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May 8, 2007

U.S. Fish and Wildlife Service
Western Gray Wolf Recovery Coordinator
585 Shepard Way
Helena, Montana 59601

Re: RIN number 1018-AU53 Proposed Rulemaking regarding Establishing and Delisting a Distinct Population Segment for Gray Wolves in the Northern Rocky Mountains

On behalf of Defenders of Wildlife (“Defenders”), Biodiversity Conservation Alliance (“BCA”), Boulder-White Clouds Council (“BWCC”), Cascadia Wildlands Project (“CWP”), Gifford Pinchot Task Force (“GP Task Force”), Hells Canyon Preservation Council (“HCPC”), Help Our Wolves Live (“HOWL”), Klamath-Siskiyou Wildlands Center (“KS Wild”), Oregon Natural Desert Association (“ONDA”), Oregon Wild, Sinapu, the Siskiyou Project, The Rewilding Institute, Utah Wolf Forum, Washington Wilderness Coalition, Western Watersheds Project (“WWP”), Western Wildlife Conservancy, Wild Utah Project, Wolf Education Research Center (“WERC”), and Wolf Recovery Foundation (“WRF”), we strongly oppose the U.S. Fish and Wildlife Service’s (“Service”) proposed rule to remove the Northern Rocky Mountain distinct population segment (NRM DPS) of gray wolves from the federal list of endangered and threatened wildlife, for the many reasons detailed below.

Organizations Submitting Comments

Defenders is a national non-profit conservation organization with more than 800,000 members and supporters nationwide. Defenders is a science-based advocacy organization focused on conserving and restoring native species and the habitat upon which they depend, and has been involved in such efforts since its establishment in 1947. Over the last three decades, Defenders has played a leading role in the recovery of wolves in the Northern Rockies and now administers The Bailey Wildlife Foundation Wolf Compensation Trust, which has reimbursed ranchers in the region for more than \$800,000 since the program was founded in 1987. Additionally, Defenders administers The Bailey Wildlife Foundation Carnivore Conservation Fund, which assists family ranchers and farmers with nonlethal, proactive methods that help reduce or prevent livestock losses to wolves. These methods include sharing the cost of range riders, livestock guarding dogs, predator deterrent fencing, alternative grazing, and more.

BCA’s mission is to protect and restore biological diversity, habitat for wildlife and fish, rare plants, and roadless lands in Wyoming and surrounding states. We concentrate our efforts on the forests, prairies, and rivers of Wyoming, western South Dakota, and northern Colorado. Our focus is on entire ecosystems and on individual species, particularly those which are in need of immediate conservation help but lack a constituency and do not have a high public profile. The Biodiversity Conservation Alliances’ guiding principle is that all species and ecosystems deserve protection.

BWCC was formed in 1989 to gain permanent protection for the 550,000-acre Boulder-White Cloud Mountains by securing designation within the National Wilderness Preservation System. We focus on protecting and improving watersheds, fish and wildlife habitat in Idaho's Upper Salmon River region. Our mission includes providing accurate information on many issues including gray wolf recovery to our 800 supporters who mostly reside in Central Idaho. We also provide information to the public at large, media, elected officials, and other conservation organizations in Idaho, the northern Rockies, the Northwest, and nationally, including Washington, D.C.

CWP is a non-profit conservation organization founded in 1997 with 600 members throughout the United States whose mission is to defend the forests, waters and wildlife of the bioregion by educating, organizing and agitating for a more compassionate and responsible relationship with the ecosystems of our bioregion.

GP Task Force is a non-profit organization with over 3,000 members. We work to preserve and restore the ecosystems and communities of southwestern Washington by promoting conservation of forest ecosystems and sustainable restoration-based employment.

HCPC is a 501(c)(3) non-profit organization with a staff of 5 and 2,400 supporters. Our region of northeast Oregon includes the Hells Canyon-Wallowa Mountains and Blue Mountains Ecosystems and this region stretches well into the Payette National Forest in Idaho. We work collaboratively with a variety of local organizations and individuals, which lend credibility to our chosen work in La Grande. Being close to local interests and agency decision making processes is an advantage that other urban-bound organizations simply don't have. One of our three major programs is Wolf Recovery in Oregon and we have a significant legal interest in protecting wolves in the Hells Canyon National Recreation Area as well as in the surrounding land where they will likely recolonize from Idaho.

HOWL is a Minnesota nonprofit organization and a strong voice working for the protection and preservation of the gray wolf, lynx and other endangered or threatened species of a predatory nature. HOWL uses education and science to discourage cruelty to wild animals caused by human ignorance.

KS Wild is an advocate for the forests and wildlife of the Klamath and Rogue watersheds of northwest California and southwest Oregon. We use environmental law, science, collaboration and education to defend healthy ecosystems and help build sustainable communities.

ONDA is an Oregon non-profit public interest organization of approximately 1000 members. It is headquartered in Bend, Oregon and also has offices in Portland, Oregon. ONDA's mission is to protect, defend, and restore forever the health of Oregon's native deserts. ONDA has been actively involved in wolf recovery issues in Oregon, and the members and staff of ONDA use and enjoy the natural resources of eastern Oregon for many uses including wildlife watching.

Oregon Wild, formerly Oregon Natural Resources Council, is a non-profit conservation organization with approximately 5,000 members throughout Oregon. Oregon Wild's mission is to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy. Oregon Wild's

goals include restoring fully-functional terrestrial and aquatic ecosystems with a full complement of native species, including the gray wolf. Oregon Wild works with a broad cross-section of citizens, charitable groups, businesses, and government agencies at all levels to incorporate environmental concerns into democratic and economic institutions.

Sinapu is a non-profit organization located in Boulder, Colorado with more than 1,000 members. Named after the Ute word for wolves, Sinapu is dedicated to the restoration and protection of native carnivores and their wild habitat in the Southern Rockies, and connected high plains and deserts.

Siskiyou Project is a non-profit conservation organization dedicated to permanently protecting, enhancing and restoring the outstanding natural resources and public values of the Siskiyou Wild Rivers area as a heritage for all Americans. Siskiyou Project plans to seek congressional establishment of a Siskiyou Wild Rivers National Preserve that includes federal lands managed by the Siskiyou National Forest and the Bureau of Land Management. Working with conservation partners, local communities and public agencies, we will develop and propose a workable framework for future management that will support the character and economic sustainability of local communities, provide long-term protection for the area's outstanding natural values, and enhance the enjoyment of the Siskiyou Wild Rivers area by present and future generations.

The Rewilding Institute's mission is to develop and promote ideas and strategies to advance continental-scale conservation in North America, particularly the need for large carnivores and a permeable landscape for their movement, and to offer a bold, scientifically credible, practically achievable, and hopeful vision for the future of wild Nature and human civilization in North America.

The Utah Wolf Forum assists Utahns in the assimilation of naturally recolonizing wolves into Utah, through science-based planning and education.

The Wild Utah Project was founded in 1996 by Utah scientists and conservationists, but our personal history goes back decades further. As Utahns, some of whom have deep family roots here, we recognize how special their state's landscape is. Because the health of the land is a fundamental trust that is eventually linked to all human endeavors, including healthy communities, the mission of the Wild Utah Project is to maintain and, where needed, restore the health and productivity of our natural lands in Utah and adjoining states. We do this by applying the principles of conservation biology to land management decisions. Working with scientists, land managers, conservationists, and local communities, Wild Utah Project provides needed scientific analysis and the newest technology, including Geographic Information Systems (GIS) or computer mapping, to look at what needs to be done to ensure the health of natural lands. Our work takes the complex science of ecosystem management and puts it into measurable and understandable solutions for a local mountain range or watershed in a way that fits community goals and federal land management practices.

Washington Wilderness Coalition has worked to preserve and protect Washington's wilderness roadless and unprotected wild lands since 1979. WWC has more than 10,000 members and activists from throughout Washington State.

Western Wildlife Conservancy is a non-profit conservation organization located in Salt Lake City. WWC is dedicated to the restoration and protection of wildlife species and habitats in the Intermountain West through advocacy, education and litigation. WWC has approximately 300 members.

WWP is an Idaho not-for-profit conservation organization with over 1,500 members. WWP owns and operates the 432-acre Greenfire Preserve (a wildlife sanctuary), located on the East Fork Salmon River near Clayton, Idaho and has offices in Hailey and Boise, Idaho, Wyoming, California and Utah. The mission of Western Watersheds Project is to protect and restore western watersheds and wildlife through education, public policy initiatives and litigation.

WERC is dedicated to providing public education and outreach concerning the gray wolf and its habitat in the Northern Rocky Mountains. It is our goal to provide the public the opportunity to observe and learn about wolves in their natural habitat. WERC's interpretive visitor center provides an opportunity for our visitors to interact with the staff and to experience some hands on education opportunities by way of pelts, bones and replicas of skulls and tracks.

