

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

Honorable Dave Freudenthal Governor of Wyoming
State Capital
Cheyenne, Wyoming 82002

Dear Governor Freudenthal:

This letter responds to your July 1, 2005, petition and brief in support of the State of Wyoming's petition to amend 50 CFR 17.84(i). In the brief, you provide a four-point summary of the primary changes proposed for the amendment of special regulations that implement the 1994 10(j) rule (59 FR 60266). These four points entail: 1) requiring the U.S. Fish and Wildlife Service (Service, we, us) or a designated agent to lethally control wolves causing livestock depredation; 2) establishing a uniform standard for determining unacceptable impacts to wild ungulate herds caused by wolves; 3) requiring the Service or a designated agent to lethally control or relocate wolves harassing elk at feed grounds; and 4) requiring the Service to compensate livestock producers for losses caused by wolves. The sum of these four issues is characterized by an overarching concern for negative effects of a recovered wolf population on livestock and wild ungulates, and hence on the agricultural, hunting, and outfitting communities of Wyoming. In this letter, we respond to your concern and explain our decision to deny your petition.

We believe that the 1994 and 2005 10(j) special rules (50 CFR 17.84(i) and (n)), our July 6, 2007, proposed revisions to the 2005 10(j) special rule (Appendix A), and our past and ongoing wolf control efforts adequately address the concerns you raised. Therefore, we do not believe the requested actions are needed and are denying your petition for the reasons stated below.

Background on Federal Special Rules

As you are aware, in 1994, we promulgated special rules under 10(j) of the Endangered Species Act of 1973, as amended, for reintroducing wolves as nonessential experimental populations (NEP) in the central Idaho and Yellowstone areas. All of Wyoming is within the Yellowstone NEP area. These special rules also provided management flexibility to address potential negative impacts and concerns regarding wolf reintroduction. In 2005, we promulgated another 10(j) special rule to provide additional flexibility for managing wolves, and on July 6, 2007, we proposed to revise the 2005 rule to facilitate management of wolves causing unacceptable impacts to wild ungulate populations and attacking stock animals. These proposed changes would provide even more flexibility to control problem wolves.

Wolf Management to Protect Livestock and Domestic Animals

The 1994 rules include authorization, without a permit, for private citizens to harass wolves in a non-injurious manner and take wolves that are in the act of attacking livestock on private land. These rules also provide a permit process that similarly allows, under certain circumstances, the take of wolves in the act of attacking livestock on public land. In addition, they allow, under specified circumstances, designated government employees or Service-designated agents to perform non-lethal and lethal control to remove problem wolves. The rules also provided increased flexibility to those States and Tribes with Service-approved wolf management plans for listed wolves to develop their own definitions of livestock for wolf control purposes.

The 2005 rule provided additional flexibility in States with approved post-delisting wolf management plans to allow private citizens to, also lethally take wolves that were "in the act of attacking" their livestock and dogs on private land and any livestock or herding and guarding dogs on active public grazing allotments or special use areas. The definition of "in the act of attacking" was expanded from the 1994 rule in 50 CFR 17.84 (n)(3) as "the actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment."

On July 6, 2007, we proposed to revise the 2005 special rule to expand the standard for lethal take of wolves in States with approved post-delisting wolf management plans when in defense of "stock animals" (defined as "a horse, mule, donkey, or llama used to transport people or their possessions") or dogs.

Wolf Management for Unacceptable Impacts to Wild Ungulates

Under the 1994 rules, States and Tribes with Service-approved management plans for listed wolves can define unacceptable impacts to wild ungulate populations and relocate wolves causing such impacts. They also provide a mechanism for increased State and Tribal participation in wolf management via cooperative agreements that designate them as agents of the Service.

The 2005 special rule added the option of lethal control of wolves causing unacceptable impacts as defined by approved State and Tribal plans if the State or Tribe completed a proposal for wolf control that had undergone peer review and public comment. Under that rule, the definition of "unacceptable impacts" was a "State or Tribally-determined decline in a wild ungulate population or herd, primarily caused by wolf predation, so

that the population or herd is not meeting established State or Tribal management goals," (50 CFR 17.84(n)).

Additionally, on July 6, 2007, as described in the proposed rule, we proposed revisions to the 2005 special rule that would revise the definition of "unacceptable impacts" so wolf control measures could be implemented when wolves are among the primary causes of unacceptable impacts as defined by the State or Tribe in their approved post-delisting wolf management plan. This would expand the, State's or Tribe's management flexibility and increase the potential for lethal control.

