolf Under the Endangered Species Act

The gray wolf was first listed under the ESA’s predecessor statute in 1967. In 1973, Congress enacted the ESA, which requires FWS to [list](#) a species as [endangered](#) if it determines that the species is “in danger of extinction throughout all or a significant portion of its range” and to list a species as [threatened](#) if it determines the species is likely to become endangered “within the foreseeable future throughout all or a significant portion of its range.” The ESA requires FWS to determine whether a species meets these definitions by analyzing [five factors](#) describing potential threats to the species. Listing a species triggers various requirements and protections under the ESA. The ESA does not specify a delisting process or

Congressional Research Service

<https://crsreports.congress.gov>

LSB10697

separate criteria for removing a species from the list of endangered and threatened species. Instead, species are delisted based on the same criteria used for listing: (1) the definitions of *endangered species* and *threatened species* and (2) the five factors describing potential types of threats to species. Other CRS products provide a [high-level overview](#) and an [in-depth discussion](#) of the ESA.

In March 1978, FWS [listed](#) the gray wolf in Minnesota as threatened and the gray wolf elsewhere in the lower 48 states as endangered. At that time, the ESA [defined species](#) to include “any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.” The definition of *species* was [amended in November 1978](#) to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreed when mature.” The ESA does not define *distinct population segment*; FWS and NMFS have issued a [joint policy](#) interpreting this term.

Since 2003, FWS has issued a number of rules designating DPSs of gray wolves and downlisting or delisting the DPSs. These rules have generally been overturned by courts. After multiple rules delisting the Northern Rocky Mountain DPS were vacated, in 2011 Congress [directed](#) FWS to reinstate a rule delisting the gray wolf in the Northern Rocky Mountains other than Wyoming. FWS then [delisted](#) the gray wolf in Wyoming in 2012. After the U.S. District Court for the District of Columbia [vacated](#) the rule delisting the gray wolf in Wyoming in 2014, the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) [reinstated](#) the rule in 2017. Beginning in 2017, therefore, the gray wolf in the lower 48 states was divided into four separate groups for ESA purposes: (1) the Northern Rocky Mountain DPS was not listed; (2) gray wolves in Minnesota were listed as threatened; (3) the Mexican gray wolf subspecies in Arizona and New Mexico was [listed as endangered](#) beginning in 2015; and (4) gray wolves in all other areas of the lower 48 states were listed as endangered. This [CRS report](#) provides a more detailed history of FWS’s listing and delisting decisions related to the gray wolf and associated court decisions.

FWS Delists the Remaining Listed Gray Wolf Entities

On November 3, 2020, FWS issued a [final rule](#) delisting the gray wolf listed entities except for the Mexican wolf, which remained listed as endangered. In the final rule, FWS concluded that the two listed entities—that is, (1) gray wolves in Minnesota and (2) gray wolves in the lower 48 states outside Minnesota and the Northern Rocky Mountain DPS—[are not species](#) as defined by the ESA (as revised in 1978 to include DPSs). FWS observed that neither listed entity encompassed the entire taxonomic species or any subspecies of gray wolf and accordingly could be listed only if they met the Services’ criteria for a DPS. FWS then concluded that neither listed entity qualified as a DPS because neither was discrete from other populations. FWS determined that the Minnesota wolves were not discrete from the remainder of the western Great Lakes population and that the entity listed as endangered was not discrete from either the Minnesota wolves or the Northern Rocky Mountain DPS wolves. FWS [concluded](#) that neither listed entity could remain listed as a species.

Having determined that the existing listed entities did not qualify as species, FWS [assessed](#) the status of various gray wolf groups to determine whether any of them were threatened or endangered species. FWS assessed the status of each of the two listed entities on their own, as well as the status of those entities combined (i.e., gray wolves in the lower 48 states outside the Northern Rocky Mountain DPS). Finally, FWS assessed the status of gray wolves in the lower 48 states (i.e., the two listed entities plus the Northern Rocky Mountain DPS). FWS concluded that none of those various combinations of the gray wolf listed entities qualified as endangered species or threatened species under the act. Based on those determinations, FWS delisted the gray wolf entities.