WRF is a 501(c)(3) non-profit corporation incorporated in the state of Idaho. Our mission is to foster our heritage of wild wolf communities by advocating their presence forever in places where they have been extirpated. WRF advances its mission through efforts in public representation, information and outreach, networking with the agencies, organizations, tribes and universities, and through workshops, conferences, special events, and comments on important documents.

Background

In October of 2005, the U.S. Fish & Wildlife Service ("Service") published a positive 90-day finding in response to a petition filed by the state of Wyoming and the Friends of the Northern Yellowstone Elk herd requesting the designation of the Northern Rocky Mountain population of gray wolves as a "Distinct Population Segment" (DPS) and to simultaneously remove this DPS from the federal list of Endangered Species (delist). During the ensuing public comment period, Defenders *et al* submitted comments regarding the merits of establishing a NRM DPS that included the states of Montana, Idaho and Wyoming, and whether delisting that DPS was appropriate. We acknowledged then that the northern Rockies gray wolf population may constitute a DPS but opposed delisting that population in light of Wyoming's inadequate wolf management plan. In February of 2006, the Service published an advance notice of rulemaking, and held a 60-day public comment period regarding a "preproposal" to designate and delist a NRM DPS consisting of all of Idaho, Montana and Wyoming, plus portions of eastern Washington, eastern Oregon and north-central Utah. We reiterated our view that the northern Rockies gray wolf population may constitute a DPS but questioned the Service's inclusion within the DPS of portions of additional states that were never part of the northern Rockies recovery area, and reaffirmed our opposition to delisting the northern Rockies wolf population due to the inadequacy of Wyoming's and Idaho's state wolf plans.

On February 8, 2007, the Service published a proposed rule to establish and delist the Northern Rocky Mountains DPS. In addition to seeking general comments on whether wolves should be delisted in this DPS, the Service requested information and comments on four issues regarding wolves in the northern Rockies:

1. Information, data and comments concerning the boundaries of the proposed NRM DPS and the status of the gray wolf in the NRM.
2. Whether the NRM DPS should, or should not, include more or less land within these, or any other State(s), including such relevant scientific data to support delineating the boundaries of this DPS.
3. The Service's approach to remove protections in all or a portion of the NRM DPS (e.g. in Wyoming even though the state has not produced an adequate wolf management plan).
4. Use of Section 6 agreements under the Endangered Species Act to allow states with Service-approved wolf management plans, located adjacent to the proposed NRM DPS, to assume wolf management authority including nonlethal and lethal control of "problem" wolves.

Our responses to these specific issues are below. First, we provide comments detailing why the five listing/delisting criteria under section 4 of the Endangered Species Act ("ESA") have not been met so as to warrant delisting of wolves in the northern Rockies at this time. We also address two recent developments that impact the formulation of the northern Rockies DPS and threats to wolves in this region: the recently-published Solicitor's opinion defining the term "significant portion of range," and the soon-to-be released proposal to further amend section 10(j) in all three northern Rockies states to allow for broader killing of wolves.

Summary of Comments

The Service has failed to address the concerns that we have raised throughout these public comment periods. Therefore, we continue to oppose delisting of a NRM DPS until Wyoming's wolf plan is modified to meet conservation standards and the public has the opportunity to comment on its adequacy as a wolf management plan. In addition, we continue to have significant concerns regarding the substance of Idaho's plan, concerns that are heightened by recent actions by elected officials in Idaho demonstrating substantial hostility towards wolves. Taken together it is clear that adequate regulatory mechanisms do not yet exist in the states comprising the NRM DPS to ensure the long term survival of wolves in the region, absent federal protection.

While the northern Rockies wolf population in Idaho, Montana, and Wyoming currently comprises more than 1,300 wolves, the explicit and implicit terms of Wyoming's and Idaho's plans clearly envision a greatly reduced wolf population, once under state management. We remain deeply concerned by the vagueness of the Idaho wolf management plan and by the state's official position on wolves, set forth in 2001 House Joint Memorial Resolution 5, which calls for the removal of all wolves from Idaho by "whatever means necessary," and which is reiterated in the opening pages of the state wolf plan. Moreover, for Idaho to have an adequate state management plan, there must be funding to implement it. Yet, the Idaho state wolf plan makes state management dependent on federal funding, which has not been secured, and is not expected to be secured upon delisting. Wyoming's plan, which to date has not been approved by the Service, would classify wolves as

predatory animals that can be shot on sight in 90 percent of the state and clearly aims to dismantle federal wolf recovery efforts the moment federal protections are ended.

Neither Idaho nor Wyoming has demonstrated any sincere commitment to wolf conservation in the region. Instead, both have strongly indicated that they will seek to undo much of what has been accomplished under the ESA since reintroduction by dramatically reducing their respective wolf populations to levels which will again put the species at risk of extinction. We are unaware of any other threatened or endangered species that has undergone delisting under these conditions and been subjected to such an immediate and severe reversal of positive population trends.

Beyond our ongoing concerns about the state wolf plans for Wyoming and Idaho, we also have strong concerns regarding the incorporation of portions of three additional states to create the proposed NRM DPS, the inconsistent manner in which the Service has applied its DPS policy to create the boundaries for the proposed DPS, and the proposed modification of Section 6 agreements with these states. We are further disturbed by the recent interpretive opinion issued by the Solicitor of the Department of the Interior regarding the term “significant portion of range” and the application of this interpretation to wolves in the northern Rockies. Finally, the Service’s soon-to-be-released proposal to further amend the section 10(j) rules applicable to wolves in the northern Rockies has new implications for the safety and continued viability of the wolf population in this region.

I. APPLICATION OF THE ESA’S LISTING FACTORS TO THE PROPOSED NORTHERN ROCKIES DPS

The ESA requires that the Secretary of the Interior determine by regulation whether a species is an endangered or threatened species as a result of *any* of five statutory factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; *or* other natural or manmade factors affecting its continued existence.¹ Consideration of these factors is required for both listing and delisting decisions.² If any of these factors are present to support listing, a species cannot be delisted.

After evaluating these factors, we believe that the Secretary must conclude the Northern Rockies DPS does not qualify for delisting at this time. Three factors in particular – disease or predation; inadequate regulatory mechanisms; and other manmade or non-natural factors – appear to preclude delisting. A fourth factor – the overuse for scientific, commercial, recreational or educational purposes – would become a reality upon delisting in the states of Wyoming and Idaho, where immediate, wide-scale hunting of wolves aimed at eradicating more than 75 percent of these states’ wolf populations would dramatically reduce the region’s overall wolf population. We address each factor in turn.

¹ 16 U.S.C. § 1533(a)(1).

² 50 CFR § 424.11.

A. Disease or Predation.

In the northern Rockies, wolves continue to face illegal killing (predation) by humans. Based on figures provided in the Service's 2007 NRM DPS/delisting proposal, approximately 13 percent of the region's wolf population is lost to illegal killing each year. In April, an Idaho man was sentenced for attempting to kill wolves with poison-laced meatballs, a method he had posted on the internet for widespread distribution. Disease has also caused large wolf population fluctuations in Yellowstone National Park where, in 2005, 80 percent of that year's pups died from a suspected parvo or canine distemper outbreak and wolf numbers plummeted within a year from 16 to 7 known breeding pairs. Recently, mange has been discovered among wolves in Yellowstone. Mange can be so lethal to wolves that introduction of the disease was historically used to eradicate the species.

With two or three distinctly different diseases—each capable of negatively impacting the region's wolf population—appearing in the recovery area, an analysis of their combined potential impact on the wolf population, should the population be reduced to only a few hundred wolves, is warranted. This is especially so given the apparent isolation of populations both within the DPS and from wolves in Canada and the likely restriction of genetic flow, which is discussed in more detail below. In combination, these factors weigh against delisting.

B. The Inadequacy of Existing Regulatory Mechanisms.

As discussed in more detail below, neither Wyoming nor Idaho has demonstrated a sincere commitment to wolf conservation and, in fact, statements and actions by elected officials of both states have strongly indicated their intentions to reduce dramatically the number of wolves within their borders. Of all the states in the proposed NR DPS, only Idaho and Montana have Service-approved state plans at this time, and as we have repeatedly stated in prior comments, Idaho's plan particularly does not provide for adequate conservation of wolves. Most significantly, the Service rejected Wyoming's plan, and the state has chosen to litigate that rejection rather than revise it to provide for meaningful wolf conservation.

