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PATRICK E. DUFFY, CLERK
By _____
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MINETTE GLASER, DEFENDERS OF
WILDLIFE, NATURAL RESOURCES
DEFENSE COUNCIL, SIERRA CLUB,
HUMANE SOCIETY OF THE UNITED
STATES, CENTER FOR BIOLOGICAL
DIVERSITY, JACKSON HOLE
CONSERVATION ALLIANCE, FRIENDS
OF THE CLEARWATER,

Plaintiffs,

vs.

H. DALE HALL, U.S. Fish and Wildlife
Service Director; DIRK KEMPTHORNE,
Secretary of the Interior; and UNITED
STATES FISH AND WILDLIFE SERVICE,

Defendants.

Case No. CV-08-14-m-DWM

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

SCANNED

INTRODUCTION

1. Gray wolves are a living embodiment of the remaining wildlands of the American West. Once abundant throughout North America, gray wolves were all but eradicated in Montana, Idaho, Wyoming, and adjacent southwestern Canada by the 1930s through trapping, poisoning, and shooting. Gray wolves were listed as an endangered species in 1974, but it was not until 1995 and 1996, when wolves from Canada were reintroduced into Yellowstone National Park and central Idaho, that significant wolf recovery began in the northern Rocky Mountains. Since reintroduction, the Northern Rockies wolf population has grown from 30-40 wolves to approximately 1,500 today. As top predators and a keystone species, wolves now contribute to a more natural balance in Northern Rockies ecosystems. Among other things, the reintroduction of wolves has led to healthier riparian vegetation along streams, and has measurably benefited rodent, bird, antelope and elk populations in the park. In addition, the reintroduction of wolves has brought substantial economic benefits to the region. Many thousands of visitors flock to Yellowstone National Park to see and hear wolves in the wild, contributing at least \$35 million dollars to the local economy each year.

2. Plaintiffs in this case challenge the U.S. Fish and Wildlife Service's ("FWS") Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") for the revision of the regulation that governs management of the reintroduced wolf populations of the northern Rocky Mountains ("section 10(j) rule"). The new regulation, adopted under section 10(j) of the Endangered Species Act, substantially and unjustifiably lowers the bar for killing endangered wolves in the name of protecting herds of elk, deer, and other wild ungulates that are, in fact, booming despite the presence of a recovering wolf population. The EA and FONSI for the section 10(j) rule violate the National Environmental Policy Act ("NEPA"), 16 U.S.C. §

1531 et seq., because the Service failed to analyze adequately the significant adverse impacts of authorizing the killing of more than half of the current number of endangered gray wolves in the northern Rockies.

JURISDICTION, VENUE, AND ADMINISTRATIVE REMEDIES

3. Plaintiffs bring this action pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 et seq., which waives the defendants’ sovereign immunity, and NEPA, 16 U.S.C. § 1531 et seq. This Court has jurisdiction over plaintiffs’ claims pursuant to 28 U.S.C. § 1331 (federal question) and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02.

4. Venue is proper in this division under 28 U.S.C. § 1391 because plaintiffs and/or defendants reside in the District of Montana; land affected by the challenged action is within the District of Montana; division; and/or a substantial part of the events or omissions giving rise to plaintiffs’ claims occurred in this District. Venue is proper in the Missoula Division because one or more plaintiffs reside in this Division, and Missoula, Ravalli, and Granite counties lie within the central Idaho recovery area affected by the rule change and are within the Missoula Division.

5. Plaintiffs have attempted to resolve their claims administratively by commenting on the proposed section 10(j) regulation that appeared in the Federal Register and on the Environmental Assessment for the proposed rule change. See 72 Fed. Reg. 36,942 (July 6, 2007); 72 Fed. Reg. 51,770 (Sept. 11, 2007).

PARTIES

6. Plaintiff Minette Glaser is a resident of Missoula, Montana and a member of Defenders of Wildlife. She serves as Northern Rockies Representative for Defenders of Wildlife and is an expert on large carnivore recovery. She has been involved in gray wolf recovery issues

since 1990 and works on efforts to better understand, protect, and build public support and tolerance for carnivores like the wolf, grizzly bear, lynx, and wolverine. Ms. Glaser hikes and recreates in areas of Montana and Idaho where wolves now exist and enjoys wildlife viewing, tracking, and photography.

