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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

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,)
ALLIANCE FOR THE WILD ROCKIES,)
OREGON WILD, CASCADIA WILDLANDS)
PROJECT, WESTERN WATERSHED)
PROJECT, and WILDLANDS PROJECT,)

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-08-56-M-DWM

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This case challenges the decision of the U.S. Fish and Wildlife Service (“FWS”) to designate and delist a northern Rocky Mountain gray wolf distinct population segment (“DPS”), despite the existence of significant threats to wolves’ survival. 73 Fed. Reg. 10,514 (Feb. 27, 2008) (“Delisting Rule”).

2. More than 350,000 gray wolves once inhabited the American West. By the 1930’s, however, wolves were all but eradicated from the West through poisoning, trapping, and shooting. The last viable wolf populations were reported to been eliminated from the Western landscape in 1925. Gray wolves were among the first species to be listed by the Secretary of Interior as endangered when, alarmed by the pace of species’ decline, Congress in 1973 enacted the Endangered Species Act (“ESA”), 16 U.S.C. § 1531, et seq.—“the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” Tennessee Valley Auth. v. Hill, 437 U.S. 153, 180 (1978).

3. Protected under the ESA from killing by humans, gray wolves began to return to their native landscapes in northwestern Montana from Canada. In 1995 and 1996, gray wolf recovery took a giant leap forward when FWS reintroduced 66 gray wolves into Yellowstone National Park and central Idaho. Since that reintroduction, the northern Rockies wolf population has grown to approximately 1,500 today. As a top predator and “keystone” species, the wolf’s return has restored a more natural balance in northern Rockies ecosystems. Among other things, the reintroduction of wolves has led to healthier riparian vegetation along streams, as elk no longer linger in valley bottoms, and has measurably benefited rodent, bird, antelope and elk populations. In addition, the reintroduction of wolves has brought substantial economic benefits to the region. Many thousands of visitors flock to Yellowstone National Park from around the

world to see and hear wolves in the wild, contributing at least \$35 million dollars to the local economy each year.

4. Although the restoration of wolves to the northern Rockies is a success story, it remains a vulnerable one. At 1,500 wolves, the population still has not achieved the size or connectivity between the region's core recovery populations that independent scientists have determined essential to wolves' long-term survival. Indeed, a 2007 government-commissioned study concluded that Yellowstone's iconic wolf population has remained genetically isolated since wolves were reintroduced to the Park in 1995.

5. Nevertheless, on February 27, 2008, FWS issued a final rule eliminating ESA protections for the northern Rockies gray wolf. 73 Fed. Reg. 10,514. Without ESA protections, the gray wolf population will never reach sustainable levels and is likely to enter a long-term decline. The states of Montana, Idaho, and Wyoming have each committed to maintain only 100-150 wolves. The states' plans for post-delisting wolf management represent a return to many of the policies that resulted in wolves' eradication from the western landscape in the early-20th-century.

6. Plaintiffs in this case challenge FWS' decision to designate and delist a northern Rocky Mountains gray wolf DPS. The decision to delist northern Rockies wolves despite overwhelming evidence that the population is not biologically recovered and cannot withstand the excessive human-caused mortality promoted under state management contradicts the purposes and mandates of the ESA and its implementing regulations and ignores fundamental principles of conservation biology. Thus, the delisting rule is arbitrary, capricious, an abuse of discretion, and contrary to the law, and must be set aside.

JURISDICTION, VENUE, AND ADMINISTRATIVE REMEDIES

7. Plaintiffs bring this action pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g), which waives defendants' sovereign immunity. In the alternative, this Court has jurisdiction over Plaintiffs' claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *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.

8. Venue is proper in this District under 28 U.S.C. § 1391 because one or more plaintiffs reside in the District of Montana; land affected by the challenged action is within the District of Montana; and 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 every county within the Missoula Division is also within the northern Rocky Mountain gray wolf DPS area affected by the challenged action.

9. Plaintiffs have attempted to resolve their claims administratively by commenting on the proposed delisting rule that appeared in the Federal Register and by providing defendants with notice of Plaintiffs' intent to sue on February 27, 2008. *See* 72 Fed. Reg. 6,105 (Feb. 8, 2007); 72 Fed. Reg. 36,939 (July 6, 2007); 16 U.S.C. § 1540(g).