The USFWS conducted a peer review of the Idaho, Montana, and Wyoming wolf management plans in 2003. The Service asked the peer reviewers to determine if the state wolf management plans met the objections of the plans, not whether the plans would lead to a viable metapopulation of wolves in the northern Rockies. Even so, of the 11 peer review comments that we have received from the Service via a Freedom of Information Act request, seven of them expressed concerns regarding Idaho's and/or Wyoming's wolf management plans. Their comments noted that the plan(s) were vague, lacked enforcement mechanisms, failed to adequately define objectives, lacked funding to implement them, and, in Idaho's case, was prefaced by a House Joint Memorial (a resolution of the state legislature) that undermined the state's ability to ensure wolf recovery.³

³ Comments of Dr. Warren Ballard (Oct. 29, 2003), Rod Boertje (Oct. 2003), Mark McNay (Oct. 22, 2003), Dr. L. David Mech (Oct. 15, 2003), Dr. Rolf Peterson (Oct. 30, 2003), Adrian Wydeven (Oct. 31, 2003), Bill Paul (October 17, 2003), Jim Hammill (date unknown), Dr. Dan Pletscher (Oct. 30, 2003), Dr. Kyran Kunkel (date unknown), and Dr. Todd Fuller (Nov. 6, 2003).

There are simply no assurances, and much evidence to the contrary, that these states have in place or will follow regulatory procedures adequate to ensure the survival of wolves in the DPS. It is even less likely that sufficient numbers of wolves will exist under these plans to permit dispersal and recovery throughout the Northwest. The failure of these states to ensure wolf conservation within their borders and to provide the possibility of wolf dispersal and recovery beyond the DPS boundaries strongly militates against delisting.

1. Idaho's State Wolf Plan Does Not Adequately Protect Wolves.

We continue to have very serious concerns regarding Idaho's Wolf Conservation and Management Plan ("the plan") and initially expressed those concerns in comments submitted to the Service in 2002. Idaho continues to maintain an official policy that wolves be eradicated from the state and its own governor has promised to be among the first to hunt wolves after delisting.⁴ The small numbers at which wolves would be maintained in Idaho undermines IDFG's claim that wolves would be managed like other game mammals in the state, and IDFG's proposal to kill wolves for elk declines that are actually caused by poor habitat conditions demonstrates a serious lack of science-based decision making regarding wolves.

Idaho's state plan explicitly references the official state position regarding wolves, which is that they should be removed "by whatever means necessary."⁵ The plan allows for removal of all wolves down to "recovery levels" which is defined in that document as being 10 "packs" of wolves. A "pack" of wolves is not defined nor is the use of the term "pack" consistent with the Service's definition of "breeding pairs" of wolves. Indeed, the Idaho plan's language is so vague that it could lead the state to justify killing all but 30 wolves in the state after the species is delisted. While some state officials have made public comments that the state will seek to maintain a viable wolf population after the species is delisted, these assurances are not provided for within any regulatory mechanism and, as discussed below, are undercut by statements by the current governor. Even if the state were to kill all but 10 breeding pairs of wolves as defined by the Service, to achieve that goal Idaho would have killed more than 75 percent of its current wolf population, an action that is unjustified and scientifically highly questionable.

The State of Idaho has not demonstrated how it can monitor the wolf population closely enough to guarantee that the species will not become endangered or threatened again. We are concerned that the State is making verbal gestures to conform to the effort to remove the species from federal protection and, once this has occurred, will recklessly kill more wolves than the population can viably sustain. Indeed, Idaho's first proposed wolf management action, upon assuming considerable management authority in January 2006 under a Memorandum of Agreement with the Department of the Interior, was to kill 75 percent of the wolves in the Clearwater National Forest to increase the resident elk population. The state proposed this action despite overwhelming scientific opinion that habitat conditions, not predation, have been responsible for elk decline in that region and more than

⁴ See, e.g., For Wolves, A Recovery May Not Be the Blessing It Seems, *N.Y. Times*, Feb. 6, 2007 ("In Idaho, the governor is ready to have hunters reduce the wolf population in the state from 650 to 100, the minimum that will keep the animal off the endangered species list.").

⁵ Idaho House Joint Memorial N.o. 5 (demanding that "wolf recovery efforts in Idaho be discontinued immediately and wolves be removed by whatever means necessary.").

40,000 public comments opposing this plan. Although the Service declined to approve this proposal at the time, once wolves are federally delisted in the region, Idaho will be free to move forward without obtaining federal permission, and Idaho officials have already stated that they will seek to do so.

Highlighting the State's hostility toward wolves, in February 2007, Idaho's governor "Butch" Otter announced his intention that the state's entire wolf population be reduced by more than 75 percent, down to 100 wolves, as well as his desire to get a tag to take the first shot. Practically before the ink was dry on the Services' proposal to delist wolves in the northern Rockies, hunting tag prices were set for wolves in Idaho and the state is moving forward with "stakeholder" meetings to help develop Idaho's wolf hunting regulations. Unfortunately, the stakeholders being asked to attend these meetings are 3-to-1 opposed to wolves in the state. While Idaho Department of Fish and Game (IDFG) contends it will manage wolves like other big game, a comparison between how IDFG manages other big game species versus how it would manage wolves speaks for itself. IDFG manages for more than 100,000 elk, 20,000 black bears and 3,000 cougars, yet plans to manage for only 100-150 wolves or less. If the Idaho state government takes deliberate actions to remove significant numbers of wolves, long-term viability and success of the program would be jeopardized.

Lastly, Idaho law precludes the possibility of judicial review of state management plans.⁶ Thus, the Idaho wolf plan provides no enforcement mechanism or other assurances that it will even be followed. Adequate regulatory mechanisms simply do not exist in Idaho to ensure continued survival of wolves in the state. Delisting wolves in the region under such conditions violates the ESA.

2. Wyoming Lacks a Service-Approved Wolf Plan and Has No Adequate Regulatory Mechanisms in Place to Sustain Wolf Recovery

The Service cannot delist the proposed NRM DPS until Wyoming's state plan meets the regulatory requirements of the ESA. The federal government has withheld approval of Wyoming's state wolf plan because, at least until recently, the Service has correctly shared the concerns of conservation groups that Wyoming's wolf plan fails to provide adequate regulatory mechanisms to assure that the state's wolf population would remain viable after delisting. Although Wyoming has not prevailed in its lawsuit challenging the Service's refusal to approve their wolf plan, the state nonetheless has refused to make any changes to its plan and failed to present the Service with a revised wolf management plan before May 1st, the last deadline set by the Service.

On July 15, 2002, Defenders *et al.* submitted comments to the Service detailing the inadequacy of Wyoming's state plan. As the state has yet to remedy any of the concerns expressed in our 2002 comment letter and those identified by the Service, we remain strongly opposed to Wyoming assuming primary management control of wolves within their borders. In the Notice of 12-Month Petition Finding, the Service deferred designation of a NRM DPS to a future rulemaking process, and concluded that delisting was not warranted for the Northern Rockies wolf population.⁷ This was based on the Service's determination that the Wyoming Plan is not an adequate regulatory

⁶ Idaho Code § 67-818(3)(b).

⁷ 71 Fed. Reg. 43410 (Aug. 1, 2006),

mechanism to maintain a viable gray wolf population and that unregulated killing of wolves under the Wyoming Plan could “reduce population levels to a point at which wolves in the [northern Rockies] are, within the foreseeable future, likely to become in danger of extinction throughout a significant portion of the range.”⁸ By its own repeated assertions in federal documents pertaining to wolf recovery in this region, the Service must not delist wolves region wide without Wyoming completing a state plan in compliance with the ESA.

Because Wyoming has no approved wolf plan and has demonstrated no willingness to cooperate with the Service or conservation organizations to ensure the survival of wolves in the state, the Service simply cannot delist wolves in the state or the greater NR DPS. Indeed, we strongly oppose the removal of ESA protections for wolves anywhere in Wyoming prior to adequate regulatory mechanisms being in place to allow for delisting. As discussed further below, any attempt to carve out some or all of Wyoming for the purposes of furthering delisting in other areas of the NR DPS would also be unacceptable as it would violate the DPS Policy and the ESA and undermine wolf survival in the region.

Finally, we note that while Montana’s wolf plan provides the highest level of protection of Service-approved plans in the NR DPS, no regulations have been codified to implement the plan or harmonize its provisions with other aspects of Montana law. What is more, the plan – like all state plans under consideration here – suffers from a lack of dedicated funding to ensure that it will be followed and implemented to provide for continued wolf conservation and recovery.

Delisting wolves under such circumstances would violate the ESA because adequate regulatory mechanisms clearly do not exist within the NR DPS.

C. Other Natural or Manmade Factors Affecting its Continued Existence.

Public hostility to wolves in the Northern Rockies remains a significant problem for long-term wolf recovery. The most recent public hearing in Cody, Wyoming, is a prime example of what wolves will face once protections are lifted. More than 600 people attended the hearing. According to press reports, wolf advocates were “jeered” by supporters of delisting.⁹ The Associated Press described the hearing as “sometimes-raucous” and noted that: “One speaker told federal moderators to ‘take your wolves back to Canada.’ Another wore a vest embroidered with the message, ‘Why does a wolf howl? Because it feels the bullet.’”¹⁰

Much as we wish it were otherwise, wolves continue to generate strong negative feelings in some people. Defenders of Wildlife has attempted to foster a more hospitable climate for wolves. Defenders helped pioneer the use of economic incentives to promote protection of endangered species on private lands. Defenders created The Bailey Wildlife Foundation Wolf Compensation Trust, which pays livestock owners for losses to wolf predation. Experts credit the Trust as the most important factor contributing to social tolerance for reintroduction of wolves to Yellowstone National Park and the Northern Rockies. But the continuing on-the-ground reality is that absent

⁸ *Id.*

⁹ Cody Hearing on Delisting Draws Passionate Views, *Billings Gazette*, April 20, 2007.