7. Plaintiff Defenders of Wildlife (“Defenders”) is a national non-profit conservation organization headquartered in Washington, D.C. with offices in Boise, Idaho, and in Missoula and Bozeman, Montana. Defenders has more than one million members and supporters nationwide, including 29,974 in the northern Rockies states of Idaho, Montana, and Wyoming as of January 2008. 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 the organization’s establishment in 1947. Over the last three decades, Defenders has played a leading role in the recovery of wolves in the northern Rockies. Defenders administers The Bailey Wildlife Foundation Wolf Compensation Trust, which has reimbursed ranchers in the region for more than \$900,000 since the program was founded in 1987, and 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. Defenders’ efforts have also included the 2007 publication of a report, *Places for Wolves*.

8. Plaintiff Natural Resources Defense Council (“NRDC”) is a non-profit conservation organization that uses law, science, and the support of 421,550 members (including 1,980 members in Montana, 2,048 members in Idaho, and 856 members in Wyoming), to protect the planet’s wildlife and wild places, and to ensure a safe and healthy environment. NRDC and its members have a longstanding interest in conserving threatened and endangered species, including wolves.

9. Plaintiff Sierra Club is a nationwide conservation organization with more than 750,000 members, 2,000 of whom belong to the Montana Chapter, 1,000 of whom belong to the Wyoming Chapter and 2,700 of whom belong to the Idaho Chapter. The Sierra Club is America's oldest, largest and most influential grassroots environmental organization. The mission of the Sierra Club is: "To explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments."

10. Plaintiff The Humane Society of the United States ("The HSUS") is a non-profit charitable organization incorporated in 1954 and is headquartered in Washington, DC, with eight regional offices located throughout the country, including a Northern Rockies Regional Office. The HSUS is the largest animal protection organization in the world, with more than 10.5-million members and constituents. The HSUS's mission is to promote the humane treatment of animals and to foster respect, understanding, and compassion for all creatures. The HSUS has been actively involved in the preservation of wildlife and endangered and threatened species and supports efforts aimed at the protection and recovery of such species and their habitats. In particular, the HSUS has been a long-standing advocate for wolf protection and recovery.

11. Plaintiff Center for Biological Diversity is a nonprofit organization dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center was founded in 1989, and is based in Tucson, Arizona with offices in California, Oregon, New Mexico and Washington, D.C. The Center has more than 35,000 members, including many who explore and enjoy the Greater Yellowstone Ecosystem.

12. Plaintiff Jackson Hole Conservation Alliance is a non-profit organization based in Jackson, Wyoming with more than 1,800 members. The Jackson Hole Conservation Alliance is dedicated to responsible land stewardship, and to ensuring that human activities are in harmony with the area's irreplaceable wildlife, scenery, and other natural resources.

13. Plaintiff Friends of the Clearwater, a recognized non-profit organization since 1987, defends the Idaho Clearwater Bioregion's wildlands and biodiversity through a Forest Watch program, litigation, grassroots public involvement, outreach, and education. The Wild Clearwater Country, the northern half of central Idaho's Big Wild, contains many unprotected roadless areas and wild rivers, and provides crucial habitat for countless rare plant and animal species. Friends of the Clearwater strives to protect these areas, restore degraded habitats, preserve viable populations of native species, recognize national and international wildlife corridors, and to protect our public lands.

14. All plaintiffs have long-standing interests in the preservation and recovery of gray wolves in Montana, Idaho and Wyoming both because they and their members place a high value on wolves as a species, and because the presence of gray wolves is essential to the healthy functioning of the ecosystems in which they evolved. Plaintiffs actively seek to protect and recover the gray wolf through a wide of array of actions including public education, scientific analysis, and advocacy intended to promote achievement of healthy ecosystem functioning in the region.