Requirement for Lethal Control of Problem Wolves

The first point of your brief maintains that the Service or designated agents should be required to lethally control wolves to reduce effects of depredation on livestock and wild ungulate populations. Looking at statistics for 2005 (the most recent year full statistics for livestock losses from the National Agricultural Statistics Service are available), losses of cattle in Wyoming due to all causes (both predation and non-predation) was 42,000 head (National Agricultural Statistics Service 2006), while losses confirmed due to wolves was 54 head (0.13 percent) (U.S. Fish and Wildlife Service 2007). For sheep, 29,000 head were lost to all causes in Wyoming (National Agricultural Statistics Service 2007), while .27 (0.09 percent) of those losses were confirmed due to wolves (U.S. Fish and Wildlife Service 2007). These numbers indicate that wolf depredation on cattle and sheep are a very small percentage of losses due to other causes (e.g., respiratory and digestive problems and predators other than wolves), and that wolf depredation is not causing a significant economic impact to Wyoming's livestock industry. However, in recognition of impacts to individual ranchers whose livestock have been killed by wolves, the Service has consistently devoted adequate resources to controlling problem wolves in Wyoming since 1995 when they were reintroduced.

The reasoning in your brief for requiring lethal control of problem wolves is that non-lethal methods, including relocation of problem wolves, is not effective for addressing livestock losses. We agree that though we have routinely considered non-lethal control options in the past, we have found that some of these methods are not particularly effective. However, in some situations they have been effective and resolved the conflict. We also had concluded that relocation of problem wolves is largely ineffective, primarily due to the lack of unoccupied high-quality suitable habitat. Relocated wolves either do not survive, return to their previous territories, or move to areas similar to previous conditions where they tend to repeat livestock conflicts (Bradley et al. 2005). Therefore, we no longer resort to relocation as a method of control, and 2001 was the last time wolves were relocated in the Northern Rocky Mountains.

In fact, we have been using lethal control as the primary method to address wolves depredating livestock in Wyoming. The Service devotes significant resources to coordinating with the U.S. Department of Agriculture Wildlife Services to investigate killed livestock, determine appropriate steps, and lethally remove wolves as needed. In addition, we have issued 28 shoot-on-sight permits to private individuals from 2000 through 2006, enabling landowners to immediately take lethal action against wolf seen on their property. Four wolves were killed by these permit holders during that period (M. Jimenez, U.S. Fish and Wildlife Service, pers. comm., July 2007). In 2006, 75 percent of the wolf mortality in Wyoming outside Yellowstone National Park (where lethal control is not conducted) was from lethal control (Jimenez et al. 2007). This lethal control effort in 2006 resulted in the removal of 44 wolves, about 18.8 percent of the wolf population in Wyoming outside Yellowstone National Park (Jimenez et al. 2007). In contrast, 13.9 percent of the wolf population was lethally controlled in Montana (U.S. Fish and Wildlife Service et al. 2007) and 9.3 percent in Idaho (Nadeau et al. 2007). As these figures demonstrate, we are making a concerted effort to address livestock depredation with lethal control of wolves. Therefore, revising the special rule to require, rather than authorize, lethal control as you proposed, is not needed.

Uniform Standard for Unacceptable Impacts to Wild Ungulates

In your second point, you propose we establish a uniform standard regarding what constitutes an unacceptable impact on wild ungulates based on sound scientific reasoning. However, you then briefly describe a process where each State develops a standard for unacceptable impacts, which the Service then approves and grants the individual State authority for taking appropriate management actions. In addition, the language in your proposed changes to the rule specifies that "Whether the decline in population, or a designated herd of wild ungulates, constitutes an 'unacceptable impact' shall be determined by the State or Tribal management authority and shall be based upon the best available science." Having each State or Tribal management authority develop their own separate definition of "unacceptable impact" appears to contradict your request for a "uniform standard."

A uniform standard does not provide the needed flexibility, because different conditions exist in each State and on Tribal lands. We agree that each State and Tribe should have the flexibility to tailor criteria for unacceptable impacts according to those conditions rather than be required to adhere to a uniform standard. We already have a process in place that does just that.

In reference to determining unacceptable impacts to ungulate populations by

wolf predation, the 1994 NEP special rules state that:

"The States and Tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or Tribal wolf management plans," (50 CFR 17.84(i)(2)(iv)).

You also propose a requirement for specific control measures when criteria for unacceptable impacts to wild ungulates are met, depending on whether or not wolf populations are at recovery levels. Essentially, you propose that lethal control of such problem wolves would be required if the wolf population is at or above recovery levels, while relocation would be required below recovery levels. Again, we believe provisions for greater management flexibility are already in place. The 2005 special rule authorizes lethal take of wolves causing unacceptable impacts to wild ungulate populations. This increased management flexibility was added because we recognized that the wolf population had exceeded its recovery goals and relocations were no longer likely to be effective because most of the suitable habitat in Montana, Idaho, and Wyoming were occupied by resident wolf packs (Oakleaf et al. 2006).

Furthermore, we have proposed a revision to the 2005 special rule that, if adopted, would facilitate wolf control measures so they could be implemented when wolves are among the primary causes of unacceptable impacts as defined by the State or Tribe in their approved post-delisting wolf management plans (Appendix A). If this revision is adopted, States and Tribes with Service-approved post-delisting management plans for wolves will have the flexibility to exercise lethal or non-lethal wolf control measures they deem appropriate under a given set of circumstances. Requiring lethal control under specific conditions, rather than authorizing such control methods, would undermine the flexibility for the States and Tribes provided by the 2005 special rule and the proposed revisions to it. Therefore, we believe the existing and proposed special rules adequately address your concern.