PARTIES

10. Plaintiff Defenders of Wildlife ("Defenders") is a national non-profit conservation organization headquartered in Washington, D.C., with offices in Missoula, Montana; Bozeman, Montana; and Boise, Idaho. 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 non-lethal, 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*.

11. 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.

12. 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."

13. Plaintiff The Humane Society of the United States ("The HSUS") is a non-profit

charitable organization incorporated in 1954 and is headquartered in Washington, D.C., 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.

14. 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, Montana, and Washington, D.C. The Center has more than 40,000 members, including many who reside in, explore, and enjoy the northern Rockies.

15. 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.

16. 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.

17. Plaintiff Alliance for the Wild Rockies (“AWR”) is a tax-exempt, non-profit public-interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plants, fish, and animal life, and its naturally functioning ecosystems. AWR has over 2,000 individual members and more than 500 member businesses and organizations.

18. Plaintiff Oregon Wild, formerly Oregon Natural Resources Council, is a non-profit corporation with approximately 4,500 members, headquartered in Portland, Oregon. Oregon Wild is dedicated to protecting and restoring Oregon’s wildlands, wildlife, and waters, including fully functioning forest ecosystems with a full complement of native species like the wolf. Oregon Wild has appealed numerous timber sales which could affect the wolf and its habitat. Delisting the wolf will preclude or greatly delay the possibility of full recovery of the wolf in Oregon. The northern Rockies population must be maintained at relatively high numbers so it can act as a source population and enable wolves to recolonize abundant suitable habitat in the wolf’s former range to the west and south of the currently occupied areas. Oregon Wild brings this action on its own behalf and on behalf of its members, many of whom regularly enjoy and will continue to enjoy educational, recreational, and scientific activities, including hiking, camping, and observing wildlife, in suitable wolf habitat. The interests of Oregon Wild and its members in wolf conservation have been harmed by defendants’ failure to comply with the Endangered Species Act, because the absence of wolf conservation measures will permit activities that harm the wolf and the interests of Oregon Wild.

19. Plaintiff Cascadia Wildlands Project is a 501(c)(3) non-profit organization based in Eugene, Oregon, that is dedicated to defending the forests, waters, and wildlife of the Pacific Northwest. The Cascadia Wildlands Project works to protect and restore wildlife populations to bring balance back to wild ecosystems of the Cascadia Bioregion. In 2005, Cascadia Wildlands Project worked cooperatively with the State of Oregon to develop a wolf management plan that may, in the future, help provide for a viable population of gray wolves in the northwest. The interests of Cascadia Wildlands Project and its members are harmed by gray wolf delisting due to the adverse impact delisting has on wolves' ability to disperse to and recolonize their native Oregon landscapes.

20. Plaintiff Western Watersheds Project ("Western Watersheds") is an Idaho non-profit conservation group, headquartered at the Greenfire Preserve located on the East Fork Salmon River, near Clayton in Custer County, Idaho. The Greenfire Preserve is a former cattle ranch, which Western Watersheds manages to promote the restoration of native habitats and protection of wildlife species there; to educate the public about native habitat restoration, wildlife protection, and other environmental issues; and to carry out science-based advocacy in the region. Western Watersheds has over 1,400 members plus additional volunteers and supporters, located in Idaho and around the United States, as well as professional staff in Idaho, Utah, and Wyoming. Western Watersheds, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West.

21. Plaintiff Wildlands Project is a non-profit organization working across North America to protect, restore, and connect networks of natural areas so that all native species, including top predators, can exist in healthy populations across their historic range. Wildlands

Project, relying on the biological and ecological sciences, recognizes that predators such as wolves are essential to healthy ecosystems on which all species, including humans, depend. Of Wildlands Project's 5,001 members, 285 live in Montana, Idaho, and Wyoming and another 489 live in Washington and Oregon. The organization's board, staff and many of its members recreate in the northern Rockies and personally enjoy the presence of wolves in addition to believing they are ecologically important and that their right to exist is entitled to respect.

22. 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 array of actions including public education, scientific analysis, and advocacy intended to promote achievement of healthy ecosystem functioning in the region.