15. The members of each of the plaintiff conservation groups use public land in the northern Rocky Mountains for recreational pursuits, including hiking, camping, backpacking, cross-country skiing, hunting, wildlife viewing, and aesthetic enjoyment. Members of the plaintiff groups seek to view wolves and signs of wolf presence in the wild throughout the

northern Rockies, and the defendants' challenged action will reduce their opportunity to do so. The decision to modify the section 10(j) regulation governing gray wolf management will also cause irreparable ecological harm to the ecosystems where wolves are now found. The legal violations alleged in this complaint cause direct injury to the aesthetic, conservation, recreational, scientific, educational, and wildlife preservation interests of members of the plaintiff organizations.

16. Plaintiffs' aesthetic, conservation, recreational, scientific, educational, and wildlife preservation interests have been, are being, and, unless their requested relief is granted, will continue to be adversely and irreparably injured by defendants' failure to comply with federal law. These are actual, concrete injuries, traceable to defendants' conduct that would be redressed by the requested relief. Plaintiffs have no adequate remedy at law.

17. Defendant H. Dale Hall is the Director of the U.S. Fish and Wildlife Service. Defendant Hall has supervisory responsibility over the Fish and Wildlife Service Regional Director who signed the Fish and Wildlife Service Finding of No Significant Impact for the section 10(j) regulation. Defendant Hall is sued in his official capacity.

18. Defendant Dirk Kempthorne is the United States Secretary of the Interior. In that capacity, Secretary Kempthorne has supervisory responsibility over the U.S. Fish and Wildlife Service. Defendant Kempthorne is sued in his official capacity.

19. Defendant United States Fish and Wildlife Service is a federal agency within the Department of Interior. FWS is responsible for administering the ESA with respect to terrestrial wildlife such as gray wolves, and with adopting and implementing regulations that govern gray wolf management.

THE NATIONAL ENVIRONMENTAL POLICY ACT

20. NEPA “is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA’s twin aims are to ensure that federal agencies consider significant aspects of the environmental impacts of their proposed actions, and to ensure that agencies inform the public that environmental concerns have been considered in agency decision-making.

21. NEPA requires federal agencies to prepare an environmental impact statement (“EIS”) in connection with all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The EIS must detail, among other things, “the environmental impact of the proposed action” and “alternatives to the proposed action.” *Id.* § 4332(2)(C)(i), (iii). NEPA further provides that agencies must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(2)(E).

22. NEPA’s implementing regulations elaborate on these statutory requirements. The regulations provide that agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a).

23. The regulations further provide that “[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” *Id.* § 1502.24.

THE ENDANGERED SPECIES ACT

24. The Endangered Species Act of 1973 (“ESA”), 16 U.S.C. § 1531 *et seq.*, was enacted to “provide a program for the conservation of ... endangered species and threatened species” and to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b). To receive the full

protections of the Act, a species must first be listed by the Secretary as “endangered” or “threatened” pursuant to ESA section 4. Id. § 1533.

25. The ESA defines “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range.” Id. § 1532(6). A “threatened species” is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Id. § 1532(20). The term “species” is defined to include “any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” Id. § 1532(16).

26. The ESA requires the Secretary to “determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.”

Id. § 1533(a)(1). The Secretary must make these determinations “solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species.” Id. § 1533(b)(1)(A).

27. Once a species is listed as “endangered” or “threatened” under the ESA, it is protected under the Act’s substantive and procedural provisions. Among other things, the ESA prohibits any federal agency from taking any action found “likely to jeopardize the continued

existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical habitat].” Id. § 1536(a)(2).

28. ESA section 10 allows the Secretary to “authorize the release ... of any population ... of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.” 16 U.S.C. § 1539(j)(2)(A). The Secretary must designate such experimental populations as essential or nonessential to the continue existence of the species. Id. § 1539(j)(2)(B).

29. Section 10(j) requires, with two limited exceptions, that “each member” of an experimental population be treated as “threatened” under the ESA. 16 U.S.C. § 1539(j)(2)(C). The first exception provides that nonessential experimental populations—except when they occur within National Parks or National Wildlife Refuges—are not subject to the consultation requirements of section 7 of the ESA, 16 U.S.C. § 1536. Second, critical habitat “shall not be designated” for nonessential experimental populations. 16 U.S.C. § 1539(j)(2)(C)(ii). In all other respects, the ESA requires conservation of each member of an experimental population.