¹⁰ AP, Wolf Delisting Praised, Panned at Final Hearing, April 20, 2007.

federal protection or adequate state mechanisms for conservation of wolves, too much animosity toward wolves remains to ensure their long term viability.

Finally, as discussed in more detail below, the expanded use of M-44s in wolf territory will undoubtedly impact wolf populations. Continued hostility to wolves, state and private efforts to kill wolves as game or trophy species, and poisoning risks remain acute. Accordingly, delisting of wolves at this time is not justified and would violate the ESA.

II. ADDITIONAL INFORMATION, DATA AND COMMENTS CONCERNING THE BOUNDARIES OF THE PROPOSED NORTHERN ROCKY MOUNTAIN DPS AND THE STATUS OF THE GRAY WOLF WITHIN THE PROPOSED NRM DPS.

A. The Service Has Failed to Address How the Lack of Connectivity with the Canadian Wolf Population Affects the Sustainability of an Isolated U.S. Wolf Population That Has Also Exhibited Declines Due to Agency Lethal Control Actions, Illegal Killings and Disease.

The foundation of population viability is representation, redundancy, and resiliency. While the number of wolves in the northern Rockies has grown significantly over the last decade, the original premise scientists used to establish recovery goals for the NRM wolf population – i.e., the connectivity between the northern Rockies and southern Canadian wolf meta-population – has not yet been realized. In the 1994 Environmental Impact Statement (EIS) review, Dr. Steve Fritts, EIS Team Wolf Scientist and Northern Rocky Mountain Wolf Recovery Coordinator, based the Service's population goals for wolves in the northern Rockies on a premise that this population "would be connected to the Canadian population via the Rocky Mountain chain northward from Glacier National Park [in Northwest Montana] to the Banff Jasper Parks in Alberta and B.C."¹¹ Dr. Fritts concludes "That corridor may be vital to the long term future of wolves in the Northern Rockies of the U.S."¹² The Service also conducted a review by a "wide diversity of professional peer reviewers" who concluded that some minimum level of connectivity among the U.S. subpopulations and with the larger wolf population in Canada was necessary to guarantee long-term persistence."¹³ Instead of guaranteeing this connectivity, the northwest Montana wolf population lagged significantly behind the other wolf recovery areas (central Idaho and the Yellowstone ecosystem) due to heavier use of lethal control actions used to remove wolves at low population levels when they preyed on livestock and illegal killing.

Starting from a recorded population of 66 wolves in 1995, the population in northwestern Montana had climbed to an estimated 108 wolves in 2002, and then declined again by 54 percent to only 59 wolves in 2004. It then apparently doubled to 130 wolves in 2005 and the population today is reported at 149 – 171 wolves. By the end of 2006, the wolf population appears to be on a positive trend with an estimated 171 wolves comprising 12 breeding pairs of wolves. Under the Service's original recovery goal of 10 breeding pairs in each of the three recovery areas successfully

¹¹ U.S. FWS 1993.

¹² U.S. FWS 1994a.

¹³ U.S. FWS 2003.

reproducing litters for three consecutive years, it appears that this goal will be met in 2007 (the Service claims to have met this goal in 2002 but only after changing the recovery goalposts from 10/10/10 to 30 breeding pairs overall, allowing the Service to discount the lagging wolf population in the NW Montana wolf recovery area). While this recent trend is encouraging, this population should be monitored for several years to determine if it is robust enough to provide a reliable conduit for connectivity between Canada and the northern portion of the proposed DPS. If it is not, then the Service needs to reevaluate the minimum population of wolves that must be guaranteed by the states before federal protection can be removed from wolves in this region. This new minimum must reflect the number of wolves necessary for a sustainable meta-population isolated from Canada.

Although the Service's proposal claims that there is connectivity with the Canadian wolf population, it only references two dated studies: Pletscher, *et al.* (1991) and Boyd & Pletscher (1997). However, in our discussions with Dr. Pletscher, he concluded that there appears to be only "tenuous" connectivity between the Canadian wolf population and the NRM wolf population.¹⁴ Dr. Pletscher also stresses that the "connectivity must be maintained" after delisting in order to protect population viability in the region.¹⁵ In light of this more recent information, we believe that the lack of connectivity with the Canadian wolf population remains a critical issue as it relates to population viability and gene flow that the Service has failed to adequately address before proposing to delist the NRM wolf population. This is especially true when one considers the population changes that are likely to occur after delisting. The current estimated wolf population for the three-state northern Rockies region is 1300+ individuals; however, wolf population goals expressed by both Idaho and Wyoming officials would significantly reduce these two states' respective wolf populations to only 100-150 animals each. The lack of connectivity in the existing population coupled with expected population declines under state management should compel the Service to re-examine its minimum recovery goal numbers.

The Service states in the proposed rule that "Overall, recovery of a species is a dynamic process requiring adaptive management and judging the degree of recovery of a species is also an adaptive management process."¹⁶ Given advancements in research related to wolf population dynamics since the original recovery goals were established and the unfortunate on-the-ground realities of state wolf management plans, the Service must evaluate whether the NRM wolf population's original recovery goals of only 300 wolves may be insufficient as a "meta-population" able to guarantee the long term recovery of wolves in the region as an isolated population.

Particularly, the Service should explain why it has set dramatically lower demographic recovery goals in the NRM DPS compared to the proposed Western Great Lakes DPS. The Service's new requirement that Idaho, Montana, and Wyoming, maintain a combined total of 30 breeding pairs and 300 wolves,¹⁷ is a far cry from the much larger population it has determined to be required to ensure long-term population goals in the Great Lakes. The 1992 Recovery Plan established a goal for Minnesota of between 1,250 and 1,400 individual wolves and described this population size as

¹⁴ D. Pletscher, personal communication with Suzanne Stone, Defenders of Wildlife, May 2007.

¹⁵ *Id.*

¹⁶ 72 Fed. Reg. at 6107.

¹⁷ 72 Fed. Reg. at 6108.

necessary to “increase the likelihood of maintaining its genetic diversity over the long term” and to provide “resiliency to reduce the adverse impacts of unpredictable demographic and environmental events.”¹⁸ It is unclear why the Northern Rockies population should require nearly 1000 wolves less than Minnesota standing alone in order to maintain viable wolf populations; indeed, given the lack of adequate regulatory mechanisms in the NRM DPS and other threats, the Service must account for this discrepancy. This evaluation should include consideration of the risk of disease, illegal killing and the expanded use of M44s, which will be widely used within wolf range after wolves lose federal protection.

In Yellowstone National Park, the wolf population declined from 171 wolves in 16 known breeding pairs in 2004 to only 118 wolves in 7 breeding pairs in 2005. Pup survival in Yellowstone in 2005 was only 20 percent within the entire park. According to National Park Service wolf biologists, a high incidence of parvo and distemper may have been responsible for the high level of pup mortality that year. In addition, park biologists have recently confirmed the spread of mange in wolves in the Yellowstone ecosystem.¹⁹ Though wolf numbers in the Park have rebounded since 2005, with three distinctly different diseases – each capable of negatively impacting the region’s wolf population – appearing in the recovery area, an analysis of their combined potential impact on the wolf population should the population be reduced to only a few hundred wolves is warranted.

B. Insufficient Elapsed Time Has Occurred to Judge Genetic Flow Among the Three Regions.

Too little time (in wolf generations) has elapsed to accurately assess the genetics of the northern Rockies wolf population as reliable evidence for the existence or lack of connectivity among the three-state area and with Canada. As discussed above, the original recovery goal of 10/10/10 was predicated, in large part, on connectivity and gene flow from Canada. Genetic researchers have recently characterized over 500 individuals from the 1995 reintroduced Canadian wolves through individuals sampled in 2005. They determined that while the Montana, Idaho and Yellowstone populations are “genetically distinct” and currently display high levels of genetic variation, there is cause for concern:

Despite very limited gene flow from other wolf populations, we find that high levels of genetic diversity have been maintained during the reintroduction. Based on genetic analysis of 30 microsatellite loci and field data, we have produced a completely resolved genealogy of over 200 YNP wolves that elucidates the breadth and variety of social dynamics within the Yellowstone population. Despite currently high levels of variation, there is concern for maintaining the genetic health over the long-term given the lack of connectivity with other populations. **Population-based simulations provide a pessimistic outlook for genetic viability of the Greater Yellowstone wolf population if the population is isolated and not maintained**

¹⁸ U.S. FWS, *Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife*, 72 Fed. Reg. 6052 (Feb. 8, 2007).