23. 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, 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 defendants' challenged action will reduce their opportunity to do so. The decision to eliminate ESA protections for gray wolves in the northern Rockies 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 plaintiff organizations and their members.

24. 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.

25. Defendant H. Dale Hall is the Director of the U.S. Fish and Wildlife Service. Defendant Hall is sued in his official capacity.

26. 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.

27. Defendant United States Fish and Wildlife Service ("FWS") 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.

THE ENDANGERED SPECIES ACT

28. The ESA 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.

29. 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).

30. Under these definitions, the FWS can list a distinct population segment (“DPS”) of a vertebrate species, even when the species as a whole is neither endangered nor threatened. See 61 Fed. Reg. 4,722, 4725 (Feb. 7, 1996). By extending the protections of the ESA to locally vulnerable populations, DPSs are meant to “protect and conserve species and the ecosystems upon which they depend before largescale decline occurs that would necessitate listing a species or subspecies throughout its entire range.” Id.

31. In 1996, FWS and the National Marine Fisheries Service jointly adopted a policy for determining when DPSs can be designated under the Act (“DPS Policy”). Id. In determining whether a DPS designation is appropriate, the DPS policy directs FWS to consider the proposed DPS’s discreteness, significance to the species, and conservation status. Id. A proposed DPS is “discrete” if it is “markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors” or if it “is delimited by international boundaries within which [significant] differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.” Id. “[B]iological and ecological significance” takes into consideration the proposed DPS’s “importance to the taxon to which it belongs.” Id.

32. In making decisions to list or delist a species, including a DPS, as “endangered” or “threatened,” the ESA requires the Secretary to “determine whether [the] 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.

16 U.S.C. § 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).

33. Once a species is listed as “endangered” or “threatened” under the ESA, “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the ESA].” Id. § 1531(c).

GRAY WOLVES IN THE NORTHERN ROCKIES

34. The gray wolf (*Canis lupus*) is the largest wild member 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 occasionally 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. Many livestock owners have successfully avoided or reduced conflicts with wolves through non-lethal methods, including the use of fladry (strips of fabric tied to fences), range riders, guard dogs, and changed calving practices.

35. Wolves are social animals that normally live in packs of 2 to 12 animals and 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, which, along with territorial instincts that limit the number of packs in any given region, serves to naturally limit wolf numbers. Litters are generally born in April and range from 1 to 11 pups. All pack members help feed, protect, and play with the pups as they grow. Wolf pups are weaned at 5 to 6 weeks of age, and are mature enough to begin traveling with the pack by around October, a critical period for wolf survival.

36. Research demonstrates that when one alpha wolf is removed from a pack, the probability that the pack will successfully breed the following year is approximately 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 and distribution.

37. 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.” 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 Apr. 24, 2008). This hunting, together with an active eradication program sponsored and carried out by FWS and its predecessor agency, resulted in the extirpation of wolves from more than 95 percent of their

range in the lower-48 states. 68 Fed. Reg. at 15,805; 72 Fed. Reg. 6,106, 6,125 (Feb. 8, 2007).

In Montana, Idaho, Wyoming, and adjacent southwestern Canada, wolves were exterminated by the 1930s. 73 Fed. Reg. at 10,514.

38. In 1987, FWS developed a wolf recovery plan that established a northern Rockies wolf recovery goal of at least 10 breeding pairs and 100 wolves for three consecutive years in each of three recovery areas: northwestern Montana, central Idaho, and the Greater Yellowstone area. FWS' 1994 EIS for the wolf reintroduction states that these criteria require a minimum of "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., id.; FWS, Final Environmental Impact Statement studying the reintroduction to Yellowstone National Park and central Idaho (1994), App. 9 at 42; id., Glossary, at 4 (defining metapopulation as essential component of recovery)

39. In 1995, FWS embarked on an ambitious plan to restore wolves in the northern Rockies by relocating and releasing 66 gray wolves from Canada into Yellowstone National Park and central Idaho. See 72 Fed. Reg. at 36,943.