30. Because nonessential, experimental populations are treated as threatened species, the Secretary must issue “protective” regulations that “he deems necessary and advisable to provide for the conservation of such species.” 16 U.S.C. § 1533(d). Congress defined the terms “conserve,” “conserving,” and “conservation” to mean “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.” 16 U.S.C. § 1532(3).

GRAY WOLVES IN THE NORTHERN ROCKIES

31. Gray wolves (*Canis lupus*) are the largest wild members of the dog family (*Canidae*). Wolves' fur ranges from white to shades of gray to coal black. Wolves primarily prey on medium and large mammals. In the northern Rockies, wolves' most common prey are elk, white-tailed deer, mule deer, moose, pronghorn antelope, and bison. Although wolves prefer their native prey of wild ungulates, wolves in the northern Rockies sometimes also prey on domestic livestock, including sheep and cattle. Wolf predation on livestock represents a relatively minor source of total livestock mortality in Montana, Idaho and Wyoming.

32. Wolves are social animals and normally live in packs of 2 to 12 wolves that have strong social bonds with each other. Wolf packs are usually family groups consisting of a breeding pair (the "alpha male" and the "alpha female"), their offspring from previous years, and an occasional unrelated wolf. In general, only the alpha male and alpha female of a wolf pack breed. Litters are generally born in April and average five pups. All pack members may help feed the new wolf pups, and also provide play and protection for the pups as they grow. Wolf pups are weaned at 5 to 6 weeks of age. Wolf pups are mature enough to begin traveling with the pack by around October, a critical period for wolf survival.

33. Research demonstrates that when one alpha wolf is removed from a pack, the probability that the pack will successfully breed the following year is generally halved. When both alpha wolves are killed, the short-term reproductive potential of the pack is generally destroyed. This impact is exaggerated for smaller or less concentrated wolf populations, as an alpha wolf that is eliminated from a pack generally must be replaced by a mature wolf from an adjacent pack to allow the pack to persist and produce pups the following year. The chances of

reproduction and pup survival after the loss of one or both alpha wolves are greatly influenced by pack size.

34. Wolves were once abundant throughout all of North America except in extreme desert regions. With the European settlement of North America, “superstition and fears . . . led to widespread persecution of wolves” that resulted in their extirpation from more than 95 percent of their range in the lower-48 states. See Final Rule, 68 Fed. Reg. 15,804, 15,805 (Apr. 1, 2004). According to FWS, “wolves were hunted and killed with more passion and zeal than any other animal in U.S. history.” U.S. Fish and Wildlife Service, Gray Wolf, <http://training.fws.gov/library/Pubs/graywolf.pdf> (last checked January 25, 2008). In Montana, Idaho, Wyoming, and adjacent southwestern Canada, wolves were exterminated by the 1930s. Id. at 15,815. According to FWS, “an active eradication program is the sole reason that wolves were extirpated from the [northern Rocky Mountains].” 72 Fed. Reg. 6,106, 6,125 (Feb. 8, 2007).

35. The 1987 wolf recovery plan established a northern Rockies wolf recovery goal of 10 breeding pairs of wolves for three consecutive years in each of three recovery areas: northwestern Montana, central Idaho, and the Greater Yellowstone area. FWS’s 1994 EIS for the wolf reintroduction states that these criteria require “thirty or more breeding pairs . . . comprising some 300+ wolves in a metapopulation . . . with genetic exchange between subpopulations.” 72 Fed. Reg. at 6,107. FWS has stated repeatedly that gray wolves will not be recovered in the Northern Rockies until wolves in the Greater Yellowstone, central Idaho, and northwestern Montana recovery areas are genetically linked. See, e.g., 70 Fed. Reg. 1,289 (January 6, 2005); FWS Northern Rocky Mountain Gray Wolf Recovery Plan at 13 (1987); 72 Fed. Reg. at 6,121; 72 Fed. Reg. 36,945.