¹⁹ D. Smith, personal communication with Suzanne Stone, Defenders of Wildlife, April 2007.

at high numbers.²⁰

Furthermore, recent work by Oakleaf, *et al*, determined that “currently there appears to be limited interchange of individuals between the 3 Northern Rockies recovery areas.”²¹ Both Oakleaf and another study by Carroll, *et al*, conclude that connectivity among the three recovery areas are poor, that dispersal corridors may not presently provide suitable habitat for wolves, and that increased development pressure in the region may only reduce the possibility of enhancing connectivity and gene flow.²² This research is further confirmation that the Service must re-examine and possibly substantially increase the minimum wolf level requirements in each recovery area within the northern Rockies DPS if this population is to be considered an isolated meta-population.

C. Risk of State Management Plans Becoming Unfunded, and Therefore Unenforced, Mandates.

Before the Service can seriously consider creating and delisting an NRM DPS, the Service must be assured that adequate funding will be available to implement and enforce the wolf conservation measures set forth in the Idaho, Montana and Wyoming state management plans. Moreover, because state-funding of wolf management programs are key to the long-term success of the recovery efforts and delisting can only be based on an assessment of the adequacy of “existing” regulatory mechanisms under section 4(a)(1)(D) of the Endangered Species Act, 16 U.S.C. § 1533(a)(1)(D), only the funded aspects of the state management plans can be properly considered in the Services’ delisting calculus.²³ In other words, the Service cannot rely on unfunded mandates or otherwise meaningless regulatory mechanisms to justify the delisting of a NRM DPS. Funding is necessary to assure appropriate monitoring of the wolf population as it changes over time. This need is especially apparent in light of Idaho’s announced intention to reduce their state wolf population by more than 75 percent down to the minimum 10-15 breeding pairs established by the Idaho state wolf management plan and Wyoming’s intention to kill 16 of its 23 packs immediately upon delisting.

D. The Service’s New Definition of the Term “Significant Portion of Range” Defies All Common Sense and Logic.

The ESA defines an endangered species as one that is “in danger of extinction throughout all or a significant portion of its range.”²⁴ The Solicitor of the Department of the Interior released a legal opinion on March 16, 2007, that attempts to redefine the term “significant portion of its range” and thus prescribe how the Bush Administration will make listing and delisting decisions in the future.²⁵

²⁰ (Von Holdt, *et al* 2007) (*emphasis added*).

²¹ Oakleaf, *et al* (2006), at 555.

²² *Id*; Carroll, *et al* (2006).

²³ *See, e.g., Center for Biological Diversity v. Morgenweck*, 351 F. Supp. 2d 1137, 1141 (D. Colo. 2004) (“The law is clear that FWS cannot consider future conservation efforts in its review of the Petition.”).

²⁴ 16 U.S.C. § 1532(6).

²⁵ *See* Memorandum from Solicitor, U.S. Department of the Interior, to Director, U.S. Fish & Wildlife Service on The Meaning of “In Danger of Extinction Throughout All or a Significant Portion of its Range,” March 16, 2007. Defenders of Wildlife and other conservation groups have

The Solicitor's opinion raises two serious issues that are relevant to this delisting proposal. Most significantly, the opinion suggests that the Secretary may list and delist species by state, a practice that is contrary to longstanding agency interpretations. State-by-state listing would lead to patchwork legal protections that could be inconsistent with biological realities, such as a species' actual range or condition across a multi-state geographic area. For example, the opinion suggests "the Secretary has the discretion to divide the range of a species along political boundaries and declare it endangered only in states where the state authorities are not providing adequate protection of species."²⁶ It further states that "For example, the Secretary might examine the American alligator as a species, determine that Florida is a significant portion of the American Alligator's range, and conclude that American alligators in Florida are in danger of extinction, even though alligators elsewhere are not."²⁷ The use of state boundaries for listing purposes is flatly inconsistent with the Service's current interpretation of its official DPS Policy, which was formulated in 1996, and has been interpreted to preclude the use of political boundaries in assessing the significance of a population.

Such an interpretation raises particularly grave concerns in the northern Rockies where the states of Wyoming and Idaho are urging the Department to delist gray wolves and permit greater state management of the species. Both states are hostile to wolves and have expressed intentions to dramatically cull wolf populations as soon as federal protections are lifted. Allowing wolves to be delisted in individual states, particularly in such an unfavorable climate, flies in the face of biological and ecological realities of wolf populations and could undermine region-wide efforts to recover wolves in the northern Rockies and restore them to appropriate habitats throughout the Northwest.

Secondly, the opinion appears to limit protection to species that are facing risk of extinction in their *current* range. This could significantly limit the protections available to species—like the gray wolf—that formerly occupied major geographical areas but no longer do. This portion of the Solicitor's opinion flatly contradicts the Ninth Circuit's opinion in *Defenders of Wildlife v. Norton*, 258 F.3d 1136

successfully argued in various courts that the definition of endangered species should be given its plain meaning to cover species that are either 1) in danger of extinction everywhere or 2) in danger of extinction in some smaller, but significant, part of its range. The Solicitor's opinion is a response to these repeated losses in federal court, most notably *Defenders of Wildlife v. Norton*, 258 F.3d 1136 (9th Cir. 2001) (flat-tailed horned lizard), and the administration's prior losses in gray wolf cases *Nat'l Wildlife Fed'n v. Norton*, 386 F. Supp. 2d 553 (D. Vt. 2005) (gray wolf); *Defenders of Wildlife v. Secretary*, 354 F. Supp. 2d 1156 (D. Or. 2005) (gray wolf). In total, seven district courts and the Ninth Circuit now accept Defenders' plain language interpretation of the phrase. *Defenders of Wildlife v. Norton*, 239 F. Supp. 2d 9 (D.D.C. 2002) (Canada lynx); *see also Center for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 402 F. Supp. 2d 1198 (D. Or. 2005) (coastal cutthroat trout); *Env'tl. Protection Info. Ctr. v. Nat'l Marine Fisheries Serv.*, No. C-02-5401 EDL (N.D. Cal. Mar. 1 2004) (green sturgeon); *Sw. Ctr. For Biological Diversity v. Norton*, CA No. 98-934 (RMU/JMF), 2002 U.S. Dist. LEXIS 13661 (D.D.C. July 29, 2002) (Queen Charlotte goshawk); *Defenders of Wildlife v. Norton*, CA 99-02072 (HHK) (D.D.C. Dec. 13, 2001) (Florida black bear).

²⁶ Solicitor's Op. at 11.

²⁷ *Id.* at 15.

(9th Cir. 2001) and subsequent court decisions requiring the agency to consider historic range.²⁸ Conceivably, this interpretation could also encourage habitat destruction or direct take of species on the theory that once a species is extirpated from an area, that area would no longer be considered “current range” and thus the species would not be designated endangered or threatened in that area.

Thus, the Service must explain the extent to which it will continue to pursue wolf recovery in states or areas of states outside the proposed DPS including Oregon, Washington, Colorado, Utah, and Wyoming. To the extent that the Solicitor’s Opinion limits listing and recovery activities to a species’ current range, it calls into question whether the Service intends to continue recovery efforts outside the DPS at all. We strongly oppose any interpretation which abandons or weakens restoration of wolves inside or outside the DPS boundary. We believe such an interpretation is clearly contrary to law and science.

E. New Threats to Wolves Upon Delisting Will Arise Due to Expanded Use of M-44’s to Kill Coyotes.

In a recent discussion with Mark Collinge, state director of Idaho Wildlife Services in March 2007, Defenders staff was informed that the use of M44s will be expanded into known wolf territory once wolves are no longer protected under federal law. It is our understanding that the M44s cannot be used to target wolves but would instead be used to expand lethal control of coyotes throughout a significant portion of the wolf’s range in the region. Given that three wolves have recently been killed by M44s despite the severely restricted usage of M44s in their range while the species is federally protected, we are concerned that the expanded use of M44s may result in a significant and abrupt decline in the wolf population once federal protections are removed.

We have attached information from the Environmental Protection Agency regarding M44s (sodium cyanide) and its use with canines.²⁹ Widespread use of M44s in areas where wolves are present could have significant impacts on wolf populations and could impede further recovery and dispersal.

III. DELINEATION OF THE BOUNDARIES OF THE NORTHERN ROCKIES DPS

A. The DPS Boundaries Rely Substantially on a Map That Has No Corresponding Published Data.

The Service frequently cites “Boyd 2006” as the recent reference for establishing the DPS boundaries; however, no published data exists for this citation. The Service has only an email memo and a picture of a map with arrows drawn in various directions, to document this reference (see attached). There is no comprehensive data or explanation for hinging the Service’s criteria on this “paper” as there is no analysis currently available from the Service to support this policy

²⁸ See *Northwest Ecosystem Alliance v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 2007 U.S. App. LEXIS 2296, at *35-36 (9th Cir. Feb. 2, 2007); *Tucson Herpetological Soc’y v. Norton*, No. CV-04-0075-PHX-NVW, slip op. at 9 (D. Ariz. Aug. 30, 2005).