40. In the years following reintroduction, wolves reproduced and established packs. 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 elk, which now tend

to avoid browsing in areas where they are most vulnerable to predation, and in turn have reduced destruction of young aspen and willow shoots. The restoration of shrubs and trees in riparian areas controls stream erosion, and supports native bird communities, beavers, and other wildlife. Wolves aggressively prey on coyotes within wolves' home territories. 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 upon by coyotes).

41. 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.

42. When the delisting rule took effect on March 28, 2008, the northern Rockies wolf population numbered approximately 1,500. If the northern Rockies wolf population continues to grow at the pace of recent years, it may soon reach the numbers and geographic distribution that will ensure its long-term viability. Numerous scientists have informed FWS that a connected population of 2,000-5,000 wolves is necessary to ensure a genetically viable northern Rockies wolf population over the long term. Further, the current wolf population must expand geographically to achieve necessary connectivity and genetic exchange between the three core wolf recovery areas in the northern Rockies. To date, sufficient connectivity has not been achieved. In particular, wolves in the Greater Yellowstone area remain genetically isolated from wolves in central Idaho and northwest Montana.

THE CHALLENGED DELISTING DECISION

43. In 2000, the northern Rockies wolf population met FWS' numeric recovery goal of 300 wolves in 30 breeding pairs for the first time, though the population had not, and still has

not, achieved connectivity that FWS has deemed essential to recovery.

44. In preparation for delisting, FWS sought scientist peer reviews of the agency's definition of a viable northern Rockies wolf population. Many of the selected scientists commented at the time that FWS' peer review process was biased to elicit views consistent with FWS' preferred outcome. Peer reviewers were presented with three alternative definitions of a viable wolf population and asked to rank the definitions in order of scientific accuracy. Reviewers were also offered a fourth possibility of creating their own definition. One reviewer described the presentation as "artificial and misleading" (Reed Noss). Another reviewer noted, "By limiting the choices to those 3 options approved by the Service, plus a category of 'other', it may unfairly bias the results" (Brian Miller).

45. The Service proceeded with its preferred definition of a viable wolf population despite dissent from a considerable number of scientific experts. Numerous peer reviewers criticized FWS' determination of population viability as lacking quantitative analysis or modeling with life history data. Some of the reviewers specifically noted that genetic problems were likely to present a threat to wolves without greater attention to connectivity in the northern Rockies.

46. FWS requested that the states of Montana, Idaho, and Wyoming prepare wolf management plans specifying how they would manage wolves once the animals were no longer listed as endangered. FWS determined that state plans must each provide for at least 100 wolves in 10 breeding pairs in order to meet the agency's numeric recovery standard developed in 1987.

47. In a January 2004 letter, FWS determined that the Montana and Idaho wolf management plans would be adequate to maintain a viable wolf population, as defined by FWS. At the same time, FWS determined that Wyoming's 2003 proposed plan and state law were

inadequate. In rejecting Wyoming's 2003 plan, FWS stated that: (1) "[t]he 'predatory animal' status for wolves must be changed" because "[t]he unregulated harvest, inadequate monitoring plan, and unit boundaries proposed by the state's management plan do not provide sufficient management controls to assure the Service that the wolf population will remain above recovery levels;" (2) "[t]he Wyoming state law must clearly commit to managing for at least 15 wolf packs in Wyoming;" and (3) "[t]he Wyoming definition of a pack must be consistent among the three states and should be biologically based" to insure the inclusion of "at least one breeding pair." FWS anticipated that under Wyoming's 2003 plan and state law, wolves would be eliminated from 90% of the area they now use and occupy outside of the national parks. Indeed, FWS found that unregulated killing of wolves under the 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." 71 Fed. Reg. 43,410, 43,430 (Aug. 1, 2006).