36. In 1995, FWS embarked on an ambitious plan to restore wolves in the northern Rockies by relocating and releasing gray wolves from Canada into Yellowstone National Park and central Idaho. See 72 Fed. Reg. at 36,943. Under ESA section 10(j), FWS classified these reintroduced populations as “nonessential experimental populations.” Id.; see also 59 Fed. Reg. 60,252; 59 Fed. Reg. 60,266 (Nov. 22, 1994). Together, the two nonessential experimental areas encompass all of Wyoming, most of Idaho, and much of Montana.

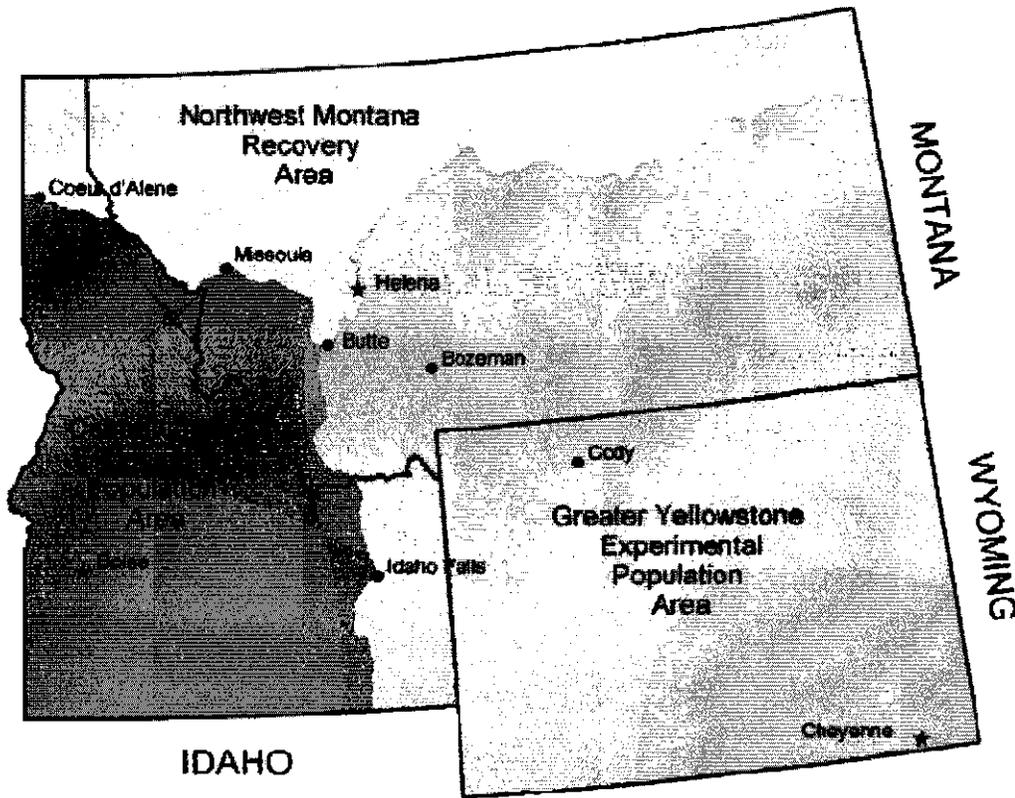


Figure 1. Gray Wolf Nonessential Experimental Population Areas in Central Idaho (South of Interstate 90 and West of Interstate 15) and the Yellowstone Area (South of the Missouri River From the Montana-North Dakota Border to Great Falls and East of Interstate 15).

EA at 31.

37. In the years following reintroduction, wolves reproduced and established packs. Wolves now number approximately 1,500 in Montana, Idaho, and Wyoming. Since returning to

their native landscape, wolves have restored a more natural balance to northern Rockies ecosystems. Wolves benefit the health of elk and deer populations by virtue of their selection of prey animals, as they primarily take the old, the very young, the injured, and the diseased, leaving the healthiest animals to produce the next generation. In Yellowstone National Park, the renewed presence of wolves has altered the behavior of the elk, which now tend to avoid browsing in areas such as stream banks where they are most vulnerable to predation, and in turn have reduced destruction of young aspen shoots. The restoration of shrubs and trees in riparian areas controls stream erosion, and supports native bird communities, beavers, and other wildlife. Wolves aggressively predate on coyotes within their territory. By reducing the number of coyotes in the area, the presence of wolves has also benefited populations of small rodents, birds of prey (who feed on the rodents), and pronghorn antelopes (who are often preyed on by coyotes).