Unacceptable Impacts to Wild Ungulates at Feed Grounds

The third point in your brief raises the concern for wolves causing unacceptable effects to wild ungulates on or near State feed grounds. You propose that, when the wolf population is at or above recovery goals, the Service or Service-designated agents of the State or Tribe must lethally control wolves causing such effects and to allow designated agents to take action if we are unable to respond promptly. We maintain that provisions for control of wolves in such cases are currently in place in accordance with the 1994 and 2005 special rules. The provision in the 1994 special rule for States and Tribes to determine criteria for unacceptable impacts to wild ungulates may include such impacts occurring at feed grounds if

deemed appropriate by States or Tribes with wolf management plans that have been peer-reviewed and approved by the Service.

The 2005 special rule made lethal control methods available for use by States and Tribes with Service-approved post-delisting wolf management plans. The 2005 special rule also provides for States and Tribes to undertake implementation of control measures identified in their management plans if they enter a cooperative agreement or a Memorandum of Agreement with the Service.

Furthermore, our July 6, 2007, proposed revisions to the 2005 special rule, if adopted, would provide sufficient flexibility to address unacceptable impacts to wild ungulates caused by wolves and to allow for more effective control of problem wolves. Therefore, we do not believe your requested changes regarding elk feed grounds are needed.

Compensation for Livestock Losses

Your fourth point is that the Service should be required to reimburse livestock producers for property losses caused by wolves. The Service does not have the requisite statutory authority to provide monetary compensation for loss or damage to private property caused by a listed species. However, as you are aware, Defenders of Wildlife is providing compensation to livestock producers for wolf depredation while the northern Rocky Mountain population of the wolf is listed under the Endangered Species Act. Therefore, even assuming we had the authority to make the modification you propose, it is not necessary to include a compensation provision in the special rule.

I am encouraged by recent discussions with you on seeking solutions for meeting our respective needs. I look forward to maintaining cooperation between us and continuing to make progress in resolving the difficult issues surrounding wolf recovery. Finally, we intend to complete the current rule making process and implement any changes that are adopted. We encourage the State of Wyoming to participate in that rulemaking process during the public comment period from July 6 through August 6, 2007.

Sincerely,

Enclosures

cc: Patrick Crank
Wyoming Attorney General Cheyenne, WY

Terry Cleveland
Wyoming Game & Fish Department Cheyenne, WY

LITERATURE CITED

- Bradley, E.H., D.H. Pletscher, E.E. Bangs, K.E. Kunkel, D.W. Smith, C.M. Mack, T.T. Meier, J.A. Fontaine, C.C. Niemeyer, and M.D. Jimenez. 2005. Evaluating wolf translocation as a non-lethal method to reduce livestock conflicts in the northwestern United States. *Conservation Biology* 19:1498-1508.
- Jimenez, M.D., D.W. Smith, D.S. Guernsey, and R.F. Kri.schke. 2007. Wyoming Wolf Recovery 2006 Annual Report. Pages 174- 201 in U.S. Fish and Wildlife Service Rocky Mountain Wolf Recovery 2006 Annual report. USFWS, Ecological Services, 585 Shepard Way, Helena, Montana 59601. 235 pp..
- Nadeau, M. S., C. Mack, J. Holyan, J. Husseman, M. Lucid, P. Frame, and B. Thomas. 2007. Wolf conservation and management in Idaho; progress report 2006. Idaho Department of Fish and Game, 600 South Walnut, Boise, Idaho; Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho. 73 pp.
- National Agricultural Statistics Service. 2006a. <http://usda.mannlib.cornell.edu/usda/current/CattDeer/CattDeer-05-05-2006.pdf>
- National Agricultural Statistics Service. 2006b. <http://usda.mannlib.cornell.edu/usda/current/sgdl/sgdl-05-06-2005.pdf>
- Oakleaf, J.K., D.L. Murray, J.R. Oakleaf, E.E. Bangs, C.M. Mack, D.W. Smith, J.A. Fontaine, M.D. Jimenez, T.J. Meier, and C.C. Niemeyer. 2006. Habitat selection by recolonizing wolves in the northwestern United States. *J. Wildlife Management* 70:554-563.
- U.S. Fish and Wildlife Service, Nez Perce Tribe, National Park Service, Montana Fish, Wildlife and Parks, Idaho Fish and Game, and USDA Wildlife Services. 2007. Table IC. Montana Portion of the Central Idaho Experimental Area (Montana statewide totals): Wolf packs and population data, 2006. http://www.fws.gov/mountain-prairie/species/mammals/wolf/annualrpt06/Table_1c.pdf