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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEFENDERS OF WILDLIFE, et al.,
Plaintiffs,
v.
U.S. FISH AND WILDLIFE SERVICE, et
al.,
Defendants.

Case No. 21-cv-00344-JSW
21-cv-00349-JSW
21-cv-00561-JSW

**ORDER RESOLVING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

Re: Dkt. Nos. 74, 107, 109, 111

WILDEARTH GUARDIANS, et al.,
Plaintiffs,
v.
UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,
Defendants.

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,
Defendants.

1 Now before the Court for consideration are: (1) Plaintiffs' motion for summary judgment,
 2 filed by the plaintiffs in these related cases (collectively "Plaintiffs")¹ (Dkt. No. 74, "Plaintiffs'
 3 MSJ)²; (2) Defendants' cross-motion for summary judgment, filed by the United States Fish and
 4 Wildlife Service, et. al., (collectively "Federal Defendants") (Dkt. No. 107, "Federal Defendants'
 5 Cross-MSJ"); (3) Intervenor-Defendants' cross-motion for summary judgment filed by the State of
 6 Utah ("Utah") (Dkt. No. 109); and (4) Intervenor-Defendants' cross-motion for summary
 7 judgment filed by the National Rifle Association of America and Safari Club International
 8 (collectively, "NRA") (Dkt. No. 111). The Court has considered the parties' papers, relevant legal
 9 authority, the record in this case, and had the benefit of oral argument.³ For the reasons below, the
 10 Court GRANTS, IN PART, and DENIES, IN PART, Plaintiffs' motion for summary judgment
 11 and therefore GRANTS, IN PART, and DENIES, IN PART, the Federal Defendants and
 12 Intervenor-Defendants' motions.

13 BACKGROUND

14 These three related cases challenge the recent rule enacted by the Department of the
 15 Interior and the National Fish and Wildlife Service (the "Service"), which removes federal
 16 protections for the gray wolf population. Plaintiffs challenge the rule as a violation of the
 17

18 ¹ The plaintiffs in the three related cases are as follows: In case number 4:21-cv-344-JSW,
 19 Defenders of Wildlife, Center for Biological Diversity, Sierra Club, National Parks Conservation
 20 Association, Oregon Wild, and Humane Society of the United States (collectively "*Defenders*
 21 plaintiffs"); in case number 4:21-cv-349-JSW, WildEarth Guardians, Western Watersheds Project,
 22 Cascadia Wildlands, Environmental Protection Information Center, Kettle Range Conservation
 Group, Klamath Forest Alliance, Klamath-Sisikyou Wildlands Center, The Lands Council, and
 Wildlands Network (collectively "*Guardians* plaintiffs"); in case number 4:21-cv-561-JSW, the
 National Resources Defense Council ("*NRDC*").

23 ² All citations to the docket are to the docket in case number 4:21-cv-344 unless otherwise
 noted.

24 ³ The Court also received and considered three *amicus* briefs supporting Plaintiffs from, the
 25 people of the State of Michigan and the State of Oregon (Dkt. No. 83-2), several federally
 26 recognized Indian tribes with reservations in Minnesota, Wisconsin, and Michigan (Dkt. No. 87-
 1), and the Sault Ste. Marie Tribe of Chippewa Indians and several animal welfare and
 27 environmental organizations. (Dkt. No. 116.) The Court also received and considered four
 28 *amicus* briefs supporting Defendants from the Oregon Farm Bureau, Oregon Cattleman's
 Association, and Klamath County (Dkt. No. 113-2), the Gray Wolf Agricultural Coalition (Dkt.
 No. 117), the Sportsmen Conservation Coalition (Dkt. No. 118), and Hunter Nation Inc. (Dkt. No.

1 Endangered Species Act of 1973 (“ESA”), 16 U.S.C. section 1531, *et seq.*, and the Administrative
2 Procedure Act (“APA”), 5 U.S.C. section 551 *et seq.*

3 The gray wolf once occupied a large portion of the United States. AR_52. After the
4 arrival of Europeans, the range of the gray wolf began shrinking due to deliberate killings of
5 wolves by humans and human agricultural and industrial development. *Id.* As a result, the range
6 and population of gray wolves was substantially reduced by the 1970s. *Id.* Accordingly, regional
7 subspecies of the “gray wolf” were declared endangered by the federal government between 1966
8 and 1976. *Id.*

9 In 1978, the Service reclassified the gray wolf throughout the lower 48 United States and
10 Mexico. The reclassification subsumed the previous regional listings into a single species listing
11 divided into two entities: the gray wolf in Minnesota, which the Service determined was a
12 threatened population; and the gray wolf in the remaining lower 48 United States and Mexico,
13 which remained endangered. *See* Reclassification of the Gray Wolf in the United States and
14 Mexico, with Determination of Critical Habitat in Michigan and Minnesota, 43 Fed. Reg. 9,607, 9,
15 608, 9612 (March 9, 1978). As a result of the ESA’s protections, gray wolf populations began to
16 rebound in several parts of their historic range. *See* AR_48.