38. According to a 2006 study, roughly 151,000 people visit Yellowstone National Park each year to see and hear wolves in the wild, and bring in \$35 million in direct spending annually to Montana, Idaho, and Wyoming.

39. If the northern Rockies wolf population continues on its current course, it may soon reach numbers that will ensure its long-term viability. Numerous scientists have informed FWS that a continuous population of 2,000-5,000 individual wolves is necessary to ensure a genetically viable northern Rockies wolf population over the long term. Further, the current wolf population must expand to achieve necessary connectivity and genetic exchange between the three wolf recovery areas in the Greater Yellowstone ecosystem, central Idaho, and northwest Montana. To date, sufficient connectivity has not been achieved. In particular, wolves in the

Greater Yellowstone recovery area remain genetically isolated from wolves in central Idaho and northwest Montana.

40. FWS has proposed designating a northern Rockies gray wolf distinct population segment (“DPS”) and removing it from the list of federally protected threatened and endangered species. See 72 Fed. Reg. 6,106 (Feb. 8, 2007); 72 Fed. Reg. 36,939 (July 6, 2007). After delisting, wolf management will be in the hands of states. Under the delisting proposal, the states of Montana, Idaho, and Wyoming are permitted to eliminate all but 100 wolves each, a mere fraction of the current northern Rockies wolf population. Published reports indicate that the final delisting rule will be published by the end of February, 2008.

THE CHALLENGED DECISION

41. On July 6, 2007, FWS published in the Federal Register a “Proposed Revision of Special Regulation for the Central Idaho and Yellowstone Area Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains.” 72 Fed. Reg. 36,942 (July 6, 2007). On September 11, 2007, FWS published a Notice of Availability and opened a 30-day public comment period on its EA assessing the proposed rule change. 72 Fed. Reg. 51,770 (Sept. 11, 2007).

42. FWS completed a FONSI for the section 10(j) rule revision on January 18, 2008. The FONSI is based upon FWS’ EA, and states that the section 10(j) rule revision “is not a major Federal Action which would significantly affect the quality of the human environment within the meaning of [NEPA].” FWS did not prepare an Environmental Impact Statement (“EIS”) for the rule change.

43. The new section 10(j) regulation changes the conditions under which states and tribes are permitted to kill wolves in the Yellowstone and central Idaho experimental population

areas that are having an “unacceptable impact” on wild ungulate (deer, elk, etc.) populations or herds. The Record of Decision adopts an alternative that modifies the definition of “unacceptable impact.” Under a previous regulation, the definition required that: 1) there is a decline in a wild ungulate population; and 2) that wolves are the primary cause of the population decline. 50 C.F.R. § 17.84(n)(3). The “unacceptable impact” definition adopted in the Record of Decision eliminates both of these requirements, requiring only that a wild ungulate population is failing to meet state or tribal management objectives and that wolves are one of the major causes for that failure. Under the new rule, a state or tribe may propose wolf killing to address any number of ungulate management goals, including state objectives for population size, cow-calf ratios, nutrition, behavior, and movement, and may propose wolf killing even if ungulate populations are meeting or even exceeding targets established by state agencies.

44. The new section 10(j) regulation also allows any private citizen, rather than just landowners and individuals with a federal permit, to kill wolves that are in the act of attacking their stock animals or dogs.

45. FWS states that the rule change is necessary because the prior definition of “unacceptable impact,” which required a determination that wolves are the primary cause of the decline of a wild ungulate population, set an “unattainable” threshold for wolf killing. 72 Fed. Reg. 36,944.