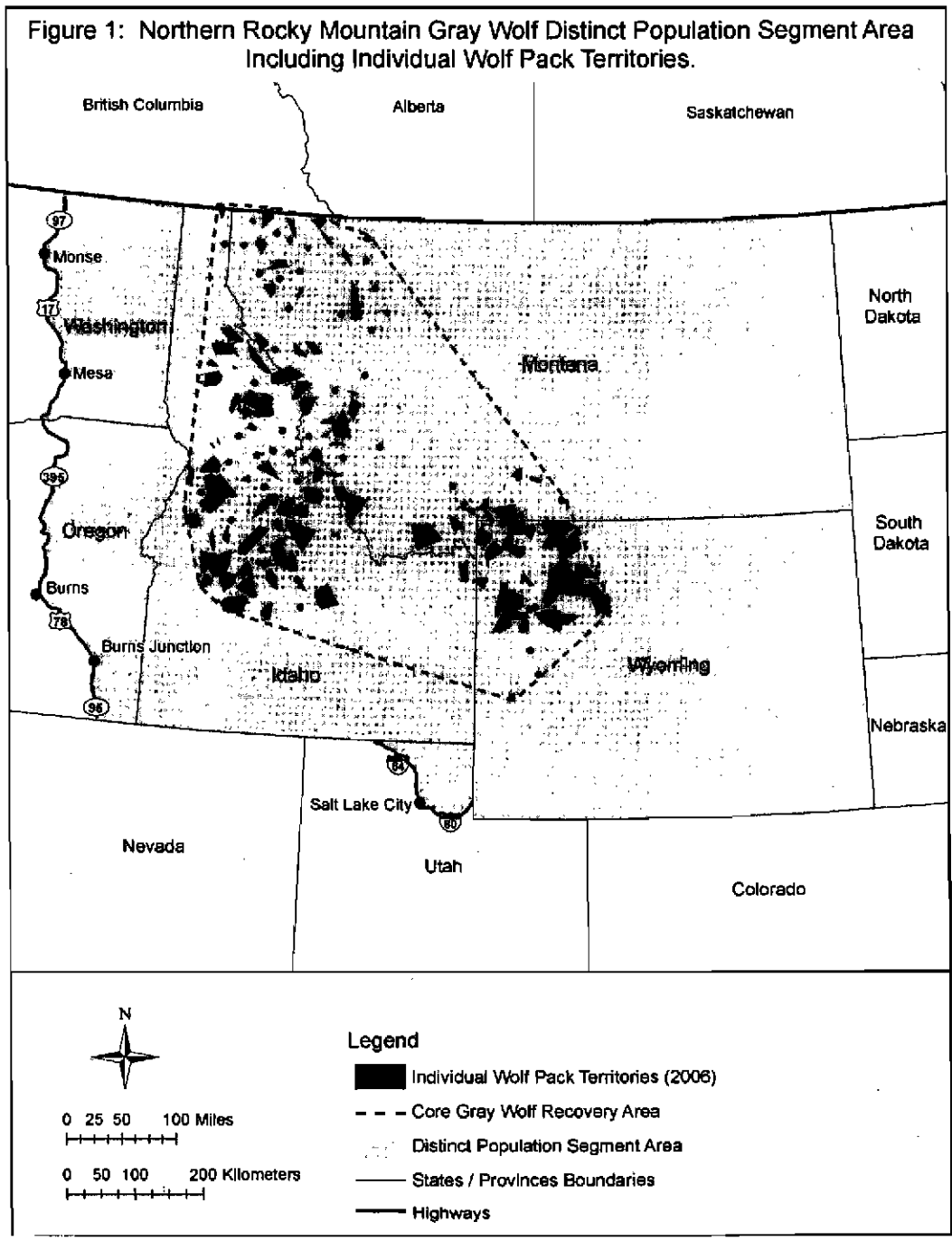
48. FWS proposed designating a northern Rockies gray wolf DPS and removing it from the list of federally protected threatened and endangered species in early 2007. See 72 Fed. Reg. 6,106 (Feb. 8, 2007). The proposal was to delist wolves throughout the portion of the DPS comprising Montana, Idaho, eastern Oregon, eastern Washington, northern Utah, as well as most of Wyoming. FWS stated that unless and until Wyoming developed an adequate post-delisting management plan, wolves in their occupied range in northwest Wyoming, outside of Yellowstone Park, would remain on the endangered species list. See 72 Fed. Reg. at 6,117.