²⁹ EPA (1994), available at www.epa.gov/oppsrrd1/REDs/factsheets/3086fact.pdf.

determination for establishing the DPS boundaries. Despite this significant lack of data and analysis results, the Service bases much of its proposal's DPS policy statements on this citation, including:

These data indicate the average dispersal distance of wolves from the NRM for the last 10 years was about 97 km (60 mi) (Boyd 2006). We determined that 180 mi (290 km), three times the average dispersal distance, was a breakpoint in our data for unusually long distance dispersal out from existing wolf pack territories. Only 8 wolves (none of which subsequently bred) have dispersed farther and remained in the United States.³⁰

and

Only 8 of nearly 200 confirmed NRM wolf dispersal events from 1994 through 2004 have been over 290 km (180 mi). Six of these eight confirmed United States long-distance dispersers remained within the proposed DPS. None of those long-distance wolves found mates nor survived long enough to breed in the United States. (Boyd 2006).³¹

Regardless of the existence of these statements in the NRM DPS/delisting proposal itself, Defenders et al. have not been given access to published data that supports these statements and, in fact, have been expressly told by the Service that there is no published data. It therefore is impossible to evaluate the accuracy of the statements and therefore the justification for where the proposed DPS boundaries have been placed.

B. The DPS Boundaries Have Been Set Inconsistently and in Violation of the Service's Own DPS Policy.

The eastern boundaries of the DPS follow the eastern state border of Montana and Wyoming, a direct violation of DPS policy that disallows the use of political boundaries, save for international borders. The western boundaries of the DPS extend into portions of Washington and Oregon and follow state highways, as does the southern DPS boundary within the state of Utah. Thus the placement of these boundaries not only violates the DPS policy, it has also been done in an inconsistent manner. And, while the policy allows the use of manmade features such as roads as boundary lines, the Service could have easily used instead natural boundaries such as the Snake and Columbia Rivers that would have some biological or physiographic basis for demarcating a line.

In the DPS proposal the Service asserts its use of the eastern state boundaries of Montana and Wyoming allows for easier management by state wildlife authorities, yet the same logic was not applied in setting the western or southern boundaries. All three affected adjacent states to the west and south – Washington, Oregon and Utah – are on record in their 2006 comments regarding the Service's advance notice of rulemaking to designate and delist a NRM DPS as opposing the boundaries set by the Service (see attached letters from these three states to the Service). Washington requested the Service not include any of the state in the DPS. Utah requested the

³⁰ 72 Fed. Reg. at 6113.

³¹ 72 Fed. Reg. at 6114.

Service include the entire state. Oregon requested the Service either include the whole state or move the boundary far enough west so as to match up with the halfway point in Oregon's wolf plan as a dividing line for management purposes.

The Service has stated that the western boundary is 180 miles from the core, inhabited wolf habitat in the northern Rockies states and that this distance represents three times the average dispersal distance of wolves (and again, the Service relies on the Boyd, 2006 citation to assess this distance) In a January 5 meeting with the Region 1 Regional Director, Renne Lohofener and Assistant Regional Director Terri Rabot, Defenders inquired regarding the basis for the 180-mile line and were informed this was set so that northern Rockies wolves could be taken care of if they dispersed west from core wolf habitat into adjoining states and got into any trouble with livestock. Thus wolves that previously would have been considered fully endangered if dispersing out of the recovery area into adjacent states would instead be devoid of federal protections and subject to lethal control. Further, the 180-mile distance is not applied consistently along the western border, as noted in ODFW's testimony at the March 7th public hearing on the DPS designation and delisting (see attached).

C. The Inclusion of Portions of Three Additional States That Were Not Included in the Original Recovery Plan for the Northern Rockies Requires Further Examination.

The areas outside of the original northern Rockies recovery area should be viewed as potential areas for dispersal that must retain full federal protections for wolves that migrate beyond the northern Rockies core habitat and which provide the basis for wolf recovery in the states of Washington, Oregon and California, as well as Nevada and Utah. Placing the westernmost edge of the boundary for the proposed NRM DPS in an area the Service suggests is a wolf sink seems difficult to justify biologically. The Service is aware of several studies documenting suitable wolf habitat in western Oregon and western Washington,³² and its placement of the western boundary line appears designed to operate as a moat to keep wolves from dispersing westward, rather than a bridge to aid in natural dispersal and recovery into the Cascades and beyond. Currently, the Service has placed the boundary so that it cuts across critical wolf dispersal corridors in northeastern and southeastern Washington, and in northeastern Oregon. At the very least, the boundary placement should not act as a potential impediment to wolf dispersal westward.

Viewing the proposed boundaries from the perspective of state wildlife agencies in Oregon, Washington and Utah, additional significant concerns arise. The Service is well aware of the Oregon wolf plan's inclusion of a dividing line near the center of the state for management purposes under state law. Placing the NRM DPS boundary line within the state of Oregon yet to the east of the state plan dividing line will create serious management difficulties for the Oregon Department of Fish and Wildlife, and extreme confusion for Oregon citizens, as it effectively results in three potentially differing management treatments.³³ And, even with no state plan yet in place, the Washington Department of Fish & Wildlife opposes the Service creating two different management scenarios within the state by drawing the western boundary across the eastern one-third of Washington. Similar concerns are being raised by stakeholders in Utah. While it is correct that the

³² Carroll *et al.*, (2001); Larsen (2004); Carroll, *et al.*, (2006).

³³ Letter from ODFW dated March 7, 2007.

states of Idaho and Montana have lived under management regimes that differ in different parts of those states, these states have always been part of the northern Rockies Recovery Area for wolves, with goals set for wolf populations and standards set for state wolf plans. This is not true of the adjacent states that are now under consideration for inclusion in the proposed NRM DPS and there is no biological or legal justification for imposing a split state management regime in these states.

The Service's expansion of the region designated as the Northern Rockies Recovery Area, to include the eastern one-third of Washington and Oregon and a small portion of north-central Utah for purposes of delisting, is being proposed now despite repeated assertions by the Service over the years that wolf recovery in the northern Rockies does not require the inclusion of Washington or Oregon.³⁴ Further, the Service has included portions of these states in the DPS while simultaneously stating they do not include suitable wolf habitat and would not contribute to the wolf's occupation of a significant portion of its range within the proposed NRM DPS. While the Service's intent in including the additional states may be to create a buffer for dispersal of wolves from the northern Rockies core population, instead their boundary placement arbitrarily severs a crucial travel corridor for wolf dispersal from the northern Rockies to the west. In the absence of federal safeguards, unless there are adequate state protections in place, wolves will likely be subject to high mortality levels jeopardizing population viability and dispersal. Oregon has developed and adopted a balanced wolf conservation and management plan, but Utah's plan is focused on wolf eradication and Washington is only now starting a process to develop a state wolf plan. With wolves just starting to disperse into these adjoining states, now is not the time to lift federal protections

The placement of the proposed boundaries for the DPS raises significant questions, not the least of which is whether the Service's expansion of the boundaries from the original northern Rockies recovery area requires a corresponding expansion of population recovery goals for the newly-included areas. Another key question is what the Service intends to do regarding federal protections outside the NRM DPS once that region is delisted.

We recommend the Service redefine a NRM DPS that focuses on that area that is deemed necessary for the long-term success of northern Rockies wolf recovery efforts. To the extent possible by law, and justifiable biologically, the boundaries of the DPS should remain within the states of Idaho, Montana and Wyoming. On the western side, this could be done as closely as possible by using natural boundaries such as the Snake River, which runs north-south along the Idaho/Oregon border, and the Columbia River, which joins the Snake River and cuts into the state of Washington to a far lesser degree than does the currently set DPS boundary line. The Service must also justify its choice of southern and eastern boundaries. As noted above, use of state lines, without explanation of their relationship to biological factors, is inconsistent with the Service's DPS Policy. In addition, the Service must require the development of wolf conservation and management plans in compliance with the ESA, prior to reduction or removal of federal protections for wolves in the NRM DPS. Should the Service include portions of adjacent states beyond those historically contemplated, it needs to recalibrate the population goals and occupation of the DPS landscape necessary to ensure long-term viability.

³⁴ U.S. FWS (1980); U.S. FWS (1987); U.S. FWS (1994); U.S. FWS (2003).