17 In 2003, the Service issued a rule that divided the gray wolf listing into three distinct
18 population segments (“DPS”): an Eastern segment, a Western segment, and a Southwestern
19 segment. Final Rule to Reclassify and Remove the Gray Wolf From the List of Endangered and
20 Threatened Wildlife in portions of the Conterminous United States; Establishment of Two Special
21 Regulations for Threatened Gray Wolves, 68 Fed. Reg. 15,804, 15,818 (April 1, 2003) (“2003
22 Rule”). The 2003 Rule designated wolves in Eastern and Western segments as threatened, rather
23 than endangered. Two district courts invalidated the 2003 Rule. A district court in Oregon found
24 that the Service effectively ignored the species’ status in its full range by downlisting the species
25 based solely on the viability of a small population within that segment. *See Defs. of Wildlife v.*
26 *U.S. Dep’t of the Interior*, 354 F. Supp. 2d 1156, 1170-72 (D. Or. 2005). A district court in
27 Vermont invalidated the Service’s attempt to designate and delist the Eastern segment of gray

1 Northeast region of the United States, without determining whether a gray wolf population existed
2 in the Northeast. *See Nat'l Fed'n v. Norton*, 386 F. Supp. 2d 553, 564-65 (D. Vt. 2006)
3 (“*Norton*”).

4 In 2007, the Service issued a new rule that created a “Western Great lakes gray wolf
5 distinct population segment” and simultaneously delisted that segment. *See Final Rule*
6 *Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population*
7 *Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf*
8 *From the List of Endangered and Threatened Wildlife*, 72 Fed. Reg. 6,052 (Feb. 8, 2007) (“2007
9 Rule”). A district court invalidated the 2007 Rule for “fail[ing] to acknowledge and address
10 crucial statutory ambiguities” concerning the creation of distinct population segments for the
11 purpose of delisting. *Humane Soc’y of the U.S. v. Kempthorne*, 579 F. Supp. 2d 7 (D.D.C. 2008).

12 In 2009, the Service published a new final rule without notice and comment, which added
13 a section to the vacated 2007 Rule entitled “Issues on Remand.” *Final Rule to Identify the*
14 *Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment and to Revise*
15 *the List of Endangered and Threatened Wildlife*, 74 Fed. Reg. 15,070 (Apr. 2, 2009) (“2009
16 Rule”). The 2009 Rule was challenged in court on several grounds. Shortly after filing suit, the
17 parties entered into a stipulated settlement and the Service conceded that it erred by publishing the
18 2009 Rule without providing for notice and comment as required by the APA. *Humane Soc’y of*
19 *the U.S. v. Salazar*, No. 09-1092 (D.D.C. July 2, 2009), Dkt. No. 27. The 2009 Rule was therefore
20 vacated and remanded back to the Service and returned the wolves in the Western Great Lakes
21 DPS to the listing status they had prior to the 2009 Rule.

22 In 2009, the Service recognized and delisted the Northern Rocky Mountain population of
23 gray wolves (“NRM wolves”). *Final Rule to Identify the Northern Rocky Mountain Gray Wolf*
24 *DPS and Revise the List of Endangered and Threatened Wildlife*, 74 Fed. Reg. 15,123 (Apr. 2,
25 2009). Although a district court invalidated the delisting, it was reinstated by Congress. *See Defs.*
26 *of Wildlife v. Salazar*, 729 F. Supp. 2d 1207, 1228 (D. Mont. Aug. 5, 2010); Section 1713, Pub. L.
27 112-10, 125 Stat. 38 (Apr. 15, 2011). The Service’s delisting of wolves in Wyoming was

2012); *Def. of Wildlife v. Zinke*, 849 F.3d 1077, 1093 (D.C. Cir. 2017).

In 2011, the Service issued another rule seeking to divide and delist gray wolves in the broader Western Great Lakes region. Revising the Listing of the Gray Wolf (*Canis lupus*) in the Western Great Lakes, 76 Fed. Reg. 81,666 (Dec. 28, 2011) (“2011 Rule”). The 2011 Rule designated the wolves previously listed as “threatened” in Minnesota as part of a new Western Great Lakes DPS that included Minnesota, Wisconsin, and Michigan, and portions of North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio, and it simultaneously delisted that segment. The 2011 Rule was vacated by a district court, and the D.C. Circuit Court of Appeals affirmed the decision on the basis that the Service failed to adequately analyze and consider the impacts of partial delisting and of historical range loss on the already-listed species. *Humane Soc’y v. Zinke*, 865 F.3d 585, 589 (D.C. Cir. 2017).

Following these delisting efforts, two gray wolf entities remained protected under the ESA: the Minnesota gray wolf entity, listed as threatened; and the gray wolf entity in all or portions of 44 lower United States and Mexico, which excludes the NRM wolves, listed as endangered. In March 2019, the Service proposed eliminating protections for the gray wolf throughout the contiguous United States. AR_20097; Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife, 84 Fed. Reg. 9648 (Mar. 15, 2019). The Service provided 120 days of public comment on the proposed rule. AR_40. On November 3, 2020, the Service issued its final rule, which removed ESA protections for the two previously listed entities—the Minnesota entity and 44-state entity. AR_38; Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife, 85 Fed. Reg. 69,778 (Nov. 3, 2020) (“Final Rule”).

The Final Rule asserts that delisting is appropriate because neither the Minnesota entity nor the 44-state entity qualify as a species, subspecies, or DPS under the ESA, and delisting is warranted for that reason alone. The Final Rule goes on to evaluate the conservation status of the currently listed entities under three different configurations: the two currently listed entities separately, the two currently listed entities combined into a single entity, and a single gray wolf

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