49. Wyoming then revised its wolf management statute and plan. Under the new law, the trophy game area in which wolf killing is somewhat regulated was minimally expanded within the northwest corner of Wyoming, but wolves still qualify as predators—and are subject

to unregulated killing and persecution—across nearly 90% of the state. Wyo. Stat. §§ 11-6-302(a)(ix), 23-1-101(a)(viii)(B). The new Wyoming law also replaces the “pack” definition for measuring compliance with recovery standards size with FWS’ preferred “breeding pair” definition, which requires “an adult male and an adult female gray wolf raising at least two (2) pups of the year until December 31.” Id. § 23-1-304(c). Wyoming’s new management scheme was made contingent on several events, including revision of an ESA regulation to allow Wyoming to kill wolves in response to impacts to elk and other ungulates and publication of a final rule delisting gray wolves in Wyoming before February 29, 2008.

50. On July 6, 2007, FWS announced that it was satisfied that Wyoming’s new plan appeared to constitute an adequate regulatory mechanism. 72 Fed. Reg. 36,939, 36,940 (July 6, 2007). FWS approved the 2007 Wyoming plan in December 2007 and thus enabled the entirety of Wyoming to be included in the final delisting rule.

51. On February 27, 2008, FWS issued its final rule designating a northern Rocky Mountains gray wolf DPS and removing the DPS from the list of threatened and endangered species. The DPS encompasses a large area, including all of Montana, Idaho, and Wyoming; and eastern Washington, eastern Oregon, and northern Utah. See 73 Fed Reg. at 10,518. Wolf packs are known to occupy only a small portion of the DPS—areas limited to northwestern Montana, central Idaho, and the Greater Yellowstone area. See id.



73 Fed. Reg. at 10,517

52. Wolf management is now in the hands of states. Under the delisting rule, 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.

53. Idaho's governor signed into law Senate Bill 1374 on March 28, 2008, the day delisting took effect, amending Idaho Code § 36-1107. The new law allows owners of livestock and other domestic animals to kill without a permit any wolf that is allegedly molesting or attacking livestock or other domestic animals. The law defines "molesting" broadly as "the actions of a wolf that are annoying, disturbing or persecuting, especially with hostile intent or injurious effect, or chasing, driving, flushing, worrying, following after or on the trail of, or stalking or lying in wait for, livestock or domestic animals."

54. Since delisting took effect on March 28, 2008, at least 13 wolves are reported to have been killed in Wyoming's predator management area, and an unknown number of wolves have been killed without a permit pursuant to predator laws in Idaho and Montana.

FIRST CAUSE OF ACTION

(Violation of Endangered Species Act, § 4(a) [Lack of Biological Recovery])

55. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 54.

56. FWS may "delist" a species only if it determines, based on "the best scientific and commercial data available," that the species is no longer threatened or endangered. See 16 U.S.C. § 1533(a)(1) (listing factors); id. at § 1533(b) (listing determinations shall be made "solely on the basis of the best scientific and commercial data available"); see also 50 C.F.R. § 424.11(d) (providing grounds for delisting). In order to delisting the northern Rocky Mountain wolf DPS, FWS must find that it is not threatened or endangered by "natural or manmade factors affecting its continued existence." 16 U.S.C. § 1533(a)(1)(E). FWS arbitrarily concluded that northern Rockies gray wolves are not threatened by a current or foreseeable lack of genetic diversity, small population size, or lack of population connectivity. See 73 Fed. Reg. at 10,553-54. Biologists have established that in order to remain genetically viable, animal populations

must number in the thousands. With respect to wolves in particular, scientists have calculated that a minimum population of 2,000 to 5,000 (including both mature and immature animals) is required to ensure genetic viability in the northern Rockies. At approximately 1,500 wolves, the current wolf population has not yet achieved the size widely accepted as necessary to ensure the population's long-term viability. Moreover, the population has not yet achieved the substantial connectivity between core recovery areas that FWS itself has deemed essential. Thus, FWS' determination that the population will be genetically viable if Montana, Idaho, and Wyoming each maintain only 100 wolves in 10 breeding pairs is not in keeping with the best available science or the agency's own standards.

57. Moreover, FWS contracted with wolf genetics experts to conduct a genetic analysis of wolves in the Greater Yellowstone area. The expert study concluded that the Yellowstone ecosystem's current population of approximately 170 wolves, even absent the additional mortality that delisting precipitated, was sufficiently small and isolated that increased juvenile mortality would result within approximately 60 years—well within the period that FWS deemed appropriate for analysis in the Delisting Rule. VonHoldt, *et al.*, The genealogy and genetic viability of reintroduced Yellowstone grey wolves, *Molecular Ecology* at 19 (2007). Moreover, “intense control actions in the [greater Yellowstone] region may severely affect the continuity of pack systems and hinder genetic exchange.” *Id.* at 19. The study further concluded that populations of 100 wolves in 10 breeding pairs, as contemplated by the Delisting Rule, “that remain isolated will lose genetic variation and become inbred over the long term.” *Id.* at 18.