Litigation Challenging the Final Rule

In January 2021, WildEarth Guardians, Defenders of Wildlife, and the Natural Resources Defense Council each filed lawsuits against the Department of the Interior and FWS alleging that the delisting rule violated the ESA and the APA. On July 16, 2021, the plaintiffs filed a joint motion for summary judgment. On February 20, 2022, the court granted the motion in part and vacated and remanded the rule to FWS. In its decision, the court held that FWS had violated the ESA and APA in multiple ways.

First, the court determined that FWS could not delist an entity solely because the listed entity did not meet the statutory definition of a species. It concluded that the 1978 amendment changing the act's definition of *species* was not intended to lessen protections for species that had been validly listed based on the prior definition and that upholding the rule on that basis would “amount to an impermissible ‘backdoor route to the de facto delisting of already-listed species.’” To reach its conclusion, the court relied on a [D.C. Circuit opinion](#) vacating a FWS rule that had first designated and delisted a Western Great Lakes DPS and then delisted the remnant by concluding that it did not qualify as a species. Finding that decision persuasive, the district court concluded that allowing FWS to delist gray wolf entities for not qualifying as species under the current definition would amount to a “statutory dodge” that removed federal protections without accounting for the ESA's standards for delisting.

Second, the court concluded that FWS had failed to consider adequately threats to the gray wolf in the lower 48 states outside the core populations in the western Great Lakes and northern Rocky Mountains. It determined that FWS had attempted to avoid assessing threats to gray wolves outside the core populations by either associating them with one of the core populations or dismissing them as “lone dispersers” with only a “cursory” explanation.

Third, the court concluded that FWS had failed to explain adequately why it did not give credence to certain studies relating to the genetic relationship between gray wolf populations. The ESA requires FWS to use the [best scientific and commercial data available](#) when making listing decisions. In the final rule, FWS assessed whether gray wolves in Oregon and Washington were genetically distinct from the wolves in the Northern Rocky Mountain DPS. Although it acknowledged that gray wolves in Washington had a mixed ancestry from Northern Rocky Mountain gray wolves and coastal gray wolves, FWS concluded that the two groups were not distinct. The court determined that the “primary studies” on gray wolf genetics clearly identified the “unique evolutionary heritage and adaptations” of gray wolves within the west coast population. In the court's view, FWS had not adequately explained why it concluded that the Washington gray wolves were not genetically distinct in light of this science. As a result, the court held that FWS had not used the best available science and that the agency's decision to combine the west coast and Northern Rocky Mountain DPS gray wolves was arbitrary and capricious.

Fourth, the court concluded that FWS had not employed a reasonable construction of the phrase *significant portion of its range* when evaluating whether any gray wolf entities merited listing. The ESA [requires](#) FWS to list a species if it is endangered or threatened in “all or a significant portion of its range.” Accordingly, FWS must determine what makes a portion of a species' range “significant” to assess its status. FWS issued a joint [policy](#) with NMFS interpreting the phrase *significant portion of its range* in 2014, but a court [vacated](#) that policy in 2018. In its delisting rule, FWS [stated](#) that it was assessing significance based on whether the portion of the range contributed meaningfully to “resiliency, redundancy, or representation of the gray wolf entity” but declined to set any particular threshold for or definition of significance. The court concluded that this approach failed to provide “objective guideposts or factors” for the court to use in evaluating whether FWS had reasonably exercised its discretion. Accordingly, the court could not determine whether FWS had given independent meaning to the phrase or impermissibly rendered it superfluous.

