

“Because the government failed to reasonably analyze or consider two significant aspects of the rule—the impacts of partial delisting and of historical range loss on the already-listed species—we affirm the judgment of the district court vacating the 2011 Rule.”

**I**

“The central dispute in this case is whether the Endangered Species Act permits the Service to carve out of an already-listed species a “distinct population segment” for the purpose of delisting that segment and withdrawing it from the Act’s aegis. We hold that the Act permits such a designation, but only when the Service first makes the proper findings.”

“Holding that the Service has the legal authority to identify a distinct population segment from within an already-listed species does not mean it did so properly here. In fact, it did not. The fundamental error in the Service’s decision is that, in evaluating whether gray wolves in the Western Great Lakes region are a “distinct” population segment, the Service failed to address the impact that extraction of the segment would have on the legal status of the remaining wolves in the already-listed species. More specifically, the Service cannot find that a population segment is distinct—in the Service’s words, that it is severable because it is “discrete” and “significant”—without determining whether the remnant itself remains a species so that its own status under the Act will continue as needed.”

“In designating the Western Great Lakes wolves as a distinct population segment, the Service looked only at the characteristics of the Western Great Lakes segment in a vacuum, ignoring the second step of determining whether both the segment and the remainder of the already-listed wolves would have mutually independent statuses as species”

Prior to the 2011 Rule designating the Western Great Lakes segment, the Service had made two listings of gray wolves: those in Minnesota that were found to be threatened, and those wolves in the lower forty-eight states outside of Minnesota that were determined to be an endangered species. When the Service attempted to carve the Western Great Lakes segment out of the latter, it left the remnant of that already-statutorily-protected group in legal limbo without any determination that the gray wolves in the continental United States outside of the Western Great Lakes segment were themselves a species, subspecies, or segment that could continue to be protected under the Endangered Species Act. Certainly “gray wolves outside the Western Great Lakes segment” have never been recognized as a taxonomic species. The Service also failed to analyze whether “gray wolves outside the Western Great Lakes segment” are either a subspecies or a segment.<sup>7</sup> Absent such a determination, the Service has left entirely unexplained how the remaining wolves’ existing endangered status would continue. Nor did the Service make any finding that the remnant was no longer endangered under the statutory listing criteria.

Worse still, the Service has announced that, with the Western Great Lakes segment carved out, the remnant is no longer a protectable “species” and has proposed its delisting for that reason alone.”

“Because the Service’s interpretation of “range” as focusing on “current range” is reasonable, we uphold it. But because the Service categorically excluded the effects of loss of historical range from its analysis, we hold that the Service’s conclusion about the ongoing threat to the Western Great Lakes segment within its current range was insufficiently reasoned, and therefore arbitrary and capricious.”

“We hold that the Service’s analysis of the status of the Western Great Lakes segment within its current range wrongly omitted all consideration of lost historical range. Just because the Endangered Species Act does not compel the Service to interpret “range” to mean historical range, that does not mean that the Service can brush off a substantial loss of historical range as irrelevant to the species’ endangered or threatened status.”

“Despite immense losses in the gray wolves’ historical range—including the historical range of those wolves now occupying the Western Great Lakes area—the Service nowhere analyzed the impact of that loss on the survival of the gray wolves as a whole, the gray wolves remnant, or the Western Great Lakes segment. Such a failure to address “an important aspect of the problem” that is factually substantiated in the record is unreasoned, arbitrary, and capricious decisionmaking.”

“The Service does not deny the gap in its analysis.”

“In sum, because the undisputedly vast loss of historical range is a salient factor in determining the endangered or threatened status of the Western Great Lakes segment and the remnant population within their current ranges, the Service’s wholesale failure to address that factor renders the Service’s decision unreasoned, arbitrary, and capricious.”

“The Humane Society also argues that the final rule failed adequately (i) to explain why the wolf population’s combined mortality from humans and disease is not a continuing threat to the species’ existence, and (ii) to address the lack of adequate plan provisions or other protections for the gray wolves in the seven States that make up the Western Great Lakes area. Neither argument succeeds.

With respect to the combined threat to the gray wolves’ survival from disease and human-caused death, the record reflects that the Service adequately wrestled with both problems and grounded its decision in substantial evidence.”

“In short, the record supports the Service’s conclusion that disease- and human-caused mortality have not materially threatened the expansion of the gray wolf population in the Western Great Lakes region, and thus the Service reasonably concluded that those factors do not counsel against delisting.”

“In this case, the agency’s analysis (i) wholly failed to address the effect on the remnant population of carving out the Western Great Lakes segment, and in doing so (ii) misapplied the Service’s own discreteness and significance tests, and also (iii) turned its back on the implications of historical range loss. Those are major shortcomings that go to the heart of the Service’s delisting decision. Given the serious and pervading role those deficiencies played in the agency’s decisionmaking, there is substantial “doubt whether the [Service] chose correctly” in promulgating the 2011 Rule, *Sugar Cane Growers*, 289 F.3d at 98 (citation omitted). That makes vacatur appropriate. *See id.* at 97–98; *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1049, 1052–1053 (D.C. Cir. 2002). In addition, vacatur would not trigger disruptive consequences. The agency has failed repeatedly over the last sixteen years to make a delisting decision that complies with the APA, and it has not shown that vacatur here would be any more disruptive than it was on the Service’s last three failed occasions. With respect to protecting domestic animals in the interim, federal regulations already permit depredation control in Minnesota, which is where most of the gray wolves in the Western Great Lakes segment live.

Because of the “seriousness of the [Rule’s] deficiencies” and the absence of materially “disruptive consequences,” we affirm the judgment of the district court vacating the Service’s 2011 Rule.”