58. Because wolves in the northern Rockies are threatened by a current and foreseeable lack of genetic diversity, small population size, and lack of population connectivity, the Delisting Rule is arbitrary, capricious, an abuse of discretion, and otherwise contrary to the

ESA, 16 U.S.C. § 1533(a), (b), in violation of the APA, 5 U.S.C. § 706(2), and must be set aside.

SECOND CAUSE OF ACTION

(Violation of Endangered Species Act, § 4(a) [Inadequate Regulatory Mechanisms])

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

60. FWS wrongly concluded that the northern Rockies wolf population is not threatened by “the inadequacy of existing regulatory mechanisms.” 16 U.S.C. § 1533(a)(1)(D); see 73 Fed. Reg. at 10,546-52. Despite assurances in the Delisting Rule that the states of Montana, Idaho, and Wyoming “inten[d] to manage for about 883-1,250 wolves,” 73 Fed. Reg. at 10,553, none of these states has made enforceable commitments to maintain more than 100-150 wolves or 10-15 breeding pairs. Indeed, Wyoming law requires state wildlife officials to manage for no more than 7 breeding pairs outside of Yellowstone National Park, regardless of the population within Yellowstone. Laws in each of the three states also promote significant reductions in wolf numbers in the name of “predator control.” Montana, Idaho, and Wyoming provide for the largely unregulated killing of wolves. Further, Wyoming law classifies wolves in all but the far northwest corner of the state as predators—a designation that subjects them to unlimited killing by the full array of methods available to modern humanity. In spite of the high level of wolf mortality allowed, and even encouraged, under state laws, the states have no guaranteed sources of funding for the monitoring and conservation measures that are contemplated in their wolf management plans to ensure that wolves do not drop below levels that FWS has deemed the bare minimum. In light of these and other deficiencies, the Service’s conclusion that a delisted northern Rockies wolf population is not endangered or threatened by inadequate state regulatory mechanisms is arbitrary, capricious, and not based on the best available science. See 16 U.S.C. § 1533(a), (b).

61. The Delisting Rule is thus arbitrary, capricious, an abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a), (b), in violation of the APA, 5 U.S.C. § 706(2), and must be set aside.

THIRD CAUSE OF ACTION

(Violation of Endangered Species Act, § 4(a) [Significant Portion of the Range])

62. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 61.

63. ESA section 4(a) sets forth a five-factor test for determining whether a species is threatened or endangered. 16 U.S.C. § 1533(a). These factors must be analyzed “throughout all or a significant portion of [the species’] range.” *Id.* § 1532(6), (20). A species’ range includes “major geographical areas in which [a species] is no longer viable but once was.” Defenders of Wildlife v. Norton, 258 F.3d 1136, 1145 (9th Cir. 2001). The delisting rule fails to analyze threats to the gray wolf throughout significant portions of its range within the northern Rockies DPS, instead assuming that the entire range of gray wolves is the DPS area currently occupied by gray wolves. 73 Fed. Reg. at 10,533, 10,555.

64. The Delisting Rule also arbitrarily and capriciously determined that areas of the DPS outside the occupied portions of core recovery areas are not significant portions of the gray wolf’s range because they do not contain suitable wolf habitat. *Id.* at 10,557. This finding is based in part on current and future threats due to development, and in part on the lack of resident wolves due to human-caused mortality or agency removal of wolves that have dispersed to these areas. To sacrifice a major portion of wolves’ historic range within the DPS due to preventable factors relating to human activities turns the ESA on its head. The Act’s protections are meant to protect species from such threats. Further, the Delisting Rule fails to tie the determination of what constitutes a significant portion of wolves’ range to the biological requirements of wolves,

for example, the range necessary for genetic viability.