IV. REMOVING FEDERAL PROTECTION WITHIN ONLY PART OF THE PROPOSED DPS.

The Service is also proposing a contingency plan that would allow delisting of portions of the NRM DPS even though Wyoming has failed to adopt adequate regulatory mechanisms to protect wolves. The proposed rule states that “[i]n order to finalize this rule as proposed, Wyoming would have to adopt a State law and wolf management plan that would adequately conserve a recovered wolf population into the foreseeable future in the significant portion of range outside the National Parks in northwestern Wyoming.”³⁵ If Wyoming failed to develop such a law and plan, then the Service proposes delisting the DPS in Idaho, Montana, portions of Oregon, Washington, and Utah, as well as portions of Wyoming deemed not to be a significant portion of the wolf’s range. The proposal goes on to state that “[t]he significant portion of the range that exists outside the National Parks within the State of Wyoming would continue to be listed as ‘nonessential experimental’ based on the biologically significant nature of that portion of the species’ range and the continuing unacceptable level of threats that occur under the state’s current statute and management plan.”³⁶

We strongly oppose any attempt to create a DPS that includes Idaho and Montana but which excludes any or all portions of Wyoming as this would violate the ESA. Should the Service consider a DPS designation or delisting of Idaho and Montana without Wyoming, our concerns regarding this potential option are set forth below.

A. The Service Cannot Delist Portions of the NRM DPS.

The Service has consistently, throughout recovery planning, EIS’s and scientists’ peer reviews, maintained the necessity of a tie among the states of Montana, Idaho and Wyoming, for constructing an interconnected metapopulation of wolves in the northern Rockies. The ESA requires that listing and delisting decisions be based only upon the best available scientific and commercial data³⁷ and that adequate regulatory mechanisms already be in place to conserve the species.³⁸ There is no scientific support for piecemeal delisting and no such regulatory protections are in place. By the Service’s own admission, “[c]urrent predatory animal status in Wyoming would jeopardize the GYA significant portion of range and the overall NRM wolf population.” 72 Fed. Reg. at 61119.

Moreover, the ESA simply does not permit delisting on a state-by-state basis. As recent court decisions have made clear, the ESA authorizes listing and delisting at the species, subspecies, and DPS level only.³⁹ Any attempt to separate a delisting for the states of Idaho and Montana simply because the state of Wyoming refuses to modify its state wolf plan and state laws to assure an adequate regulatory mechanism for wolf conservation and management would violate the ESA.

³⁵ 72 Fed. Reg. at 6117.

³⁶ *Id.*

³⁷ 16 U.S.C. § 1533(b)(1)(A).

³⁸ 16 U.S.C. § 1533(a)(1)(D).

³⁹ “Listing distinctions below that of a subspecies or a DPS of a species are not allowed under the ESA.” *Alsea Valley Alliance v. Evans*, 161 F. Supp. 2d 1154, 1162 (D. Or. 2001).

The Service is clearly acting prematurely to propose delisting even before Wyoming produces a wolf management plan, in addition to the other factors that have not been adequately addressed before delisting should occur (e.g. funding, strengthening of Idaho's wolf management plan, determination of the number of wolves necessary to serve as a "meta-population" if they are unconnected to the Canadian wolf population, etc.).

B. Threats to the Regional Wolf Population Related to the Application of Section 10(j) in Wyoming and Efforts to Further Expand Wolf-Killing Authority under Section 10(j).

We understand that the Service will soon be proposing a revision to the section 10(j) rule in order to unnecessarily allow more wolves to be killed in all three northern Rockies states.⁴⁰ Section 10(j) of the act applies to populations designated "experimental nonessential" and provides additional management flexibility similar to that allowed for threatened species. We include a discussion of this issue in the event that the Service does not delist the northern Rockies DPS or does so in a piecemeal or state-by-state fashion. In either case, the Service should not propose amendments to section 10(j) rules that could weaken requirements that lethal wolf control measures be used as a last resort.

As an initial matter, the Service has not complied to date with the provisions of the section 10(j) rules currently applicable in Wyoming and has failed first to exhaust all reasonable nonlethal methods before resorting to lethal take of wolves for wolf-livestock conflict management. In a January 23, 2007 meeting with Ed Bangs, USFWS Western Gray Wolf Recovery Coordinator, and Mitch King, U.S. FWS Region 6 Director, Defenders staff discussed our concerns over the Service's lack of effort to utilize reasonable nonlethal deterrents or proactive methods to reduce livestock losses to wolves in Wyoming. These conflicts form the basis for substantial public and legislative opposition to wolves in the state. In our meeting, Mr. Bangs explained the Service's policy on nonlethal methods to mean that if wolves "get in trouble" the Service "kills one or two" and more are killed if the conflicts continue. This is, at the least, an odd interpretation of what is meant by first exhausting all reasonable nonlethal control methods before resorting to killing wolves. A wide range of nonlethal methods are successfully being used elsewhere in the region to prevent or reduce wolf depredation conflicts. Unfortunately, the Service's approach undermines local tolerance for wolves by implying that the only way to manage wolves is to kill, which is not true. Furthermore, it sets a precedent for the state wildlife agency to adopt these unnecessary and unsuccessful practices as well.

The Service's soon-to-be-released proposal to further expand wolf killing authority under section 10(j) additionally threatens the region's wolf population. According to published reports, the purpose of the proposed section 10(j) revisions is to broadly expand the circumstances under which wolves can be killed for preying on other wildlife. Among other revisions, a key change will be that there will no longer be a requirement to demonstrate that wolves are the primary cause of ungulate decline before lethally controlling wolves. Purportedly, this is in response to claims by sportsmen and by the governors of Wyoming and Idaho that the wolf populations in those states are

⁴⁰ See Gray Wolf Recovery Coordinator, US Fish & Wildlife Service. Wolf Weekly Report of 3/23/07 to 3/30/07, *available at* <http://www.fws.gov/mountain-prairie/species/mammals/wolf/weeklyrpt07/wk03302007.html>.

decimating elk herds. Information provided by the state wildlife agencies of each of these states, however, proves otherwise.

For example, on April 25, 2007, a Wyoming Game and Fish Department (WGFD) videoconference meeting, facilitated by WGFD personnel, was held regarding Wyoming's Mule Deer Initiative. WGFD staff indicated that elk numbers in Wyoming are quite high and that in some places, elk are outcompeting mule deer on winter ranges. Emphasizing this point further, in a WGFD Commissioner's meeting held the same week, WGFD Assistant Wildlife Division Chief Bill Rudd urged the Commission to dramatically increase big game hunting licenses in the state to help herds achieve populations closer to objectives and provide relief to drought-damaged ranges.⁴¹ Despite claims by Wyoming elected officials and sportsmen that elk populations are being ravaged by wolves, WDFG's own figures, reported at the Commission hearing, indicate that elk in the state are 54.3 percent above population objectives.⁴² As reported at the hearing, this is also the case for pronghorn (56.8 percent above objective), mule deer (17.9 percent above objective) and white-tail deer (20 percent above objective). The annual winter classification for Wyoming's largest elk herd – the Jackson Herd – was recently completed. The number of elk was similar to last year with 11,790 elk counted compared to 11,850 in 2006.⁴³ The annual count on the National Elk Refuge totaled 7,279 elk. This is the eighth consecutive year wildlife managers have met the refuge population objective.⁴⁴ In 2005 (the most recent year for which data is available), of the 8 hunting units within occupied wolf territories, one was at the desired population objective while the other 7 combined were above objective by 6,694 animals (17.8 percent). Calf-to-cow ratios fluctuate, but in 1995, before the reintroduction of wolves to the region, wildlife managers recorded a low of 19 calves per 100 cows, whereas in 2006 the ratio was at 25 calves per 100 cows.⁴⁵

The figures are similar in Idaho, despite sportsmen's and elected officials' alarmist claims that wolves must be dramatically culled for severely impacting elk populations. Data from Idaho Department of Fish and Game shows that as the wolf population has steadily increased since 2003, so has the hunter harvest success rate.⁴⁶ According to IDFG statistics, hunter harvest numbers for elk go up and down from year to year, but the overall success rate has remained relatively consistent since before wolves were reintroduced. For example, data shows that in 2005, the most recent year for which we have statistics, hunter harvest numbers are higher than they were in 1993, two years before

⁴¹ See Brodie Farquhar, Game and Fish proposes additional hunting licenses to offset forage shortage, *Casper Star Tribune*, April 26, 2007.