Current information does not indicate that wolf predation alone is likely to be the primary cause of a reduction of any ungulate population in Montana, Idaho, or Wyoming. There are no populations of wild ungulates in Montana, Idaho, or Wyoming where wolves are the sole predator. Wolf predation is unlikely to impact ungulate population trends substantially unless other contributing factors are in operation, such as habitat quality and quantity, other predators, high harvest by hunters, weather, and other factors.

Id. (citations omitted); see also EA at 25.

46. No wolf killing proposal was ever implemented under the prior section 10(j) regulation, adopted in 2005, in part because elk herds are almost universally above population objectives in Montana, Idaho, and Wyoming. State wildlife managers in Idaho and Wyoming recently reported that their elk populations statewide were at an all-time high. By expanding the definition of unacceptable impacts to include impacts to behavior, feeding, and other characteristics beyond herd or population size, the new section 10(j) regulation greatly expands the ability of states and tribes to kill wolves even in areas where elk, deer, and other wild ungulates are plentiful.

47. Under the modified section 10(j) regulation, FWS must approve a state or tribe determination of unacceptable impact. The only substantive constraints on wolf killing in the proposed rule are that the Service must conclude that “wolf removal is not likely to impede recovery,” and that the wolf population will not be reduced “below 20 breeding pairs and 200 wolves” in the affected State. Thus, the rule creates the potential that States could kill all but 600 out of the approximately 1,500 wolves that currently inhabit the northern Rockies.

FIRST CAUSE OF ACTION

(Failure to Prepare an Adequate EA)

48. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 47.

49. Under NEPA’s implementing regulations, an EA must discuss the environmental impacts of the proposed action and all alternatives studied. 40 C.F.R. § 1508.9(b). The EA fails to disclose reasonably foreseeable impacts of the new section 10(j) regulation on the northern Rockies wolf population.

50. FWS asserts that “the likely level of wolf removal under this alternative would not significantly impact the [northern Rockies] wolf population or compromise its recovery.”

EA at 50. However, the EA provides no support for this claim. FWS's analysis of potential wolf killing under the section 10(j) rule focuses exclusively on potential state actions to remove wolves impacting numeric herd management objectives that the states have already established. The EA ignores entirely the likelihood that states will establish new management objectives – numeric and otherwise – under the new rule. The section 10(j) rule gives states almost unlimited discretion to establish management objectives based on ungulate behavior, movements, and use of key feeding areas, including state-run elk feedgrounds. See EA at 33. The EA fails to disclose and analyze foreseeable wolf killing to address these objectives.

51. Moreover, contrary to the EA's finding, the new section 10(j) regulation will compromise the recovery of wolves in the northern Rockies. Contrary to statements in the EA, studies that FWS itself relies upon demonstrate very little population connectivity between the three recovery areas in the northern Rockies, which FWS has made clear is essential for wolf recovery. See EA at 49. Indeed, Greater Yellowstone wolves are entirely isolated genetically from any other wolf population. Extensive wolf mortality under the new section 10(j) regulation will further diminish genetic interchange, and the potential for genetic interchange, between the three recovery areas. The EA asserts that the section 10(j) rule will not disrupt connectivity and genetic exchange because FWS does not foresee widespread wolf killing. Id. As discussed above, the EA fails to recognize the potential for large numbers of wolves to be killed to address new herd management objectives or the increased mortality risks for dispersing wolves. The EA fails to analyze the impact of a sizeable decrease in the central Idaho and Greater Yellowstone wolf populations on genetic exchange between wolves in northwestern Montana, central Idaho, and Yellowstone.

52. In addition to failing to disclose the potential impacts of the new section 10(j) regulations on genetic connectivity, the EA also fails to disclose and analyze adequately the regulation's ecological impacts, which contradict the ESA's purpose to conserve the ecosystems upon which endangered species depend. Removing significant numbers of a top predator from the ecosystem has potentially cascading consequences, particularly for fish and wildlife that depend on wolves to reduce over-browsing by ungulates in riparian areas. Significant reductions in wolf numbers can also be expected to lead to an increase in coyote populations. Increased coyote predation will result in a reduction in rodent populations, which will decrease the prey base for numerous raptor species, and also will result in increased coyote predation on pronghorn antelope. The EA did not analyze these potentially significant ecological impacts.