65. The Delisting Rule is thus arbitrary, capricious, an abuse of discretion, and otherwise contrary to the ESA, 16 U.S.C. § 1533(a), in violation of the APA, 5 U.S.C. § 706(2), and must be set aside.

FOURTH CAUSE OF ACTION

(Violation of Endangered Species Act, § 2 [DPS Boundaries])

66. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 65.

67. The ESA's purpose is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531(b). The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. § 1532(16).

68. The DPS Policy was developed to carry out the ESA's conservation mandate, and to this end provides that DPSs be designated "to protect and conserve species and the ecosystems upon which they depend before large-scale decline occurs that would necessitate listing a species or subspecies throughout its entire range." 61 Fed. Reg. at 4,725.

69. Under the DPS Policy, FWS may designate DPSs that are discrete and significant in relation to the species to which they belong. Id. The DPS Policy emphasizes that, "[i]t is important in light of the Act's requirement to use the best available scientific information in determining the status of species that this interpretation [of the meaning of a DPS] follows sound biological principles" and, necessarily, "[a]ny interpretation adopted should also be aimed at carrying out the purposes of the Act." 61 Fed. Reg. 4,722 (Feb. 7, 1996).

70. Rather than drawing a line around a wolf population with a conservation status different from that of other populations of the species, as required under the ESA, the NRM DPS includes large expanses presently unoccupied by wolves. The Service's action, therefore, eliminates protections beyond the currently occupied range, though the wolf's conservation status in those areas has not changed from when the wolf was first listed as endangered. See Reclassification of the Gray Wolf in the U.S. and Mexico with Determination of Critical Habitat in Michigan and Minnesota, 43 Fed. Reg. 9,607, 9,611 (Mar. 9, 1978).

71. By including within the northern Rockies gray wolf DPS largely unoccupied portions of Montana, Idaho, Wyoming, Oregon, Washington, and Utah, the Service has essentially created a moat around existing wolf populations in core recovery areas that will ensure that wolves do not disperse to suitable habitat outside of the DPS where the wolf is still protected as endangered. Rather than promoting the continued recovery of wolves outside the DPS, therefore, the Service's action severs crucial dispersal corridors by eliminating federal protections for dispersing wolves and leaving them subject to inadequate state mechanisms and intensive federal, state and private predator control actions.

72. The Service's decision to eliminate crucial protections for wolves over an arbitrarily large northern Rockies gray wolf DPS violates the Service's obligation to conserve endangered and threatened species and the ecosystems on which they depend, see 16 U.S.C. § 1531(b); 61 Fed. Reg. at 4,725, in violation of the APA, 5 U.S.C. § 706(2), and must be set aside.

FIFTH CAUSE OF ACTION

(Violation of ESA § 4 [DPS Designation])

73. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 72.

74. The DPS also violates the ESA by arbitrarily disregarding the status of the entity listed as endangered in 1978—*i.e.*, gray wolves throughout the lower-48 states. 43 Fed. Reg. 9,607 (Mar. 9, 1978). In its 1978 listing determination, FWS determined that “the entire species *Canis Lupis* is Endangered or Threatened to the south of Canada.” *Id.* The Delisting Rule fails to explain FWS’ *de facto* determinations that the conterminous United States is no longer the appropriate measure of the gray wolf’s condition, and that areas constituting a significant portion of the wolf’s range in 1978 are no longer significant

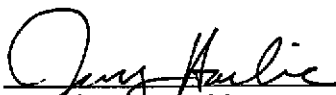
75. Because the Delisting Rule is an arbitrary departure from the 1978 determination that gray wolves are endangered throughout a significant portion of their range in the conterminous United States, outside of Minnesota, it violates ESA section 4, 16 U.S.C. § 1533, and APA, 5 U.S.C. § 706(2), and must be set aside.

PRAYER FOR RELIEF

THEREFORE, plaintiffs respectfully request that the Court:

1. Declare that FWS has violated the ESA and its implementing regulations in designating a northern Rockies gray wolf DPS;
2. Declare that FWS has violated the ESA and its implementing regulations in delisting the northern Rockies gray wolf DPS;
3. Set aside FWS’ Delisting Rule, and issue an injunction reinstating ESA protections for gray wolves;
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 28th day of April, 2008.



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