Finally, the court determined that FWS's analysis of the threats to the various gray wolf entities was arbitrary and capricious because it (1) failed to analyze adequately the threats to the gray wolf across the

entire listed species, (2) failed to consider the adequacy of existing regulatory mechanisms on federal public lands, and (3) failed to assess adequately the effect of the loss of the gray wolf's historical range. The court's first two determinations both turned on its conclusion that FWS could not rely solely on the viability of two populations—the Northern Rocky Mountain DPS and the gray wolves in the western Great Lakes—to delist the species across the lower 48 states and disregard threats to gray wolves elsewhere. With respect to the gray wolf's loss of most of its historical range in the lower 48 states, the court did not find FWS's assessment of the threat to gray wolves from human-caused mortality to be sufficient to constitute adequate consideration of the effect on the gray wolf of losing that range.

Having concluded that FWS should reconsider the delisting rule in light of its decision, the court considered whether to vacate the rule during that process. Courts may [leave an agency action in place](#), despite finding some error in it, if the agency seems likely to be able to correct the error on remand or if vacatur would be disruptive. The court found that FWS's reliance on two populations to delist the gray wolf across the lower 48 states and its failure to interpret *significant portion of its range* reasonably were sufficiently serious errors to justify vacating the rule.

Next Steps for FWS

The vacatur of the delisting rule returns the gray wolf to the ESA status it had prior to the rule's promulgation. As of the court's order, the gray wolf is again listed as threatened in Minnesota and endangered elsewhere in the lower 48 states, except for the Northern Rocky Mountain DPS. The court's decision does not affect the listing status of the Northern Rocky Mountain DPS. FWS may consider whether to issue a new rule to delist the listed entities that addresses the flaws the court identified.

Separately, FWS has received two petitions related to listing gray wolf DPSs. First, it received a [petition](#) on June 1, 2021, to relist the Northern Rocky Mountain DPS as an endangered or threatened species. Second, FWS received a [petition](#) on July 29, 2021, to list a DPS of gray wolves in western North America as an endangered species. The [ESA requires](#) FWS to make a finding within 90 days of receiving a petition, to the maximum extent practical, as to whether a petition presents information indicating that the requested action may be warranted. The ESA then requires FWS to issue a decision on each petition within 12 months of filing that (1) denies the petition as not warranted, (2) grants the petition as warranted along with a proposed rule to list the species, or (3) concludes that the petition is warranted but that other agency priorities preclude listing the species at this time. Pursuant to the ESA's procedures for petitions, FWS issued a [90-day finding](#) on September 17, 2021, that the petitions may be warranted. FWS has not yet issued a 12-month finding.

The court's decision to vacate the delisting rule may affect FWS's decisions on the petitions. Pursuant to the court's order, the gray wolf is again listed in some areas covered by the petition related to western North America. For both petitions, the requirement that FWS relist the previously delisted entities may affect its analysis of the threats to the gray wolves in the Northern Rocky Mountain DPS.

Considerations for Congress

The status of the gray wolf under the ESA has been of interest to many Members of Congress. In 2011, an act of Congress [reinstated](#) the rule that delisted the Northern Rocky Mountain DPS except for Wyoming. In 2021, 85 Members submitted a [letter](#) to Secretary of the Interior Haaland asking her to revisit the delisting decision and consider listing the gray wolf as threatened. In the wake of the court's decision vacating the delisting rule, Congress may consider whether to modify the status of the gray wolf via legislation. For example, it might direct FWS to reinstate the delisting rule or to grant the petition to relist the remaining gray wolves in the Northern Rocky Mountain DPS. Alternatively, Congress could opt not to legislate and to allow FWS to address these issues administratively. In light of the repeated rulemakings and litigation overturning such rules, Congress may consider whether to craft legislation specific to the

protection or management of gray wolves in lieu of the ESA, as it did for [golden and bald eagles](#). Congress may also consider the listing and delisting process more broadly, and the role litigation plays in those decisions, to ensure that the ESA is implemented as Congress intends.

Author Information

Erin H. Ward
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.