53. The EA also fails to analyze the potential economic, aesthetic, and recreational impacts of reduced wolf populations.

54. The EA fails to project site-specific impacts of reasonably foreseeable state actions to implement the section 10(j) rule. For example, the EA discusses Idaho's 2006 proposal, which was "on hold" pending the rule change at issue, to kill 75 percent of wolves in the Lolo zone of north central Idaho. EA at 25-26. Once the rule change is effective, Idaho may obtain approval of its Lolo wolf-killing proposal. Yet the EA fails to disclose the number of wolves that would be killed and the site-specific ecological impacts of the Idaho proposal. Such forecasting of impacts from reasonably foreseeable actions is required by NEPA.

55. Further, FWS failed to "insure the ... scientific integrity" of the EA with respect to the discussion of impacts of the "no action alternative." 40 C.F.R. § 1502.24. FWS acknowledges that the "extent and specific effects" of wolf predation on wild ungulate populations "are very difficult to generalize." EA at 43. Nevertheless, FWS speculates that

“[b]ecause lethal control would not be available to States and Tribes as a remedy under the no-action alternative, ... [e]lk numbers and calf/cow ratios of these herds may not be able to meet management objectives” *Id.* FWS’ determination of alleged impacts to elk under the no-action alternative is not supported by evidence. Indeed, FWS’ conclusion that elk numbers will suffer if the new section 10(j) regulation is not implemented is contradicted by data demonstrating an over-abundance of elk even in areas where wolves and elk have overlapped ranges for a decade.

56. FWS also failed to “insure the ... scientific integrity” and accuracy of the EA in other respects. 40 C.F.R. § 1502.24. In responses to comments on the draft EA, FWS concedes that there is no support for the premise that the new 10(j) rule will diminish illegal take of wolves by increasing public tolerance of the species, Responses to Comments at 10, yet FWS continues to justify changes to the section 10(j) rule as “necessary for the continued enhancement and conservation of wolf populations because they foster local tolerance of introduced wolves,” *id.* at 18; see also EA at 29. By FWS’ own admission, there is no evidence that enhanced take of wolves increases local tolerance. Nevertheless, FWS continues to rely on this “social tolerance” rationale to justify its analysis of environmental impacts in the EA.

57. The agency decision is thus arbitrary, capricious, and not in accordance with the law, and must be set aside. 40 C.F.R. § 1508.9(b); 5 U.S.C. §§ 701-706.

SECOND CAUSE OF ACTION

(Failure to Prepare an EIS)

58. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 57.

59. NEPA requires federal agencies to prepare an EIS for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). NEPA

regulations specifically recognize harm to threatened or endangered species as the kind of activity that often requires an EIS. 40 C.F.R § 1508.27(b)(9).

60. The FONSI endorses an alternative that would authorize killing of all but 200 wolves each in Montana, Idaho, and Wyoming. Thus, the new section 10(j) regulation could result in the killing of all but 600 of the approximately 1,500 wolves that currently occupy the northern Rockies. This extensive wolf killing would have significant adverse effects both on the northern Rockies wolf population, which is still recognized as endangered, and, as alleged above, on the ecosystem of which the wolves are a part. FWS was required to prepare an EIS to analyze and disclose these significant environmental impacts of the section 10(j) rule change. 42 U.S.C. § 4332(2)(C)

61. The EA and FONSI are thus arbitrary, capricious, an abuse of discretion, and otherwise contrary to NEPA, 42 U.S.C. § 4332(2)(C), in violation of the APA, 5 U.S.C. §§ 701-706, and must be set aside.

PRAYER FOR RELIEF

THEREFORE, plaintiffs respectfully request that the Court:

1. Declare that FWS has violated NEPA and its implementing regulations in its Environmental Assessment and Finding of No Significant Impact;
2. Set aside FWS' Environmental Assessment and Finding of No Significant Impact, and enjoin FWS from authorizing any take of gray wolves pursuant to the revised 10(j) rule pending compliance with NEPA;
3. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys fees, associated with this litigation; and

4. Grant plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 25th day of January, 2008.



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