⁴² *Id.*

⁴³ Wyoming Game & Fish Dept., Annual Tally of Jackson Elk Herd, March 3, 2007, *available at* http://gf.state.wy.us/services/news/pressreleases/07/03/03/070303_5.asp.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Idaho Fish and Game, Wildlife Technical Reports, *available at* <https://research.idfg.idaho.gov/wildlife/Wildlife%20Technical%20Reports/Forms/Show%20All%20Reports.aspx>. See specifically, Bruce Ackerman, Big Game Harvest Survey, *available at* <https://research.idfg.idaho.gov/wildlife/Wildlife%20Technical%20Reports/Game%20Harvest%20PR06.pdf> and Pete Zager, Elk Ecology, *available at* <https://research.idfg.idaho.gov/wildlife/Wildlife%20Technical%20Reports/W-160-R-33-31%20PR06-Elk%20Ecology.pdf>.

the wolves were ever reintroduced. Most importantly, IDFG statistics verify that elk and deer populations are at ecologically sustainable numbers, and wolves account for less than 10 percent of all elk and deer deaths in Idaho.⁴⁷

Given that Wyoming has failed to produce an adequate Service-approved wolf management plan, delisting in the state is impermissible. In light of the above information regarding wild ungulate populations in Wyoming and Idaho, the Service's efforts to revise the 10(j) provisions constitute yet another threat to the ongoing conservation of wolves in the region. Accordingly, we encourage the Service to change its approach to Wyoming wolf conservation in two important ways:

First, the Service must adhere to the current 10(j) rule mandate that requires the Service to "exhaust" reasonable nonlethal control methods before utilizing lethal control of wolves in livestock conflict situations. The Service has failed to support the testing and implementation of these nonlethal methods in Wyoming in areas where nonlethal methods may be able to help resolve conflicts. The Service has no scientific evidence on which to base its current management approach to lethal control nor has the agency provided the staff support, equipment and management protocol for reasonably exhausting nonlethal methods in the region. It has simply discounted these methods as impractical and underplayed their demonstrated success in other areas despite scientific evidence that heavy reliance on lethal control, without addressing the underlying problems, simply leads to more livestock and wolf losses and more conflicts.⁴⁸ While we appreciate that the Service faces a difficult challenge in managing wolves in these high conflict areas, lack of leadership to reduce conflicts has clearly impaired the Service's objective to build public support for wolf conservation and secure wolf delisting in the region.

Second, the Service should work with the state to increase public education and implement professional conflict management strategies to reduce the increased level of anti-wolf sentiment, increase educational awareness of wolves and their limited impacts and develop a state plan that addresses the primary concerns of all the stakeholders, meets the science-based standards, and meets the ESA's standard that adequate regulatory mechanisms be in place prior to delisting.

V. SECTION 6 AGREEMENTS TO ALLOW STATES TO IMPLEMENT NONLETHAL AND LETHAL CONTROL AND MANAGEMENT OF WOLVES

Although not directly relevant to the issue of delisting, the Service has also requested comments on the potential use of section 6 agreements under the ESA to allow states to conduct lethal and non-lethal control and management of wolves. Section 6 is *not* intended to permit delegation of entire species conservation programs to the states nor is it permissible to use Section 6 agreements to achieve de facto delisting in areas where a species remains protected as threatened or endangered.

States have an important role to play in the conservation and recovery of species like the gray wolf and section 6 agreements may provide opportunities for state and federal governments to work cooperatively to achieve wolf recovery. But section 6 agreements are constrained by the ESA, and states implementing wolf management plans pursuant to such agreements must meet federal

⁴⁷ *Id.*

⁴⁸ Musiani, *et al.* (2006)

standards. State control of wolf management should not give rise to a relaxation of recovery standards or an expansion of lethal control.

Section 6 of the ESA requires the Secretary of the Interior to “cooperate to the maximum extent practicable” with the states. In furtherance of this purpose, section 6(c)(1) gives the Secretary authority to enter into cooperative agreements with any state “which establishes and maintains an *adequate and active program* for the conservation of endangered and threatened species” (emphasis added). The statute and its implementing regulations define what constitutes an adequate and active program. The regulations define “program” as a “state-developed set of goals, objectives, strategies, action, and funding necessary to be taken to promote the conservation and management of resident endangered or threatened species.” 50 CFR § 81.1(f).

Both the ESA and its implementing regulations clearly require that state programs promote “conservation” of species, which is itself defined in the ESA as “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 pursuant to the Act are no longer necessary.” Accordingly, the obligation to recover species is equally born by the States when they assume management responsibilities through a cooperative agreement.

Through the ESA, Congress established an overriding federal interest in species protection. While state programs may provide opportunities to enhance species recovery, they must be consistent with minimum federal protections. Without adherence to the criteria mandated by the Act, species potentially face inconsistent and potentially contradictory levels of protection from state to state, highlighting the need for maintaining the current national standard of protection. We are also concerned that some states may be unprepared and lack the resources to manage their own wildlife populations. A 2005 study by Defenders of Wildlife found that while most states have enacted their own endangered species laws, these laws remain far from comprehensive, and many fall short of what is mandated for a state program under the federal ESA.⁴⁹ Staffing and funding levels also may remain far below what states need in order to effectively manage species. Some states bordering the proposed DPS do not yet have approved wolf management plans and have not demonstrated their capacity to adequately and effectively manage a wolf conservation program.

The state of Oregon raises two concerns in its comments of March 7, 2007, that are worth noting. The first is that the state has applied for a Section 10(a)(1)(A) permit to “allow Oregon officials to use lethal control of wolves in certain chronic depredation situations but ... have received no word on the status of our application.”⁵⁰ Perhaps this is because, as the federal court for the District of Columbia recently ruled, section 10(a)(1)(A) permits are not appropriately issued if the purpose is to permit killing of wolves to address wolf depredation.⁵¹ To the extent that the Service intends to facilitate lethal wolf control through issuance of section 10(a)(1)(A) permits, this has been deemed to be illegal. Secondly, Oregon rightly expresses concern that reliance on Section 6 agreements “could have unforeseen legal and financial consequences to existing agreements.” These issues must be

⁴⁹ Defenders of Wildlife, *ESA Section 6: The Role of the States* (Sept. 2005).

⁵⁰ ODFW written testimony recited and delivered to USFWS at March 7, 2007, NRM DPS/ delisting public hearing in Pendleton, Oregon.

⁵¹ *See Humane Society of the United States v. Kempthorne*, No. 06-1279 (CKK) (D.D.C. Sept. 6, 2006).

explored in detail if the use of Section 6 agreements is to enhance and not hinder effective wolf management.

Without a continuing federal and state commitment to wolf recovery throughout the species' range in the West, discussions about shifting regulatory authority to states outside the DPS boundary are premature. We believe states potentially have a great deal to offer in species conservation, and encourage the Service to work to improve trust and communication with the states. Any efforts to devolve management authority, however, must be consistent with the federal ESA and the goal of wolf recovery.

CONCLUSION

We commend the Service for the remarkable achievement of restoring wolves to portions of their former range within the NRM region, and we encourage the Service to continue promoting the expansion of this species across the remaining suitable habitat within the western United States. At this time, however, we strongly oppose delisting wolves in the northern Rockies and portions of adjacent states.

Of the six states proposed as part of the DPS and therefore proposed for delisting, only three of these states (Idaho, Montana and Wyoming) have established wolf populations. Idaho and Wyoming lack a science-based wolf conservation plan and no state in the region has regulations in place that are adequate to assure their respective portion of the wolf population would be maintained at sufficient recovery levels to protect into the foreseeable future. Idaho's plan is vague in its provisions, focused on wolf control not conservation, and is at the mercy of state elected officials who would like to remove as many wolves as possible. Wyoming has refused to prepare a state wolf management plan that would adequately protect their portion of wolves within the northern Rockies. Under the circumstances, it is premature at best to delist wolves and remove federal protection in the region.

The Service's proposal to establish a DPS boundary that includes the eastern one third of the states of Washington and Oregon and a portion of north-central Utah without requiring establishment of wolves in those areas essentially ignores the Service's responsibility to establish a species DPS based on viable populations and historic range. By delisting in these states before adequate wolf numbers and state wolf management plans are secured, the Service is essentially drawing a "moat" around the core northern Rockies states and prohibiting the expansion of wolves into other areas of their native habitat.

The Service has failed to conduct an analysis of what constitutes a "metapopulation" of wolves if the current region-wide population were reduced to a quarter of its current size, which would be the outcome if wolves are delisted and Idaho and Wyoming assume full responsibility for managing wolves in their states. The scientists who developed the EIS determined that the northern Rockies recovery goal of 10 breeding pairs in each of the three regions within the recovery zone that subsequently reproduced for 3 consecutive years was the minimum needed to sustain wolves but only if the NRM wolf population was connected to the Canadian wolf "metapopulation" of fifty to fifty-five thousand wolves. However, genetic and wolf monitoring research indicates that wolves in

the NRM are largely isolated from the Canadian wolf population and thus, appear to require a larger minimum population in order to be considered viable and self-sustaining into the foreseeable future.

Finally, the Service has not met its legal mandate under section 4 of the ESA to ensure that wolves do not face continued threats to their survival upon delisting. Wolves in the region currently face threats from woefully inadequate regulatory mechanisms, disease and predation/illegal killing, and from ongoing hostility towards the species. Should delisting proceed, under the plans currently in place in Idaho and Wyoming, a fourth factor—overutilization for scientific, commercial, recreational or educational purposes—will become a threat as overzealous state-approved hunting campaigns wipe out two-thirds to three-quarters of these states' wolf populations.

In conclusion, we strongly oppose delisting of gray wolves in the northern Rockies at this time and urge the Service to rescind the proposed delisting rule.

Sincerely,

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